

## **REGULAR MEETING - NOVEMBER 2, 2017**

The Mayor and City Council met in regular session on Thursday, November 2, 2017 at 7:00 pm. in the Council Chambers of City Hall, located at 114 West Sycamore Street, Lincolnton, NC.

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

Councilman Black ask Mayor Hatley to consider adding an item to the agenda, which was an update from Councilman Jetton on the “Old Clock” that is being placed downtown on the Court House lawn (formerly on the First National Bank Building).

Councilman Black made the motion to approve the Regular Agenda, adding item number 17, providing an update on the “Old Clock”.

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

- Approved Minutes from the October 5<sup>th</sup> Regular Meeting
- Calls to Public Hearing for the December 7, 2017 City Council meeting:

CUP-9-2017- Application from Teramore Development, LLC requesting a conditional use permit to construct a 9,100 square feet

retail building (Dollar General) in the Planned Business (PB District).

The subject property has frontage on both W. NC Highway 27 and W

NC Highway 150 and is approximately 300 feet west of the intersection

of these two roads (Parcel ID 21439).

(O-18-17)

- Proposed amendment to the City’s Code of Ordinances - Title IX -

General Regulations - Chapter 93.016: Unnecessary Noise  
Prohibited  
Specifically and Title XIII - General Regulations - Chapter 130:  
Offenses Against Public Peace and Safety

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### **REGULAR AGENDA :**

**ZTA-5-2017- APPLICATION FROM THE LINCOLNTON  
PLANNING DEPARTMENT REQUESTING AN AMENDMENT TO  
SECTION 153.315 OF THE UNIFIED DEVELOPMENT  
ORDINANCE TO TEXT AND MAP TO MODIFY THE PROVISION  
REGARDING CONSISTENCY WITH THE COMPREHENSIVE  
PLAN TO CONFORM TO RECENTLY ADOPTED STATE  
LEGISLATION:**

### **(O-16-17)**

Mayor Hatley opened the Public Hearing. Laura Elam, Planning Director, reviewed the request for proposed amendments to the Unified Development Ordinance to Text and map to modify the provision regarding consistency with the comprehensive plan to conform to recently adopted state legislation.

Laura said, "In 2005, the State enabling legislation related to planning was amended to require that when governing boards make decisions on requests for rezonings and zoning ordinance text amendments, they consider the request's consistency with their adopted comprehensive plan."

During the 2017 legislative session, the State adopted the 2016 - 17 Regulatory Reform Act. The Act amends the state statutes to add more specificity to the legislation governing zoning amendments and requirements for consideration of consistency with the comprehensive plan.

The new statute now requires approval of a statement that describes plan consistency specifically in one of three forms:

1. A statement approving the proposed zoning amendment and describing its consistency with the comprehensive plan;

2. A statement rejecting the proposed zoning amendment and describing its inconsistency with the comprehensive plan; or
3. A statement approving the proposed amendment and declaring that this also amends the comprehensive plan along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.

With each of these alternatives, the statement is also to include an explanation of why the governing board deems the action reasonable and in the public interest.

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The proposed amendment adds the above requirements to the existing section of the zoning regulations regarding City Council's consideration of the comprehensive plan with decisions on zoning amendments in accordance with recent state legislation. Laura concluded recommending approval on behalf of Planning Board and Staff.

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

Councilman Eaddy made the motion unanimously approved to approve the statement of consistency and reasonableness.

Councilman Black made the motion unanimously approved to adopt the proposed amendment to the Unified Development Ordinance as recommended.

**ZTA-6-2017- APPLICATION FROM THE LINCOLNTON  
PLANNING DEPARTMENT REQUESTING AN AMENDMENT TO  
SECTION 153.031 OF THE UNIFIED DEVELOPMENT  
ORDINANCE TO AMEND THE DEFINITIONS OF THE TERMS  
"SUBDIVISION" AND "MINOR SUBDIVISION" TO COMPLY WITH  
RECENTLY ADOPTED STATE LEGISLATION :**

**(O-17-17)**

Mayor Hatley opened the Public Hearing. Laura Elam, Planning Director, reviewed the above stated request.

Laura said, “The North Carolina General Statutes outline local authority to regulate the subdivision of land. As part of the State enabling legislation for subdivision authority, four types of divisions of land are specifically exempted from local subdivision regulation including:

- Recombination of lots when the total number of lots is not increased and the resultant lots meet standards;
- Divisions creating lots greater than 10 acres where no street right-of-way is involved,
- Public acquisition for widening or opening of streets, and
- Division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots where no street right-of-way is involved and where the resultant lots meet standards.

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The City of Lincolnton, like most jurisdictions, has regulations and standards for new streets, infrastructure, open space, etc along with requirements for recording of a plat of the subdivision with the register of deeds. Large subdivisions involving the creation of new roads, more than 10 acres or more than 10 lots are reviewed and approved as “Major Subdivisions” which require submittal of a sketch plan, preliminary plan and final plat approval. Small subdivisions are reviewed and approved through the “Minor Subdivision” process which involves only the submittal, approval and recording of a final plat.”

During the 2017 legislative session, the State adopted the 2016 - 17 Regulatory Reform Act. The Act makes the following two changes regarding subdivision regulation:

1. The subdivision of a tract in accordance with the terms of a probated will or in accordance with intestate succession is added to the list of exempt subdivisions and
2. A city may require only a plat for the recording of a subdivision that involves the division of a tract greater than five acres in single ownership that meets the following criteria:
  - A. The tract is not exempted under the “greater than 10 acres / no right-of-way” exemption,

- B. The tract has not been subdivided as an exempt subdivision in the past 10 years,
- C. The tract is greater than five acres,
- D. No more than three lots will be created, and
- E. All resulting lots will comply with the lot dimension size requirements of the zoning regulations; the use of the lots will conform with zoning requirements, and the lots will have a permanent means of ingress and egress.

Laura concluded saying, "The above proposed text amendment makes the changes to the City's Subdivision Ordinance necessary to conform to the recently adopted legislation. Planning Board and Staff recommend approval of the amendment as outlined above in order to conform to recent state legislation."

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

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Councilman Black made the motion unanimously approved the statement of consistency and reasonableness.

Councilman Eaddy made the motion unanimously approved to amend the Unified Development Ordinance - Subdivision Ordinance, conforming with recently adopted State legislation, as recommended.

**CUP-6-2017- APPLICATION FROM WILLIAM MCDANIEL REQUESTING A CONDITIONAL USE PERMIT TO OPERATE A TAVERN IN THE PLANNED BUSINESS (PB) DISTRICT. THE SUBJECT PROPERTY IS LOCATED WITHIN THE LINCOLNTON PLAZA SHOPPING CENTER AT 1565 NORTH ASPEN STREET (PARCEL ID 57488):**

Mayor Hatley opened the Public Hearing. Laura Elam, Planning Director, said the applicant withdrew his request, after the public hearing was advertised.

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

**CUP-7-2017-APPLICATION FROM HWP REALTY, LLC REQUESTING RENEWAL OF A CONDITIONAL USE PERMIT, ISSUED IN 2015, TO CONSTRUCT A PHARMACY IN THE PLANNED BUSINESS (PB) AND SPECIAL HIGHWAY OVERLAY (SHO) DISTRICTS. THE SUBJECT PROPERTY IS LOCATED ON THE SOUTH SIDE OF EAST MAIN STREET APPROXIMATELY 350 FEET EAST OF THE INTERSECTION OF EAST MAIN STREET AND U.S. HIGHWAY 321 (PARCEL ID 91738).**

Mayor Hatley opened the Public Hearing. Laura Elam, Planning Director, reviewed the above stated request for renewal of a conditional use permit.

Laura told Council that on October 1, 2015, the Lincolnton City Council approved a conditional use permit to construct a new 4,000 square foot pharmacy on property located on the south side of East Main Street approximately 350 east of the intersection of East Main Street and U.S. Highway 321 (Parcel ID 91738). The permit expires this month and the applicant is asking for a 24 month extension.

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She said, "Section 153.243 of the Lincolnton Unified Development Ordinance states that the applicant shall have a period of twenty-four (24) months from the date of issuance of the conditional use permit to secure a building permit for the project. If the applicant fails to obtain a building permit within the time allowed, the Zoning Administrator notifies the applicant of such finding, and within sixty (60) days of notification, the Planning Board is to make a recommendation concerning rescinding or extending the conditional use permit to the City Council. The City Council, after having conducted a public hearing to consider the matter, may extend the life of the conditional use permit for a specified period of time."

Laura told Council since the renewal of the conditional use permit in 2015, no activity has taken place and no building permits have been issued. The owner has applied for an extension asking that the permit be renewed. The applicant is not asking for any changes to the permit or the conditions attached to it by the City Council when it was approved originally in 2015.

She concluded recommending on behalf of the Planning Board and Staff, that the permit be extended for a period of two (2) years.

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

Councilman Black made the motion unanimously approved to extend the conditional use permit for a two year period as requested and recommended.

**CUP-8-2017- APPLICATION FROM CONCORD PROPERTIES REQUESTING APPROVAL OF A CONDITIONAL USE PERMIT TO CONSTRUCT A CHICK-FIL-A RESTAURANT IN THE PLANNED BUSINESS (PB) AND SPECIAL HIGHWAY OVERLAY (SHO) DISTRICTS. THE SUBJECT IS LOCATED ON THE SOUTH SIDE OF EAST MAIN STREET APPROXIMATELY 650 FEET EAST OF THE INTERSECTION OF EAST MAIN STREET AND U.S. HIGHWAY 321 (PARCEL ID 22484).**

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

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Laura told Council that Concord Properties is requesting a conditional use permit to construct a new 4,988 square foot restaurant with a drive through on property located on the southside of East Main Street approximately 650 east of the intersection of East Main Street and U.S. Highway 321 (Parcel ID 22484).

The property is zoned Planned Business (P-B) and Special Highway Overlay (SHO) districts. Most of the nearby properties are zoned P-B. The property is bounded by East Main Street to the north, Peoples Bank to the east, CSX Railroad to the south, a vacant parcel immediately to the west and an urgent care center further to the west.

Laura said the site plan proposes a new restaurant building of approximately 4,988 square feet. Access will be provided by two

proposed driveway connections to East Main Street plus a connection to the existing urgent care center driveway. The site's western driveway will be channelized to prevent left turns out and the eastern driveway will be configured to serve as an exit with right turns out only. Forty two (42) parking spaces will be provided.

She noted the property is located in the WS-IV watershed protected area which allows up to 70% built upon area through the "10/70 Option". The site plan indicates that 63 % of the site will be impervious cover.

Section 153.236 of the UDO requires that a conditional use permit application contain specific terms and meet specific requirements. The site plan needs to include the following information:

A landscaping plan noting parking lot landscaping and street landscaping.

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

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
2. The use meets all required conditions and specifications, and
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and

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

Laura told Council the following in regards to the findings of fact:

1. It does not appear that the use will endanger the public health or safety.
2. The use meets all required conditions and specifications with the exception of the item listed above.
3. It does not appear that the use will substantially injure the value of adjoining or abutting property.
4. The use is in conformance with the land use plan.

She reviewed the following Staff Review Committee comments:

- (1) Erosion control plan must be submitted to and approved by Lincoln County.
- (2) Building plans must be approved by Lincoln County Inspections and the City Fire Marshal.
- (3) NCDOT driveway permit must be reviewed and approved by the NCDOT.
- (4) Utility plans must be coordinated with and approved by the Public Works and Utilities Department. A grease trap will be required.
- (5) The existing sidewalk along East Main Street must be preserved or replaced with new sidewalk meeting City and ADA requirements.

Laura concluded recommended on behalf of Planning Board and Staff that the conditional use permit be approved, subject to the ordinance requirements and Staff Review Committee comments noted above.

Mr. Jeff Irvin, of Concord Properties, was in attendance on behalf of the applicant and offered to answer any questions that Council may have regarding the proposed Chick-Fil-A Restaurant.

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Mayor Hatley said, "You will be a hero to the Lincolnton Student Advisory Council, as they have worked hard for several years lobbying recruitment of a Chick-Fil-A."

Councilman Eaddy recommended that Mr. Irvin take a look at a video submitted to the corporate offices of Chick-Fil-A, choreographed by Lincoln Student Advisory Council members during their attempts to recruit a Chick-Fil-A to locate in Lincoln.

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

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

Findings of Fact:

1. Councilman Eaddy made the motion unanimously approved that the use will endanger the public health or safety.
2. Councilman Jetton made the motion unanimously approved that the use meets all required conditions and specifications with the exception of the item listed above.
3. Councilman Black made the motion unanimously approved that the use will substantially injure the value of adjoining or abutting property.
4. Councilman Jetton made the motion unanimously approved that the use is in conformity with the land use plan.

Councilman Eaddy made the motion unanimously approved to grant the conditional use permit as recommended by the Planning Department.

Mayor Hatley invited Mr. Irvin to attend the Lincoln Student Advisory Council meeting that will be held on Monday, November 6<sup>th</sup> at 6:00 p.m. in the Council Chambers of City Hall, to share the good news with the students.

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**CU-ZMA-3-2017- APPLICATION FROM GREG HOUSER REQUESTING A CONDITIONAL REZONING FROM R-25 TO CU-NB DISTRICT FOR THE PURPOSE OF CONSTRUCTING A DANCE STUDIO. THE SUBJECT PROPERTY IS LOCATED ON THE EAST SIDE OF STARTOWN ROAD APPROXIMATELY 750 FEET NORTH OF THE INTERSECTION OF STARTOWN ROAD AND REEPSVILLE ROAD (PARCEL ID 21757) :**

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

Laura said the subject property is a 1.45 acre site located on the east side of Startown Road, approximately 750 feet north of the intersection of Startown Road and Reepsville Road (Parcel ID 21757). The site is undeveloped. Land uses in the area are mostly single family residential. Nearby to the north is a parcel owned by Lincoln County which has most recently been used for the Parks and Grounds Department but the building is now vacant. There are other commercial uses at the intersection of Startown and Reepsville Roads. (See attached maps.)

The subject property and all surrounding properties are zoned R-25. Several properties located at the intersection of Startown and Reepsville Roads are zoned NB.

The property is currently one parcel with two owners but will be subdivided into two lots with two separate owners.

The existing R-25 zoning allows low density residential development and agricultural uses. Single family dwellings and Class A manufactured homes are allowed on lots ranging from minimums of 20,000 to 25,000 square feet depending on availability of public water and sewer services. Two family dwellings (duplexes) are allowed on lots ranging from minimums of 20,000 to 50,000 square feet depending on availability of public water and sewer services.

The applicant is requesting the site be rezoned from Residential-25 (R-25) to Conditional Use Neighborhood Business (CU-NB) in order to allow construction of a 5,000 square foot dance studio. Because the rezoning consists of two lots, the second lot, when developed, will require a conditional use permit prior to any development.

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She said the applicant requests conditional use rezoning in order to construct a 5,000 square foot dance studio on the property. The site plan indicates access will be provided by one entrance onto Startown Road. The parking lot will be

gravel and there will be approximately seven (7) parking spaces. Street landscaping and parking lot landscaping will be provided. Screening will be required on the north and west sides of the property adjacent to residentially zoned land.

The dance studio will consist of two instructors with up to 25 students there at one time. The use will operate Monday, Tuesday, Wednesday, and Thursday evenings from approximately 4:00 PM until 9:00 PM.

This district is designed primarily for local business centers for retailing of merchandise such as groceries, drugs, and household items and for furnishing certain personal, business, and professional services. Unlike some of the other commercial zones, this district is established to serve local neighborhoods and other relatively small trading areas. The standards established for these business areas are designed to promote sound, permanent business development and also to protect abutting or surrounding residential areas from undesirable aspects of nearby business developments. These districts are located at accessible places with respect to traffic circulation in order to conveniently serve the trading population and to promote the grouping of several places of business at locations so designated. Since this district is established to provide for small neighborhood oriented businesses, limitations on gross floor areas are established for certain uses. A Neighborhood Business District is typically a relatively small area but shall consist of at least two lots in separate ownership or at least two acres regardless of ownership.

Laura described the Conditional Use District Rezoning Process whereby a conditional use permit and a rezoning are acted upon simultaneously. The use that is proposed in the conditional use permit portion of the process must be the use constructed on the property after it is rezoned. Unlike a standard zoning in which all the

uses permitted in the district are potentially allowed on the rezoned site, a conditional use rezoning limits the potential use of the property. In this case, the applicant wishes to limit the use of the property to a Dance Studio. Because the rezoning consists of two lots, the second lot, when developed, will require a conditional use permit prior to any development.

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The UDO requires that a conditional use permit application contain specific terms and meet specific requirements. The site plan meets the requirements of this section with the following exception:

Additional parking may be required once maximum capacity is determined. The ordinance requirement is one space for every three persons that the facilities are designed to accommodate when fully utilized.

Laura said the applicant will be disturbing less than one acre of land. Therefore, compliance with the Water Supply Watershed standards is not required.

### **LAND USE PLAN**

The Lincolnton Land Use Plan shows this property in the Residential Suburban Planning Area. These planning areas are primarily single family in character and where the primary development pattern should continue to be single family dwellings.

In Staff's opinion, the rezoning request does not comply with the Land Use Plan. For the use to be consistent with the Plan, it would need to be amended to include the property in the Neighborhood Business Planning Area.

The Neighborhood Business Planning Area states that "these planning areas are for small business clusters that cater to the needs of a small trading area. They are appropriate for smaller sized stores and establishments."

Staff feels that there is some merit to amending the land use plan in this case. The property is located along a minor thoroughfare between commercially developed areas. However, any amendment of the land use plan should be contingent on a determination that the proposed dance studio would be a compatible use in the area.

**STAFF REVIEW COMMITTEE**

The Staff Review Committee made the following comments:

- (1) Building plans must be approved by Lincoln County and the City Fire Marshal prior to issuance of building permits.
- (2) NCDOT will require a driveway permit for access to Startown Road. Paving will be required from the street to the NCDOT Right of Way Boundary.

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- (3) Erosion control permit will be required from Lincoln County Natural Resources.
- (4) Additional parking may be required once maximum capacity is determined. The ordinance requirement is one space for every three persons that the facilities are designed to accommodate when fully utilized.

Laura concluded recommending on behalf of Planning Board and Staff the following three actions:

- (1) If the applicant satisfactorily proves the findings of fact, approve rezoning of the property from R-25 to CU-NB and attached Statement of Consistency and Reasonableness.
- (2) If the applicant satisfactorily proves the findings of fact, approve the Conditional Use Permit for a 5,000 square foot dance studio subject to Ordinance requirements and Staff Review Committee conditions.
- (3) If rezoning request is approved, amend the Land Use Plan to show the two parcels in the Neighborhood Business Planning Area.

Paul Northrop spoke against the conditional use rezoning. Everette Hullette spoke in favor.

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

Councilman Black made the motion unanimously approved to consider the statement of consistency and reasonableness.

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

Findings of Fact

- (1) Councilman Black 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 Jetton made the motion unanimously approved that the use meets all required conditions and specifications.
- (3) Councilman Smith 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.

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- (4) Councilman Black 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.

Councilman Black made the motion unanimously approved to approve the conditional use permit.

Councilman Eaddy made the motion unanimously approved to amend the Land Use Plan as recommended.

**CU-ZMA-4-2017- APPLICATION FROM CARL JENKINS REQUESTING A CONDITIONAL USE REZONING FROM R-8 TO CU-RO DISTRICT FOR THE PURPOSE OF OPERATING A FUNERAL HOME. THE SUBJECT PROPERTY IS LOCATED AT 406 BATTLEGROUND ROAD (PARCEL ID 17847):**

Mayor Hatley opened the Public Hearing. Councilman Smith asked to be excused from hearing or voting on this item, in accordance with NCGS 130A -75. Councilman Jetton made the motion unanimously approved to excuse Councilman Smith.

The City Clerk administered the oath to all those wishing to speak for or against the issue. Laura Elam, Planning Director, reviewed the above stated request.

Laura said the subject property is located on a 1.49 acre site at 406 Battleground Road (Parcel ID 17847). The site is developed with an approximately 4,800 square foot historic home built around 1890. Properties surrounding the site are a mixture of R-8 and RO. Land uses in the area are single family dwellings, a church, and a medical office. (See attached maps.)

The existing R-8 zoning district allows single-family dwellings on lots with a minimum of 6,000 square feet and two-family dwellings (duplexes) on lots with a minimum of 12,000 square feet. Additional forms of residential development could also be permitted subject to review and approval by the City Council.

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The applicant is requesting the site be rezoned from Residential-8 (R-8) to Conditional Use Residential Office (CU-RO) to allow use of the existing dwelling as a funeral home.

She said the site plan proposes use of the existing 4,800 square foot dwelling as a funeral home plus addition of a 625 square foot accessory building to be used for a private garage for unloading and preparation. A new paved parking lot with 28 parking spaces would be added. The two existing access points onto Battleground Road will be kept but will be widened to meet commercial driveway widths. The applicant indicates the funeral home will be operating an office on site daily from 9:00 a.m. until 5:00 p.m. There will be two rooms for viewing only. Hours for viewing services are typically in the evening. There will be no chapel on site for any service to be held. No cremations will be done on site.

Laura told Council that the Conditional use rezoning is a process whereby a conditional use permit and a rezoning are acted upon simultaneously. The use that is proposed in the conditional use permit portion of the process must be the use constructed on the property after it is rezoned. Unlike a standard rezoning in which all the uses permitted in the district are potentially allowed on the rezoned site, a conditional use rezoning limits the potential use of the property. In this case, the applicant wishes to limit the use of the property to a funeral home.

The UDO requires that a conditional use permit application contain specific terms and meet specific requirements. The site plan is missing the following items:

1. Detailed landscaping plan including street trees and parking lot landscaping. Existing trees may count toward these requirements.
2. Additional parking may need to be provided based on maximum occupancy.

She further stated that the applicant will be disturbing less than one acre of land. Therefore, compliance with the Water Supply Watershed Standards is not required. The Lincolnton Land Use Plan shows this property in the Traditional Single Family Planning area. The purpose of the planning area is for single family dwellings to be maintained in older established portions of the community. As these areas are primarily residential in character, they should be

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protected from encroachment of incompatible business and industrial development.

Adjacent properties located to the east and south are located in the Mixed Use/Residential/Commercial Planning Area. This planning area is in select, older portions of the City where true, “urban villages” consisting of high density residential uses (both single family and multifamily) and associated small-scale and pedestrian oriented office and retail uses may be located.

Laura said “In Staff’s opinion, the rezoning request is not consistent with the Land Use Plan. For the proposed use to be consistent with the Land Use Plan, the Plan would need

to be amended to include the property in the Mixed Use/Residential/Commercial Planning Area. Staff feels that there is some merit to amending the land use plan in this case. The property is located on a somewhat heavily-traveled minor thoroughfare in a transitional area with a mixture of land uses. However, any amendment of the land use plan should be contingent on a determination that the proposed funeral home would be a compatible use in the neighborhood.”

Laura reviewed the following Staff Review Committee made the following comments:

- (1) Building plans must be approved by Lincoln County Inspections prior to issuance of building permits.
- (2) The owner/operator is responsible for storm water leaving the site. Storm water must be configured so as to have no more harmful effect on streets and adjacent properties than the current situation. A storm water management plan is to be reviewed and approved by the Public Works Department prior to issuance of a certificate of occupancy.
- (3) The applicant will need to contact Chris Wilson, Electrical Superintendant, about electrical upgrade issues that may be needed for the new use.
- (4) Use of the site is limited to a funeral home only through re- use of the existing structure and grounds. New development is limited to the accessory garage noted on the site plan.
- (5) There will be no chapel on site for any services to be held and no cremations will be done on site.
- (6) Any outdoor lighting to be added is to be downwardly directed so as not to cast glare on adjoining properties.
- (7) Hours of operation to be limited to between 7:00 am and 9 pm.

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- (8) No changes to be made to the building’s exterior other than for routine maintenance.

Laura reviewed the FINDINGS OF FACT as follows:

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

1. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and

2. The use meets all required conditions and specifications, and
3. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
4. 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 Lincoln Land Use Plan and other plans for the physical development of the City as officially adopted by the City Council.

#### COMPLIANCE WITH FINDINGS OF FACT

1. The applicant will need to provide evidence that the use will not endanger the public health or safety.
2. The proposed use meets all required conditions and specifications.
3. The applicant will need to provide evidence that the use will not have any negative impacts on the value of adjoining or abutting properties.
4. The use is not in compliance with the Lincoln Land Use Plan. However, City Council may consider a change to the land use plan which would make this use consistent with the plan.

Laura concluded recommending on behalf of Planning Board and Staff the following three actions:

1. If the applicant satisfactorily proves the findings of fact, approve rezoning of the property from R-8 to CU-RO and attached Statement of Consistency and Reasonableness.
2. If the applicant satisfactorily proves the findings of fact, approve the Conditional Use Permit for the funeral home use subject to Ordinance requirements and Staff Review Committee conditions.
3. If rezoning request is approved, amend the Land Use Plan to show the property in the Mixed Use/ Residential/Commercial Planning Area.

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This item generated much discussion. The following people spoke on behalf of this request: Carl Jenkins, the applicant, Michael Soloman,

on behalf of the the applicant, Christine Boyles, James Burbach, and Vickie Yount.

Those speaking against the rezoning were as follows: Marti Shehan, Lee Haynes who also spoke for Greer Stamey, Will Wadsworth who also spoke for Jerry Stamey, Sally Gunter Potts, Bill Ballard, Vic Seagle, Robert Eugcer, and Tim Leonhardt. Parking was an issue by most of those speaking against as was the concern of lower property values with a funeral home located in this area.

Councilman Eaddy questioned when the Land Use Plan was revised/amended, Laura said in 2000.

Councilman Black questioned if there were ample parking spaces for this type use. Mr. Jenkins said he has 28 spaces, utilizing the church across the street as agreed upon verbally with the pastor.

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

Councilman Eaddy then ask the Planning Director for clarification on the Land Use Plan, asking if multi family would be permitted without coming to City Council. Laura said it would not, a request for multi-family use would require approval by City Council.

Councilman Eaddy then made the motion unanimously approved (by Councilmen Black, Eaddy and Jetton) to consider the statement of consistency and reasonableness.

Councilman Black made the motion unanimously approved (by Councilmen Black, Eaddy and Jetton) to deny the request.

**CONSIDERATION OF RESOLUTION DIRECTING THE CITY ATTORNEY TO PETITION FOR A COURT ORDER FOR REPAIR, REMOVAL OR DEMOLITION AT 702 N GROVE STREET :**  
**(R-11-17)**

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Laura Elam, Planning Director, asked Council to consider approving the following resolution:

RESOLUTION AUTHORIZING AND DIRECTING CITY ATTORNEY  
TO PETITION SUPERIOR COURT FOR AN ORDER  
REQUIRING THE OWNER OF CERTAIN PROPERTY  
TO COMPLY WITH THE ORDER  
OF THE CODE ENFORCEMENT OFFICER:  
702 NORTH GROVE STREET

WHEREAS, the City Council of the City of Lincolnton finds that the structure herein described is unsafe and thereby constitutes a fire and safety hazard and is dangerous to life, health and other property and that all of the procedures of the Code of the City of Lincolnton, North Carolina, have been complied with; and

WHEREAS, the owner of this structure has failed to comply with a lawful Order of the Code Enforcement Official to repair or demolish the same within the time therein prescribed; and

WHEREAS, G. S. 160A-432 and Section 150.054 of the Code of the City of Lincolnton, North Carolina, empowers the City of Lincolnton to seek enforcement when an Order of the Code Enforcement Official is not complied with;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lincolnton that the City Attorney is hereby authorized and directed to proceed, as authorized by G. S. 160A-432, to petition the Superior Court of Lincoln County for a petition requiring the owner, David E. Watson, of the structure located at 702 North Grove Street in the City of Lincolnton, North Carolina, to take such steps as may be necessary to comply fully with the Order of the Code Enforcement Official issued pursuant to the Abandoned Structure Ordinance contained in Chapter 150 of the Code of the City of Lincolnton, North Carolina.

This Ordinance shall become effective upon adoption.

Councilman Eaddy made the motion unanimously approved to adopt the resolution as recommended by the Planning Director.

## **REGULAR MEETING - NOVEMBER 2, 2017**

### **PROPOSED BUDGET AMENDMENT - TRANSFER MONIES TO CONSOLIDATE INSURANCE CODES AND AMEND FUNDS TO ADD 321 BRIDGE PROJECT :**

**(BA-04-17)**

Steve Zickefoose, City Manager, recommended that Council considered adopting the proposed budget amendment which would simply payments of insurance premiums, consolidating individual department line items into one general expense line item for insurance premiums. This amendment also includes increasing funds for the Hwy 321 bridge project which was to be monies from grant funding received.

Councilman Black made the motion unanimously approved to adopt the budget amendment as recommended by the City Manager.

### **CONSIDERATION OF QUOTES FOR PROPERTY & LIABILITY INSURANCE COVERAGE :**

**(R-12-17)**

David Ramsey, Business Services Manager, recommended City Council consider changing insurance carriers for the City's property and Liability coverage, from Travelers to the North Carolina League of Municipalities.

He said the price for renewal with our current carrier would be \$ 175,727, which has increased by \$ 17,709.00 over last year. The NCLM quote for the year was \$ 168,505.00 which would result in a \$ 7,222.00 cost savings, if the City selects the NCLM as our carrier.

Other advantages that David and Steve pointed out were the NC League of Municipalities only deals with municipalities, there are no other insured's allowed into the League. Their scope of understanding as to how cities operate and the inner workings of how all our departments operate is very specialized. Also other additional services, of no-cost to the City, such as property appraisals for any facility valued over \$ 250,000 along with pump and lift stations would be available as well as many opportunities for law enforcement training, Police Officer driver training and Law Enforcement Risk management Review program would be available.

Councilman Smith made the motion unanimously approved to allow the City to change insurance carriers for property and liability to the North Carolina League of Municipalities.

**REGULAR MEETING - NOVEMBER 2, 2017**

**CONSIDERATION OF NEW CITY POLICY REGARDING SMALL CLAIMS AND SANITARY SEWER BACKUP REIMBURSEMENT**  
**“GOOD NEIGHBOR POLICY”:**

**(P-07-17)**

David Ramsey, Business Services Manager, requested that Council approve the following policy:

**City Policy Regarding Small Claims &  
Sanitary Sewer Backup Reimbursement**

Effective Date: December 1, 2017

Adopted: November 2, 2017

**Purpose:** To establish guidelines and criteria as to when the City of Lincolnton will reimburse or pay claimants/residents for damages incurred due to low dollar amount accidents or due to sanitary sewer blockages which result in reverse flow into residential or commercial dwellings or structures.

**Background:** The City of Lincolnton recognizes that there are occasions where property owners/claimants will experience relatively low dollar amount claims as a result of the failure of the Sewer Main or service line resulting in damages to their property. Additionally, there are times when other accidents

may happen that cause low dollar amount claims to be submitted to the City's Insurance carrier - such as pot holes, minor backing accidents, glass claims, etc. The total amount of claims, regardless of the dollar amount, is taken into consideration when the City's liability insurance rates are calculated. It is therefore in the City's best interest to adopt a policy which establishes when more in-depth investigation should occur and when City Staff should be encouraged to negotiate and resolve claims without submitting to our liability insurance carrier. Also, there is ambiguity at times as to whether the

loss occurred as a result of failure on the City's behalf to maintain and service.

Procedures Sewer Backup Reimbursement:

- A. Owners seeking reimbursement for damages incurred due to sanitary sewer backup must submit the following information to the City in writing:
  - 1. Name of Property owner and occupant;
  - 2. Property address
  - REGULAR MEETING - NOVEMBER 2, 2017**
  - 3. Contact Number
  - 4. Date of damage and loss
  - 5. Itemized list of property damaged and approximate value of same
  - 6. Expenses incurred attempting to mitigate damages and clean the property
  - 7. Any other pertinent information as may assist in evaluating the request
- B. If a sanitary sewer back up does occur, and it is the result of infrastructure failure, it is the Policy of the City of Lincoln to resolve claims resulting in actual damages of twenty-five hundred (\$2500.00) or less without submitting the same to its insurance carrier.
- C. This policy is not to be construed as an admission of liability on the part of the City nor any negligence nor wrongdoing on its part, nor is it an admission of a breach of its agreement with sanitary sewer customers. It is, instead, an attempt to resolve a dispute without the need to resort to litigation.
- D. In order to qualify under this policy, the following criteria must be met:
  - 1. The sewer backup must clearly occur in the public sanitary sewer system and not in the customer's lateral line or private plumbing system.
  - 2. The sewer backup must have occurred through no negligence on the part of the property owner or occupant seeking damages, nor

by any third party who is on the property at the invitation of the owner or occupant or otherwise.

3. Reimbursement is limited to the actual cost incurred by the owner for damages to the property and cleanup expenses involved, and shall not exceed the amounts established herein.
4. Reimbursement will not be paid under this policy for personal injury, loss of income, temporary lodging or meals, emotional stress, or any other consequential damages.
5. The owner must agree to the installation of an approved water backflow valve at the expense of the owner.
6. The owner must execute a release discharging the City from any further liability upon payment of the claim, and must certify that no other payment has been received for the damages alleged from any other source, including any other insurance policy.

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- E. Owners who do not wish to limit their claims to the amounts established herein may submit their claims to the City Staff member who handles claims submission. Claims will thereafter be exempt from this policy once submitted to the City's liability carrier and will no longer be eligible to have a claim processed under this policy. If after processing by the insurance carrier it is determined that there is no liability or that damages are less than the amount provided under this policy, the claim cannot be reconsidered under the terms of this policy.

**Procedures for Small Claim Payment:**

- A. Claimants seeking payment for damages incurred due to an unforeseen accident or an accident in which the City of Lincolnton may be liable must submit the following information to the City in writing:
1. Name of Claimant and/or Owner
  2. Address where incident occurred
  3. Contact number
  4. Date & time of damage and loss
  5. Details of damaged property and how it happened
  6. Details of reason City may be liable

7. Any other pertinent information as may assist in evaluating the request
- B. If an unforeseen accident does occur and it is the result of an infrastructure failure or any other small claim situation such as a minor fender bender or backing accident or minor property damage, it is the Policy of the City of Lincolnton to resolve these claims resulting in actual damages of one thousand dollars (\$1,000.00) or less without submitting the same to its insurance carrier.
- C. In order to qualify under this policy, the following criteria must be met:
1. The claim must clearly occur within the City limits of Lincolnton or occur from a City of Lincolnton employee operating City of Lincolnton property.
  2. The claim must have occurred through no negligence on the part of the claimant.
- REGULAR MEETING - NOVEMBER 2, 2017**
3. Payment is limited to the actual cost for damages to the property and shall not exceed amounts established herein.
  4. Payment will not be paid under this policy for personal injury, loss of income, emotional stress or any other consequential damages.
  5. This policy will NOT apply if any personal injuries are present or possible.
  6. The owner must execute a release discharging the City from any further liability upon payment of the claim and must certify that no other payment has been received for the damages alleged from any other source.
  7. The claimant must provide the City with at least 2 verifiable estimates to be considered valid.
  8. For small fender bender or backing accident, the Lincolnton Police Department must be called to the scene to issue a police report. The owner & driver's names, the make, model, year and VIN of the claimant vehicle are required.

- D. The City of Lincoln, at its discretion, may deny this policy at any time and submit the information to be considered by their liability insurance carrier.
- E. Claim settlement under this policy will be payable to the Claimant and to the repair facility submitted when applicable.
- F. Claimants who do not wish to limit their claim to the amounts established herein or foresee their claim to be more than the amounts established herein may submit their claim to the City Staff member who handles claims submission. Claims will thereafter be exempt from this policy once submitted to the City's liability carrier and will no longer be eligible to have a claim processed under this policy. If after processing by the insurance carrier it is determined that there is no liability or that damages are less than the amount provided under this policy, the claim cannot be reconsidered under the terms of this policy.

Councilman Smith questioned who would make the decision to pay these claims that are over \$ 2500.00. Steve said he, David Ramsey and Mary Huffman would review the claims and determine if payment should be made based on the claim submitted.

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Steve said he feels this will be a cost savings to the City as it could result in lower premiums.

Councilman Eaddy made the motion unanimously approved to adopt the policy as recommended by the City Manager and the Business Services Manager.

**MONTHLY FINANCIAL UPDATE/OVERTIME REPORT :**

Steve Zickefoose, City Manager:

| November 2017 Council Meeting |                      |              |              |             |              |              |            |
|-------------------------------|----------------------|--------------|--------------|-------------|--------------|--------------|------------|
| Executive Summary             |                      |              |              |             |              |              |            |
| September 2017 Year-To-Date   |                      |              |              |             |              |              |            |
|                               |                      |              |              |             |              |              |            |
|                               |                      |              |              |             |              |              |            |
| General Fund                  |                      | Budget 17-18 | Actual 17-18 | % of Budget | Budget 16-17 | Actual 16-17 | Difference |
| Fund 10                       | Revenues             | 10,252,739   | 3,350,890    | 30%         | 10,662,262   | 3,271,813    | 79,078     |
|                               | Fund Balance         | 785,301      | -            | -           | 1,366,107    | -            | -          |
|                               |                      | 11,038,040   | 3,350,890    |             | 12,028,369   | 3,271,813    | 79,078     |
|                               |                      |              |              |             |              |              |            |
|                               | City Manager/Clerk   | 333,365      | 103,988      |             | 309,730      | 64,533       | 39,455     |
|                               | Human Resources      | 235,030      | 61,985       |             | 215,848      | 55,237       | 6,748      |
|                               | Finance              | 279,012      | 139,985      |             | 273,609      | 135,888      | 4,097      |
|                               | General Expense      | 809,520      | 351,962      |             | 878,154      | 275,424      | 76,537     |
|                               | General Debt Service | 463,524      | 24,179       |             | 425,535      | 27,525       | (3,346)    |
|                               | Police               | 3,344,770    | 776,901      |             | 3,153,942    | 748,063      | 28,837     |
|                               | Fire                 | 2,030,690    | 496,454      |             | 2,206,450    | 521,700      | (25,245)   |
|                               | Public Works         | 181,356      | 57,952       |             | 246,538      | 47,437       | 10,515     |
|                               | Street               | 1,229,141    | 186,312      |             | 1,534,891    | 332,792      | (146,480)  |
|                               | Equipment Services   | 132,120      | 39,848       |             | 157,819      | 66,401       | (26,553)   |
|                               | Solid Waste          | 718,328      | 144,554      |             | 820,485      | 171,391      | (26,837)   |
|                               | General Services     | -            | -            |             | 212,559      | 61,235       | (61,235)   |
|                               | Plannin/Zoning       | 277,060      | 68,423       |             | 276,258      | 47,078       | 21,345     |
|                               | Bus & Comm. Dev      | 132,454      | 5,927        |             | 160,693      | 43,281       | (37,354)   |
|                               | Recreation           | 871,670      | 267,939      |             | 1,155,858    | 180,027      | 87,912     |
|                               | Expenses             | 11,038,040   | 2,726,409    | 25%         | 12,028,369   | 2,778,012    | (51,603)   |
|                               | Difference           |              | 624,481      |             |              | 493,800      | 130,681    |

| Water & Sewer Fund |                   | Budget 17-18 | Actual 17-18 | % of Budget | Budget 16-17 | Actual 16-17 | Difference |
|--------------------|-------------------|--------------|--------------|-------------|--------------|--------------|------------|
| Fund 61            | Revenues          | 7,449,995    | 2,052,290    | 26%         | 7,867,135    | 2,186,257    | (133,966)  |
|                    | Fund Balance      | 390,000      | -            |             | 1,265,399    |              |            |
|                    |                   | 7,839,995    | 2,052,290    |             | 9,132,534    | 2,186,257    | (133,966)  |
|                    |                   |              |              |             |              |              |            |
|                    | Water Treatment   | 1,501,500    | 335,883      |             | 1,476,528    | 303,545      | 32,338     |
|                    | Dist & Collection | 1,356,250    | 330,693      |             | 2,390,175    | 784,609      | (453,916)  |
|                    | Wastewater        | 1,537,900    | 213,631      |             | 1,648,076    | 226,149      | (12,518)   |
|                    | W & S Intangibles | 3,444,345    | 115,966      |             | 3,617,755    | 110,107      | 5,859      |
|                    | Expenses          | 7,839,995    | 996,174      | 13%         | 9,132,534    | 1,424,410    | (428,236)  |
|                    | Difference        |              | 1,056,117    |             |              | 761,847      | 294,270    |
|                    |                   |              |              |             |              |              |            |
|                    |                   |              |              |             |              |              |            |
|                    |                   |              |              |             |              |              |            |
|                    |                   |              |              |             |              |              |            |
| Electric Fund      |                   | Budget 17-18 | Actual 17-18 | % of Budget | Budget 16-17 | Actual 16-17 | Difference |
| Fund 63            | Revenues          | 7,791,714    | 2,016,330    | 26%         | 8,000,000    | 2,081,569    | (65,239)   |
|                    | Fund Balance      | -            | -            |             | 79,000       | -            | -          |
|                    |                   | 7,791,714    | 2,016,330    |             | 8,079,000    | 2,081,569    | (65,239)   |
|                    |                   |              |              |             |              |              |            |
|                    | Electric Dept.    | 7,791,714    | 1,596,973    |             | 8,079,000    | 1,545,826    | 51,147     |
|                    | Expenses          | 7,791,714    | 1,596,973    | 20%         | 8,079,000    | 1,545,826    | 51,147     |
|                    | Difference        |              | 419,357      |             |              | 535,743      | (116,386)  |
|                    |                   |              |              |             |              |              |            |
| Overtime           | 80+ hours         |              | 82,338       |             |              | 97,444       | (15,106)   |

## REGULAR MEETING - NOVEMBER 2, 2017

### PUBLIC COMMENT :

Mr. Dennis Poston and Mrs. Barber spoke about the upcoming renaming of Abernathy Street to Martin Luther King Jr. Drive. The event is set for Sunday, November 19<sup>th</sup> at 2:30 pm. They thanked the City for their assistance with the renaming and for helping with signage.

### NEWS MEDIA :

There were no questions from the News Media.

**UPDATE ON THE “OLD CLOCK BY COUNCILMAN JETTON:**

Councilman Jetton provided an update on the “Old Clock” saying it should be installed in the next couple of weeks and a dedication will take place just before the Christmas Tree Lighting on Sunday, November 26<sup>th</sup>. He thanked all those involved in helping to bring the clock back and for those who gave donations to assist him with the repairs and clock restoration.

**ADJOURNMENT :**

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