

## REGULAR MEETING – NOVEMBER 1, 2007

The Mayor and City Council met in regular session on Thursday, November 1, 2007 at 7:00 p.m. in the Council Chambers of City Hall, located at 114 West Sycamore Street.

Mayor Bobby G. Huitt called the meeting to order and led the Pledge of Allegiance.

Councilman Heavner made the motion unanimously approved to approve the **CONSENT AGENDA** as follows:

- Approved the MINUTES of the October 4<sup>th</sup> regular meeting.
- BUDGET AMENDMENT (BA-05-07) – Transfer of funds from Fund Balance to the Recreation Capital Expense in the amount of \$ 47,300.00

### **PUBLIC HEARINGS**

**APPLICATION FROM PIEDMONT COMPANIES REQUESTING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO CONSTRUCT A WALGREEN'S DRUG STORE IN THE GENERAL BUSINESS (GB) DISTRICT. THE SUBJECT PROPERTY IS LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF EAST MAIN STREET AND SOUTH GENERALS BOULEVARD.**

#### **CUP-3-2007**

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

Mark Carpenter, Zoning Administrator, reviewed the request from Piedmont Companies for a conditional use permit to construct a WalGreen's Drug Store at the above referenced location. Mark said the new drug store building would be 14,550 square feet in size and will have approximately 77 parking spaces to support the store. The property would have no access onto East Main Street. One access point will be provided onto Montgomery Street. A new sidewalk would be constructed along Generals Blvd.

Mark reviewed the applicant's compliance with Section 13.3 of the zoning ordinance and discussed the staff review committee comments and well as the other conditional use permit requirements. He concluded recommending on

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behalf of Planning Board and staff that the conditional use permit be approved provided that all requirements of Section 13.3 and staff review committee conditions, as detailed in the report, are met prior to the issuance of a zoning certificate of compliance.

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

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

### 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 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 Lincolnnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

Councilman Houser made the motion unanimously approved to approve the conditional use permit provided that all requirements of Section 13.3 and staff review committee conditions are addressed as recommended.

**APPLICATION FROM WILLIAM AND LORI FERRELL REQUESTING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO OPERATE AN INDOOR SHOOTING RANGE IN THE PLANNED BUSINESS (PB) DISTRICT. THE SUBJECT PROPERTY IS LOCATED ON THE WEST SIDE OF CENTER DRIVE APPROXIMATELY 100 FEET SOUTH OF THE**

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**INTERSECTION OF CENTER DRIVE AND EAST GASTON STREET. THE ADDRESS OF THE PROPERTY IS 606 CENTER DRIVE.**

**CUP-4-2007**

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

Mark Carpenter, Zoning Administrator, reviewed the request from William and Lorie Ferrell for a conditional use permit to operate an indoor shooting range with the sale of firearms and ammunition in the above stated location.

Mark discussed the site description, the compliance with Water Supply Watershed Standards as well as the compliance with conditional use permit application requirements. He then reviewed the staff review committee comments noting the following three (3) comments: All utilities must be coordinated with Clay Harrelson, City Utilities Supervisor. Sewer line that runs to Clark Drive is the responsibility of the developer. Building plans must be submitted to Lincoln County Inspections and approved prior to development of the site and all plans for storage of firearms and ammunition must be submitted and approved by the City Fire Inspector, Patrick King.

Mark concluded recommending on behalf of the Planning Board and staff approval of the permit provided that all requirements of Section 13.3, 13.5.10, and staff review committee conditions, which are on file in the Planning Department, are satisfactorily addressed and met before issuance of a zoning certificate of compliance.

Mayor Huitt questioned limiting the hours of operation. Mark said the current permit does not address the hours of operation nor the days.

The applicant William Ferrell told Council the planned hours of operation would be from 9:00 a.m. until 8:00 p.m. He would like to operate on Sundays from 1:00 p.m. until 6:00 p.m.

Councilman Hovis questioned the sound proofing. Mr. Ferrell said they have used a decimal meter and the shooting range would be less noise than the bowling alley that was originally located on the property. He said he has been involved in building sound proof walls and bullet proofing and has dealt with

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many federal facilities and hopes this would help. He said he is dealing with the ATF from Atlanta and Texas on this project as well.

With no further questions, Councilman Cloninger made the motion unanimously approved to close the Public Hearing.

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

### Findings of Fact – Section 13.4 and 13.5.10:

- (1) Councilman Hovis 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 Heavner 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 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 Hovis made the motion unanimously approved that the use shall be located at least 150 feet from any existing dwelling or property holding valid permits for a dwelling. (Measurement shall be from building to building not property line to property line)
- (6) Councilman Heavner made the motion unanimously approved that the use shall not be located within 150 feet from the property line if a school, day care, or place of worship.
- (7) Councilman Cloninger made the motion unanimously approved that the application for a conditional use permit shall include information which demonstrate what measures will be implemented so that the use will not pose a hazard off site, including guarantees that the walls will be lined with a sound absorbing material certified by an acoustical professional..

- (8) Councilman Houser made the motion unanimously approved that when allowed, the shooting range shall be the primary use (shall make up at least 51 percent of the gross floor area of the structure) and shall not be an accessory use to a gun store. Shooting ranges may provide repair and sales as an accessory activity.
- (9) Councilman Hovis made the motion unanimously approved that the use shall provide all parking on site. At least one space shall be provided for each shooting lane and for each employee on the shift of greatest employment.
- (10) Councilman Heavner made the motion unanimously approved that the use take all measures to recover any ammunition that could pose a danger to the environment.

Mark said Council also may impose any additional standards or safeguards it feels necessary to protect the general welfare of the citizens as a part of the use permit process.

Councilman Cloninger made the motion unanimously approved to approve the conditional use permit as recommended by the Planning Board and staff.

**APPLICATION FROM CAROLINA HEALTHCARE SYSTEM REQUESTING TEXT AMENDMENTS TO THE LINCOLNTON UNIFIED DEVELOPMENT ORDINANCE. THE AMENDMENTS WOULD ADD THE FOLLOWING DEFINITIONS TO SECTION 4.2: OUTPATIENT WELLNESS, PERSONAL HEALTH CLINIC MEDICAL EDUCATION CENTER, HEALTH CENTER, HELISTOP, AND HOSPITAL. AMENDMENTS ARE ALSO PROPOSED FOR SECTION 5.10-HEIGHT CALCULATIONS AND EXCEPTIONS, SECTION 5.13 – ACCESSORY STRUCTURES, AND SECTION 7.7.1 PERMITTED USES IN THE OFFICE-INSTITUTIONAL (O-I) DISTRICT.**

**ZTA-4-2007**

Mayor Huitt opened the Public Hearing. Mark Carpenter, Zoning Administrator, reviewed the above stated request from Carolina Healthcare System.

Mark said if approved the amendments proposed will expand and more fully define hospitals and related uses in the O-I District. The height provisions standards as proposed are comparable to other standards for separation of structures when the ordinary height regulations cannot be met.

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He said the amendments as proposed will be in compliance with the policies set out in the Lincolnton Land Use Plan adopted in 2003. He concluded recommending on behalf of Planning Board and staff that the request be approved.

Mr. Pete Acker, CEO of Carolina Medical Center-Lincoln, spoke to Council in favor of the request. He thanked City Council, the City Manager, and the Planning Board for the work that has been done to date. He said he is in hopes that the hospital is nearing the final stages of discussions with the State of North Carolina to obtain the approval for the opportunity to build a replacement hospital to serve Lincoln County. He asked that Council consider approval of the proposed amendment.

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

Councilman Cloninger made the motion unanimously approved to amend the zoning text as requested by the Planning Board and staff.

### **PUBLIC HEARING TO CONSIDER A PIGGBACK PURCHASE OF A BUCKET TRUCK FROM ALTEC INDUSTRIES BASED ON A PURCHASE FROM N.C. A & T STATE UNIVERSITY:**

**(C-16-07)**

City Manager Jeff Emory recommended that Council approve a piggyback purchase of a 2008 bucket truck, such as recently purchased by North Carolina A&T University. He said state statute allows a municipality to purchase equipment, through such process as piggy backing. All appropriate paperwork and legal advertisements were provided to demonstrate the adequate public bid process was followed. The total cost of the bucket truck would be \$ 118,000.

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

Councilman Hovis made the motion unanimously approved to award the piggy back purchase to Altec Industries, as a “piggy back” purchase from NC A & T University for \$ 118,000, as recommended.

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**PROPOSED AMENDMENT TO THE CITY CODE OF ORDINANCES - CHAPTER 3 – ANIMALS AND FOWL – SECTION 3-6. ANIMALS AT SPECIAL EVENTS:**

**(O-06-07)**

City Manager Jeff Emory reviewed the above request to Council to amend the City's Code of Ordinances as follows:

Chapter 3  
Animals and Fowl  
Article I. In General

Sec. 3 – 6. Animals at Special Events

- (a) It shall be unlawful for any owner to take an animal into or allow the animal to enter or remain within the boundaries of a festival, concert or other public gathering (special events). The event boundary shall include any area that is part of the event and shall include any public street, sidewalk or other publicly owned area within the confines of such event.
- (b) The following animals are exempt from the prohibitions contained in subsection (a):
  - (1) Guide (or seeing-eye) dogs assisting persons who are visually impaired;
  - (2) Animals under the control of on duty law enforcement personnel;
  - (3) Animals that are part of an authorized exhibit or attraction approved by the event organizers.

This amendment shall become effective upon adoption. Adopted this the 1<sup>st</sup> day of November 2007.

Jeff noted that the Apple Festival Board has made an official request that the City consider amending Lincolnnton's Code of Ordinances, modeled after the City of Morganton, reflecting the above stated changes.

With no comments from the Council or general public, Councilman Cloninger made the motion unanimously approved to close the Public Hearing.

Councilman Cloninger made the motion unanimously approved to amend the City's Code of Ordinances as recommended and stated above.

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**PROPOSED AMENDMENT TO THE CITY CODE OF ORDINANCES – CHAPTER 5 CEMETERIES – SECTION 5-32. ANIMALS:**

**(O-07-07)**

City Manager Jeff Emory reviewed the proposed amendment to the City's Code of Ordinances as follows:

Chapter 5  
Cemeteries

Article II. Hollbrook Cemetery

ADD:

Sec. 5-32. Animals

It shall be unlawful for any owner to take an animal into or allow the animal to enter or remain within the boundaries of Hollybrook Cemetery.

This amendment shall be effective upon adoption. Adopted this the 1<sup>st</sup> day of November 2007.

With no comment from City Council or citizens in attendance, Councilman Cloninger made the motion unanimously approved to close the Public Hearing.

Councilman Houser made the motion unanimously approved to amend the City's Code as recommended and as stated above.

**REQUEST FROM NEIL FERGUSON TO DISCUSS THE CITY'S ZONING ORDINANCE:**

Neil Ferguson, Ferguson & Associates, said "the purpose of the request is to speak to the zoning which is in the Central Business Transitional which only consist of three blocks on Main Street, which I feel is inequitable from one block to the next and way different from one side to the other side of the street.." "The setback for Main Street is measured from the back of the sidewalk to the property line. The distance is different for each block and in several blocks there are no distinct sidewalks, again I'm only talking about the CBT." He said the zoning ordinance allows for zero to twenty foot setbacks but uses the benchmark of the back of the sidewalk which is different in each block from the property lines. He said "There is no other section in the zoning ordinance that I'm aware of that uses the sidewalk as a bench mark." He specifically noted the block in which First Charter Bank is located as an example. Mr. Ferguson owns the property at 510 East Main Street which is a

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very narrow lot which is set back from the property line thirty one feet. He feels the site view of his building will be obstructed once the new Lincoln Economic Development building is completed.

He requested that City Council review the zoning ordinance, and consider that the benchmark be the property line rather than the sidewalk in the CBT District.

After some discussion, Councilman Cloninger made the motion unanimously approved directing staff to study this request and report back at a future meeting. Mr. Ferguson asked that he be kept apprised of the request.

### **REQUEST FROM THE LINCOLN COUNTY (LINCOLNTON) CHAPTER OF THE NC SYMPHONY:**

Christine Poinsette, President of the Lincoln County Chapter, along with several members of the Lincoln County Chapter of the NC Symphony. Mrs. Poinsette requested that Council consider providing funding in the amount of \$ 18,000 to assist with funding for the 2008 spring concert.

She explained that funding had previously been provided by the Lincolnton-Lincoln County Recreation Department. A major hurdle this year is the timing of funding for the summer concert. Both the City and County had completed their budgets for the upcoming year before they realized they did not have the funding secured for their spring concert.

Councilman Cloninger questioned if Lincoln County would be assisting in providing funding. Mrs. Poinsette said they plan to go before the County Commissioners at their next meeting to request financial support.

After some discussion, Councilman Cloninger made the motion unanimously approved to defer action on this item until information can be obtained from the School of Government for possible legalities of the City providing such funding.

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**CONSIDERATION OF JUNE 30, 2008 AUDIT CONTRACT:**

**(C-15-07)**

Councilman Heavner made the motion unanimously approved to extend the audit contract for one year to Lowdermilk, Church & Co. L.L.P. for \$ 34,000 with no increase to complete the 2008 fiscal year audit, as recommended by the City Manager.

The City Manager noted that the audit would go out for bid next fall for a three year contract as in the past.

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

Mark Carpenter provided a brief update on the rail trail expansion. A copy of the report is on file in the Planning Department for review.

**PUBLIC COMMENT:**

No one spoke during the Public Comment period.

**CLOSED SESSION:**

Councilman Houser made the motion unanimously approved to enter into CLOSED SESSION in accordance with NCGS 143-318.11(6) to discuss personnel.

Councilman Cloninger made the motion unanimously approved to return to REGULAR SESSION. No action was taken in closed session.

**NEWS MEDIA:**

There were no questions from the News Media.

**ADJOURNMENT:**

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

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

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**BOBBY G. HUITT  
MAYOR**