

## JULY 14, 2009, CITY COUNCIL MEETING

The City Council of the City of Clinton, North Carolina, met in regular session at 7:00 PM on July 14, 2009 in the city hall auditorium. Mayor Starling presided. Councilmembers Becton, Harris, Strickland, and Turlington were present. Councilmember Stefanovich was absent. The city attorney Dale Johnson; city clerk Elaine F. Hunt; city manager John F. Connet; assistant city manager Shawn Purvis; finance director Betty Brewer; planning and community development director Jeff Vreugdenhil; planner Mary Rose; recreation director Judi Nicholson; public works director Chris Doherty; police chief Mike Brim; and human resource manager Lisa Carter were present.

Rev. Louie Andrews, Pastor of Graves Memorial Presbyterian Church gave the invocation.

### **CITY COUNCIL**

Upon a motion made by Councilmember Harris, seconded by Councilmember Becton, the minutes of the April 7, 2009 closed session, the June 2, 2009 regular meeting, and the June 23, 2009 special city council meeting were approved unanimously.

### **RECOGNITIONS**

Recreation Director Judi Nicholson spoke and recognized three former Advisory Board members: Brian DeMay, Mac Purcell, and Jay Tilley who voluntarily gave service to the City.

Mayor Starling presented certificates to the former Recreation Advisory Board members.

Becky Spell appeared before City Council with a group of young people from the Learning Station, 112 Northeast Boulevard. The youth spoke, commended City Council for their All-America City efforts, guidance, and leadership. They presented to Mayor, City Council, and City Manager Connet a banner and numerous letters written by the class.

### **P & Z – 403 SOUTHEAST BLVD – MIDNITE RODEO OF CLINTON, LLC**

Mayor Starling administered oaths to Jeff Vreugdenhil, Chief Mike Brim, Paul Scoggins, and James Ezzell III, of 517 McKoy Street, who spoke during a public hearing for a conditional use permit request.

Mayor Starling opened a public hearing on a request by Paul Scoggins of Midnite Rodeo of Clinton, LLC for a conditional use permit to operate an entertainment facility at 403 Southeast Boulevard, in an HC Highway Commercial district.

**Decision: Denied**

This matter came before the Clinton City Council (the "City Council") following a hearing by the Clinton Planning and Zoning Board on April 20, 2009. The Planning and Zoning Board recommend denial of this application based on the fact that the Applicant failed to submit substantial evidence that it could meet the four standards set forth in Section 10 of the City of Clinton Zoning Ordinance.

The City Council conducted a quasi-judicial hearing on the Applicant's Conditional Use request for 403 Southeast Boulevard on July 14, 2009. A video recording of the proceeding and evidence presented by Chief of Police Mike Brim is attached to this decision and incorporated herein by reference.

Based upon the Application and related documentation, the applicable City ordinances, the sworn testimony and documentary evidence presented by the Applicant, the City Staff and those supporting and opposing the Application, the City Council makes the following Findings of Fact and Conclusions of Law:

**A. Findings of Fact**

1. The Applicant submitted the Application to the City for review in February, 2009. Pursuant to City Zoning Ordinance (dated May 2, 1995 and herein referenced as the "Zoning Ordinance"), the Application was reviewed by the City Planning and Zoning Board. On April 20, 2009 the Planning and Zoning Board in a 4-1 vote recommended denial of the Application. Pursuant to Section 10.6 of the Zoning Ordinance, the Application is sent to the City Council, with a recommendation from the Planning and Zoning Board, for final approval or denial.
2. The Application requests a Conditional Use Permit to operate an entertainment facility known as Midnite Rodeo at 403 Southeast Boulevard in Clinton (the "Property"). The Property is zoned HC Highway Commercial which provides for entertainment not elsewhere classified as a conditional use.
3. The Zoning Ordinance requires that the Applicant establish compliance with the following standards in order to be approved:

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

Standard 2: The use meets all required conditions and specifications as outlined in the conditional use application, and/or as imposed by the City Council.

Standard 3: The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood, or is a public necessity.

Standard 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 in conformity with the Clinton Development Plan

4. The Property contains approximately 9.78 acres, with the Applicant utilizing a 19,000 square foot building within the existing shopping center. This area of the shopping center is currently vacant.
5. Paul Scoggins, of 7209 Concord Hwy, Monroe, NC, appeared before City Council representing the Applicant. He asked consideration of his request to open an entertainment facility at 403 Southeast Boulevard. Mr. Scoggins presented no documentary exhibits and did not specifically address any of the Section 10.7 standards.
6. Upon inquiry by the City Council for additional information, Mr. Scoggins provided the following evidence, which the Council finds as fact:
  - a. Country music will be played.
  - b. The establishment will serve only beer; there will be no food served.
  - c. Dancing will take place.
  - d. An estimate of 600-800 people will patronize the facility on Saturday nights.
  - e. An estimate of 1200-1400 bottles of beer will be sold, and estimated 200-250 vehicles will be parked per night.
  - f. The building will be available for rent when not in use.
  - g. The establishment would open at 8 PM and close approximately at 1:45 AM.
  - h. The establishment would open on Friday and Saturday – occasionally opened on Wednesday and/or Thursday for charitable events.
7. After being asked by Mr. James Ezzell, III for clarification as to the age group who would attend this entertainment facility, Mr. Scoggins stated that “it will depend on the entertainment.”
8. Mr. Scoggins stated that security will come from the police force. The Clinton police force, however, is not allowed to perform services of this type, so there was no competent evidence showing how security would be provided.
9. The proposed Midnite Rodeo is essentially the same type of establishment as the Palomino night club in Fayetteville and will have same services and hours. Both establishments would have the same management, specifically, the Applicant, Mr. Scoggins.
10. The Applicant testified that “[t]he Chief of Police closed down” the Palomino Club in Fayetteville. The current Application was filed at or around the time the proceedings to close the Palomino were commenced.

11. The Palomino was closed as a public nuisance by the Cumberland County Superior Court in March 2009 due to, among other things, the following activities:
  - a. a homicide;
  - b. multiple assaults and break-ins;
  - c. shootings;
  - d. use of narcotics;
  - e. abusive and profane language; and
  - f. drunk and disruptive behavior.
12. The proposed use is expected to attract clientele from outside of Clinton, including patrons from the now-closed Palomino Club in Fayetteville.
13. Clinton Chief of Police Mike Brim appeared before Council. He stated that his department did an investigation regarding this request for public safety reasons. He stated that they contacted the Fayetteville Police Department and learned that before the closing of the nightclub in Fayetteville, there had been numerous disturbances with weapons, drugs, shootings, and fights. He further noted that Mr. Scoggins stated that "security will come from the Police force;" however, he does not allow his officers to work inside nightclubs and entertainment facilities. Chief Brim pointed out that the City of Clinton's Police Department consists of a much smaller police force than Fayetteville. He stated if Fayetteville's police force could not address the types of activity which may be associated with an entertainment facility of this type; it would be more difficult for his department to do so.
14. There is no evidence that the operations and/or clientele will be any different in Clinton than at the Fayetteville Palomino. There is no evidence the Applicant has taken steps to prevent any of the activities for which the Palomino Club was closed from occurring at the proposed Midnite Rodeo, or that there will be adequate security to protect the public from such activities.
15. The attached binder was admitted into evidence without objection.
16. City Manager John Connet presented evidence regarding a Midnite Rodeo in Charlotte. Mr. Scoggins confirmed that he has a nightclub in Charlotte, NC, known as the "Midnite Rodeo Club" located on Albemarle Road. In May 2008, a man was shot outside of this nightclub.
17. The applicant did not present any additional evidence on how he was going to provide security at this facility. Furthermore, he did not present any evidence on how he was going to prevent criminal activity in and around this entertainment facility nor could he provide any assurances that the same problems would not occur here as they did at the Palomino in Fayetteville.

18. The Midnite Rodeo as proposed will create an increased level of crime and disturbance of the peace that cannot be adequately handled by the Clinton Police Department.
19. The proposed use will cause significant disturbances to nearby establishments as a result of additional noise, crime and vehicular traffic.
20. The proposed use is different from and inconsistent with other uses in the area, some of which are frequented by families with children and senior citizens. In particular, Zeng's Restaurant, a family oriented restaurant, is within 500 feet and Rose's Discount Store is in close proximity as well. The hours of operation of these establishments would overlap with the proposed use.
21. The proposed use could endanger the health, safety and welfare of citizens or visitors who may patronize other businesses in the shopping center.

No one else wished to be heard, and the hearing was closed.

Mayor Starling read Standard 1: The use will not endanger the public health, safety, or general welfare if located where proposed and developed according to plan. He then called for a vote on whether the requested use would meet this standard. Four voted that the standard would not be met. No one voted yes.

Mayor Starling read Standard 2: The use meets all required conditions and specifications as outlined in the conditional use application, and/or as imposed by the City Council. He then called for a vote on whether the requested use would meet this standard. Four voted that the standard would be met. No one voted no.

Mayor Starling read Standard 3: The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood, or is a public necessity. He then called for a vote on whether the requested use would meet this standard. Four voted that the standard would not be met. No one voted yes.

Mayor Starling read Standard 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 in conformity with the Clinton Development Plan. He then called for a vote on whether the requested use would meet this standard. Four voted that the standard would not be met. No one voted yes.

## **B. Conclusions of Law**

The proposed application for a Conditional Use Permit as submitted fails to meet the requirements of the Zoning Ordinance and, therefore, the Application

is hereby DENIED. In addition to the Applicant failing to carry his burden of proof on all of the above-mentioned required elements of Section 10.7.

### **C. Final Action**

Upon a motion made by Councilmember Harris, seconded by Councilmember Becton, and with the incorporation into the minutes of the attached Midnite Rodeo binder notated as Exhibit B, a site map notated as Exhibit C, and a letter from the applicant notated as Exhibit A, a conditional use permit was unanimously denied for Paul Scoggins of Midnite Rodeo of Clinton, LLC to operate an entertainment facility at 403 Southeast Boulevard.

### **CELL PHONE POLICY**

Assistance City Manager Purvis asked City Council to consider adopting a Cell Phone Policy to comply with IRS regulations regarding cell phones as “listed property” that requires cell phones to be taxed as a benefit. He stated that this policy provides guidelines for providing city employees, whose position requires a cell phone, with monthly stipends and phone allowances. Two options were outlined within the policy: (1) Option 1: Standard City Owned Phone –an accountable non-taxable plan which includes the prohibition of personal calls and (2) Option 2: Phone Stipend – a non-accountable taxable plan which allows employees to be paid a taxable monthly stipend: non-departmental head paid \$30 for a standard phone, department head paid \$35 for a standard phone, and \$75 for a Smartphone.

City Manager Connet stated that there will be a potential annual savings of \$3,700.

Upon a motion made by Councilmember Turlington, seconded by Councilmember Becton, the Cell Phone Policy with the implementation of Option 2 was approved unanimously.

### **CONDEMNATION – 304 BARDEN STREET**

City Manager Connet stated that this item: the continuation of an ordinance directing the Code Enforcement Officer to remove or demolish public nuisance property located at 304 Barden Street, in accordance with G. S. 160A-426 has been resolved. He further stated that no action needs to be taken.

### **BIDS— INSTALLATION OF NEW HEATING AND AIR CONDITIONING UNITS**

City Manager Connet spoke regarding the award of bid for the installation of new heating and air conditioning units for the: (a) City Hall Auditorium, (b) City Hall Computer Room, (c) City Hall Annex, and (d) Police Department. He stated that bids were solicited from the following contractors: Clinton Mechanical Contractors, Spell’s Mechanical Services, and Melton & Sons Heating & Air. He further stated that Spell’s Mechanical Services, of Autryville, NC, was the low bidder and recommended awarding our installation of new heating and air conditioning units contract to them for \$47,015.19.

Upon a motion made by Councilmember Strickland, seconded by Councilmember Harris, the bid from Spell's Mechanical Services for \$47,015.19 was unanimously approved.

### **CRUSE AND ASSOCIATES, P. A. & SAMPSON COMMUNITY THEATER – CITY OF CLINTON AGREEMENT – ENGINEERING SERVICES**

Assistant City Manager Purvis stated that Jeff Warren from the Sampson Community Theater appeared before City Council at the June 2009 city council meeting and informed them that the theater is in need of an electrical upgrade to bring the building up to code. He stated that Cruse and Associates, P.A. of Dunn, NC, had been contacted to develop construction drawings and specifications for the electrical system. He further stated that this contract does not include the actual upgrade of the system. Assistant City Manager Purvis recommended that City Council approve this contract with Cruse and Associates, P.A. so that they might develop construction drawings and specifications for the electrical system.

Upon a motion made by Councilmember Harris, seconded by Councilmember Strickland, approval of a contract with Cruse and Associates, P.A. to develop construction drawings and specifications for the electrical upgrade passed unanimously.

### **WASTEWATER COLLECTION AND TREATMENT PLANT REPORT**

City Manager Connet told City Council that one of the most technologically advanced and complicated services the City of Clinton provides is the treatment of wastewater. He stated that Public Works Director Doherty had compiled a short presentation for informational purposes only.

Public Works Director Doherty did a 10-12 minute detailed and very informative PowerPoint presentation.

No action was required.

### **MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE**

City Manager Connet stated that the 1997 Municipal Records Retention and Disposition Schedule, along with its 2001 and 2002 amendments from the Department of Cultural Resources was updated May of this year. He stated that each municipality is asked to have its governing body approve this update so that we might be in compliance with the Local Records Unit, Government Records Branch, and continue disposing of records in accordance with the provisions of Chapters 121 and 132 of the General Statutes of North Carolina.

Upon a motion made by Councilmember Strickland, seconded by Councilmember Harris, the new Municipal Records Retention and Disposition Schedule published by the North Carolina Department of Cultural Resources in May 2009 was approved unanimously.

## **MINORITY BUSINESS PARTICIPATION OUTREACH PLAN**

Public Works Director Doherty told Council that recently the City was awarded some stimulus funding and one requirement is to have a Minority Business Participation Outreach Plan. The Minority Business Participation Outreach Plan is a written policy to meet regulations set forth in NC G. S. 143-128.2(g) and by the Federal Government for use of various grants and loans. He asked City Council to adopt this Plan.

Upon a motion made by Councilmember Harris, seconded by Councilmember Becton, the Minority Business Participation Outreach Plan was approved unanimously.

## **ORDINANCE—BUDGET – POLICE DEPARTMENT PUBLIC SAFETY GRANT**

Upon a motion made by Councilmember Strickland, seconded by Councilmember Turlington, the following amendment **#09.07.01** Public Safety Grant Amendment was unanimously adopted:

### **Public Safety Grant Amendment For Second Year Fiscal Year 2009-2010 #09.07.01**

Be It Ordained by the City Council of the City of Clinton, NC, that the following amendment be made to the Public Safety Grant Ordinance that was adopted on May 5, 2009:

**Section 1.** To amend the Public Safety Grant Ordinance, the expenditures are to be changed as follows:

Account #	Account Title	Increase	Decrease
765200.0200	SALARY	36,000.00	
765200.0400	PROFESSIONAL SERVICE	8,000.00	
765200.0500	FICA PAYROLL TAXES	2,755.00	
765200.0600	GROUP INSURANCE	4,505.00	
765200.0700	RETIREMENT	1,800.00	
765200.0701	401(K)	810.00	
765200.1000	EMPLOYEE TRAINING	4,850.00	
765200.1100	COMMUNICATIONS	1,200.00	
765200.1200	PRINTING & BINDING	3,500.00	
765200.1300	UTILITIES	500.00	
765200.1400	TRAVEL & EDUCATION	5,500.00	
765200.1600	COMPUTER SERVICE	500.00	
765200.3300	PROGRAM SUPPLIES/MATERIALS	13,655.00	
765200.4500	MEDIA CONTRACTS	15,200.00	
765200.5401	WORKER'S COMP INSURANCE	1,225.00	

**TOTAL EXPENDITURES: 100,000.00**

**Section 2.** The revenues are to be changed as follows:

Account #	Account Title	Increase	Decrease
763020.0000	GRANT REVENUES	100,000.00	
	<b>TOTAL REVENUES:</b>	<b>100,000.00</b>	

**Section 3.** Copies of this budget amendment shall be furnished to the City Clerk, City Manager, and Finance Director for their direction.

### **CITY FIRE INSPECTION'S DIVISION**

This item, consideration of establishing a City Fire Inspection's Division was continued until the August 4, 2009 city council meeting.

### **DOWNTOWN REVITALIZATION PROJECT – PHASE III**

This item was moved to Closed Session.

### **ASSESSMENT CENTER – MAPS – FIRE CHIEF'S POSITION**

City Manager Connet stated that the advertising process for the fire chief's position is complete. He stated that the applications had been narrowed to 16, then 10, and will be narrowed to 6 candidates. He stated that these 6 candidates will go through an assessment center. City Manager Connet stated that he has had several meetings with Council, business people, and fire staff.

City Manager Connet asked City Council to approve hiring the MAPS group to run the assessment center. He stated that the assessment center is one step—not the only step. He stated that exercises are facilitated by other fire chiefs, other city managers, etc. who do not know the candidates. He further stated that the Fire Department requested this assessment center.

Councilmember Strickland does not like spending \$8,200 but wants a fair decision made. He further stated that if the Fire Department requested the assessment center, he is all for it. Councilmember Harris stated that \$8,200 to hire the MAPS group is a lot of money to put out at this time. She further asked City Manager Connet how many were on the business people list initially. He stated that there were 16 on the list.

Earl Parker, 94 Deems Drive, Clinton, NC, questioned City Manager Connet regarding the diversity of the assessment team. City Manager Connet replied that he does not know at this time the diversity.

Dwight Miller, 191 Deems Drive, Clinton, NC, asked if the community asked for the assessment or the Fire Department only. City Manager Connet stated the Fire Department asked only.

Andrea Hill, 2267 Browns Church Road, Clinton, NC, asked if any other assessment groups were considered. City Manager Connet stated that MAPS were the only group considered because the City receives discounts with them.

Wanda E. Green, 2735 H. B. Lewis Road, Clinton, NC, voiced concerns regarding the cost to hire the MAPS group.

Before concluding the discussion, it was stated that a second meeting will be scheduled for local business people to give input on the hiring of the fire chief's position. Also, Dwight Miller, President of the NAACP, Sampson County Branch, was asked to take part in gathering individuals for this second meeting.

The contract with the MAPS group was not approved. However, upon a motion made by Councilmember Turlington, seconded by Councilmember Becton, it was approved unanimously for City Manager Connet to handle assessment center internally or, look for less expensive consultant(s) or, use his discretion and proceed with a second meeting composed of business people.

### **UPDATE ON UNSAFE OR NUISANCE PROPERTIES**

City Manager briefed City Council on a list of unsafe and nuisance properties that will likely end up before them for condemnation action. He stated that these properties are likely to come before City Council in the next thirty to ninety days. He further stated that demolition of each of these properties will cost the City approximately \$7,500—some of the money will be recouped from the property owners and some of the money will not be collected until the property is sold or foreclosed on by the City or County. The list of unsafe and nuisance properties is as follows:

85 Faison Hwy -- 60 Days up 8/17/2009  
220 Moye Street -- 60 Days up 8/17/2009  
624 Lisbon Street – 60 Days up 8/25/2009  
304 Barden Street (Church) – Hearing 7/20/2009 at 2 PM  
1000 Sampson Street – Chief Brim brought this structure to our attention, have not begun process.

506 & 508 Williams Street – Had hearing, waiting to send 60-day notice.

No action taken at this time.

### **CONTRACT – NCLM – PAY AND CLASSIFICATION PLAN –PUBLIC WORKS**

City Manager Connet stated that our current pay and classification plan is almost ten years old and needs to be updated. He stated that at this time, it is not feasible to update the entire plan; therefore he is asking Council to approve a contract with the North Carolina League of Municipalities to update the pay and classification for the Public Works and Utilities Department. City Manager stated that his goal is to update the entire plan over a three-year cycle. He stated that this pay and classification plan was included in the 2009-2010 Budget.

Upon a motion made by Councilmember Harris, seconded by Councilmember Becton, the contract with the North Carolina League of Municipalities to update the pay and classification plan for the Public Works and Utilities Department passed unanimously.

### **APPOINTMENTS**

Upon a motion made by Councilmember Becton, seconded by Councilmember Strickland, Shurley McCullen was reappointed to the ABC Board for a three-year term ending August 2012. The motion passed unanimously.

### **REPORTS**

City Manager Connet acknowledged that the financial, police, personnel, fire, and public works reports were received and he stands ready to answer any questions from City Council regarding the reports.

City Manager Connet thanked City Council for allowing him to be the city manager of the City of Clinton. He stated that today marked his 7<sup>th</sup> year as city manager.

### **OTHER BUSINESS**

Chief Mike Brim thanked City Council for allowing him to be the police chief of the City of Clinton. He stated that this is his 5<sup>th</sup> year with the City of Clinton.

### **RESOLUTION—CLOSED SESSION**

Upon a motion made by Councilmember Strickland, seconded by Councilmember Harris, the following resolution was unanimously adopted:

#### **RESOLUTION TO ENTER CLOSED SESSION**

Be It Resolved that the regular meeting of the City Council of the City of Clinton, North Carolina, held at 7:00 PM on July 14, 2009, entered closed session as allowed by G. S. 143-318.11(a)(3) to discuss potential litigation.

Council re-entered regular session at 9:26 PM. Mayor Starling reported that City Council was briefed on property matters and personnel matter; however, no action was taken.

Upon a motion made by Councilmember Becton, seconded by Councilmember Turlington, and unanimously passed, the meeting adjourned at 9:30 PM.