REGULAR MEETING - SEPTEMBER 13, 2012

The Mayor and City Council met in regular session on Thursday, September 13, 2012 at 7:00 p.m. in the Council Chambers of City Hall located at 114 West Sycamore Street, Lincolnton North Carolina. Mayor John O. Gilleland, Jr. called the meeting to order and thanked everyone for participating in city government.

Those in attendance were:

RHYNE CLONINGER HEAVNER HOVIS

Mayor Gilleland started by asking Spencer Carpenter, a member of Boy Scout Troop #71, to come to the front and lead the Pledge of Allegiance after which he presented Mr. Carpenter with a letter congratulating him on receiving his Eagle Scout ward.

Councilman Cloninger made the motion unanimously approved the *REGULAR AGENDA* as presented.

Councilman Rhyne made the motion unanimously approved the *CONSENT AGENDA* as follow:

- **Approved minutes from the August 2, 2012 meeting**
- **Approved the following Proclamations:**
  Constitution Week – September 17th – 23rd, 2012
  National Assisted Living Month – September 2012
  Industry Appreciation Month – October 2012
- **Approved (R-06-12) "FIRE FIGHTERS WEEK" – September 9th – 15th , 2012**

REGULAR AGENDA:

Mayor Gilleland presented Chief Lee with a formal resolution honoring his retirement of thirty years of public service. The resolution read as follows:

(R-07-12)

WHEREAS, *Michael H. Lee* began employment with the City of Lincolnton on September 16, 2008 as Chief of the Lincolnton Fire Department; and
WHEREAS, *Michael H. Lee* obtained the title of Executive Fire Officer through the United States Fire Academy in April of 2010, bringing recognition to Lincolnton and North Carolina for his achievement; and

WHEREAS, *Michael H. Lee* has demonstrated strong leadership qualities serving as an exceptional role model, motivating fellow employees, and providing excellent Public Safety to the citizens of Lincolnton; and
WHEREAS, *Michael H. Lee*, serving the past four years as Lincolnton Fire Chief, plans to retire with over thirty years of service in the Public Safety Sector, effective October 1, 2012; and
WHEREAS, I, John O. Gilleland, Jr., and the Lincolnton City Council would like to formally recognize and officially commend Michael H. Lee for the outstanding service rendered to the City of Lincolnton and its citizens;
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Lincolnton that we congratulate Michael H. Lee for a career of public service and wish him continued success in all his future endeavors.
Adopted and presented this the 13th day of September, 2012.

On behalf of the City, Mayor Gilleland expressed appreciation for the leadership and hard work Chief Lee displayed during his tenure. Chief Lee expressed his appreciation and support of the Council, manager, and fire department.

APPLICATION FROM MCDONALD'S USA, LLC REQUESTING THE CONDITIONAL USE REZONING OF APPROXIMATELY 1.43 ACRES OF LAND FROM GENERAL BUSINESS (GB) AND RESIDENTIAL-8 (R-8) DISTRICTS TO CONDITIONAL USE GENERAL BUSINESS (CU-GB). THE USE PROPOSED FOR THE SITE IS A NEW MCDONALD'S RESTAURANT. THE SUBJECT PROPERTIES ARE LOCATED AT OR NEAR THE SOUTHWEST CORNER OF EAST MAIN STREET AND SALEM CHURCH ROAD (PARCEL ID 53514, 50234 AND 24425):

(CU-ZMA-2-12)

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

Laura Simmons, Planning Director, reviewed the site and area description. She also gave a description of the conditional use district rezoning process. Ms. Simmons stated that all but two of the application requirements were met. Developer has chosen to meet the watershed requirements using the 10/70 option. Ms. Simmons read the 10 comments made by the Staff Review Committed regarding the request and concluded with the following recommendations. Planning Board recommends that Council approve rezoning the property from GB and R-8 to CU-GB and approve the Conditional Use Permit for a McDonald's restaurant provided all requirements of the Unified Development Ordinance are met and all Staff Review Committee

comments are addressed. In addition, the Planning Board recommends an added condition restricting traffic from Openview Drive onto East Main Street to right turns only. Maps of the options were explained.

Opening the floor for questions, Mayor Gilleland asked for clarification of comment #9 from Staff Review Committee. Ms. Simmons explained this would prevent traffic from turning left into the neighborhood. Councilman verified that this will be a second McDonalds. He verified that any sidewalk repair would be the responsibility of the developer.

With no other questions from Council at this time, Mr. Dennis Williams with Williams Design spoke to Council on behalf of McDonald's. Mr. Williams introduced a number of the McDonald's USA representatives that were in attendance. Mr. Williams described McDonald's as a good corporate citizen and stressed their desire to be in Lincolnton. Regarding staff recommendations, McDonald' s plans to address all of the issues. After meeting with NCDOT regarding traffic, McDonald's is requesting that everything stays as it presently is regarding traffic on Openview Drive. There will be a recombination plate recorded. In conclusion McDonald's is requesting approval of the conditional use rezoning complying with the ten comments with the exception of not modifying the exit onto Openview Dr.

Ms. Christine Tolbert, a resident at 232 Openview Drive, spoke against the request. Ms. Tolbert questions the need for a second McDonald's as well as the current zoning in the area. Her concerns included the lack of sidewalks currently in their neighborhood as well as the increase traffic already experienced do to the neighborhood being used as a cut-through. She also is concerned with a decrease in property values. In conclusion Ms Tolbert asked that Council not grant the request or to find a better location to build.

Mr. Chris Timberlake spoke in favor of the request. Mr. Timberlake stated that he does not reside in Lincolnton but does frequent Lincolnton. He expressed concerns as to how this will effect Eddie's Auto Parts especially how delivery trucks would gain access to the business if the traffic islands are installed on Hwy. 27 and Openview Drive. Mr. Timberlake concluded speaking in favor of the rezoning with out the addition of any traffic islands as recommended by the planning review committee.

With no one else to speak to the issue Mayor Gilleland asked for a motion to close the public hearing. Councilman Cloninger made the motion unanimously approved to close the Public Hearing.

Councilman Cloninger made the motion unanimously approved to rezoning of the property.

<u>FINDINGS OF FACT:</u>

Section 153.237 of the UDO requires that four findings be determined by City Council. They are as follows:

1. **Councilman Rhyne made the motion unanimously approved 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 the use meets all required conditions and specifications**
3. **Councilman Heavner made the motion unanimously approved the use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity**
4. **Councilman Cloninger made the motion unanimously approved the location and character of the use, if developed according to the plan as submitted 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**

Councilman Heavner made the motion unanimously approved to approve the request as staff has recommended. Mayor Gilleland, along with Council, asked the McDonald's consider moving the sidewalk back off the highway.

Meeting was recessed at 8:05 pm , reconvened at 8:15pm.

<u>APPLICATION FROM CHAULA JATIN SHAH REQUESTING APPROVAL TO OPERATE AN INTERNET CAFÉ/SWEEPSTAKES IN THE PLANNED BUSINESS (PB) DISTRICT. THE SUBJECT PROPERTY IS LOCATED WITHIN THE TOWN AND COUNTRY SHOPPING CENTER AT 634 CENTER DRIVE (PARCEL ID 00382):</u>

(CUP-9-2012)

Mayor opened the meeting with City Clerk Donna Flowers administering the oath to those wishing to speak for or against the request.

Laura Simmons, Planning Director spoke to the issue reviewing the specifics of the request noting the location and the limited hours of operation. Ms. Simmons noted that currently there are already five of these businesses within the cities jurisdiction. It was also noted that the Unified Development

Ordinance requires that the City Council make four finding as well as two additional finding reference to the location and hours of operation. Staff review committee commented that the use must conform to State Building Code occupancy requirements. Planning Board recommended that request be denied.

Ms. Simmons addressed Councilman Hovis' question why Planning Board denied the request stating that the concern was there being too many internet sweepstakes uses in this area. More discussion was generated by Council with Councilman asking if the request meets all of the requirements. Mayor Gilleland requested that Mr. Emory research other surrounding cities are regulating and/or addressing this issue. Mr. Emory reminded Council that we have no business license however charging a fee could be a possibility. Councilman Rhyne had questions as to any income the city was recognizing from these type establishments. More discussion was generated regarding how to handle the issue making sure that all are treated equally. City Attorney T.J. Wilson cautioned Council of the liability of denying the request because we feel we have enough of these establishments already is the criteria used.

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

Councilman Heavner made the motion to consider the request. Motion carried three to one. Councilmen Cloninger, Heavner and Hovis voted in favor and Councilman Rhyne voted no.

FINDINGS OF FACT:

Sections 153.237 of the Lincolnton Unified Development Ordinance requires the City Council to make four findings. They are as follows:

1. **Councilman Heavner made the motion the use will not materially endanger the public health or safety if located where proposed and developed according to plan. Motion carried three to one, Councilman Rhyne opposed.**
2. **Councilman Hovis made the motion the use meets all required conditions and specifications. . Motion carried three to one, Councilman Rhyne opposed.**
3. **Councilman Cloninger made the motion the use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity. Motion carried three to one, Councilman Rhyne opposed.**

4. **Councilman Heavner made the motion 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. Motion carried three to one, Councilman Rhyne opposed.**
5. **Council Hovis made the motion that if such use is not located in a Class C Shopping Center, it will be located no closer than three hundred (300) feet from any residential district. Motion carried three to one, with Councilman Rhyne opposed.**
6. **Councilman Cloninger made the motion that the hours of operation be added and would be limited to the hours between eight o'clock in the morning (8:00 a.m.) and twelve o'clock midnight (12:00 a.m.) Motion carried three to one, Councilman Rhyne opposed.**

Councilman Cloninger made the motion to approve request as recommended by staff. Motion carried three to one, Councilman Rhyne opposed.

Councilman Cloninger also requested that there be follow up discussion regarding this issue.

PROPOSED AMENDMENT TO THE CITY OF LINCOLNTON CODE OF ORDINANCES – TITLE IX-GENERAL REGULATIONS – CHAPTER 95 – STREETS AND SIDEWALKS. THE PROPOSED AMENDMENT WOULD ADD LANGUAGE TO REQUIRE SIDEWALK INSTALLATION FOR NEW DEVELOPMENTS SUBJECT TO CERTAIN CONDITIONS:

(O-05-12)

Mayor Gilleland opened the public hearing after which he called Laura Simmons, Planning Director to review the request. Ms. Simmons began by stating the requirements of the City's current policy. She went on to explain the reason for staff's recommendation for changes to the Code, one being to broaden our requirements for sidewalk installation. After listing all of the proposed changes, Ms. Simmons welcomed any questions Council may have. Councilman Cloninger questioned by cul-de-sacs were exempt. In response, Ms. Simmons clarified that this is development not being captured by the subdivision ordinance.

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

Councilman Hovis made the motion unanimously approved to accept the change as recommended.

<u>CONSIDERATION OF AWARDING BIDS TO SKIDMORE CONSTRUCTION FOR SIDEWALK INSTALLATION, CURB, AND GUTTER ON THE WEST SIDE OF NEWBOLD STREET FROM E. MAIN STREET TO TIMKEN DRIVE AND ON THE NORTH SIDE OF TIMKEN DRIVE FROM NEWBOLD STREET TO THE EASTERN SIDE OF THE WORLD WIDE IMPORTS DRIVEWAY, AT A COST OF $53,180.60:</u>

(C-20-12)

City Manager Jeff Emory spoke to this item. Mr. Emory began by reminding Council of the direction he received several months ago to receive quotes for the two portions of sidewalk as described with the intent of using Powell Bill funds for the completion of this project. Mr. Emory continued stating that three contractor were contacted, Skidmore Construction, Elegant Concrete Designs, and Randy Peeler Concrete Finishing. Two of the three submitted quotes, with the lowest quote coming from Skidmore. Mr. Emory recommended that the bid be awarded to Skidmore Construction. The City Manager noted by obtaining three quotes the original quote received was reduced by $ 1800, therefore it was beneficial to request quotes as recommended by City Council.

Councilman Rhyne made the motion unanimously approved to accept the bid of $53,180.60 by Robert Skidmore for said sidewalk installation.

<u>CONSIDERATION OF 2012-2013 STUDENT ADVISORY COUNCIL MEMBERS:</u> (APPT-04-12)

City Manager Jeff Emory spoke to this item. Names of those recommended from each school were submitted by the principals to Council for their approval. The proposed list was as follows:

EAST	LINCOLNTON	WEST
Jade Leondorf	Seattle Kiser	John Dock Tallent
Will Krehnbrink	Tori Urban	Bailee Eurey
Derek Hilgert	Luke Brogden	Mason McConnell
Tori Horner	Ethan Miller	Colten Lineberger
Taylor Johnson	Brian Emory	Jakala Williams
*Tyler Mispley	*Ross Ritter	

NORTH	LINCOLN CHARTER
Leslie Leung	Christian Hilty
Anna Carswell	Joey Redmond
Amy Gilleland	*Mary Canipe
Brooke Haynes	
Ben Lineberger	

*Denotes members appointed by a Council member.

The 2012-13 SAC members total twenty-five, the maximum number allowed per Student Advisory Council by-laws.

Councilman Cloninger made the motion unanimously approved to approve those students recommended for the 2012-2013 school year.

CONSIDERATION OF FUTURE CITY MEMBERSHIP IN THE LAKE NORMAN RPO VS THE GASTON URBAN AREA MPO:

Laura Simmons, Planning Director, began by stating that Lincolnton and Lincoln County both are members of the Lake Norman RPO (LNRPO) for coordinated transportation planning purposes. Ms. Simmons continued explaining that in light of the 2010 Urbanized Area delineations released by the Census Bureau in March, and the requirement for the areas identified as part of an urbanized area to join the relevant MPO, Lincolnton has two membership options. The City can become a member of GUMPO due to an invitation that has been extended to join the MPO, or Lincolnton has the option to remain a member of the LNPRO. GUAMPO membership would range from roughly $4,500.00 to $5,000.00 per year depending on what type of funding scenario adopts. Currently the membership dues to LNRPO total around $509.00 plus 6 COG member hours. Which, according to COG staff would remain relatively similar. Staff recommends continued membership in the Lake Norman RPO.

Councilman Cloninger made the motion unanimously approved to continue membership with the Lake Norman RPO.

STATUS REPORT ON PHASE III OF THE MARCIA H. CLONINGER RAIL TRAIL AND COMPREHENSIVE TRANSPORTATION PLAN UPDATE:

Laura Simmons, Planning Director, undated to Council that the project is now under construction with a projected completion date of December 15th. Ms. Simmons continued with an update on the Comprehensive Transportation Plan. State representatives will be attending the October Planning Board Meeting and the November City Council Meeting to give a status update. The overall summary in the roadway recommendations are: Widening of Hwy. 321 to six lanes, connectivity of roadways, cross sections to include median, this would include Maiden Hwy. , Generals Blvd and East Main Street.

Mayor Gilleland wanted to stress the importance of Council being aware of the significance of this proposal. He stated that he felt it was just a matter of two different goals however he envisioned it having a negative impact on the City. Ms. Simmons continued listing other changes include widening projects and extension.

CONSIDERATION OF RESOLUTION OF ENDORSEMENT OF GRANT APPLICATION TO ENVIRONMENTAL PROTECTION AGENCY (EPA) FOR IDENTIFICATION AND ASSESSMENT OF POTENTIAL BROWNFIELD SITES:

(R-08-12)

City Manager Jeff Emory spoke to the issue regarding the possibility of a Brownsfields Assessment Grant. Mr. Emory explained that the grant would be a coalition grant, with the City, County and LEDA. The purpose of the grant being to assess potential brownsfields sites in the county first. Mr. Emory express his agreement with submitting the grant, pointing out no match is required. If grant is awarding, sites can be identified, and could possibly pay for a Phase I or Phase II environmental study. Mr Emory did caution Council to the fact that some owners may not want this type of work done. However there will be lots of communication and the public will be informed about what will be happening. Mayor Gilleland commented that he did not see any downside with this undertaking. Mr. Emory concluded that a resolution would need to be adopted if Council desired to proceed with the application.

Councilman Cloninger made the motion unanimously approved to proceed with the application.

UPDATE ON FINANCIAL STATUS AS OF JUNE 30, 2012:

Jeff Emory, City Manager, provided Mayor and Council with an update on the City's financial status cautioning Council that these are non-audited numbers. The officials will be available when the 2012 audit is completed. Numbers included are staffs journal entries.

The City Manager explained that what he provided was a brief synopsis of the four major funds and how they compared to last year at this time. Mr. Emory reported that funds appear to have done better. Of the four the Electric Funds is the biggest concern. Discussion was generated regarding the rate increases, and the concern Mayor Gilleland expressed over the General Fund still operating with the negative balance even though the trending is better compared to last year.

Mayor Gilleland said he would like to see an executive summary be provided to Council on a monthly basis on the agenda, each month which would better allow Council to know which direction the City is trending. It is just like our personal finances, "If we have to start cutting back now to make sure we don't outspend our revenues."

More discussion was generated regarding the financial status. Councilman Rhyne said, "The reality of it is, if that rends keeps up we are four years from broke." He asked Mr. Emory if he was wrong in assuming that trend. Jeff confirmed, while we are above the State average right now, the City could not continue on this trend.

Councilman Rhyne asked about Council receiving employee overtime numbers. Mr. Emory confirmed that the overtime report can also be provided monthly. He cautioned Council that September is the City's biggest overtime month for the City due to the Apple Festival.

Council was hopeful that with savings from overtime and the proposed in house recycling the City may be in a slightly better financial position going into the next fiscal year budget.

PUBLIC COMMENT:
No one spoke under the public comment portion of the agenda.

NEWS MEDIA:
There were no questions from the news media.

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

DONNA C. FLOWERS, CMC **CITY CLERK**	**JOHN O. GILLELAND, JR.** **MAYOR**

Minutes drafted by Daphne Ingram, Administrative Support Specialist from the tape, proofed by City Clerk.