

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
COUNCIL CHAMBER, MUNICIPAL BUILDING  
APRIL 8, 2010  
7:00 p.m.**

\*\*\*\*\*

This being the time and place for a regular meeting of the City Council, a meeting was held with the following officials and members present:

David H. Smith            ) – Mayor Presiding  
  
Talmadge S. Baker        )  
Clark R. Bell             )  
Edward J. Burks         )  
Linda H. Carter          ) – Council Members Present  
Stuart B. Fountain       )  
Michael W. Hunter       )  
Walker B. Moffitt        )

John N. Ogburn, III, City Manager  
Timothy M. Allred, Deputy Fire Chief (Retired)  
Dumont Bunker, P.E., City Engineer  
Edsel L. Brown, Code Enforcement Officer  
Richard L. Cox, Jr., Community Planning and Development Department Intern  
Holly H. Doerr, City Clerk/Senior Legal Assistant  
John L. Evans, Planner  
Casandra M. Fletcher, Marketing Specialist  
R. Wendell Holland, Jr., Zoning Administrator  
T. Myers Johnson, Human Resources Director  
Justin T. Luck, Community Planning and Development Department Intern  
R. Reynolds Neely, Jr., Planning Director  
Ralph W. Norton, Assistant Chief of Police  
Robert H. Kivett, Public Works Director  
Deborah P. Reaves, Finance Director  
Michael D. Rhoney, Water Resources Director  
Jonathan M. Sermon, Recreation Services Superintendant  
Jeffrey C. Sugg, City Attorney  
James W. Smith, II, Fire Chief  
Felix L. Ward, Cultural and Recreation Services Director  
Kermit D. Williamson, Sanitation Superintendant  
Rickey D. Wilson, Chief of Police  
Roy C. Wright, Deputy Fire Chief

**1. Call to order.**

Mayor Smith called the meeting to order for the transaction of business, and business was transacted as follows.

**2. Moment of silence and pledge of allegiance.**

After a moment of silence was observed in order to allow council members, staff, and guests to collect their thoughts and private meditation, Mayor Smith asked everyone to stand and repeat the pledge of allegiance.

**3. Appearance and recognition of guests and citizens.**

Mayor Smith welcomed everyone in attendance.

**4. Recognition of Deputy Fire Chief Timothy M. Allred for his 30 years of service to the City of Asheboro.**

Chief Smith recognized and presented a plaque to Deputy Fire Chief Timothy M. Allred in appreciation for his devoted service and dedication of 30 years of service to the City of Asheboro. Additionally, Chief Smith presented Mr. Allred with his dress uniform hat, his helmet, and his shirt and dress coat badges that he wore at the time of his retirement.

Mayor Smith congratulated Mr. Allred and presented him with the Order of the Long Leaf Pine from Governor Beverly Perdue.

**5. Consent Agenda:**

Upon motion by Mr. Baker and seconded by Dr. Fountain, Council voted unanimously to approve the following consent agenda items:

- (a) **The minutes of the regular meeting of the City Council that was held on March 4, 2010.**
- (b) **The minutes of the special meeting of the City Council that was held on March 15, 2010.**
- (c) **A resolution approving requests as amended for state aid to the Asheboro Regional Airport in the Aviation Element of the Transportation Improvement Program (adds additional land acquisition for future improvements and pavement rehabilitation of the north apron area.)**

**08 RES 4-10**

**RESOLUTION APPROVING REQUESTS AS AMENDMED FOR STATE AID TO THE ASHEBORO REGIONAL AIRPORT IN THE AVIATION ELEMENT OF THE TRANSPORTATION IMPROVEMENT PROGRAM BY THE CITY COUNCIL OF THE CITY OF ASHEBORO**

WHEREAS, the North Carolina Department of Transportation Division of Aviation has requested that the City of Asheboro submit a list of projects for the Aviation Element of the FY 2011-2015 Transportation Improvement Program (TIP); and

WHEREAS, the Asheboro City Council has approved a TIP submission by Resolution # 53 RES 12-09 adopted on December 10, 2009; and

WHEREAS, the NC Department of Transportation Division of Aviation has recommended that additional land acquisition for future improvements and pavement rehabilitation of the north apron area be added to the previously submitted requests; and

WHEREAS, the City of Asheboro has included these recommendations in a list title "NEW PROJECT Requests for Asheboro Regional Airport – Amended March, 2010" incorporated herein by reference to modify previously submitted requests.

NOW, THEREFORE, BE IT RESOLVED that the Asheboro City Council has reviewed the referenced TIP submission, and that the City Council hereby formally approves the submission of these requests as amended for State Aid to Airports and for the State Block Grant Program where applicable.

Adopted in regular session on this 8<sup>th</sup> day of April, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr

[A copy of the "NEW PROJECT Requests for Asheboro Regional Airport – Amended March, 2010" is on file in the City Clerk's office and available for public inspection.]

- (d) **The audit contract for fiscal year ending June 30, 2010.**

[A copy of this audit contract is on file in the City Clerk's office and available for public inspection.]

- (e) **Budget ordinance amendments:**
  - (i) **Ordinance to amend U.S. 64/N.C. 42 NCDOT Improvements Project**

**22 ORD 4-10**

**ORDINANCE TO AMEND HWY 64 /HWY 42 NCDOT IMPROVEMENTS PROJECT (FUND #76)  
FY 2009-2010**

WHEREAS, the scope of work outlined to be completed and paid for out of the HWY 64, HWY 42 NCDOT Improvements Fund (#76) has been completed, and;

WHEREAS, the excess funds of \$22,262.30 need to flow back to General Fund and the Water and Sewer Fund from where the funds were originally allocated, and;

WHEREAS, expenditures have changed in relation to the expenditures shown in the project, and;

WHEREAS, the City Council of the City of Asheboro desires to amend the budget as required by law, and;

WHEREAS, the City Council of the City of Asheboro desires to be in compliance with all generally accepted accounting principles.

THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro, North Carolina:

That the following Expense line items be increased / (decreased):

<u>Account #</u>	<u>Expense Description</u>	<u>Increase / (Decrease)</u>	<u>Amended Budget</u>
76-820-0000	Water Line Relocation	(19,914)	120,086
76-820-1000	Sidewalk Construction	(2,348)	25,038
76-830-1000	Contribution to General Fund	2,348	2,348
76-830-3000	Contribution to Water & Sewer Fund	19,914	19,914
	Total Change	0	167,386

Adopted this the 8<sup>th</sup> day of April 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**(ii) Ordinance to close U.S. 64/N.C. 42 NCDOT Improvements Project**

**23 ORD 4-10**

**ORDINANCE TO CLOSE HWY 64 /HWY 42 NCDOT IMPROVEMENTS PROJECT (FUND #76)  
FY 2009-2010**

WHEREAS, the officers of the City of Asheboro have completed the improvements outlined for this project and;

WHEREAS, the officers of the City of Asheboro submit the below as the final budget for the project and request that the project be closed;

THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro, North Carolina that the below budget is accepted as the final budget and the HWY 64 / HWY 42 NCDOT Improvements Project (fund #76) is hereby closed.

That the following is the final Revenue Budget:

<u>Account #</u>	<u>Revenue Description</u>	<u>Final Budget</u>
76-367-1000	General Fund Contribution	27,386
76-367-3000	Water & Sewer Fund Contribution	140,000
	Total Revenues	167,386

That the following is the final Expense Budget:

<u>Account #</u>	<u>Expenditure Description</u>	<u>Final Budget</u>
76-820-0000	Water Line Relocation	120,086
76-820-1000	Sidewalk Construction	25,038
76-830-1000	Contribution to General Fund	2,348

76-830-3000	Contribution to Water & Sewer Fund	19,914
	Total Expenditures	167,386

Adopted this the 8<sup>th</sup> day of April 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**(iii) Ordinance to amend Water & Sewer Fund (#30) (Park Drive to Pineview Water Line)**

**24 ORD 4-10**

**ORDINANCE TO AMEND THE WATER AND SEWER FUND (#30) FY 2009-2010**

WHEREAS, The City of Asheboro was approved for loan assistance in the amount of \$5,331,881 (Project # DEH-0911) from the State Clean Water Pollution Control Revolving Fund on August 21, 2002 for a water system improvements project , and;

WHEREAS, the water systems improvement project scope included the construction of a new water line from the Water Treatment Plant to Park Drive, a new water line from Park Drive to Pineview Rd, new generators at the Water Treatment Plant and Lake Lucas and Water Line improvements on North Fayetteville Street, and;

WHEREAS, the project construction was certified complete on September 16, 2008, the final loan advance from Division of Water Quality Construction Grants and Loans was approved June 6, 2009 and has been received, and the City of Asheboro received on March 4, 2010 the final Maturity Schedule and Promissory Note in the amount of \$4,987,267 from the Local Government Commission noting the first payment of principal and interest being due on May 1, 2010, and;

WHEREAS, the first payment due is \$690,961.93 which includes accrued interest from September 16, 2008 going forward, and;

WHEREAS, the City Council of the City of Asheboro desires to amend the budget as required by law to appropriate funding for the amount of this first debt expense over current budgeted appropriation, and;

WHEREAS, the City Council of the City of Asheboro desires to be in compliance with all generally accepted accounting principles.

THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro, North Carolina

Section 1: That the following revenue line items are changed:

<u>Account</u>	<u>Description</u>	<u>Increase</u>	<u>Amended Budget</u>
30-399-0000	Fund Balance Allocation	343,563	343,563

Section 2: That the following expense line items are changed:

<u>Account</u>	<u>Description</u>	<u>Increase</u>	<u>Amended Budget</u>
30-820-8100	Principal On Long Term Debt	49,364	249,364
30-820-8200	Interest On Long Term Debt	<u>294,199</u>	441,599
	Total	343,563	

Adopted this the 8th day of April 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**(iv) Ordinance to amend Water & Sewer Fund (#30)**

**25 ORD 4-10**

**ORDINANCE TO AMEND THE WATER AND SEWER FUND FY 2009-2010**

WHEREAS, The City of Asheboro is self funded for health insurance, and;

WHEREAS, the City Council of the City of Asheboro allocated funding for the 2009- 2010 fiscal year in the annual adopted budgets passed on June 23<sup>rd</sup>, 2009, and;

WHEREAS, the current fiscal year claims are significantly greater than the past fiscal years claims, which were used as basis for estimation in the FY 2009-2010 appropriation, and;

WHEREAS, additional funding is needed to provide for current known claims and estimated claims through June 30, 2010, and;

WHEREAS, the budget as adopted requires amendment to reflect the appropriation of fund balance to pay for these unanticipated medical costs, and;

WHEREAS, the City Council of the City of Asheboro wants to be in compliance with all generally accepted accounting principles, and;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

Section 1: That the following Revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Budget</u>
30-399-0000	Fund Balance Allocation	132,135	475,698

Section 2: That the following Expense line item be increased:

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>
30-720-0704	Fringe- Insurance	9,800
30-810-0704	Fringe- Insurance	13,556
30-820-0704	Fringe- Insurance	20,416
30-830-0704	Fringe- Insurance	51,450
30-840-0704	Fringe- Insurance	15,190
30-850-0704	Fringe- Insurance	21,723
	Total Increase	132,135

Adopted this the 8<sup>th</sup> day of April, 2010.

\_\_\_\_\_  
s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

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s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**(v) Ordinance to amend the General Fund (#10)**

**26 ORD 4-10**

**ORDINANCE TO AMEND THE GENERAL FUND FY 2009-2010**

WHEREAS, The City of Asheboro is self funded for health insurance, and;

WHEREAS, the City Council of the City of Asheboro allocated funding for the 2009- 2010 fiscal year in the annual adopted budgets passed on June 23<sup>rd</sup>, 2009, and;

WHEREAS, the current fiscal year claims are significantly greater than the past fiscal years claims, which were used as basis for estimation in the FY 2009-2010 appropriation, and;

WHEREAS, additional funding is needed to provide for current known claims and estimated claims through June 30, 2010, and;

WHEREAS, the budget as adopted requires amendment to reflect the appropriation of fund balance to pay for these unanticipated medical costs, and;

WHEREAS, The City Council of the City of Asheboro desires to amend the budget as required by law, and;

WHEREAS, the City Council of the City of Asheboro wants to be in compliance with all generally accepted accounting principles, and;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

Section 1: That the following Revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Budget</u>
10-399-0000	Fund Balance Allocation	497,339	1,730,113

Section 2: That the following Expense line item be increased:

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>
10-410-0704	Fringe- Insurance	13,066
10-420-0704	Fringe- Insurance	3,266
10-440-0704	Fringe- Insurance	6,533
10-450-0704	Fringe- Insurance	3,266
10-480-0704	Fringe- Insurance	3,266
10-490-0704	Fringe- Insurance	10,616
10-510-0704	Fringe- Insurance	155,164
10-530-0704	Fringe- Insurance	102,900
10-540-0704	Fringe- Insurance	6,533
10-550-0704	Fringe- Insurance	14,700
10-555-0704	Fringe- Insurance	31,033
10-565-0704	Fringe- Insurance	32,666
10-575-0704	Fringe- Insurance	6,533
10-580-0704	Fringe- Insurance	37,566
10-585-0704	Fringe- Insurance	1,633
10-590-0704	Fringe- Insurance	8,166
10-620-0704	Fringe- Insurance	16,333
10-625-0704	Fringe- Insurance	3,266
10-640-0704	Fringe- Insurance	40,833
	Total Increase	497,339

Adopted this 8<sup>th</sup> day of April, 2010.

\_\_\_\_\_  
s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

\_\_\_\_\_  
s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**6. Land Use Items:**

- (a) **RZ-10-02: Request to rezone from OA6 (Office Apartment) to B3 (Central Commercial).** The property of Lynette S. Garner is located at 170 Worth Street and consists of approximately 0.51 of an acre of land. Randolph County Parcel Identification Number 7751827598 more specifically identifies the property.

Mayor Smith opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Ms. Vickie Lorimer to rezone the above-referenced property from OA6 (Office-Apartment) to B3 (Central Commercial). The Planning

Board recommended approval of the request based on the following planning department staff's analysis:

"Several factors support rezoning the property B3 (Central Commercial). The Land Development Toolkit emphasizes that the Center City should consist of a mix of complementary land uses, including a commercial component. The B3 district would offer additional commercial uses and services that could complement the existing mix of land uses (i.e. office/institutional/residential) in the vicinity. Land uses that are adjacent to the property, such as the Randolph County Courthouse and Randolph County Public Library are considered to be the core of the center city, so rezoning the property to B3 is supported by the context of surrounding land uses.

On street parking is available in front of the subject property, and public parking is within 500 feet of the site, which mitigate concern of not requiring on-site parking. The subject property is located in Tier 1 of the Center City Planning Area and is subject to Tier 1 development regulations, which are consistent with the development patterns (i.e. buildings constructed close to the street) of the B3 zoning district. Considering all these factors, staff believes the proposed rezoning is generally within the public interest in supporting a reasonable use of the property."

Ms. Vickie Lorimer presented comments in support of the request.

There being no further comments nor opposition from the public, Mayor Smith closed the public hearing.

Upon motion by Mr. Baker and seconded by Mr. Moffitt, Council unanimously followed the recommendation of the Planning Board and approved the requested rezoning.

**(b) Combined Public Hearing on the Question of the Issuance of a Conditional Use Permit for a Gas Station and an Accessory Automatic Carwash Use (CUP-10-03) and on the Question of the Issuance of a Conditional Use Permit for a Bank (CUP-10-04).**

Mayor Smith opened a combined public hearing on the following applications for Conditional Use Permits filed under planning department file numbers CUP-10-03 and CUP-10-04.

During this public hearing, Mr. Neely was placed under oath and presented the city planning department staff's analysis of the applicant's request to amend condition number 5 that was attached to the Conditional Use Permits initially issued under file numbers CUP-09-14 (2.376 acres owned by Franson, LLC and currently identified by Randolph County Parcel Identification Number 7760385611) and CUP-09-15 (1.281 acres owned by Franson II, LLC and currently identified by Randolph County Parcel Identification Number 7760382591). Otherwise, the current application for a gas station, including the sale of retail convenience goods, and an accessory single bay automatic car wash sought under CUP-10-03 along with the application for a bank with a 3-bay bank drive through window under file number CUP-10-04 are not materially different from the applications approved by the City Council in December 2009.

The existing permits require, pursuant to condition number 5, that the following actions be taken:

"Prior to the issuance of a Zoning Compliance Permit, an engineering study of storm water runoff shall be made. If such study indicates that post development runoff will exceed predevelopment conditions, plans for runoff control shall be designed and certified by a professional engineer. Such controls shall be designed to reduce the runoff during the occurrence of a 10-year storm to predevelopment volumes and rates. Prior to the issuance of a Certificate of Occupancy, a professional engineer shall provide certification that the storm water controls were build according to the plans. Any open water retention or drainage areas shall be sprayed regularly for mosquito control. The continued maintenance of all runoff control measures shall be the responsibility of the property owner."

The applicant contends that the above-stated condition is not warranted because a storm water runoff study has now been completed. This study, which was not previously available to the City Council, indicates that the impact of runoff from a 10-year storm under existing requirements enforced by the Division of Water Quality within the North Carolina Department of Environment and Natural Resources is negligible. Therefore, the applicant is requesting that condition number 5 be replaced with the following condition:

"Prior to the issuance of a Certificate of Occupancy, a professional engineer shall provide certification that any storm water control measures on the site were

designed and constructed in accordance with North Carolina Department of Environment and Natural Resources, Division of Water Quality (NCDENR-DWQ).”

Mr. Ben Morgan, Esq. and Mr. Jim Bell, P.E. of ARCADIS were placed under oath and offered comments in support of this application.

Mr. Randy McDowell, a neighboring property owner, was placed under oath and presented concerns in regards to the possibility of a higher volume of traffic on Dublin Road as a result of the construction of a gas station on the above-referenced property. Other than his general concerns and questions, Mr. McDowell offered no evidence to undercut the expert testimony previously offered on this issue.

There being no further comments nor evidence to present, Mayor Smith closed the public hearing. An audiotape of the testimony presented during this hearing is on file in the City Clerk's office.

After the public hearing was closed, the city council considered the applications for Conditional Use Permits in the following order:

**(i) CUP-10-03:**

Upon motion by Mr. Moffitt and seconded by Mr. Burks, Council voted to approve the requested Conditional Use Permit for a gas station and an automatic carwash. Council Members Bell, Burks, Carter, Fountain, Hunter, and Moffitt voted in favor of the motion. Council Member Baker voted no. The issuance of this Conditional Use Permit was based on the four standard tests being met.

The formal findings of fact, conclusions of law, and order granting the Conditional Use Permit will be entered by the Council during regular session on May 6, 2010. This order will reflect certain conditions imposed upon this permit as a consequence of the testimony presented during the hearing of this matter.

**(ii) CUP-10-04:**

Upon motion by Mr. Moffitt and seconded by Dr. Fountain, Council voted unanimously to approve the requested Conditional Use Permit for a bank. The issuance of this Conditional Use Permit was based on the four standard tests being met.

The formal findings of fact, conclusions of law, and order granting the Conditional Use Permit will be entered by Council during regular session on May 6, 2010. This order will reflect certain conditions imposed upon these permits as a consequence of the testimony presented during the hearing of this matter.

**(c) RZ-10-01: Text Amendments to the Asheboro Zoning Ordinance and Chapter 113 (Dealers in Sexually Explicit Material) of the Code of Asheboro.** An application filed by the City of Asheboro to amend Article 200, Article 300, Article 400, Article 500, Article 600, and Article 1100 of the Asheboro Zoning Ordinance in addition to the amendment of Chapter 113 of the Code of Asheboro.

- (i) Combined public hearing**
- (ii) Text amendments to the Asheboro Zoning Ordinance**
- (iii) Amendment of Chapter 113 of the Code of Asheboro**

Mayor Smith opened the combined public hearing on the following staff initiated request to update the city's regulatory approach to adult establishments or sexually oriented businesses.

Mr. Neely reported that the zoning ordinance currently allows adult businesses by special use permit in the B2, B3, and TH zoning districts. Mr. Neely further reported that the zoning ordinance currently requires 1,000 feet of separation between all types of adult uses and other adult uses, residential areas, places of worship, and schools. A map illustrating the absence of potential locations for adult businesses according to current location standards was also presented to the Council.

After consulting with the city's legal counsel, the planning department concluded that the current regulatory framework was not legally sustainable. The secondary effects associated with sexually oriented businesses had to be researched and understood before more effective and sustainable regulations could be proposed. By understanding the negative secondary effects that the community can expect from adult establishments, the Council is better equipped to balance legitimate community concerns about sexually oriented businesses with the First Amendment protection afforded to certain media, presentations, and performances.

Mr. Neely then called on Mr. H. Howard "Hal" Powell, a State Certified General Real Estate Appraiser with Powell Appraisers, to present a review of the Texas Appraisers' Survey *Secondary Effects of Sexually-Oriented Businesses on Market Values*. This study was completed in June of 2008 and involved approximately 195 appraisers throughout the state of Texas. This study was to determine if the existence of sexually oriented businesses located in close proximity to private residences and community shopping centers would lower their property value.

During his presentation, Mr. Powell informed the Council that, in his professional opinion, the Texas study and its conclusions are relevant to identifying the secondary effects that would impact the residential and commercial real estate market in Asheboro as a consequence of the location of sexually oriented businesses in the market place. The Texas study shows 1/2 mile as the "safe" zone in regards to property values as opposed to 500 feet that is proposed in the amendments of the Asheboro Zoning Ordinance. This 500 feet requirement is proposed in order to provide sites where sexually oriented businesses may exist. This concession must be made because courts have been strict in not allowing cities to deprive sexually-oriented businesses of the right to exist, and sexually oriented businesses would be effectively zoned out of existence in the City of Asheboro if a one-half (1/2) mile separation requirement were to be imposed. Mr. Powell's written review of the Texas Appraisers' Survey was distributed to the City Council during the public hearing. Additionally, a copy of the "Survey of Texas Appraisers" and "Crime-Related Secondary Effects" prepared as a study for the Texas City Attorneys Association was entered into the record as Exhibit A. A copy of Mr. Powell's review and Exhibit A are on file in the City Clerk's office.

Major Ralph Norton, who is the Assistant Chief of Police for the Asheboro Police Department, presented a PowerPoint presentation explaining the adverse secondary effects of sexually-oriented businesses. Major Norton contends that the studies he discussed during his presentation to the city council are relevant and applicable to problems that the City of Asheboro is likely to face due to the adverse secondary effects of sexually-oriented businesses. Major Norton also believes that it is necessary to enact ordinances and licensing provisions that address the adverse secondary effects in a content-neutral manner that seeks to suppress the adverse secondary effects without suppressing speech. The PowerPoint presentation used by city staff members was placed in the record as Exhibit B, and a hard copy of the presentation is on file in the City Clerk's office.

Mr. Neely then presented the planning department staff's proposed amendments to the Asheboro Zoning Ordinance regarding sexually-oriented businesses. These amendments affect Article 200, Article 300, Article 400, Article 600, and Article 1100 of the zoning ordinance. The proposed regulations permit an "Adult Establishment General" with supplemental development regulations. Additionally, the proposed regulations require that an "Adult Establishment with Live Entertainment and On Premises Consumption of Alcoholic Beverages" obtain a Special Use Permit. During the Special Use Permit hearing for an Adult Establishment with Live Entertainment and On Premise Consumption of Alcoholic Beverages, the following ordinance regulations must be met:

- Location Standards
- Setbacks/Building Design
- Landscaping
- Signs
- Lighting
- Parking
- Change of Use

Additionally, the planning department staff proposes amending the zoning ordinance to allow adult establishments to be located in the industrial zoning districts instead of the districts in which they are currently permitted (B2, B3, and TH). Industrial districts are better suited to accommodate more sensitive land uses.

The planning department staff recommended approval of the proposed amendments based on the following:

"Staff contends that the proposed technical amendments comply with the Land Development Plan and are within the public interest in promoting a reasonable use of property and protecting the public health, safety, and general welfare. In addition, the proposed amendments appear to be legally sustainable."

The planning board concurred with the staff's reasoning with the following comments:

1. Ensure location, materials, and color of fencing is architecturally compatible with the site.
2. Ensure coverings over windows are architecturally compatible with building.
3. Consider rewording color requirements for signs.

Mr. Neely then presented the proposed amendments to Chapter 113 of the Code of Asheboro.

Mr. Andy Aikens presented comments about the proposed amendments to the Asheboro Zoning Ordinance and his desire to open an adult establishment in Asheboro. During his comments, Mr. Aikens noted that he thought the proposed amendments appeared to be in line with regulations that he had encountered in other cities.

There being no further comments and no opposition from the public, Mayor Smith closed the public hearing.

After substantive discussion, Dr. Fountain moved to table this item until the Council's regular May meeting so that council members could devote more thought to this issue. Ms. Carter seconded the motion, and the Council voted unanimously to continue this item to the Council's regular May meeting for further consideration.

**7. Consideration of appointments of Ms. Linda Carter, Ms. Martha Norman, Mr. Tommy Lemons, Mr. Charlie Robbins, Ms. Katie Snuggs and Mr. Roger Spoon to the Redevelopment Commission for a five year term from April 1, 2010 until April 1, 2015.**

Ms. Carter moved to appoint the following individuals to the Asheboro Redevelopment Commission for a five year term beginning April 1, 2010 and ending on April 1, 2015:

- Ms. Linda Carter
- Ms. Martha Norman
- Mr. Tommy Lemons
- Mr. Charlie Robbins
- Ms. Katie Snuggs
- Mr. Roger Spoon

Mr. Burks seconded the motion, and the Council voted unanimously to appoint the above-listed individuals to the Redevelopment Commission for a five year term.

**8. Receive annual report of the Asheboro Police Department.**

Mr. Rickey D. Wilson, Chief of Police, presented an overview of the Police Department's activities for 2009. A copy of the report presented by Chief Wilson is on file in the City Clerk's office.

**9. Public comment period.**

There being no comments from the public, Mayor Smith closed the public comment period.

**10. Public Works Items:**

**(a) Receive report on closing date of south recycling collection station and upgrading of two remaining sites.**

Mr. Kermit Williamson, Sanitation Superintendent, reported that the County of Randolph is selling the property in which one of the city's recycling stations is located. Therefore, the city will be closing the recycling station located on South Fayetteville Street. The recycling dumpsters at this location will be moved to the city's other two recycling stations.

Additionally, Mr. Williamson reported that the city's curbside recycling program has been successful thus far, and that the recycling cans will be distributed to residences within sanitation route 6 soon.

**(b) Receive report on proposed traffic management plan for NC Zoo traffic.**

Mr. Robert H. Kivett, the city's Public Works Director, presented a proposed traffic management plan for vehicular traffic traveling to and from the North Carolina Zoological Park. More specifically, Mr. Kivett presented specific routing options that may be implemented in order to address the traffic congestion issue along Zoo Parkway. Along with these options, Mr. Kivett presented examples of certain signage that may be posted near the park directing vehicular traffic in specific directions. Mr. Kivett will meet with representatives from the North Carolina Department of Transportation in order to discuss these specific routing options.

An index of the travel route intersections along with examples of proposed signage, as presented by Mr. Kivett, are on file in the City Clerk's office. Additionally, a copy of the PowerPoint presentation utilized by Mr. Kivett during his presentation is on file in the City Clerk's office.

**(c) Review proposed parking lot and landscaping plans for Asheboro Public Library.**

Mr. Kivett presented a proposed parking lot and landscaping plan for the Asheboro Public Library. As illustrated in the proposed plan, a new parking lot will be constructed in front of the Salisbury Street entrance of the library. Along with landscaping, a fountain will be constructed as part of this plan. A copy of the proposed plan, as presented by Mr. Kivett, is on file in the City Clerk's office.

**Due to the existence of a conflict of interest, upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to excuse Dr. Fountain from participating in the Council's consideration of agenda item 10(d). Council Members Baker, Bell, Burks, Carter, Hunter, and Moffitt voted in favor of the motion.**

**(d) Consideration of a resolution authorizing the acceptance and recording of a right-of-way agreement conveying certain streets in the Tot Hill area satellite corporate limits to the City of Asheboro as public rights-of-way.**

Mr. Sugg presented and recommended adoption of the aforementioned resolution.

Upon motion by Mr. Burks and seconded by Ms. Carter, Council voted unanimously to adopt the following resolution by reference. Council Members Baker, Bell, Burks, Carter, Hunter, and Moffitt voted in favor of the motion. No one was in opposition.

**09 RES 4-10**

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF MAINTENANCE RESPONSIBILITIES FOR CERTAIN STREETS LOCATED WITHIN THE SATELLITE CORPORATE LIMITS AT TOT HILL FARM**

**WHEREAS**, pursuant to Session Law 2008-21, the North Carolina General Assembly annexed a portion of the Tot Hill Farm area into the satellite corporate limits of the City of Asheboro effective June 30, 2008; and

**WHEREAS**, during the time period leading up to the annexation of this area, the city indicated that it was willing to assume control and maintenance responsibilities for certain streets located within the annexation area; and

**WHEREAS**, the legal entities with ownership and easement interests in the above-referenced streets have indicated their willingness to execute a right-of-way agreement that will convert specified streets that are currently privately maintained streets into public rights-of-way subject to control and maintenance by the City of Asheboro; and

**WHEREAS**, the proposed right-of-way agreement, which is attached hereto as EXHIBIT 1, has been reviewed and accepted by the parties that must convey their interest in the streets to the City of Asheboro prior to the city assuming responsibility for the streets as public rights-of-way; and

**WHEREAS**, the document identified as EXHIBIT 1 is hereby incorporated into this resolution by reference as if copied fully herein.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the right-of-way agreement attached hereto as Exhibit 1 is hereby approved; and

**BE IT FURTHER RESOLVED** that the city staff is hereby authorized to accept delivery of the agreement and record it in the Randolph County Public Registry once the instrument has been fully executed by all of the parties.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8<sup>th</sup> day of April, 2010.

\_\_\_\_\_  
s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

\_\_\_\_\_  
s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**EXHIBIT 1**

**RIGHT-OF-WAY AGREEMENT**

Excise Tax: \$0.00

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This instrument was prepared by Jeffrey C. Sugg, City Attorney for the City of Asheboro, 146 North Church Street, Asheboro, North Carolina 27203

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After recording, please return this instrument to the Asheboro City Attorney, Post Office Box 1106, Asheboro, North Carolina 27204-1106.

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STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

THIS RIGHT-OF-WAY AGREEMENT is entered into this \_\_\_\_ day of April, 2010, by and between the following Grantor and Grantee:

**GRANTOR:** **TOT HILL FARM HOMEOWNERS ASSOCIATION**, a North Carolina non-profit corporation, Post Office Box 1024, Asheboro, North Carolina 27204

**TOT HILL FARM, L.L.C.**, a North Carolina limited liability company,  
3185 Tot Hill Farm Road, Asheboro, North Carolina 27205

**TOT HILL TOWNHOUSE ASSOCIATES, L.L.C.**, a North Carolina limited liability company,  
3185 Tot Hill Farm Road, Asheboro, North Carolina 27205

**GRANTEE:** **CITY OF ASHEBORO**, a North Carolina municipal corporation,  
146 North Church Street, Asheboro, North Carolina 27203

The designation Grantor and Grantee as used herein shall include the said parties and their heirs, successors, and assigns, and the designation shall signify singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, in Cedar Grove Township, Randolph County, North Carolina, the Grantor owns and/or has reserved easements in certain privately maintained roads located within a residential planned unit development, which is commonly known as Tot Hill Farm; and

WHEREAS, pursuant to Session Law 2008-21, the North Carolina General Assembly annexed the above-referenced area into the satellite corporate limits of the City of Asheboro effective June 30, 2008; and

WHEREAS, at the request of the Grantor, the Grantee has agreed to assume control and maintenance responsibilities for certain private streets located within the residential planned unit development; and

WHEREAS, in order to assume control and maintenance responsibilities for these previously private streets, the Grantor must relinquish its easements in the private streets that are to be added to the City of Asheboro street system, and the agreed upon streets must be conveyed to the Grantee for use and maintenance as public rights-of-way.

NOW, THEREFORE, in consideration of the benefits that will be conferred upon the Grantor by virtue of the Grantee's assumption of the responsibility for maintaining these streets, the Grantor has and by these presents does hereby grant, bargain, sell, and convey unto the Grantee a public right-of-way in perpetuity along, through, and over the 13.879 acres of land, more or less, that are described below and are needed for the public use and maintenance, specifically including without limitation any construction activities that may be necessary at a future date, of Stone Bridge Road, Fox Ridge Road, Stable Brook Road, Deer Ridge Road, Grey Rabbit Run, High Meadow Drive, Johns Ridge Drive, Maple Hill Court, Stonewall Court, and Tot Hill Trail. The public rights-of-way granted herein are more particularly defined and described as follows:

**RIGHT-OF-WAY PARCEL 1**

Cedar Grove Township, Randolph County, North Carolina:

All of the proposed public right-of-way for Deer Ridge Road, Grey Rabbit Run, Stable Brook Road, Stone Bridge Road, and Fox Ridge Road, in, along, through, and over the 9.226 acres, more or less, of the Grantor's land as shown on two (2) plats of survey recorded in Plat Book 125, Page 17, Randolph County Public Registry and in Plat Book 125, Page 18, Randolph County Public Registry. These two plats of survey are entitled, respectively, "MAP 1 OF 4 STREET RIGHT-OF-WAY AND

UTILITY EASEMENT FOR THE CITY OF ASHEBORO TOT HILL FARM AREA” and  
“MAP 2 OF 4 STREET RIGHT-OF-WAY AND UTILITY EASEMENT FOR THE CITY  
OF ASHEBORO TOT HILL FARM AREA.”

**RIGHT-OF-WAY PARCEL 2**

Cedar Grove Township, Randolph County, North Carolina:

All of the proposed 50-foot wide public right-of-way for High Meadow Drive in, along, through, and over the 2.030 acres, more or less, of the Grantor’s land as shown on the plat of survey recorded in Plat Book 125, Page 19, Randolph County Public Registry. This plat of survey is entitled “MAP 3 OF 4 STREET RIGHT-OF-WAY AND UTILITY EASEMENT FOR THE CITY OF ASHEBORO TOT HILL FARM AREA.”

**RIGHT-OF-WAY PARCEL 3**

Cedar Grove Township, Randolph County, North Carolina:

All of the proposed public right-of-way for Johns Ridge Drive, Maple Hill Court, and Stonewall Court in, along, through, and over the 1.965 acres, more or less, of the Grantor’s land as shown on the plat of survey recorded in Plat Book 125, Page 20, Randolph County Public Registry. This plat of survey is entitled “MAP 4 OF 4 STREET RIGHT-OF-WAY AND UTILITY EASEMENT FOR THE CITY OF ASHEBORO TOT HILL FARM AREA.”

**RIGHT-OF-WAY PARCEL 4**

Cedar Grove Township, Randolph County, North Carolina:

All of the proposed 50-foot wide public right-of-way for Tot Hill Trail in, along, through, and over the 0.658 of an acre, more or less, of the Grantor’s land as shown on the plat of survey recorded in Plat Book 125, Page 19, Randolph County Public Registry. This plat of survey is entitled “MAP 3 OF 4 STREET RIGHT-OF-WAY AND UTILITY EASEMENT FOR THE CITY OF ASHEBORO TOT HILL FARM AREA.”

The above-listed plats of survey that collectively describe the four (4) right-of-way parcels were drawn under the supervision of Roland D. Ward, a Professional Land Surveyor with registration number L-2728. The table displaying curve and line data for all of the above-listed plats is found on the plat of survey that is entitled “MAP 4 OF 4 STREET RIGHT-OF-WAY AND UTILITY EASEMENT FOR THE CITY OF ASHEBORO TOT HILL FARM AREA” and is recorded in Plat Book 125, Page 20, Randolph County Public Registry. The above-listed plats of survey are hereby incorporated into this instrument by reference as if copied fully herein.

By way of clarification and without limitation on the overall conveyance found herein, Tot Hill Farm, L.L.C. is executing this instrument in order to convey to the Grantee, and thereby extinguish, the easement for the operation of golf carts previously reserved by Tot Hill Farm, L.L.C. in the roads conveyed to Tot Hill Farm Homeowners Association by means of a North Carolina General Warranty Deed recorded in Deed Book 1846, Page 1651, Randolph County Public Registry.

By way of additional clarification and without limitation on the overall conveyance found herein, Tot Hill Townhouse Associates, L.L.C. is executing this instrument in order to convey to the Grantee, and thereby extinguish, any of the limited liability company’s easement rights under the North Carolina General Warranty Deed recorded in Deed Book 1820, Page 3026, Randolph County Public Registry for ingress, egress, and regress across the portion of Tot Hill Trail that is conveyed herein as a public right-of-way. The execution of this RIGHT-OF-WAY AGREEMENT shall not extinguish or impair to any degree Tot Hill Townhouse Associates, L.L.C.’s easement for ingress, egress, and regress across the privately maintained portion of Tot Hill Trail.

THE FURTHER TERMS AND CONDITIONS of the right-of-way herein conveyed are as follows:

1. The Grantor agrees not to install, construct, or place, or facilitate the installation, construction, or placement of, any structures or obstructions, whether permanent or temporary in nature, including by way of illustration and without limitation fencing, signs, masonry driveway headwalls, masonry mailboxes, or basketball goals/hoops, within the right-of-way and further agrees not to engage in cultivation within the right-of-way.

2. With regard to mailboxes other than masonry mailboxes, the Grantor agrees not to install or place, or facilitate the installation or placement of, such mailboxes in a manner that leads to any portion of the mailbox extending into the paved portion of the street right-of-way, specifically including without limitation the curb and guttering for the street.

3. The Grantor hereby releases the Grantee from all claims for damages arising from this RIGHT-OF-WAY AGREEMENT and from all claims for damages arising from the future use by the Grantee of the above-described public right-of-way for all purposes for which the Grantee is authorized by law to subject said right-of-way.

4. The Grantee does not waive or forfeit the right to take action to ensure compliance with the terms, conditions, and purposes of this RIGHT-OF-WAY AGREEMENT as a consequence of prior failures to act to insure compliance with this agreement.

5. There are no conditions to this RIGHT-OF-WAY AGREEMENT not expressed herein.

TO HAVE AND TO HOLD the aforesaid right-of-way interest and all privileges and rights thereunto belonging to the Grantee forever. The covenants agreed to and the terms, conditions, and restrictions imposed herein shall be binding upon the said Grantor and shall continue as a servitude running in perpetuity with the above-described land.

By executing this RIGHT-OF-WAY AGREEMENT, the undersigned President and Secretary of the Tot Hill Farm Homeowners Association hereby certify that the above-described transfer of certain streets to the City of Asheboro for maintenance and use as public rights-of-way was approved by a vote of a minimum of two-thirds of the association's membership in accordance with Paragraph 6.5.6 of Article 6 of the amended and supplemented General Declaration of Covenants and Restrictions recorded in Book 1626, Page 714, Randolph County Public Registry.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed on its behalf by its duly authorized officers and/or managers on the day and year first written above.

**TOT HILL FARM HOMEOWNERS ASSOCIATION,  
a North Carolina non-profit corporation:**

By: \_\_\_\_\_  
Steven T. McCrary, President

Attest: \_\_\_\_\_  
Philip Brown, Secretary

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Steven T. McCrary, either being personally known to me or having established his identity by means of the presentation of satisfactory evidence, personally appeared before me this day and acknowledged that he is the President of the Tot Hill Farm Homeowners Association, a North Carolina non-profit corporation, and that he, as president of the non-profit corporation, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the non-profit corporation for the purposes stated therein.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of April, 2010.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(Name of Notary Public, typed or printed)

**TOT HILL FARM, L.L.C.,  
a North Carolina limited liability company:**

By: \_\_\_\_\_  
Jack C. Lail, Manager

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

I, the undersigned Notary Public of the county and state aforesaid, do hereby certify that Jack C. Lail, either being personally known to me or having established his identity by means of the presentation of satisfactory evidence, personally appeared before me this day and acknowledged that he is a Manager of Tot Hill Farm, L.L.C., a North Carolina limited liability company, and that, as Manager and being duly authorized to do so, he voluntarily executed the foregoing instrument on behalf of the said limited liability company for the purposes stated therein.

Witness my hand and notarial seal, this \_\_\_\_\_ day of April, 2010.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(Name of Notary Public, typed or printed)

**TOT HILL TOWNHOUSE ASSOCIATES, L.L.C.,  
a North Carolina limited liability company:**

By: \_\_\_\_\_  
Jack C. Lail, Manager

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

I, the undersigned Notary Public of the county and state aforesaid, do hereby certify that Jack C. Lail, either being personally known to me or having established his identity by means of the presentation of satisfactory evidence, personally appeared before me this day and acknowledged that he is a Manager of Tot Hill Townhouse Associates, L.L.C., a North Carolina limited liability company, and that, as Manager and being duly authorized to do so, he voluntarily executed the foregoing instrument on behalf of the said limited liability company for the purposes stated therein.

Witness my hand and notarial seal, this \_\_\_\_\_ day of April, 2010.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(Name of Notary Public, typed or printed)

**11. Water & Sewer items:**

**(a) Request to approve contract with Cavanaugh & Associates, PA in the amount of \$70,000.00 for the following professional services:**

- (i) Water audit and revenue recovery program**
- (ii) Water loss control team implementation**
- (iii) Utility billing rate study**

Mr. Michael D. Rhoney, the city's Water Resources Director, presented and recommended adoption, by reference, of a resolution exempting the City of Asheboro from the advertisement/qualification based selection procedure to contract with Cavanaugh and Associates, P.A. for the above-referenced engineering services.

Mr. Steve Cavanaugh of Cavanaugh and Associates, P.A. explained the services provided by the company.

Upon motion by Mr. Bell and seconded by Mr. Moffitt, Council voted unanimously to adopt the following resolution by reference. Council Members Baker, Bell, Burks, Carter, Fountain, Hunter, and Moffitt voted in favor of the motion. No one was in opposition.



- (b) **Consideration of a resolution exempting the City of Asheboro from the advertisement/qualification based selection procedure to contract with Marziano & McGougan, PA of Asheboro, NC for engineering services to prepare a preliminary engineering report on extending wastewater service along US Highway 64 East approximately three (3) miles, for hourly costs estimated not to exceed \$16,175.**

Mr. Rhoney presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Dr. Fountain and seconded by Mr. Burks, Council voted unanimously to adopt the following resolution by reference.

11 RES 4-10

**RESOLUTION EXEMPTING A PROJECT FROM THE PROVISIONS OF ARTICLE 3D OF CHAPTER 143 OF THE NORTH CAROLINA GENERAL STATUTES**

(Preliminary Engineering Report on Extending Wastewater Service along US Highway 64 East)

**WHEREAS**, Section 143-64.31 of Chapter 143, Article 3D of the North Carolina General Statutes provides in pertinent part as follows:

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof . . . to announce all requirements for architectural, engineering, surveying, and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

**WHEREAS**, Section 143-64.32 of the North Carolina General Statutes provides in pertinent part as follows:

Units of local government . . . may in writing exempt particular projects from the provisions of this Article (Article 3D) in the case of:

- (c) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000), or
- (d) Other particular projects exempted in the sole discretion of . . . the unit of local government, stating the reasons therefore and the circumstances attendant thereto; and

**WHEREAS**, in consultation with the Water Resources Director and the City Engineer, the City Manager has determined that engineering services need to be procured by the city in order to obtain a preliminary engineering report on extending municipal wastewater service approximately three (3) miles along United States Highway 64 East; and

**WHEREAS**, Marziano & McGougan, PA of Asheboro has submitted a proposal to provide the requisite engineering services for a cost that is estimated not to exceed sixteen thousand one hundred seventy-five and no/100 dollars (\$16,175.00); and

**WHEREAS**, on the basis of the estimated professional fee, the City Manager and the City Engineer have concluded that Marziano & McGougan, PA should be utilized to provide the engineering services needed to successfully complete this preliminary engineering report.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the above-described project to obtain a preliminary engineering report for extending wastewater service three (3) miles along United States Highway 64 East is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes on the basis of the fact that the estimated professional fee for the required engineering services is less than thirty thousand and no/100 dollars (\$30,000.00); and

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with Marziano & McGougan, PA for the provision of the engineering services needed to complete the above-described project.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8<sup>th</sup> day of April, 2010.

\_\_\_\_\_  
s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**12. Cultural and Recreation Services Division items:**

**(a) Request to approve the closing of Sunset Avenue on Saturday, May 8, 2010 for Art-May-Ham.**

Mr. Jonathan Sermon, the city's Recreation Services Superintendent, requested the temporary closure of Sunset Avenue from Church Street to Fayetteville Street on Saturday, May 8, 2010 for Art-May-Ham, which is an event sponsored by the Cultural and Recreation Services Division along with the Randolph County Arts Guild and Habitat for Humanity of Randolph County.

Upon motion by Mr. Baker and seconded by Ms. Carter, Council voted unanimously to close Sunset Avenue from Church Street to Fayetteville Street on Saturday, May 8, 2010 for Art-May-Ham.

**With the general consent of the Council, Mayor Smith moved agenda item 12(e) to immediately follow agenda item 12 (a).**

**(b) Request to amend Sunset Theatre fee schedule to create a non-profit rental rate. [Agenda Item 12(e)]**

Mr. Sermon presented a request to amend the Sunset Theatre fee schedule in order to reduce the non-profit rental rate. More specifically, the Recreation Services Department has recommended the reducing of the single-day rental rate (8-hour maximum duration) for non-profit organizations from \$250.00 to \$125.00. Non-profit organizations will be asked to provide documentation certifying that they are a non-profit organization in order to receive this rental rate.

Upon motion by Dr. Fountain and seconded by Mr. Burks, Council voted unanimously to reduce the single-day rental rate for non-profit organizations from \$250.00 to \$125.00.

**(c) Receive update on construction progress at McCrary Park. [Agenda Item 12(b)]**

Mr. Felix Ward utilized a PowerPoint presentation to illustrate the construction progress at McCrary Park. Mr. Ward reported that the construction at McCrary Park is progressing very well. Mr. Ward further reported that city crews are in the process of rebuilding the dugouts and repairing the press box, and that the synthetic turf is expected to arrive in approximately one week. The construction is expected to conclude the first week in May 2010.

**(d) Receive report from tennis foundation and proposed Morris Whitson championship courts.**

Mr. Ogburn reported the Randolph County Tennis Foundation is now a 501(c) charitable organization and has received \$10,000.00 from Bruce Voncannon towards the pledge of \$25,000.00. The organization has now raised approximately \$4,000.00 locally for tennis court improvements.

A celebration in honor of Mr. Morris B. Whitson ("Morris B. Whitson Tennis Celebration") has been scheduled for Saturday, May 22, 2010 from 10:00 a.m. until 3:00 p.m. at the tennis courts located at Memorial Park. Coach Whitson's former players from the 1960's through the 2000's have been invited to attend along with the current tennis players. This celebration will continue as an annual fundraiser in order to fund tennis programs and court improvements.

**(e) Consideration of a resolution, pursuant to G.S. 143-64.32, exempting the City of Asheboro from the advertisement/qualification based selection procedure in order to contract with Atlantic Coast Engineering and Testing, Inc. of Greensboro, NC for engineering services for soil evaluation, construction recommendations and testing to repair or reconstruct eight (8) tennis courts at Memorial Park. [Agenda Item 12(d)]**

Mr. Ogburn presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to adopt the following resolution by reference.

**RESOLUTION EXEMPTING A PROJECT FROM THE PROVISIONS OF ARTICLE 3D OF CHAPTER 143 OF THE NORTH CAROLINA GENERAL STATUTES**

(Project to Repair or Reconstruct Eight Tennis Courts at Memorial Park)

**WHEREAS**, Section 143-64.31 of Chapter 143, Article 3D of the North Carolina General Statutes provides in pertinent part as follows:

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof . . . to announce all requirements for architectural, engineering, surveying, and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

**WHEREAS**, Section 143-64.32 of the North Carolina General Statutes provides in pertinent part as follows:

Units of local government . . . may in writing exempt particular projects from the provisions of this Article (Article 3D) in the case of:

- (a) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000), or
- (b) Other particular projects exempted in the sole discretion of . . . the unit of local government, stating the reasons therefore and the circumstances attendant thereto; and

**WHEREAS**, the City of Asheboro has undertaken a project to repair or reconstruct eight (8) tennis courts at Memorial Park, and this project will require engineering services in the specific form of soil evaluation, construction recommendations, and testing; and

**WHEREAS**, Atlantic Coast Engineering and Testing, Inc. of Greensboro, North Carolina has demonstrated, when previously rendering professional services to the city on other projects, its capability to provide the services needed for the current project at Memorial Park; and

**WHEREAS**, Atlantic Coast Engineering and Testing, Inc. has offered to provide the engineering services needed for the project and has advised the city to initially budget eight thousand two hundred fifty and no/100 dollars (\$8,250.00) for the professional services that will be rendered by the firm; and

**WHEREAS**, on the basis of the firm's demonstrated competence and estimated professional fee for this project, the city manager and the city engineer have concluded that Atlantic Coast Engineering and Testing, Inc. should be utilized to provide the engineering services needed for this project.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the project to repair or reconstruct eight (8) tennis courts at Memorial Park is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes on the basis of the demonstrated competence of Atlantic Coast Engineering and Testing, Inc. and the fact that the estimated professional fee for the needed engineering services is less than thirty thousand and no/100 dollars (\$30,000.00); and

**BE IT FURTHER RESOLVED** that the city manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with Atlantic Coast Engineering and Testing, Inc. for the provision of the engineering services described above.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8<sup>th</sup> day of April, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**13. Consideration of a resolution appointing a new council member to serve on the Identity Theft Prevention Program Committee.**

The city's Identity Theft Prevention Program Committee is composed of two (2) sitting council members. Since Mr. David H. Smith was elected as Mayor in the most recent election, he will not be able to continue to serve on the Identity Theft Prevention Program Committee. Therefore, Mr. Sugg recommended that the Council reappoint Council Member Carter and appoint Council Member Hunter to serve on the Identity Theft Prevention Program Committee. Both council members indicated that they are willing to serve on the committee.

Upon motion by Mr. Bell and seconded by Mr. Baker, Council voted unanimously to reappoint Council Member Carter and appoint Council Member Hunter to serve on the Identity Theft Prevention Program Committee.

**14. Upcoming events:**

- The Special Council meeting that was tentatively scheduled for April 19, 2010 has been cancelled and will be rescheduled at a later date.
- The NCLM Regional Legislative meeting is scheduled for Thursday, April 15, 2010 at the Trinity City Hall Annex at 4:00 p.m. until 6:00 p.m.
- The Mayor's Prayer Breakfast is scheduled for Thursday, May 6, 2010 at AVS. The National Day of Prayer Service will be held in Bicentennial Park at 12:00 p.m.
- A Council planning retreat is scheduled for Thursday, May 13, 2010 at 9:00 a.m. until 5:00 p.m. and will resume on Friday, May 14, 2010 at 9:00 a.m. until 1:00 p.m. at the Hampton Inn in Asheboro.

**15. Consideration of going into closed session pursuant to Section 143-318.11(a)(4) of the North Carolina General Statutes in order to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City of Asheboro, including agreement on a tentative list of economic development incentives that may be offered by the city in negotiations.**

Mayor Smith entertained a motion to go into closed session pursuant to the statutory provisions found in Section 143-318.11(a)(4) of the North Carolina General Statutes in order to discuss matters relating to the location or expansion of industries or other businesses, including agreement on a tentative list of economic development incentives that may be offered.

Upon motion by Mr. Bell and seconded by Dr. Fountain, Council voted unanimously to go into closed session.

**16. Return to open session and discussion of items not on the agenda.**

After returning to open session, there was no other business to bring before the Council.

There being no further business, the meeting was adjourned at 11:42 p.m.

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

s/ David H. Smith  
David H. Smith, Mayor