REGULAR MEETING – MAY 2, 2013

The Mayor and City Council met in regular session on Thursday, May 2, 2013 at 7:00 p.m. in the Council Chambers of City Hall located at 114 West Sycamore Street Lincolnton, NC. The following were in attendance:

RHYNE CLONINGER HEAVNER

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

The Mayor called on Council man Cloninger to give an update on Councilman Hovis who suffered a severe heart attack on April 9th . Councilman Hovis remains in critical care at Carolina Medical Center Charlotte. The family asked for your continued thoughts and prayers for his recovery.

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

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

- Approved of the following minutes:
  April 4, 2013 Regular Meeting
- Approved the following PROCLAMATIONS:
  Older Americans Month – May 2013
  National Nursing Home Week – May 12 – 18, 2013
- Approved the following Call to Public Hearing for the June 3rd City Council meeting:
  CUP-4-2013 – Application from American Towers, LLC requesting a conditional use permit to construct a new wireless telecommunications tower (Essential Services Class III) in the Residential-25 (R-25) district. The subject property is located on the west side of Startown Road approximately 400 feet north of the intersection of Startown Road and Clear Creek Circle. The address of the property is 1237 Startown Road (Parcel ID 57942).

REGULAR AGENDA:

APPLICATION FROM BOB COLVARD REQUESTING RENEWAL OF A CONDITIONAL USE PERMIT ISSUED IN 2010 TO CONSTRUCT MINI WAREHOUSE UNITS IN THE NB DISTRICT. THE SUBJECT PROPERTY IS LOCATED AT THE NORTHWEST CORNER OF WEST NC HIGHWAY 150 AND HILLTOP ROAD. THE ADDRESS OF THE PROPERTY IS 944 WEST NC HIGHWAY 150 (PARCEL ID 22706):

CUP-2-2013

Mayor Gilleland opened the Public Hearing. The City Clerk administered the oath to all those wishing to speak for or against the issue. Laura Simmons, Planning Director reviewed the above stated request.

Laura explained that the CUP was approved until April 2012. However, the permit was extended automatically, through the permit extension legislation, as approved by the North Carolina State legislature until April 2013. She said section 153.243 of the Lincolnton Unified Development Ordinance states that the applicant has a period of twenty-four (24) months from the date of issuance of the conditional use permit to secure a building permit. Laura said since the issuance of the conditional use permit in 2010, no activity has taken place and no building permits have been issued. The owner was sent a letter in March 2013 asking that the permit be renewed and extended so that he would be allowed to build the mini warehouse units.

Laura concluded that with the applicant not requesting any changes to the permit or the conditions attached to it by City Council when it was originally approved in April of 2010, staff recommends that the permit be extended for a period of two years.

Councilman Rhyne made the motion unanimously approved to close the public hearing.

Councilman Cloninger made the motion unanimously approved to extend the permit for two years (through April 2015) as recommended by the Planning Department.

APPLICATION FROM BRYAN MCCLURE REQUESTING A CONDITIONAL USE PERMIT TO OPERATE A PRIVATE SOCIAL CLUB IN THE CENTRAL BUSINESS (CB) DISTRICT. THE SUBJECT PROPERTY IS LOCATED AT 118 EAST WATER STREET (PARCEL ID 00485): CUP-3-2013

Mayor Gilleland opened the public hearing. The City Clerk administered the oath to all those wishing to speak for or against the issue. Laura Simmons, Planning Director reviewed the request from above said applicant for a CUP to operate a private social club in the central business district.

Laura said the applicant would like to use the existing 1,800 square foot building formally occupied by Flatline Graphics near Rhodes Corriher building. The proposed hours of operation, if approved, would be from 10 am and 10 pm Monday through Saturday and Sunday hours were to be determined. Food, malt beverages, and mixed drinks would be served, with approximately 12 tables and 18 employees. Live music noise levels would be observed to insure the club would not be a nuisance to the community.

Laura said the conditional use permit does meet the requirements of Section 153.236 of the LUDO as well as 153.237. Upon review of the four findings of fact, two additional findings would be necessary for the club if approved and were noted; (5) No business shall located within 50 feet of a church, public or private elementary and secondary school, child day care or nursery school, public park or playground or residentially zoned property. (6) The 50-foot distance shall be measured in a straight line from building to building, with no consideration to intervening structures, roads or landforms.

Laura concluded noting the Planning Board voted 5 to 1, with one abstention, to recommend approval of the conditional use permit subject to eleven conditions outlined in the staff review committee report.

Mayor Gilleland explained that those signed to speak to this item would be given three minutes each and the City Clerk would be responsible for noting their time. There was much discussion for this item. The applicant Bryan McClure spoke first and thanked everyone for attending, saying it is good to have public input. Mr. McClure said there would be access to the club from Water Street but there would be no parking spaces on Water Street, the primary access would be from the back of the building. He said "This will be a low key private facility that I hope to grow into a better restaurant". Mayor Gilleland asked about the 10:00 pm closing. Mr. McClure said he wanted to close at 10 pm, because typically if you ever have any trouble it is later that 10 pm and he did not want to run until 2 am in the morning." He said they are currently drawing bikers from South Carolina, Tennessee and Virginia now and he just wants to draw more bikers from other areas, providing them a place to stop and have a beverage and a bite to eat.

Tom Hawk spoke in opposition saying, "At last month's Council meeting the LUDO was revised. The stated purpose was to greatly reduce the distance for social, fraternal, civic clubs and lounges". "If you approve this use you be considering allowing a bar or pool hall in downtown. A low key little bar was how this use was described in the local newspaper and I am going to continue using that term. Is a club private when anyone can come in or make use of the facilities by signing their name on a piece of paper? Do we enhance and energize our main street or make it a bourbon street?" He concluded saying, "I ask you to consider tonight if we want economic development don't sell out the heart and soul of downtown Lincolnton for thirty pieces of economic development silver."

Terri McClure, wife of the applicant, spoke in favor of the request supporting her husbands' efforts to build this dream into a reality. He does not want to create a nuisance he wants to attract business to our downtown.

Alan Hoyle spoke against the request. He said the bible does speak a lot about drinking and drunkenness and a lot of times when you open the door to something it can lead to too much, like drinking and alcohol. He felt he and his wife were sincere but felt if we open the door in Lincolnton it could be a change for the worst rather than the better. He does not feel it will bring respect to our town and would not set a good example for our youth.

Daniel Rhodes spoke in favor of the request. He said he would welcome this business in downtown. Nothing is alarming about his request and he feels Mr. McClure has gone above and beyond what the Planning Board has requested for this type use. Surrounding cities have uses of this type and they have helped their downtowns. He feels Mr. McClure's intentions are well thought out and would be a benefit to our downtown.

Robert Tomlinson spoke against the request. He said we have the possibility of opening a Pandora's Box if this request is approved. He referenced the Witches Brew which was located in downtown several years ago. He encouraged Council to deny this request. "Progress at the extent of turning our City into another Bourbon street would not be progress for our City".

Steve Widdows spoke against this request. He opened with prayers, asking that this Council and the people at this meeting and in this City would have the fear of the Lord. He said, "Behaved children are good, the opposite is not good. No control is not good." "God said that every idol word that men speak in the day of judgement they are going to have to give an account for it….I don't think it's going to be the case of noting happening and I encourage you to whatever extent you can make a decision, have the fear of the Lord."

In conclusion of the signed speakers for this public hearing, Mayor Gilleland asked if there were any questions for Ms. Simmons regarding this request. Councilman Cloninger asked the Council having control of the conditions for this conditional use permit. He gave the following example; if the restaurant would stay open until 10:15 would the City have the control to have them close. Ms. Simmons assured Councilman Cloninger that the City would have the control and authority to keep the applicant in compliance based on the conditions stipulated in the CUP.

Councilman Heavner made the motion unanimously approved to close the public hearing.

Councilman Cloninger made the motion unanimously approved to consider the request.

<u>Findings of Fact:</u>

(1) Councilman Heavner made the motion unanimously approved that the use will not endanger the public health or safety subject to compliance with the recommended conditions outlined in the Staff Review Report.
(2) Councilman Cloninger made the motion unanimously approved that the use meets all required conditions and specifications.
(3) Councilman Rhyne made the motion unanimously approved that the use does not appear to be one that will have a negative impact on the value of adjoining or abutting properties unless the use is a public necessity.

(4) Councilman Cloninger made the motion that the location and character of the, if developed according to plan, would be in harmony with the area in which it is to be located and would 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 passed two to one, Councilman Heavner voted no)*
(5) Councilman Rhyne made the motion unanimously approved that no business shall locate within 50 feet of a church, public or private elementary and secondary school, child day care or nursery school, Public Park or playground or residentially zoned property.
(6) Councilman Cloninger made the motion unanimously approved that the 50-foot distance shall be measured in a straight line from building to building, with no consideration to intervening structures, roads or landforms.

Councilman Cloninger made the motion to approve the conditional use permit as requested by the applicant.

The motion failed by a two to one vote and the permit was denied. Councilmen Heavner and Rhyne voted no and Councilman Cloninger voted in favor of the request.

CONSIDERATION OF AMENDMENT TO THE CITY'S CODE OF ORDINANCES; CHAPTER 74 TRAFFIC SCHEDULES – SCHEDULE VII. – TO AMEND SPEED LIMITS ON CITY MAINTAINED STREETS – ADDING UNDER TWENTY MILES PER HOUR SPEED LIMITS; MCGINNIS AVENUE AND TURNER STREET.AND MAKE A SPELLING CORRECTION TO SUMNER STREET (NOT SUMMON STREET AS PRINTED):

(O-03-13)

Mayor Gilleland opened the Public Hearing. Rodney Jordan, Chief of Police reviewed the request for an amendment to the City's Code of Ordinances as follows:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LINCOLNTON TO AMEND THE CODE OF ORDINANCES AS FOLLOWS:

Chapter 74 TRAFFIC SCHEDULES - SCHEDULES VII

Speed Limits on City Maintained Streets

ADD under the Twenty miles per hour speed limits listed;

McGinnis Avenue

Turner Street

This ordinance shall become effective upon adoption.

Hearing no questions or comments from citizens, Councilman Rhyne made the motion unanimously approved to close the Public Hearing.

Councilman Cloninger made the motion unanimously approved to amend the ordinance as stated above and recommended by the Chief of Police.

CONSIDERATION OF A CONTRACT BETWEEN THE CITY POLICE DEPARTMENT AND PROPERTY OWNERS TO INSTALL SECURITY CAMERAS IN DOWNTOWN – FOUR LOCATIONS; COUNTY GOVERNMENT BUILDING, ANDERSON BUILDING, FIRST FEDERAL BANK, AND FIFTH THIRD BANK *(10 YEAR CONTRACT)*

(C-08-13)

Rodney Jordan, Chief of Police, presented Council a proposed contract for installation of security cameras in the downtown area. The proposed locations were County Government Building, Anderson Building, First Federal Bank Building and Fifth Third Bank Building. The proposal for cameras was through Wildfire Camera Solutions and would be necessary for all of the above property owners to execute prior to cameras being located on their properties.

Councilman Rhyne asked about signage noting surveillance cameras for these specific locations if approved. Chief Jordan said he would check into signage and it is his hopes the cameras will deter vandalism once installed.

Councilman Rhyne made the motion unanimously approved to allow City Manager Emory or Police Chief Jordan to sign proposed contracts with property owners as they see fit.

CONSIDERATION OF AWARDING CHEMICAL BIDS FOR THE WATER AND WASTEWATER TREATMENT PLANT:

(C-09-13)

Steve Peeler, Director of PW&U, presented the following chemical bids to Council for approval;
Liquid Alum 8.23% - General Chemical Performance Products LLC for $ 263.00 per dry ton.
Caustic Soda 50% - JCI Jones Chemicals for $ 534.00 per dry ton
Chlorine – JCI Jones Chemicals for $ 400.00 per cylinder
Hydrofluorosilicic Acid – Water Guard Inc. for $ 2.79 per liquid gallon
Orthophosphate 36% - Univar USA, Inc. for $ 3.39 per liquid gallon
Earth Tec – Univar USA, Inc. for $ 855.40 per drum
Carbon – Univar USA, Inc. for $ 32.00 per 40lb. bag

Liquid Sodium Hypochlorite 10% and 12.5% - Water Guard, Inc. for $ 0.635 per liquid galloon for 10% and $ 0.755 for 12.5% *NOTE: This was not the low bidder but was the second lowest bidder for this chemical. Mr. Peeler noted this vendor was chosen due to product quality.*
Liquid Sodium Bisulfate 38% - Univar USA, Inc. $ 1,369 per liquid gallon

Mayor Gilleland asked Mr. Peeler to check the chemical prices for Lincoln County to compare pricing for each chemical to ensure we are getting the best price for our dollar. Mr. Peeler said he would contact the Lincoln County Public Works Director and compare pricing.

Councilman Cloninger made the motion unanimously approved to award the chemical bids just as Mr. Peeler recommended.

CONSIDERATION OF RESOLUTION TO SUPPORT SB 363 AND 394 TO PRESERVE BALANCED MUNICIPAL REVENUES:

(R-08-13)

Jeff Emory City Manager presented the following resolution to Council for consideration;

RESOLUTION SUPPORTING AMENDMENTS TO SENATE BILLS 363 and 394 TO PRESERVE BALANCED MUNICIPAL REVENUES

WHEREAS, the City of Lincolnton operates an efficient government with a minimal property tax burden on its citizens; and

WHEREAS, Senate Bills 363 and 394 as proposed will not provide a tangible alternative and would lower or eliminate sales tax, and franchise fee revenues for the City of Lincolnton and all other North Carolina municipalities; and

WHEREAS, there is no provision in these bills that would provide cities and towns with alternative revenue sources for this lost revenue, which as proposed may result in additional property taxes on individual citizens to make up the loss of significant funding sources for cities and towns; and

WHEREAS, passage of these bills as proposed will create a significant imbalance in the sources of municipal revenues in North Carolina, which historically and successfully have been balanced respectively between commercial or business sources and individual citizens in order to pay for the services desired by those businesses and citizens.

NOW, THEREFORE, BE IT RESOLVED, that the City of Lincolnton urges members of the General Assembly to amend Senate Bills 363 and 394 to preserve balanced municipal revenues and specifically to preserve sales tax and franchise fee revenues for Lincolnton and all other North Carolina municipalities.

Councilman Rhyne made the motion unanimously approved to adopt the resolution and forward to the appropriate parties noting a change to the second paragraph; adding tangible alternatives. *The above resolution does reflect the changes and was sent by the City Clerk to the appropriate members of the NC General Assembly.*

CONSIDERATION OF RESOLUTION TO MAINTAIN AND SUPPORT THE CURRENT INTEGRITY AND FUNDING FOR THE PARKS & RECREATION TRUST FUND (PARTF) GRANT FUNDING:

(R-09-13)

Richard Haynes, Recreation Director, presented the following resolution recommending approval by City Council;

A RESOLUTION TO MAINTAIN AND SUPPORT THE CURRENT INTEGRITY AND FUNDING FOR THE PARKS AND RECREATION TRUST FUND (PARTF)

WHEREAS, North Carolina is known for its unique and scenic natural resources and opportunities for recreation with a long tradition of its citizens and visitors enjoying parks, mountains, rivers, greenways, beaches and more. Generations of residents and visitors have delighted in these landscapes and park facilities; and

WHEREAS, The Parks and Recreation Trust Fund (PARTF) was established with bi-partisan support on July 16, 1994 to fund improvements in the state's park system, to fund grants for local governments and to increase the public's access to the state's beaches and coastal waterways; and

WHEREAS, since its inception The Parks and Recreation Trust Fund has provided $161 million via 722 grants to 370 local governments in 99 counties and has been matched with $312 million of local and private dollars for the purchase of local park land, building and renovation of facilities and development of greenways and trails; and

WHEREAS, North Carolina's population has grown to make it the 10th most populous state in the nation with projections for the significant growth to continue in the coming decades, and more state and local parks are needed to meet the increased demands; and

WHEREAS, parks are identified as key contributors to North Carolina's tourism industry that generates nearly $20 billion in annual economic impact; and

WHEREAS, parks in North Carolina are experiencing record visitation levels including over 14.25 million to state parks in both 2011 and 2012; and

WHEREAS, The Parks & Recreation Trust Fund has leveraged funds that allowed our State to acquire land for state parks and state natural areas and protected nearly 83,000 acres and made major additions to the Mountains-to-Sea State Trail; and

WHEREAS, The Parks & Recreation Trust Fund has funded capital improvement projects in the state parks such as visitor centers and exhibit halls which provide tremendous opportunities to educate students and all citizens about North Carolina's outstanding natural resources, and other capital projects including campgrounds, picnic areas, boating facilities, trails and swimming beaches; and local capital projects including construction of community centers, athletic fields and greenways; and

WHEREAS, the annual economic impact to local economies of all tourists visiting the state parks system was estimated at more than $400 million in sales and income, as well as nearly 5,000 jobs according to a 2008 study.

WHEREAS, a portion of The Parks & Recreation Trust Fund is designated for the Public Beach and Coastal Waterfront Access Program to improve access to beaches and coastal waterways by funding public boat ramps and public beaches accesses; and

WHEREAS, access to parks, recreation facilities and open space provides cost-effective opportunities for citizens of all ages to participate in health and wellness activities thereby reducing costs associated with obesity, heart disease, diabetes and high blood pressure; and

WHEREAS, research has documented that structured park and recreational opportunities in local communities can prevent crime and provide positive activities and directions for young people; and

WHEREAS, dedicated, recurring funding of the Parks & Recreation Trust Fund allows for structured and objective planning and efficient management of the system at both the state and local levels for today and future generations; and

WHEREAS, the success of The Parks and Recreation Trust Fund is due to the dedicated funding source provided by a portion of the deed stamp tax, and is recognized nationally as a model for efficiency and accountability; and

NOW, THEREFORE, BE IT RESOLVED, that the City of Lincolnton does call on the members of the General Assembly to maintain dedicated revenues generated by seventy-five cents of the deed stamp tax for The Parks and Recreation Trust Fund.
The Clerk is directed to send a copy of this resolution to each of the members of the General Assembly representing the people of Lincolnton and the North Carolina Recreation and Park Association.
This the 2nd day of May, 2013.

Councilman Rhyne made the motion unanimously approved to adopt the resolution as presented and recommended by the Recreation Director.

REQUEST FOR FUNDING FROM CHILD ADVOCACY CENTER – $ 18,746:

Dr. Steve Austin, President of the Child Advocacy Center, spoke to Council regarding a revenue shortfall for the CAC due to state budget cuts. Dr. Austin provided staggering statistics for 2012 calendar year that 1775 children were abused throughout Lincolnton and Lincoln County. He referenced when the CAC began conviction rates for abusers started to climb. He said, "Today we have a conviction rate of 100% rather than the 30% ten years ago." He credited this to having the funding and resources available to assist our children. Dr. Austin was very pass passionate about assisting in any way with children who are subjected to abuse.

He concluded his request asking City Council to consider funding the shortfall for this fiscal year, providing the Coalition Against Child Abuse – Child Advocacy Center, $ 18,746.00 in funding. He noted that he plans to make this same request to Lincoln County for their proportionate share of funding for this year. He said if approved this would help the center to operate throughout the year in the same manner prior to state budget cuts. He thanked the Mayor and City Council for their time and consideration to this request, and apologized for the short notice given.

After some discussion, Councilman Cloninger made the motion unanimously approved to provide funding in the July 1st, 2013 fiscal year budget.

UPDATE ON PHASE III OF MARCIA H. CLONINGER RAIL TRAIL:
Laura Simmons, Planning Director, gave a very brief update on the status of the rail trail. She said staff is continuing to coordinate with the contract administrator on punch list items, and after all items are resolved, we will coordinate with NCDOT on a final inspection and project approval. She said she would keep the City Manager and Mayor & Council abreast of any progress and report back at the June City Council meeting.

Councilman Rhyne expressed his concerns as to why Eaglewood, the general contractor for the project, had not been held accountable for finishing up punch list items within the timeframe state din the contract. Ms. Simmons said she is working with TGS and Eaglewood, and will report back at the next meeting.

MONTHLY FINANCIAL REPORT & OVERTIME REPORT:
Jeff Emory, City Manager provided Council a handout providing revenue and expenditure totals for the City's three major funds, along with overtime paid.

Jeff said the revenues exceeded the expenses for the month of March by $ 6,000 ($ 6,411.74 actual).

Councilman Rhyne asked for a clarification of the increase to the Electric, Water & Sewer Fund. The City Manager told him he would check on that, and provide the information to him in an email.

PRESENTATION OF THE PROPOSED 2013 – 2014 FISCAL YEAR BUDGET:
Jeff Emory, City Manager, presented the 2013-14 fiscal year budget and provided Mayor and Council the budget message, asking them to place the message inside their budget book. He did not read the message aloud but reviewed the highlights and offered to answer any questions from Council once they had a chance to read the message.

Jeff said the total proposed budget for fiscal year 2013-14 was $ 28,217,362.00, a $ 74,000 increase from the current year's budget. He reviewed the five operating funds and offered to answer any questions from Council. He concluded saying the budget would be kept on file in the City Clerk's office, and a public hearing would be scheduled to consider adoption at our June 6th City Council meeting.

He stressed to Council that upon their review, should they have any questions or comments, to please contact him and he would be happy to sit down and go over any areas of concern.

PUBLIC COMMENT:
Public Works & Utilities Director Steve Peeler took the opportunity to thank the Mayor and Council for supporting the CAC and helping a child.

No one else spoke under the public comment portion of the meeting.

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

ADJOURNMENT:
Councilman Cloninger made the motion unanimously approved to ADJOURN the meeting.

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