

REGULAR MEETING – SEPTEMBER 13, 2007

The Mayor and City Council met in regular session on Thursday, September 13, 2007 at 7:00 p. in the Council Chambers of City Hall, 114 West Sycamore Street.

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

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

- Approval of Minutes of the August 2nd regular meeting.
- PROCLAMATIONS:
 - Litter Sweep – September 15-29, 2007
 - Employ the Older Worker Week – September 24 – 30, 2007
 - Medical Assistants Recognition Week – October 15 – 19, 2007
 - Industry Appreciation Week – October 22 – 26, 2007
- Approved the below Calls to Public Hearing for the October 4th meeting:
 - ZMA-1-07 – Application from Piedmont Companies, Inc. requesting the rezoning of approximately .03 acres from Residential-8 (R-8) to General Manufacturing and Commercial (GMC) District. The subject property is located on the west side of South Grove Street Extension approximately 150 feet north of the intersection of South Grove Street Extension and the West NC Highway 150 Bypass.
 - CUP-2-07 – Application from Gene Poinsette requesting a conditional use permit to start an indoor/outdoor flea market in the General Manufacturing and Commercial (GMC) District. The subject property is located at the southeast corner of Wilma Sigmon Road and John Howell Memorial Drive. The address of the property is 610 Wilma Sigmon Road.

REGULAR AGENDA:

Mayor Huitt moved the introduction of new Lincoln County Schools Superintendent, Dr. J. David Martin, to the first item on the agenda.

RECOGNITION OF THE SUPERINTENDENT OF LINCOLN COUNTY SCHOOLS, DR. J. DAVID MARTIN:

Fred Jarrett, Member Lincoln County Board of Education, thanked the Mayor and City Council for allowing him to appear before them and introduce the new Superintendent. Mr. Jarrett said Dr. Martin is from Virginia and has been a sitting Superintendent for about fifteen years. He was named the

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Superintendent of the year in 2007 in Virginia. Dr. Martin asked Council to indulge him as he read aloud a children's book, "Seven Blind Mice". In conclusion he said, "The mouse morale; knowing in part may make a fine tale, but wisdom comes from seeing the whole." He cited his reasoning for reading the book as in Lincoln County Schools your children are seen as a whole child, not just certain parts. He thanked Council for allowing him the opportunity to appear and to read them a children's book at an official meeting.

APPLICATION FROM WILLIAM B. FERRELL, SR. REQUESTING AN AMENDMENT TO THE LINCOLNTON UNIFIED DEVELOPMENT ORDINANCE TO ALLOW INDOOR SHOOTING RANGE/SALES OF FIRE ARMS AND AMMUNITION AS A PERMITTED USE IN SECTION 7.11 OF THE PLANNED BUSINESS (PB) DISTRICT.:

(ZTA-2-07)

Mayor Huitt opened the Public Hearing. Steve Gurley Planning Director reviewed the request from William Ferrell, Sr. to amend the Lincolnton Unified Development Ordinance as stated above.

Steve said the UDO currently does not allow an Indoor Shooting Range/Sales of Fire Arms and Ammunition in any zoning district. He said staff feels that with the nature of this use and the fact that making it a permitted use could allow it by right anywhere in the PB District, the public would be better served by requiring the use to be a conditional use. He noted that it is staff's opinion that the amendments as proposed will be in compliance with the policies set out in the Lincolnton Land Use Plan adopted in 2003.

Steve told Council that the Lincolnton Planning Board recommended denial of the request.

Steve reviewed three potential actions that City Council could choose to take; (1) Deny the application based on the majority vote (5 against, 2 in favor) of the Lincolnton Planning Board. (2) Approve the request as submitted by the applicant or (3) approve the use as per the recommendation of the staff as follows:

- (1) Add a new subsection "13" to Section 7.11.2 (conditional uses) to read: "Indoor Shooting Range/Sales of Fire Arms and Ammunition".
- (2) Amend Section 13.5 by adding additional review criteria for conditional use permits in Section 13.5.10 to read as follows:

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Section 13.5.10 Indoor Shooting Ranges

- A. The use shall be located at least 150 feet from any existing dwelling or property holding valid building permits for a dwelling. (Measurement shall be from building to building not property line to property line).
- B. The use shall not be located within 150 feet from the property line of a school, day care, or place of worship
- C. The application for a conditional use permit shall include information which demonstrates 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.
- D. 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.
- E. 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.
- F. All measures shall be taken to recover any ammunition that could pose a danger to the environment.
- G. The City Council 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.

Attorney Wesley Deaton was in attendance and along with the applicant, William Ferrell, both spoke in favor of the request and noted that they had no objection with staff's recommendation. Mr. Deaton apologized that no one spoke on behalf of the request at the Lincolnnton Planning Board meeting and said he simply had the wrong date for the meeting. Dr. James Cherry, a potential firearms instructor at the facility, also spoke in favor of the request.

Being no further questions or comments on this item, Councilman Heavner made the motion to close the Public Hearing. Councilman Cloninger made

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the motion unanimously approved to amend the Lincoln Unified Development Ordinance as recommended by the staff with the above noted conditions.

Councilman Cloninger said, “I feel like if the Planning Board would have had the exposure to the information we received here I feel like their recommendation to us would have been different.”

APPLICATION FROM THE LINCOLN COUNTY SHERIFF’S OFFICE REQUESTING AN AMENDMENT TO THE LINCOLN UNIFIED DEVELOPMENT ORDINANCE TO ALLOW OUTDOOR SHOOTING RANGE AS A PERMITTED USE IN SECTION 7.12 OF THE GENERAL MANUFACTURING AND COMMERCIAL (GMC) DISTRICT.

(ZTA-3-07)

Mayor Huitt opened the Public Hearing. Steve Gurley Planning Director reviewed the request for an amendment to the LUDO to allow an outdoor shooting range as a permitted use as stated above.

Steve said the LUDO currently does not allow an outdoor shooting range in any zoning district. He referenced the previous request noting they are very similar. He reviewed three potential actions that could be taken by Council. They were; (1) deny the application as recommended by the Planning Board (2) approve the application as submitted by the applicant, as a permitted use or (3) consider it as a conditional use as recommended by staff as follows:

- (1) add a new subsection “20” to Section 7.12.2 (Conditional Uses) to read: “Outdoor Shooting Range”
- (2) Amend Section 13.5 by adding additional review criteria for conditional uses to read as follows:

Section 13.5.11 Outdoor Shooting Ranges

- H. The use shall be located at least 150 feet from any existing dwelling or property holding valid building permits for a dwelling. (Measurement shall be from building to building not property line to property line).
- I. The use shall not be located within 150 feet from the property line of a school, day care, or place of worship
- J. The application for a conditional use permit shall include information which demonstrates what measures will be implemented so that the use will not

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pose a hazard off site, including guarantees that the walls will be lined with a sound absorbing material certified by an acoustical professional.

- K. 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.
- L. 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.
- M. All measures shall be taken to recover any ammunition that could pose a danger to the environment.
- N. The City Council 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.

Sheriff Tim Daughtery spoke in favor of the request. He thanked the City for allowing Lincoln County to use the current firing range located on City property off of Highway 27 West. He said with all the current development taking place that range would probably be shut down in the future, which is what motivated Lincoln County to search for a site for another firing range. He said he began literally looking in their on back yard and found that the property behind the Sheriff's office, with some work, could be developed into a firing range, which would also be made available to the City. Sheriff Daughtery called on Lieutenant Travis Leatherman to also speak on behalf of the Lincoln County Sheriff's Department concerning this request.

Lt. Travis Leatherman sited in house training, including the classroom training portion, that could be done simultaneously with firearm qualifying rather than commuting to an off premise site. He said he feels this would be a benefit to both Lincoln County and the City. Lt. Leatherman also noted that with the rise in development at the current City site, it would be just a matter of time before the City firing range would be closed. He said, "while the City facility has been a great place to shoot, we are just trying to get ahead of the curve because we realize at some point in time they are going to shut it down".

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Councilman Cloninger questioned the hours of operation for the range and whether there has been any opposition from residents thus far.

After some discussion being no further questions, Councilman Heavner made the motion unanimously approved to close the Public Hearing.

Councilman Houser made the motion unanimously approved to approve the text amendment as recommended by staff with the conditions noted above.

APPLICATION FROM PEGASUS TOWER COMPANY REQUESTING A CONDITIONAL USE PERMIT TO ALLOW FOR THE CONSTRUCTION OF A 195 FEET TALL STEEL LATTICE COMMUNICATION TOWER IN THE RESIDENTIAL-25 (R-25) DISTRICT. THE SUBJECT PROPERTY IS LOCATED TO THE WEST SIDE OF STARTOWN ROAD AND CLARKS CREEK ROAD.

(CUP-1-07)

Mayor Huitt opened the Public Hearing. The City Clerk administered the oath to all those wishing to speak for or against the issue. Those sworn were Steve Gurley, Michael Issacs, Harold Timmons the applicant, and Dennis Hoyle.

Planning Director Steve Gurley thoroughly reviewed the request from Pegasus Tower Company for a conditional use permit to construct a 195-foot steel lattice communications tower in the R-25 District. The proposed site for location of the tower is on the west-side of Startown Road approximately 2,000 feet south of the intersection of Startown Road and Clarks Creek Road. Steve reviewed a video tape of the property which provided excellent detail as to where the tower would be located. He reviewed the applicant's compliance with Section 13.3 of the LUDO, noting the following exceptions: (1) Approximate completion time of tower must be noted on site plan. (2) Staff recommends that at the very least a ten-(10) foot wide buffer with four small trees and 20 shrubs per 100 linear feet be required on the eastern side of the fence proposed to enclose the tower. The remaining three sides of the enclosure are currently sufficiently vegetated to meet the requirements of the LUDO.

Steve also reviewed the staff review committee comments as follows: (1) Pegasus Towers Company shall maintain general liability insurance coverage of at least \$ 1,000,000. (which they provided to the Planning Department and were attached to the application). (2) Provisions should be made for the

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removal of the tower at the expense of the owners within one year of its discontinued use. (3) In compliance with Section 13.5.6(a) of the Zoning Ordinance, a letter from the FAA must be received giving assurance that the structure will not result in interference with safe operation of aircraft in relation to existing or planned airports. (The application contained a letter provided John P. Allen Airspace Consultants, Inc. The letter notes that FAA will not be requiring marking or lighting on the tower. Personnel at the Lincoln County Airport reviewed information about the proposed tower, also. Airport personnel requested that a minimum obstruction lighting meeting the requirements of FAA Advisory Circular 70/746-1 (latest edition) be required as a condition for permit approval. (4) The tower must be changed from a steel lattice type tower to a monopole type tower designed to fall within the compound area of the leased property. (5) The applicant shall clearly show why the proposed tower should be built in the proposed location a compared to the collocation of wireless service providers on existing City of Lincolnton elevated water tanks.

Steve reviewed the compliance with Sections 13.4.2, 13.5.6 and 13.5.6(a). He concluded recommending approval of the conditional use permit provided all requirements of Section 13.3, Staff Review Committee concerns and Lincoln County Airport personnel concerns are met.

Mr. Harold Timmons the applicant spoke in favor of the application, representing Pegasus Tower Company. He addressed the staff report, saying item one two as stated above will be provided to staff as requested. He wished to go on record showing their willingness to meet those requirements.

In reference to Staff Review Committee comments, he said they do maintain general liability insurance and said they shall continue to do that. They would make arrangements to have the tower removed within one year of its discontinued use. He said they have received a final determination from the FAA and are in agreement with placing lights on the tower because the airport requested that, although it did fall under the height requirement for lighting Pegasus will provide lighting. Mr. Timmons said they will change the steel lattice type tower to a monopole as requested also. He displayed several maps depicting the area for the proposed tower. He discussed the coverage area for the tower.

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Mr. Dennis Hoyle, of Vale NC, spoke in favor of the request. He referenced the vegetation surrounding the area would assist in buffering the tower and he felt having a tower in the area would be a benefit.

Mr. Michael Isaacs of 1951 Autumn Wood Court, Lincolnton spoke against the request. He cited appearance as a concern and especially a proposed lighted tower. He felt from where the tower would be located and the proximity of his home the light from the tower would affect his sleep. He presented a petition with signatures from some sixty property owners against the erection of a tower whom he said live near the proposed site.

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

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

FINDINGS OF FACT - Section 13.4.2, 13.5.6 and 13.5.6(a)

- (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 Clouinger made the motion unanimously approved that the use meets all required conditions and specifications.
- (3) Councilman Hovis made the motion unanimously approved that the use will not substantially injure the value of adjoining 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 Lincolnton Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.
- (5) Councilman Houser made the motion unanimously approved that the tower will not result in the interference with the safe operation of aircraft in relation to existing or planned airport facilities.

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Councilman Hovis made the motion unanimously approved to the grant the conditional use permit provided that all requirements and concerns expressed in the above report are met as recommended by staff.

Councilman Hovis motioned that the Mayor and City Council take a five-minute recess at 8:35p.m. Mayor and Council reconvened at 8:40 p.m.

PROPOSED AMENDMENT TO THE CITY CODE OF ORDINANCES – CHAPTER 8 – MUNICIPAL UTILITIES AND SERVICES; ARTICLE III. SEWERS – SECTION 8-50 THROUGH 8-293, REVISIONS TO THE SEWER USE ORDINANCE IN ACCORDANCE WITH NORTH CAROLINA DEPARTMENT OF ENVIRONMENT HEALTH AND NATURAL RESOURCES:

(O-03-07)

Mayor Huitt opened the Public Hearing. Director of Public Works and Utilities Steve Peeler reviewed the summary of changes proposed to the City Code of Ordinances through North Carolina Department of Environment, Health and Natural Resources as they would pertain to our Sewer Use Ordinance.

Steve said while some changes are minor language changes others are more in depth. While the document seemed self explanatory, Steve offered to entertain questions from Council. With no questions he concluded recommending approval as submitted.

With no one else in attendance to speak to this issue Councilman Cloninger made the motion unanimously approved to close the Public Hearing. Approval and adoption of this document requires two readings. The second hearing will appear on the October 4th agenda for City Council at which time they may adopt the changes as recommended.

Councilman Cloninger made the motion to approve the revisions submitted by NCDENR amending the City's Code of Ordinances as stated above. Councilman Houser seconded the motion which was unanimously approved. *(A copy of the summary of changes will appear at the end of this document becoming a permanent part of these official minutes)*

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PROPOSED AMENDMENT TO THE CITY CODE OF ORDINANCES – CHAPTER 10 – OFFENSES AND MISCELLANEOUS PROVISIONS – SECTION 10-7. FIRING FIREARMS OR FIREWORKS WITHIN CITY LIMITS:

(O-04-07)

City Manager Jeff Emory reviewed the proposed amendment to the City Code of Ordinances, regarding the discharge of firearms inside the city limits. He recommended Council approve amending the ordinance to allow the Chief of Police authorization to grant a permit for the discharging of firearms for an approved firing range or business within the City. The proposed ordinance would read as follows:

Chapter 10 – Offenses and Miscellaneous Provisions - Article 1. In General Section 10 - 7 . Firing firearms or fireworks within the City Limits (c) For the purposes of sport, amusement, approved firing ranges or businesses the Chief of Police shall be authorized to grant a permit for the firing of any firearms, the use of fireworks or other pyrotechnics within the city limits.

Adopted this the 4th day of October 2007.

With no one signing with the City Clerk to speak for or against the proposed amendment, Councilman Heavner made the motion unanimously approved to close the Public Hearing. Councilman Cloninger then made the motion unanimously the ordinance as stated above.

PRESENTATION FROM LINCOLN COUNTY COOPERATIVE EXTENSION SERVICE FOR THE CITY FOR CONSIDERATION OF FINANCIAL ASSISTANCE WITH A NEW SHELTER FOR THE FARMER’S MARKET LOCATED OFF OF WATER STREET.

Kevin Starr, Director Lincoln County Extension, spoke to Council updating them on the potential plans for a Farmer’s Market located on County property off of West Water Street. He said a proposal with specification was developed with the help of professionals and was and was sent out for bids. The shelter size changed from a 40 x 60 to 40 x 64 to allow for more room in the bays. The structure proposed is a simple metal shelter, butler type building, with a men and a women’s bathroom. He said possibly a unisex restroom facility could be utilized.

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Mr. Starr reviewed a budget information sheet. He stated Lincoln County approved \$ 60,000 for this project. A BFI grant, in the amount of \$ 5,220.00 for the Farmer's Market was received and is still available for this project. He commended Mr. Dennis Williams for this work towards this project noting a lot of his work has been donated, only \$ 1,300 has been expended to Dennis for the architectural rendering for the project. He estimated the total cost of the project, with the contingency, to be \$ 107,527.00. He requested that City Council consider support of the project in the amount of \$ 43,607.00. If the City were to approve this the City would only be billed for the actual amount of the cost to complete the project. The \$ 9,775 in contingency may not be utilized therefore the total \$ 43,607.00 may not be necessary.

Bubby Funderburk, former Lincoln County Commissioner, who serves on the Farmer's Market Committee also spoke to Council asking them to consider appropriating the funding. He said he feels the Farmers Market will serve both the City and Lincoln County well, and be a great benefit to our community. If approved the project should be approved by March 15, 2008.

City Manager Jeff Emory said he had researched and found that if Council decided to appropriate funds for this project, the monies could be taken from the City's Occupancy Tax fund, or the City's Fund Balance. The City Attorney agreed that he felt this would be a legitimate expense from this fund due to the nature of the business/vendors that are coming into Lincolnton to the market. The Lincolnton Tourism Development Authority would have to take official action to expend funds from the Occupancy Tax Fund.

After some discussion, it was suggested that the City consider funding \$ 34,000 toward this project, or the original request minus the contingency amount allotted for the project.

After further discussion, Councilman Cloninger made the motion unanimously approved to appropriate \$ 34,000 to the Farmer's Market project.

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Councilman Hovis made the motion that the monies appropriated, \$ 34,000, from the City's General Fund.

RESOLUTION SUPPORTING THE LINCOLN COUNTY HISTORICAL ASSOCIATION IN THEIR EFFORTS TO PURSUE STATUS AS A "PRESERVE AMERICA COMMUNITY" FOR LINCOLNTON: (R-10-07)

Jason Harpe, Director Lincoln County Historical Association requested that City Council adopt a resolution indicating support and commitment to become a Preserve America community. He said if the City would receive this designation there would be several grants that he could then be eligible to apply for toward historic preservation.

Councilman Cloninger made the motion unanimously approved that the resolution be adopted as recommended and drafted by the City.

APPOINTMENT TO LINCOLNTON-LINCOLN COUNTY AIRPORT AUTHORITY – ONE (1) NEW APPOINTEE : (APPT-08-07)

Mayor Bobby Huitt called for nominations for a appointment to the Lincolnton-Lincoln County Regional Airport Authority, to replace Mr. Joe Polhill who will complete his second three-year term at the end of October. Councilman Houser nominated Johnny James, of 645 Heather Drive, to be appointed to the Lincolnton-Lincoln Regional Airport Authority. With no other nominations, Councilman Houser made the motion unanimously approved to appoint Mr. James to begin serving his first three-year term October 31, 2007. The City Clerk was directed to notify Mr. James, Airport Manager Jeff Lynn and Airport Chairman David .Lowe of this appointment.

PROPOSED AGREEMENT BETWEEN THE CITY AND RUTHERFORD ELECTRIC MEMBERSHIP CORPORATION REGARDING TERRITORIAL ISSUES (C-13-07)

Steve Peeler, Director PW&U, reviewed an agreement between the City, and REMC will designate areas around town that would be exclusively the right for the City to serve and exclusively the right for the cooperative to serve. He requested that Council consider approval of the agreement.

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Councilman Heavner made the motion unanimously approved to enter into the agreement as recommended. Councilman Houser seconded the motion which was unanimously approved.

APPROVAL OF THE PROPOSED 2007-2008 LINCOLNTON STUDENT ADVISORY COUNCIL MEMBERS:

Jeff Emory, City Manager shared with Council a list compiled of potential members submitted by the Principals from the area High Schools for nominations that Council consider to serve on the 2007-08 Lincoln Student Advisory Council. They are as follows:

CHARTER SCHOOL

Ryan Splain
Michael Jennings

EAST LINCOLN

Candace Hall
Ibanona Rendleman
Madeline Jones
Tyson Leonhardt
Houston Stokes

NORTH LINCOLN

Sara Jolley
Haley Childers
Amber Wilson
Jonathan Brooks

WEST LINCOLN

Samantha Sample
Lori Mauney
Miranda Payseur
William Hartis
Tara Koehler

LINCOLNTON

Logan Lawing
Tyler Lawrence
Ashton Ritter
Lashaunda Robinson
Natalie Wiseman

Mr. Emory pointed out that along with approving the nominations from the High Schools he would suggest that there may possibly be a need for an amendment to the Student Advisory Council By-Laws. He explained that as of this year the Lincoln Charter School only has one campus with high school students. Our current by-laws read that the Charter School gets two appointments. He recommended Council could change the by-laws allowing only one member or state that there would be two members from one campus.

Councilman Cloninger asked if the students nominated from that school had been informed of their potential appointment. Jeff said according to the response for nominees they have been contact.

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Councilman Cloninger then made the motion unanimously approved to adopt the list as nominated by the principals, and that the Charter School be allowed to have two representatives this year.

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

Steve Gurley, Planning Director updated Council on the progress since last month on the Rail/Trail project. He said earlier this week the City Attorney sent a report, with various deed information, to Norfolk Southern in Roanoke Virginia. Once Norfolk Southern has received the information we can begin consummation of a contract with them to begin construction of the trail. We plan to contact property owners concerning easement. in the near future.

Steve plans to provide another update at the October 4th regular meeting.

REQUEST FOR LETTER OF ENDORSEMENT FOR THE NEW TERMINAL BUILDING AT THE LINCOLNTON-LINCOLN COUNTY REGIONAL AIRPORT:

Jeff Emory, City Manager shared a letter from Dr. Martin Eaddy, Chairman of the Facilities Improvement Committee for the Lincolnton-Lincoln County Regional Airport, officially endorsing the new terminal building project scheduled to begin in 2008. The project will not only use monies appropriated from both the City and Lincoln County but will solicit business, industrial and private sector funding as well.

Councilman Houser made the motion unanimously approved to endorse the project and submit to the Airport Manager an official letter on behalf of the Mayor and City Council supporting their endeavors.

PUBLIC COMMENT

No one spoke during the Public Comment period.

CLOSED SESSION

Councilman Cloninger made the motion unanimously approved to enter into CLOSED SESSION to Discuss Legal Matters in accordance with NCGS 143-318.11(a)(5).

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Councilman Cloninger made the motion unanimously to return to REGULAR SESSION. Action taken during this session will remain sealed in the minutes until a time when the action may no longer frustrate the purpose of the matter.

NEWS MEDIA:

No questions from the News Media.

ADJOURNMENT:

Councilman Cloninger made the motion unanimously approved to adjourn the meeting at 9:55 p.m.

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

**BOBBY G. HUITT
MAYOR**

One (1) attachment