

REGULAR MEETING - FEBRUARY 4, 2010

The Mayor and City Council met in regular session on Thursday, February 4, 2010 at 7:00 p.m. in the Council Chambers of City Hall located at 114 West Sycamore Street, Lincolnton North Carolina.

Mayor Gilleland called the meeting to order and thanked everyone for attending the meeting and for their interest in City Government.

Mayor Gilleland then stated, "Our great town lost a great man this past weekend, former Mayor Bobby G. Huitt. I would like to start our meeting by honoring him with a moment of silence." Former Mayor Huitt passed away Friday, January 29, 2010.

Mayor Pro-Tem Cloninger then called forward Life Scout Steven Cloak, working toward one of his merit badges, for the Eagle Scout award to lead the Pledge of Allegiance.

Councilman Heavner made the motion unanimously approved the REGULAR AGENDA as presented.

Councilman Houser made the motion unanimously approved the CONSENT AGENDA as follows:

- Approved the January 7, 2010 minutes
- Awarded 2010 Audit Contract (C-02-10) to Lowdermilk, Church & Associates
- Approved the following Call to Public Hearing for the March 4th City Council meeting:

CUP-1-2010-Application from Caroline Brown requesting an amendment to a conditional use permit that would allow for an internet sweepstakes use within an approved beach bingo facility. The business would be located in the Northgate Shopping Center at the northeast corner of North Aspen Street and Vandiver Drive. The address of the use is 151 Vandiver Drive.

REGULAR AGENDA:

CU-ZMA-1-2010- APPLICATION FROM CAESAR TORRES REQUESTING THE REZONING OF 0.49 ACRES OF LAND FROM RESIDENTIAL-8 (R-8) TO CONDITIONAL USE GENERAL BUSINESS (CU-GB) FOR THE PURPOSE OF OPERATING A GARAGE, REPAIR, AND ENGINE SERVICE SHOP. THE SUBJECT PROPERTY IS LOCATED AT THE SOUTHEAST CORNER OF NORTH POPLAR STREET AND EAST SUMNER STREET. THE ADDRESS IS 300 SUMNER STREET:

REGULAR MEETING - FEBRUARY 4, 2010

Mayor Gilleland opened the Public Hearing. The City Clerk administered the oath to all those wishing to speak for or against the issue.

Steve Gurley, Planning Director presented the above request from Caesar Torres. He thoroughly reviewed the site and description, the conditional use district rezoning process, along with the rationale for conditional use rezoning. He provided information on the applicant's compliance with conditional use permit requirements, noting section 13.4.2 of the zoning ordinance, and reviewed all eight of staff review committee comments. They were as follows:

- (1) An opaque wall in compliance with screening standards in the UDO must be constructed along the full length of eastern property line adjacent to the single family structures east of the property. Said wall shall not require removal of trees and shrubs and shrubs presently existing along the eastern property line.
- (2) Hours of operation shall be no earlier than 8:00 a.m. and no later than 6:00 p.m.
- (3) Helicopter operations (landings and take offs) associated with this use shall only be allowed on previously designated properties such as the Lincolnton/Lincoln County Airport and other designated helicopter landing/take off locations and by no means will such operations be allowed on any properties adjacent to the site or within a one-half (1/2) mile radius of the site.
- (4) There will be no odors, light emissions (other than that equivalent to street lighting and or lighting from any signage normally allowed in the GB Districts), noises, vibrations, or interference in radio or television detectable from the property boundary without instruments.
- (5) Off-street parking must be shown on a site plan for the property.
- (6) All engine repair activities related to the proposed use must take place inside the existing structures on the property.
- (7) All attempts shall be made to keep vehicles off the water meter located on the property.

REGULAR MEETING - FEBRUARY 4, 2010

- (8) A plan must be submitted showing how fluids from engines will be handled. There is some concern about fluids (Oils, antifreeze, etc.) being drained onto the property and down slope drainage ways.

Steve said the potential impacts of a conditional use rezoning limits the property to the use specified in the conditional use permit application. Specific conditions stipulated in staff's report would provide added assurance that the property will be developed as proposed. In regards to compliance with the Lincolnnton Land Use Plan, the engine repair shop proposed by the applicant probably does not fit into the range of uses suggested in the planning area description Steve Said. But the property would be well screened from adjacent residential uses and should have minimal impact on surrounding properties if conditions in staff's report are met.

He concluded giving the recommendation of the Lincolnnton Planning Board as follows; (1) Approve the rezoning of the property from R-8 to CU-GB. (2) Approve the conditional use permit for an engine repair business on the condition that all items and concerns listed in the Staff Review Committee comments are addressed with three exceptions; (a) Item 1 of staff review committee comments be changed to read: "In the event the trees and shrubs on the east side of the property were to be removed, a six-foot wall would be required adjacent to the property line to serve as a buffer to the residential uses east of the property." (b) Item 2 of the staff review committee comments are removed as a requirement - no hours of operation limitations. (c) that item 3 of staff review committee comments is changed to read: "No more than twelve (12) helicopter landings/takeoffs shall be allowed adjacent to the site in any given year."

Councilman Heavner expressed concerns about gasoline tanks being housed on the property. Steve said there was nothing in the application that stated there would be gas tanks stored on the site for this operation.

REGULAR MEETING - FEBRUARY 4, 2010

Councilman Hovis expressed concern about safety procedures for helicopters landing in this area. He asked if a fire truck would be required to be on standby prior to a helicopter landing in this area. Steve said he was not aware of FAA regulations requiring that a truck be on site.

Steve reiterated that, in staff recommendations, they did not recommend to allow for helicopter landings in any area other than previously designated properties (ex. Lincoln/Lincoln County Airport), although Planning Board did recommend approval of the landings at the proposed site.

Mr. Caesar Torres spoke to Council regarding their concerns. He said there are no FAA regulations that would restrict helicopter landings in and around this area. He also confirmed that gasoline tank storage would not be an issue as no tanks would be stored on the proposed site. He reminded Council that the Planning Board agreed to approve this request and felt it would be beneficial to our community. He said in the past he had a knitting operation in this location and knitting machines were in operation twenty-four hours a day seven days per week and he never had noise complaints. He thanked Council for their consideration and encouraged them to approve this application as suggested by the Planning Board.

After some discussion, Councilman Houser made the motion unanimously approved to close the Public Hearing.

Councilman Cloninger made the motion unanimously approved to approve the rezoning of the property to the conditional use general business district as requested.

Councilman Houser made the motion unanimously approved to consider the conditional use permit application.

Section 13.4.2 - Findings of Fact:

- (1) Councilman Heavner made the motion unanimously approved that the use will not materially endanger the public health or

REGULAR MEETING - FEBRUARY 4, 2010

- safety if located where proposed and developed according to plan.
- (2) Councilman Hovis made the motion unanimously approved that the use meets all required conditions and specifications.
 - (3) Councilman Cloninger made the motion unanimously approved that the use will not substantially injure the value of the adjoining or abutting property or the use is a public necessity.
 - (4) Councilman Houser made the motion unanimously approved that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincoln Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

Councilman Cloninger made the motion unanimously approved to grant the conditional use permit as recommended by the Planning Board with the three exceptions as approved by the Planning Board as follows: (1) of staff review committee comments be changed to read: *"In the event the trees and shrubs on the east side of the property were to be removed, a six-foot wall would be required adjacent to the property line to serve as a buffer to the residential uses east of the property."* Item (2) of the staff review committee comments be removed as a requirement - *therefore having no hours of operation limitations.* Item (3) of staff review committee comments is changed to read: *"No more than twelve (12) helicopter landings/takeoffs shall be allowed adjacent to the site in any given year."*

CU-ZMA-2-2010- APPLICATION FROM GATEWAY CONSTRUCTION CORPORATION REQUESTING THE REZONING OF 7.13 ACRES OF LAND FROM GENERAL BUSINESS (GB) TO CONDITIONAL USE RESIDENTIAL-MULTI- FAMILY (CU-RMF) FOR THE PURPOSE OF CONSTRUCTING A 42 UNIT MULTI-FAMILY COMPLEX. THE SUBJECT PROPERTIES ARE LOCATED AT THE SOUTHWEST CORNER OF SALEM CHURCH ROAD AND BOGGS STREET:

Mayor Gilleland opened the Public Hearing. The City Clerk administered the oath to all those wishing to speak for or against the issue.

REGULAR MEETING - FEBRUARY 4, 2010

Steve Gurley, Planning Director, reviewed the request from Gateway Construction for the above stated conditional use rezoning, and zoning map amendment.

Mr. Gurley said the subject property is located on 7.13 acres of land located on the southwest corner of Salem Church Road and Boggs Street. The applicant requests conditional use rezoning in order to construct a 42-unit multi-family complex for the elderly and handicapped on the property. The proposed density will be approximately 5.89 units per acre. There would be seven separate buildings on the property with six dwelling units each. A community building, covered picnic area, sitting area, and a gazebo are also included on the site plan. Eighty-four parking spaces and one entrance onto Salem Church Road are also depicted on the site plan.

Steve described the current uses on properties adjacent to the site as a mixture of RMF, R-8, and General Business. Land uses in the area are a mixture of single family dwellings, and one assisted living center, multi-family uses and a hardware/garden center. Steve provided an overview of the conditional use district rezoning process. He said in addition to section 13.4.2 requirements, section 13.5.5 of the UDO requires that specific criteria be addressed by Council; the proposed ingress and egress points for Multi-Family Developments will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non-collector/non thoroughfare streets)

He furthered reviewed the applicant's compliance with Water Supply Watershed requirements, and the fourteen (14) staff review committee comments. *A copy of the report to Council regarding this application is on file in the Planning Department and available for reference.*

Upon discussing the land use plan and the applicant's compliance with the plan, Steve said that staff felt that the development would have little harmful effect in the area. Traffic issues should not be a problem. Limiting the property to the use specified in the conditional use permit application would provide added assurance that the property will be developed as proposed.

REGULAR MEETING - FEBRUARY 4, 2010

Steve concluded recommending on behalf of the Planning Board and staff that the rezoning of the property from GB to CU-RMF be approved, and that the CUP for a 42-unit multifamily complex be approved, provided all requirements of section 13.3 are met and all staff review committee comments are addressed. Then amend the LLUP to show the property in the Residential High Density Planning Area.

Mr. Thomas Ward spoke to Council in favor of this request. He referenced several of the staff review committee comments and said the building would be sprinkled and is scheduled for completion by September 2011 rather than 2010, as indicated in Steve's report. He offered to answer any questions that Council may have regarding this application. Council had no questions for Mr. Thomas.

Councilman Heavner made the motion unanimously approved to close the Public Hearing.

Councilman Houser made the motion unanimously approved to rezone the property.

Findings of Fact - Section 13.4.2 & 13.5.5:

- (1) Councilman Heavner made the motion unanimously approved that the use will not materially endanger the public health or safety if located where proposed and developed according to plan.
- (2) Councilman Hovis made the motion unanimously approved that the use meets all required conditions and specifications.
- (3) Councilman Cloninger made the motion unanimously approved that the use will not substantially injure the value of adjoining or abutting property or the use is a public necessity.
- (4) Councilman Houser made the motion unanimously approved that the location and character of the use, if developed according to plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Lincolnton Land Use plan and other plans for the physical development of the City as officially adopted by the Lincolnton City Council.

REGULAR MEETING - FEBRUARY 4, 2010

(5) Councilman Heavner made the motion unanimously approved that the proposed ingress and egress points for Multi-Family Developments will not result in a substantial amount of vehicular traffic to be channeled onto adjacent local streets (non-collector/non-thoroughfare streets).

Councilman Houser made the motion unanimously approved to grant the conditional use permit, as recommended by the Planning Board and Staff.

Councilman Cloninger made the motion unanimously approved to amend the Lincolnnton Land Use Plan as recommended by Planning Board and Staff.

Mayor Gilleland recognized that this would be Mr. Gurley's last meeting before Council as he will officially retire from the City effective March 1st. The Mayor thanked Steve for the job he has done. He said he has enjoyed getting to know Steve and appreciates all of his years of service to the City.

Steve said he appreciated Mayor Gilleland's sentiments, and said that it had been a pleasure working for the City.

(APPT-02-10)

APPOINTMENT TO LINCOLNTON TOURISM DEVELOPMENT

AUTHORITY: *(Two year term in accordance with the by-laws)*

Jeff Emory, City Manager told Council that Mrs. Paula MacZak of Comfort Inn Corporate Offices received a promotion and relocated several months ago. This created a vacancy for the Lincolnnton Tourism Development Authority.

In accordance with LTDA by-laws one of the three member board must be from the hotel/motel industry. Jeff has recently spoken with the manager of the local Comfort Inn, Ms. Sherry Anders, and she has agreed to serve if appointed.

Councilman Houser made the motion unanimously approved appointing Ms. Anders to serve a two year term, 2010 - 2012, on the Lincolnnton Tourism Development Authority.

REGULAR MEETING - FEBRUARY 4, 2010

(C-03-10)

CONSIDERATION OF CONTRACT WITH NCDOT FOR UTILITY CUT/POT HOLE PATCHING: (Contract is for a one year period)

Steve Peeler, Director of PW&U recommended that Council enter into a contract with the North Carolina Department of Transportation to repair utility cuts/pot holes on state maintained streets inside the City limits. Steve said most of these cuts are required by NCDOT to be repaired within at least a twenty-four to forty-eight hour period. He said this requirement limits the City's ability to stock pile utility cuts so that a number could be repaired at the same time. The frequency of required patching could also tie up personnel needed for other activities.

While Steve did not deny that patching could possibly be done for less cost by the City, he felt the agreement was the best option and would relieve his fear that employees would be pulled from completing their other tasks, therefore provide a lower level of customer service to our citizens.

Councilman Cloninger made the motion unanimously approved that the City enters into the contract with NCDOT with the cost not to exceed \$ 20,000 in a one year period.

NOTE: The contract effective date was July 1, 2009 and therefore would end June 20, 2010.

MASSAPOAG ROAD UPDATE: (Not a regular agenda item)

Steve Peeler then provided an update to Council regarding the Massapoag Road Bridge. He said several weeks ago during the big rain a section of Massapoag Bridge was flooded and literally excavated. He has had engineers visit the site to look at the damage and estimate repairs. The water exceeded over the head wall and two corrugated culverts were damaged.

Steve said TGS Engineers of Shelby, and Lawndale Sand has given the City a price to replace the pipes and the road for \$ 107,000. Dr. Cloninger asked if the head wall could be raised to prevent this from happening again. Steve said we could have them to allow for elevating the head wall in the plans.

The City Manager said he had confirmed that expenses to make repairs could be taken from the City's Powell Bill Fund which has a

REGULAR MEETING - FEBRUARY 4, 2010

healthy balance of 1.6 million dollars. So this would not put a burden on our General Fund. After some discussion, the City Manager said he would recommend that Council authorize them to proceed with spending up to \$ 107,000 for this project but he would attempt to get quotes from at least two other informal bids for this project. He said if we get something lower the City could go with that quote.

Mayor Gilleland said, "I think it is reasonable to move quickly, but he would like to see two more bids for this project. While we want to move quickly we want to get the best possible price for this project also."

Councilman Houser made the motion unanimously approved to proceed with the project, obtaining informal quotes, proceeding within the guidelines as outlined by the North Carolina General Statutes.

(C-04-10)

CONSIDERATION OF A CONTRACT BETWEEN THE CITY AND RAFTELIS FINANCIAL CONSULTANTS, INC. TO CONDUCT A JOINT CITY/COUNTY WATER - SEWER RATE STUDY: - (City's portion \$ 31,950)

Jeff Emory, City Manager told Council of meetings he, Mayor Gilleland and Mr. Peeler have had with Lincoln County and Raftelius Financial Consultants, Inc. regarding a possible joint water and sewer rate study with Lincoln County.

He said a rate study would do multiple things and take a look at the City's rates now and provide a model for in-house use as water and sewer changes in the month ahead. The City would have information that may allow adjustment of our rates in the future based on consumption. It will also address the cost of producing water, which will be critical for any future negotiations with the County.

Jeff said Monday, March 1st there will be a joint meeting of both the Lincolnton City Council and the Lincoln County Commissioners, at the James W. Warren Citizens Center, at 6:00 p.m. in the Commissioners room to hear from Rafetlius Financial Consultants, Inc.

He recommended Council approve entering into the contract with Raftelius for \$ 31,950 to conduct said study.

REGULAR MEETING - FEBRUARY 4, 2010

Councilman Heavner made the motion unanimously approved to enter into the contract as recommended by the City Manager.

(C-05-10)

CONSIDERATION OF AGREEMENT - CONGESTION MITIGATION/AIR QUALITY GRANT (CMAQ) FOR FUNDING FOR PHASE III OF THE MARCIA H. CLONINGER RAIL-TRAIL: (Total Grant \$ 585,000 - 20% match required from the City = \$ 117,000)

Steve Gurley, Planning Director told Council that the City is in receipt of original contract for the "CMAQ" agreement for the Marcia H. Cloninger Rail Trail Extension in Lincolnton - Project C5149. He said City Council adopted a resolution authorizing the submittal of the grant application at their December 4, 2008 meeting.

Steve said upon execution of the agreements, funding would be available in the amount of \$ 468,000 to construct Phase III or approximately 80% of the total \$ 585,000 estimated construction costs for the trail.

Councilman Cloninger made the motion unanimously approved to execute the contract, between the City and NCDOT - locally administered, for the CMAQ (Congestion Mitigation - Air Quality) grant in the amount not to exceed \$ 468,000, approving a City required match of \$ 117,000 as recommended.

Mayor Pro-Tem Cloninger said, "Steve since this is your last official duty, and your last meeting with us, I like to take a moment to speak about your work.

First, I'd like to recognize your wife Sue, who is in attendance tonight for Steve's last meeting. I'd like to personally take this opportunity to thank you for the hard work and fine years of service you have given to the City and specifically the Marcia H. Cloninger Rail Trail project. I wasn't on the board at the time this project started but I had connections with the lady that was. I know that it took many years to plan, to secure the land the property and oversee the construction and getting approval through the City government, and now with the action we just took here tonight to receive the almost a half million dollar grant to construct Phase III of the trail, our dream nears completion. It was our dream originally to connect the two City parks with the Rail trail and with Phase III that is going to become

REGULAR MEETING - FEBRUARY 4, 2010

a reality. My only regret is that you are not going to be here for that final step. It has taken about fourteen and a half years to get where we are with this project and I thank you for leading the way. This dream would never have been realized without the hard work that you have done.” He concluded asking for a round of applause for Steve’s work.

Steve thanked both Mayor Gilleland and Mayor Pro-Tem Cloninger for their kind words.

(C-06-10)

CONSIDERATION OF A CONTRACT BETWEEN THE CITY AND BAKER AR, TO PERFORM WORK ON THE STREAM RESTORATION PROJECT ON PHASE I OF THE MARCIA H. CLONINGER RAIL TRAIL: (This portion of work is estimated to cost \$ 43,000)

Jeff Emory, City Manager asked that Steve Peeler speak to Council regarding this item. Steve said that the rail-trail has begun to experience erosion problems. Several options have been considered to address this problem.

At the recommendation of Pease Associates, the City hired a specialized firm to look into this project. Mr. Peeler said the company we are working with is handling all the necessary permits, and has designed the work to be done. Attempts are being made to secure written permission from three adjoining property owners to perform the work.

After several cost estimates the City contacted a group called HARP that deals in restoration in streams and stabilizing of stream banks. They provided the City a proposal. We are ready to begin the work; one phase of the project will be to remove the kudzu. The next phase will be to put plantings on the bank to prevent future erosion. The work to be performed should cost around \$ 43,000. There will also be technical work, including a survey that has already been completed, and payment to the company that is in charge of the project. He said HARP had proposed to work this through a nationwide 13 permit, which does not require us to go through any special permitting with the CORE, NCDENR or the EPA.

The City Manager said he felt there was no way the project could have been completed without the expertise of a professional company that specializes in this type work. He said there is currently \$ 38,000

REGULAR MEETING - FEBRUARY 4, 2010

budgeted in this fiscal year for this project. He suggests that we proceed with the project and at a later date add additional funding to cover any additional cost, in the form of a budget amendment. He felt confident there would be funds from another area of the budget that could be utilized to pay for the difference.

He concluded recommending that Council authorize him to proceed signing a letter of approval with Baker AR, provided that permission from all three property owners is obtained. He said the City Attorney has drafted agreements for the three property owners and once executed work could begin.

Councilman Houser made the motion unanimously approved the proposal with BAKER AR a licensed contractor, an affiliate of HARP. The contract with Baker AR for \$ 43,000 once drafted would be brought back to City Council, possibly as a consent agenda item, for official action.

STATUS REPORT ON RAIL/TRAIL EXPANSION:

Steve Gurley, Planning Director gave a brief status report on the rail trail corridor. He said two more properties have been obtained since the last City Council meeting. The Planning Department continues to work with the City Attorney and his staff in obtaining these properties. He offered to answer any questions from Council regarding this project. Council had no questions.

Councilman Cloninger then asked Mayor and Council to consider changing the dates for the upcoming Planning Retreat from February 26, 27 & 28 to March 19, 20 & 21st due to some calendar conflicts he has for a prior meeting.

After some discussion, Councilman Cloninger then made the motion unanimously approved to change the retreat dates to March 19, 20 & 21, 2010.

PUBLIC COMMENT:

No one signed to speak under the public comment portion of this meeting.

REGULAR MEETING - FEBRUARY 4, 2010

NEWS MEDIA:

There were no questions from the news media.

ADJOURNMENT:

Councilman Cloninger made the motion unanimously approved to adjourn the meeting.

DONNA C. FLOWERS, CMC
CITY CLERK

JOHN O. GILLELAND Jr.
MAYOR