

REGULAR MEETING – JULY 13, 2006

The Mayor and City Council meet in regular session on Thursday, July 13, 2006 at 7:00 p.m. in the Council Chambers of City Hall. 114 West Sycamore Street. Mayor Huitt called the meeting to order and led in the Pledge of Allegiance. The following members were in attendance:

HOUSER CLONINGER HEAVNER HOVIS

Councilman Heavner made the motion unanimously approved the consent agenda the ***CONSENT AGENDA*** as follows:

- Approval of Minutes of the June 1, 2006 Regular meeting
- PROCLAMATION – Zoning Officials Week – July 30 through August 5, 2006
- Calls to Public Hearing for the August 3rd 2006 meeting:
 - *CUP-4-2006 – Application from York Development Group requesting a conditional use permit to construct a Zaxby’s Restaurant and future retail space on approximately 4.476 acres of Land. The subject property is located on the south side of East Main Street approximately 300 feet east of the intersection of East Main Street and South Edwards Street.
 - *ZMA-6-2006 – Application from Kevin McMorris requesting the rezoning of approximately 0.75 acres of land from General Manufacturing and Commercial (GMC) to Residential-25 (R-25) District. The subject property is located approximately 125 feet south of Lore Road and approximately 200 feet west of the intersection of Lore Road and Reepsville Road.
 - *ZTA-2-2006 – Application from the City of Lincolnton requesting an amendment to the Lincolnton Unified Development Ordinance. The amendment will add “Farmers Market” as a permitted use Section 7.6.1 of the Residential Office District. The amendment will also change Section 4.2 by amending the definition of a “Farmers Market”

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REGULAR AGENDA

ZMA-4-2006

Mayor Huitt opened the Public Hearing, which was continued from the June 1st regular City Council meeting, for the application from Bharat and Dushyaut Patel requesting the rezoning of approximately 11.69 acres of land from Residential-8 (R-8) to Planned Business (PB).

Planning Director Steve Gurley told Council that the application for this item was withdrawn. He recommended that no action be taken on the request, and that Council take action to close the hearing. Councilman Cloninger made the motion unanimously approved to close the Public Hearing.

ZMA-5-2006

Mayor Huitt opened the Public Hearing. Steve Gurley reviewed the application from Deal Land Company, LLC requesting the rezoning of approximately 16.75 acres of land from Residential Multifamily (RMF) and Residential (R-8) to General Business (GB) District. The property is located on the north side of the NC Highway 150 Bypass at the northwest corner of the NC Highway 150 Bypass and South Aspen Street intersection.

Steve did note that if approved, the change in zoning affects the land use plan and he would be coming to Council at a later date to request a change in the LUDO. In conclusion of the review of the request, Steve Gurley recommended on behalf of the Planning Board and staff that the property be rezoned from RMF to GB as requested by the applicant.

Councilman Heavner made the motion unanimously approved to close the Public Hearing. Councilman Cloninger made the motion unanimously approved to rezone the property to General Business as requested by the applicant.

ZTA-1-2006

Mayor Huitt opened the Public Hearing. Steve Gurley, Planning Director reviewed the application from Dennis Williams, agent for Romeg Development, Inc., requesting a change to section 7.19.6 of the Lincolnton Unified Development Ordinance. The change would add multifamily dwellings as a use that will not be required to meet yard requirements of the Special Highway Overlay District of the use does not abut the special highway.

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Steve pointed out that when the LUDO was adopted a sub section was added to Section 7.19.6 stating the following: (Single family residential dwelling units, including manufactured homes, that do not abut the Special Highway may use yard requirements from the underlying zoning classification). The applicant is requesting that “multifamily residential dwellings requiring a conditional use permit” be added to this section.

Steve said staff feels that this amendment is needed to make it uniform for all residential dwellings to be exempt from yard requirements of the special highway overlay if the property does not abut the highway. He said this should not affect the public health and safety since the property is not abutting the highway. He concluded recommending on behalf of Planning Board and staff that the ordinance be amended as requested by the applicant.

Councilman Heavner made the motion unanimously approved to close the public hearing. Councilman Hovis made the motion that the LUDO text be amended as requested by the applicant.

CU-ZMA-1-2006

Mayor Huitt 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 provided background and an overview of the request, for the application from Dennis Williams, agent for Romeg Development, Inc. requesting the conditional use rezoning of approximately 5.262 acres from Residential-15 (R-15) to Conditional Use-Residential Multi-Family (CU-RMF). The applicant proposed to construct a 33-unit condominium complex on the property. The subject property is located on Lincoln Country Club property approximately 650 feet north of Country Club Road and approximately 450 east of Lithia Inn Road north of the driving range.

Steve pointed out that this is conditional use rezoning application, therefore Council would be acting on two items; (1) rezoning of the property to the RMF as well as; (2) a conditional use for the property. Steve then gave a thorough overview discussing the site and area description, the description of conditional use district rezoning process, the rationale for a conditional use rezoning, the compliance with conditional use permit as well as other conditional use permit requirements and the applicant’s compliance with the water supply watershed regulations.

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Steve noted the seven staff review committee comments. He reviewed the potential impacts with conditional use rezoning, noted the land use plan stipulations and the applicant's compliance with the land use plan.

He said that staff felt the development would have little harmful effect to the area. The project is being designed similar to a development southwest of the site. Staff has seen no harmful effects from that development, and traffic issues should not be a problem. He said would like to see the site developed with sidewalks but due to it being private, cannot require that sidewalks be installed. He noted that City Council could make this a condition of approval. However, new state law requires any condition that is placed upon the project be mutually agreed upon by the applicant and the City Council.

Steve concluded recommending on behalf of Planning Board and staff that the rezoning be approved and that the CUP for a 33-unit condominium complex be approved provided all requirements of section 13.3 are met and all Staff Review Committee comments are addressed. Steve also noted that the Planning Board recommendation encourages that sidewalk be installed in the development.

Dennis Williams, spoke on behalf of the applicant. He gave Council a thorough overview of the project.

Councilman Hovis questioned the garbage collection. Mr. Williams stated that it would be a contract service.

Councilman Cloninger said, "I really would have liked to have had the sidewalks as a requirement, but after hearing from Mr. Williams explain the logic behind not installing them, I do not have a problem not having sidewalks in this case."

Mr. Joe Bentley, President of the Lincoln Country Club Board of Directors, also spoke in favor of the conditional use rezoning, as did past President Lee Canipe. No one spoke in opposition of the request.

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

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Councilman Heavner made the motion unanimously approved to consider the rezoning and CU-ZMA-1-06 as a total package.

Councilman Houser made the motion unanimously approved to rezone the property as requested to CU-RMF District.

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 unless 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 Lincolnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.
- (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.

Councilman Houser made the motion unanimously approved to approve the Conditional Use Permit as recommended.

CONSIDERATION OF WAIVER OF COMPETITIVE BIDDING UNDER NCGS 143-129(G), TO "PIGGYBACK" A PURCHASE OF A 2007 PIERCE, 105 FT, HEAVY DUTY LADDER TRUCK FOR THE LINCOLNTON FIRE DEPARTMENT:

(R- 08-06) & (C-11-06)

Don Wise, Fire Chief, presented to Council the option to "piggyback" a purchase of a 2007 Pierce Ladder Truck. He said this is the first time the Lincolnton Fire Department has requested to make a purchase through the "piggyback" process, the City has done so in the past with items through the

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Public Works and Utilities Division. He said he felt it to be a great way to save money and by Lincolnton using this process he estimates \$ 60,000 will be saved on this purchase.

The Fire Chief reviewed the bid process followed by the City of West Jordan Utah, and concluded recommending that the City award the contract to Pierce Manufacturing in the amount of \$ 629,236.00 to purchase the 2007 Ladder Truck.

With no one else requesting to speak for or against this issue, Councilman Heavner made the motion unanimously approved to close the Public Hearing.

Councilman Cloninger made the motion unanimously approved to adopt the resolution (R-08-06), thereby entering into a contract (C-11-06) with Pierce Manufacturing to purchase the truck at said price as recommended by the Fire Chief.

CONSIDERATION OF A RESOLUTION IN SUPPORT OF “CLEAN AIR”:

(R-09-06)

Brenda Huggins, Appalachian Voices, was not able to attend the Council meeting. She contacted the City Clerk and asked that Council consider adopting the resolution in support of clean air as presented in their packets. The City Manager has reviewed the resolution and felt comfortable with Council endorsing this document.

Councilman Heavner made the motion unanimously approved to adopt the resolution as presented.

LINCOLNTON ABC BOARD APPOINTMENT :

(APPT-05-06)

Mayor Huitt opened the floor for nominations to the Lincolnton ABC Board. He said this appointment would replace Mr. Tom Burgin who will complete his second three-year term in August, and in accordance with City policy is not be eligible for reappointment at this time.

Councilman Cloninger nominated Mr. L.D. “Bud” Warlick. With no other nominations, Councilman Cloninger made the motion unanimously approved

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to appoint Mr. "Bud" Warlick to serve on the ABC Board, and appointed Mr. Mike Owen to serve as Chairman of the ABC Board. Mr. Warlick's term will begin in August 2006, expiring August 2009. In keeping with past action, it was noted that Mr. Burgin would preside over the August meeting and Mr. Owen would begin his chairmanship at the September meeting.

LINCOLNTON PLANNING BOARD APPOINTMENT :

(APPT-06-06)

Councilman Heavner made the motion unanimously approved to re-appoint Mr. Bo Abernathy for a second three-year term to serve on the Lincolnnton Planning Board. Mr. Abernathy's term will begin August 2006 and will expire August 2009.

CONSIDERATION OF THE CITY'S SAFETY CONTRACT FOR THE 2006-2007 FISCAL YEAR:

(C-12-06)

Steve Peeler, Director of PW&U, told Council of three proposals received for the City's Safety contract. Of those three, Steve recommended that the City enter into a contract with Compliance Training Associates, Inc. He said he has conducted interviews and feels the City's safety needs can best be met by this company. Their proposal for all departments, for a one year period was \$ 22,500.00. The City Manager concurred with Mr. Peeler's recommendation.

Councilman Hovis made the motion unanimously approved to award the bid to Compliance Training Associates, Inc. in the amount of \$ 22,500.00 for a one year period.

REQUEST TO CONSIDER THE RENAMING OF A CITY STREET, CURRENTLY KNOWN AS SKIP LAWING DRIVE:

Mr. Dale Punch presented on behalf of the Lincolnnton High School graduating class of 1968 and the family of Paul H. "Skip" Lawing, Jr., a request to change the street name known as "Skip Lawing Drive" to Paul H. Lawing, Jr. Drive. He told Council that most classmates as well as his friends knew Mr. Lawing as Paul, not as Skip. Dale reference a letter from Jan Lawing Newton, Mr. Lawing's brother which endorsed the name change for the street.

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Councilman Heavner made the motion unanimously approved to change the name of "Skip Lawing Drive" to Paul H. Lawing, Jr. Drive as requested. Mr. Peeler was directed to change the street signage and Powell Bill map accordingly.

UPDATE ON CITY HALL / FIRE STATION BUDGET - SOUTHSIDE CONSTRUCTORS:

Jeff Emory, City Manager provided Council an update on the City Hall / Fire Station budget. He said he continues to work toward a final resolution for completing the project. The contractor continues to work on final punch list items. There are still several items to be completed. He said in addition to punch list there are other items such as lien waivers, warranty information, as built drawings, and final resolution for the retaining wall, that must be obtained or completed before the City can make final payment.

Jeff said the City owes approximately \$ 200,000.00 on the contract amount. In addition to this, there is approximately \$ 280,000 in various claims that the contractor submitted to the City. One of those claims for bad soils behind the Fire Department, has been received by the architect. The claim was in excess of \$ 80,000.00. The architect feels that \$ 60,000.00 of this claim is legitimate. In order to pay the \$ 60,000.00, an additional appropriation of \$ 5,000.00 is needed to the contingency line item. I am sure there will be other miscellaneous items that the City may be obligated to pay that are above and beyond the contract amount.

He reminded Council that if the City agrees to pay any additional funds in delay claims, or make a settlement with the contractor, it would be necessary to appropriate additional funds. The amount recommended now will only cover the bad soils that were found during the Phase II site development work.

The City Manager concluded recommending that at this time the City appropriate \$ 35,000.00 to be added to the contingency line item in order to pay the amount for the \$ 60,000.00 claim, in addition to other miscellaneous items that may be needed. He said he would keep Council informed as things progress.

Councilman Houser made the motion unanimously approved to appropriate an additional \$ 35,000.00 as recommended by the City Manager.

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UPDATE ON STATUS OF MARCIA H. CLONINGER RAIL/TRAIL EXPANSION:

Steve Gurley, Planning Director, provided Council an update on the status of Phase II and Phase III of the expansion of the rail trail. He pointed out that Most of the fence posts have been installed on both sides of the trail. We are awaiting the arrival of fence mesh, once this arrives and the fence is completed the trail will be ready for paving and final landscaping.

Steve said to date we have received a total of \$ 120,123 in reimbursements from the Enhancement Fund program. That amount depletes funds available to the City from the Enhancement Program (Project E-4813). He said upon receipt of our next bill from Lawndale Sand we will make a request for reimbursement using the \$ 72,000 pool of money available through Congestion Mitigation / Air Quality (CMAQ) program project.

He concluded saying that Austin M. Smith Appraisal Services, completed the Phase III property appraisal in June. His study shows a total value of \$ 126,500 for property/right-of-way we will need for Phase III. He has attempted to locate grant sources that might be available to us, to no avail. He will continue to keep the City Manager and Mayor and Council abreast of the progress of this project.

PUBLIC COMMENT:

No one spoke during the Public Comment portion of this meeting.

CLOSED SESSION:

Councilman Houser made the motion unanimously approved to enter into Closed Session to discuss Legal Matters and Property Acquisition, in accordance with NCGS 143-318.5(i). 11.

Councilman Cloninger made the motion unanimously approved to return to Regular Session.

NEWS MEDIA:

The News Media had no questions for City Council.

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ADJOURNMENT:

Being no further business, Councilman Cloninger made the motion unanimously approved to adjourn the meeting.

**DONNA C. FLOWERS, CMC
CITY CLERK**

**BOBBY G. HUITT
MAYOR**