

REGULAR MEETING - NOVEMBER 7, 2008

The Mayor and City Council met in regular session on Friday, November 7, 2008 at 1:30 p.m. in the Council Chambers of City Hall, located at 114 West Sycamore Street, Lincolnton. Mayor Black explained that the regular meeting was rescheduled from Thursday night, November 6th at 7:00 p.m. to Friday, November 7th at 1:30 p.m., and proper notification was given to general public as well as those participating in the agenda.

Mayor Black called the meeting to order at 1:30 p.m. and led the Pledge of Allegiance.

The following Council members were in attendance:

HOUSER CLONINGER HEAVNER HOVIS

Councilman Houser made the motion unanimously approved the Regular Agenda.

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

- Approved Minutes of the Work Session – September 22, 2008
- Approved Regular Meeting – October 2, 2008
- Approved a PROCLAMATION -Honoring “Jeb F. Seagle” – Saturday, October 25, 2008
- Approved (P-04-08) Identity Theft Detection and Prevention Program Policy
- Approved the following Calls to Public Hearing for the December 4th regular meeting:

ZTA-3-2008 – Application from Staff requesting an amendment to the text of the Lincolnton Unified Development Ordinance. The proposed text amendment would change Section 5.9.2 of the ordinance and authorize the Board of Adjustment to review and authorize the issuance of permits for carnivals, circuses, tent assemblies and other similar commercial and charitable uses.

CUP-5-2008-Application from CSE Engineering requesting a conditional use permit to expand an existing church facility in the R-15 District. The subject property is located at the southwest corner of Old Tram Way and Lithia Inn Road.

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CONSENT AGENDA:

CUP-1-2008R- Application from the Lincoln County Sheriff's Office requesting an amendment to a conditional use permit to allow for a storage building/control tower to be constructed at the existing outdoor shooting range. The subject property is located behind the Lincoln County Sheriff's Department at the end of John Howell Memorial Drive

ZMA-6-2008- Application from Lackey and Whitley Realty requesting the rezoning of approximately 1.4 acres from Residential-25 (R-25) to Neighborhood Business (NB) District. The Subject property is located on the northwest side of NC Highway 150 approximately 800 feet east of the intersection of NC Highway 150 and NC Highway 27. The address of the subject property is 2409 East NC Highway 150.

REGULAR AGENDA:

PUBLIC HEARINGS

APPLICATION FROM TAYCO REALTY, LLC REQUESTING AN AMENDMENT TO THE TEXT OF THE LINCOLNTON UNIFIED DEVELOPMENT ORDINANCE. THE PROPOSED TEXT AMENDMENT WOULD INCREASE THE DEFINITION OF LARGE RETAIL ESTABLISHMENT IN SECTION 5.31 FROM 60,000 SQUARE FEET TO 85,000 SQUARE FEET.

ZTA-2-2008

Councilman Heavner made the motion unanimously approved to open the Public Hearing. Steve Gurley, Planning Director thoroughly reviewed the request from Tayco Realty, LLC to amend the text of the LUDO, adding language that would increase the definition of large retail establishment in section 5.31 from 60,000 square feet to 85,000 square feet.

Steve said the amendments as proposed should be in compliance with the policies set out in the Lincolnton Land Use Plan adopted in 2003. The Land Use Plan sets out policies for regulating "big box" retail establishments but does not define what a big box store is. He said it could be argued that the amendments if approved would have a neutral impact on the intent of the Land Use Plan. He concluded recommending on behalf of Planning Board and staff that all references to 60,000 square feet in Section 5.31 be amended to 85,000.

Councilman Houser made the motion unanimously approved to close the Public Hearing. Councilman Cloninger made the motion unanimously approved to amend the LUDO as requested, and recommended.

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**APPLICATION FROM TAYCO REALTY, LLC REQUESTING A
CONDITIONAL USE REZONING FROM GMC DISTRICT TO CU-
PB DISTRICT FOR THE PURPOSE OF CONSTRUCTING AN
INGLES SUPERMARKET. THE SUBJECT PROPERTY IS
LOCATED ON 17.73 ACRES OF LAND LOCATED AT THE
SOUTHWEST CORNER OF THE EAST MAIN STREET AND
RAILROAD STREET. THE ADDRESS OF THE PROPERTY IS 2130
EAST MAIN STREET (BELDING HAUSMAN, INC.)**

CU-ZMA-3-2008

Mayor Black 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 reviewed the above said request from Tayco Realty, LLC. He thoroughly reviewed the site and area description, the description of conditional use district rezoning process, the rationale for rezoning, the CUP application requirements, noting fifteen items of deficiency. *(A detailed list of these items are in the report from the Planning Department and may be obtained for reference from the office of the Planning Director).*

Steve reviewed the other conditional use permit requirements, the compliance with Section 13.4.2, the applicants compliance with water supply watershed as well as the staff review committee comments. Land use plan stipulations and compliance with the land use plan were discussed. He concluded noting the site plan submitted with the application was sorely deficient. He said the applicant would need to work with the City staff to ensure all conditions are met, if the rezoning is approved. Steve said staff pointed out that the proposed use could in all likelihood be placed on the property without the need for the ordinance text amendment proposed in ZTA-2-08. However, the use would have been required to address the street and most of the parking would be required to locate in the side rear of the structure. He said staff would have preferred to review the plan with the existing ordinance requirements in place. He recommended on behalf of Planning Board and Staff that the rezoning of the property from GMC to CU-PB be approved, and that a conditional use permit for an 81,000 square foot Ingles Supermarket be approved provided all requirements of Section 13.3 of the zoning ordinance and the staff review committee comments are met. *(A detailed list of these items are in the report from the Planning Department and may be obtained for reference from the office of the Planning Director)* Steve recommended that the Land Use Plan be amended to show future land use as Planned Business.

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Mr. Brian Cillian and Gary Turner spoke in favor of the request, representing the applicant. Pastor Bill Bingham, Boger City Baptist Church, spoke to Council concerning the need for a stoplight near the proposed Ingles, to alleviate potential traffic concerns. He also asked about the time frame for completion of the project. Mr. Cillian and Mr. Turner said they have been in contact with the North Carolina Department of Transportation to discuss the need for a traffic light. Discussions for with NCDOT are on going regarding this matter.

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

Councilman Houser made the motion unanimously approved to consider the rezoning.

Councilman Heavner made the motion unanimously approved to rezone the property to the conditional use planned business (CUPD) district.

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

Findings of Fact:

- (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.
- (4) Councilman Houser made the motion unanimously approved that the location and character of the use, 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.

Councilman Cloninger made the motion unanimously approved to approve the conditional use permit with the noted by the Planning Director.

Councilman Hovis made the motion unanimously approved to amend the Land Use Plan to change the area discussed to the Planned Business planning area.

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TO RECEIVE PUBLIC COMMENT ON THE CLOSING OF SMITH STREET FROM GREEN STREET IN AN EASTERLY DIRECTION 508 FEET. NOTE: AFTER THE PUBLIC HEARING IS HELD, COUNCIL MAY ADOPT BY SEPARATE MOTION AN ORDER FOR THE CLOSING OF SAID STREET:

Councilman Houser made the motion unanimously approved to open the Public Hearing. City Manager Jeff Emory explained that the City had a request several months ago from Boger City Baptist Church to consider the closing of Smith Street from Green Street 508 feet in an easterly direction. A Resolution of Intent was adopted by Council and published as required by state statute in October of 2008.

Jeff said the Church has agreed to pay one hundred percent (100%) of the costs associated with this closing as approved by City Council at their October 2008 meeting. The recommended effective date for the order to close will be January 1, 2009. A portion of Smith Street will be left open to gain access to properties not owned by Boger City Baptist. The portion that will remain open will be divided by some type of guardrail that the City has agreed to install. Expenses for moving the utility pole and asphalt needed for a turn-around area are needed and should also be paid by Boger City Baptist Church in accordance with Council action.

Mr. Todd Cochran spoke in favor of the closing of said street and offered to answer any questions Council may have.

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

Councilman Cloninger made the motion unanimously approved to adopt the Order to Close Smith Street from Green Street 508 feet in an easterly direction.

COMMENDATION AWARD TO LYNN BRINSON OF THE BUSINESS AND COMMUNITY DEVELOPMENT DEPARTMENT:

Mayor David Black presented Mrs. Lynn Brinson, of the Business and Community Development Department a Special Commendation Award for her initiative, creativity and writing skill that resulted in winning three Main Street Awards and state wide recognition for the City by the North Carolina Department of Commerce in Statesville, NC on January 29th, 2008.

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CONSIDERATION OF AWARDING BIDS FOR THE CITY'S PROPERTY AND CASUALTY INSURANCE:

(C- 14-08)

Georgetta Williams, Finance Director presented the proposal for the City's property and casualty insurance. She said the City's risk management consultant, Mr. C.J. Spivey, has thoroughly reviewed the five bids received and concurs with the recommendation to award the bid to St. Paul Guardian – Travelers Insurance to provide property and casualty insurance to the City. The bid is approximately \$ 25,798 higher than the lowest bid received but other factors outline in the report from the Finance Director and the consultant make this the most attractive proposal. Utilizing this company would provide

The total cost to the City for property and casualty insurance would be \$ 174,000 if awarded to Travelers. Mrs. Williams said, "the City will experience a savings in premiums in taking bids this year."

The City Manager said the market was not favorable to go out to bid last year but has seemed favorable this year, and he concurred with the recommendation from the Finance Director.

Councilman Houser made the motion unanimously approved to award the bid to St. Paul Guardian – Travelers Insurance as recommended.

REQUEST FROM LINCOLNTON-LINCOLN COUNTY AIRPORT FOR ADDITIONAL FUNDING OF \$ 40,000 FROM THE CITY FOR THE NEW TERMINAL BUILDING:

Jeff Lynn, LLC Airport Manager and David E. Lowe, Airport Authority Chair requested that the City consider appropriating an additional \$ 40,000 to the Airport Authority to assist in a shortfall of funds to construct the new terminal building at the airport.

After some discussion, Councilman Cloninger made the motion unanimously approved to provide an additional \$ 40,000 from the general fund to the airport to complete their project. Mr. David Lowe noted that the funds may be needed in this fiscal year, he would let the City know as the project progresses.

REQUEST FROM LINCOLN COUNTY CONCERT ASSOCIATION FOR THE CITY TO CONSIDER FUNDING \$ 5,000 FOR THE CHARLOTTE SYMPHONY OR WESTERN PIEDMONT SYMPHONY TO PERFORM IN LINCOLNTON:

Jeff Emory, City Manager told Council he received a phone call from Mr. Brian Beal of the Lincoln County Concert Association to withdraw the above stated request. Based on Lincoln County denying funding for the project he did not feel it fair to ask the City to fund the entire \$ 10,000, therefore he withdrew his request.

REQUEST FROM LINCOLN COUNTY REGARDING CONTRACT FOR INDUSTRIAL PARK SEWER:

Councilman Cloninger made the motion unanimously approved to pay Lincoln County \$ 1,000 toward a \$ 2,000 invoice the County received regarding the Industrial Park Sewer project.

REPORT ON THE STATUS OF A REQUEST FOR “NO PARKING” ON BOTH SIDES OF CARTER STREET:

Jeff Emory, City Manager

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

Steve Gurley, Planning Director provided a status report on the purchase of right-of-way for Phase III of the Rail Trail project.

PUBLIC COMMENT: No one spoke during the Public Comment portion of the meeting.

Mayor Black recognized Ms. Allyson Levine of the Lincoln Times News. Allyson is leaving the paper, and has served the City well during her coverage of our governmental meetings. She has been great to work with as a representative of our local paper, and will be missed by all. City Council wished her the best of luck in her future endeavors.

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CLOSED SESSION:

Councilman Cloninger made the motion unanimously approved to enter into CLOSED SESSION in accordance with NCGS 143-318.11(5)(6) to discuss property acquisition and personnel.

NEWS MEDIA:

No questions from the News Media

ADJOURNMENT:

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

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

**DAVID M. BLACK
MAYOR**