

**REGULAR MEETING
ASHEBORO CITY COUNCIL
COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, OCTOBER 7, 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

Clark R. Bell)
Edward J. Burks)
Linda H. Carter) – Council Members Present
Stuart B. Fountain)
Michael W. Hunter)
Walker B. Moffitt)

Talmadge S. Baker) – Council Member Absent

John N. Ogburn, III, City Manager
Edsel L. Brown, Code Enforcement Officer
Dumont Bunker, P.E., City Engineer
Richard L. Cox, Jr., Community Planning and Development Department Intern
Holly H. Doerr, City Clerk/Senior Legal Assistant
John L. Evans, Senior Planner
Casandra M. Fletcher, Marketing Specialist
Justin T. Luck, Planner
R. Reynolds Neely, Jr., Community Development Director
Deborah P. Reaves, Finance Director
James W. Smith, II, Fire Chief
Jeffrey C. Sugg, City Attorney
Sanford A. Vuncannon, Jr., Police Captain

1. Call to order.

A quorum thus being present, Mayor Smith called the meeting to order for the transaction of business, and business was transacted as follows.

2. Silent prayer and pledge of allegiance.

After a moment of silence was observed in order to allow silent prayer or 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 and noted that Council Member Talmadge S. Baker was absent for health care reasons.

4. Consent agenda:

With the exception of consent agenda items (b) and (c), for which a continuance was requested by city staff, Mr. Bell moved to approve the remaining consent agenda items. Mr. Burks seconded the motion, and the Council voted unanimously to continue consent agenda items (b) and (c) to the Council's regular November meeting and to approve the remaining consent agenda items that are listed as follows:

(a) The minutes of the regular meeting of the City Council that was held on September 9, 2010.

(b) The findings of fact, conclusions of law, and order for the special use permit issued under file number SUP-10-04.

[Item (b) was continued to the Council's regular November meeting.]

(c) The findings of fact, conclusions of law, and order pertaining to the denial of the conditional use permit requested under file number CUP-10-14.

[Item (c) was continued to the Council's regular November meeting.]

- (d) An ordinance amending provisions in the Code of Asheboro pertaining to the bird sanctuary, hunting, and the discharge of weapons within the city's territorial jurisdiction.

47 ORD 10-10

AN ORDINANCE AMENDING CODE OF ASHEBORO PROVISIONS PERTAINING TO THE BIRD SANCTUARY, HUNTING, AND THE DISCHARGE OF WEAPONS WITHIN THE TERRITORIAL JURISDICTION OF THE CITY OF ASHEBORO

WHEREAS, Section 160A-188 of the North Carolina General Statutes provides as follows:

A city may by ordinance create and establish a bird sanctuary within the city limits. The ordinance may not protect any birds classed as a pest under Article 22A of Chapter 113 of the General Statutes and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. When a bird sanctuary has been established, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected birds within the city limits except pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. 113-274(c)(1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within the city limits; and

WHEREAS, Section 160A-189 of the North Carolina General Statutes provides as follows:

A city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 36A of Chapter 14 of the General Statutes; and

WHEREAS, Section 160A-190 of the North Carolina General Statutes provides as follows:

A city may by ordinance regulate, restrict, or prohibit the sale, possession or use within the city of pellet guns or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force; and

WHEREAS, Section 130.01 of the Code of Asheboro provides as follows:

§ 130.01 DISCHARGE OF GUNS AND OTHER WEAPONS

(A) It shall be unlawful for any person to shoot or discharge within the city any gun, rifle, pistol, air rifle, spring gun or pistol, compressed air rifle, pistol, bean shooter or other similar device which impels with force a shot or pellet of any kind.

(B) This section shall not apply to persons who discharge weapons in the discharge of a duty imposed by law or in self-defense; and

WHEREAS, Section 91.35 of the Code of Asheboro provides as follows:

§ 91.35 SANCTUARY CREATED; AREA

The area embraced within the corporate limits of the city and all lands owned or leased by the city outside the corporate limits is hereby designated as a bird sanctuary; and

WHEREAS, Section 91.36 of the Code of Asheboro provides as follows:

§ 91.36 PROHIBITED ACTIVITIES; EXCEPTIONS

(A) It shall be unlawful to trap, hunt, shoot or otherwise kill within the sanctuary established by this subchapter any native wild bird; provided, that it shall be lawful to trap or shoot starlings or similar birds or fowl when such birds or fowl are found to be congregating in such numbers in a particular locality that they constitute a nuisance or a menace to health or property.

(B) The City Council shall each year, prior to the start of duck season, in a regular stated meeting approve and post the date(s) and time(s) whereby duck hunting is to be allowed upon the waters of Lake Reese; and

WHEREAS, Section 91.37 of the Code of Asheboro provides as follows:

§ 91.37 USE OF FIREARMS RESTRICTED

(A) It shall be unlawful for any person, within the bird sanctuary established by this subchapter, to fire any pistol, gun or other firearm except on firing ranges or in legally established shooting galleries or ranges, or in the discharge of duty by law enforcement officers; provided, that the use of firearms in the destruction of rodents or similar animals or reptiles that are considered a nuisance to public health or property may be permitted by special permission of the Chief of Police and; provided, further, that the provisions of this section shall not prevent the firing of shot guns, using shot no larger in size than No. 9, in connection with the operation of target shoots organized, and operated for charitable or civic purposes and for which special permission has theretofore been granted by the City Council.

(B) The City Council, by its approval and posting of the date(s) and time(s) whereby duck hunting is to be allowed upon the waters of Lake Reese, shall permit the use of and firing of a gun in the taking of said ducks. The gun and ammunition used shall comply with state and federal regulations; and

WHEREAS, Section 91.38 of the Code of Asheboro provides as follows:

§ 91.38 SIGNS MAY BE ERECTED BY BIRD CLUBS

Bird clubs in the city are hereby granted permission to erect artistic signs, giving notice of the regulations provided in this subchapter, at such places and of such design as may be approved by the Director of Public Works; and

WHEREAS, Section 91.45 of the Code of Asheboro provides as follows:

§ 91.45 HUNTING PROHIBITED ON CITY PROPERTY BEYOND CITY LIMITS

(A) No person shall hunt, trap or snare, with or without firearms, any wild animals or birds, on any property owned by the city which is located outside the city limits.

(B) Exception. Duck hunting will be permitted upon the waters of Lake Reese only during the date(s) and time(s) established by the City Council prior to the season opening each year; and

WHEREAS, the Asheboro City Council has concluded that the existing provisions of the Code of Asheboro pertaining to the bird sanctuary and the discharge of weapons within the city limits needs to be updated.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:

Section 1. Section 130.01 of the Code of Asheboro is hereby rewritten as follows:

~~§ 130.01 DISCHARGE OF GUNS AND OTHER WEAPONS~~

~~(A) It shall be unlawful for any person to shoot or discharge within the city any gun, rifle, pistol, air rifle, spring gun or pistol, compressed air rifle, pistol, bean shooter or other similar device which impels with force a shot or pellet of any kind.~~

~~(B) This section shall not apply to persons who discharge weapons in the discharge of a duty imposed by law or in self-defense.~~

§ 130.01 REGULATION OF THE USE OF FIREARMS OR ANY DEVICE DESIGNED OR USED TO PROJECT PELLETS, ARROWS, OR OTHER PROJECTILES

(A) Subject to the exceptions listed in subsection (B), it is unlawful for a person to discharge any pistol, rifle, gun, or other type of firearm within the city or within the boundary lines of any city-owned property that is located beyond the city limits.

(B) The prohibition listed above in subsection (A) does not apply to the following situations:

- (1) The discharge of a firearm at a shooting gallery or range that is operating in compliance with the Asheboro Zoning Ordinance.
- (2) The discharge of a firearm by a sworn law enforcement officer.
- (3) The discharge of a firearm by a person in self-defense, in the lawful defense of others, and/or pursuant to a duty established by federal, state, or local statute or ordinance, specifically including by way of illustration and not

limitation the discharge of a firearm by a duly appointed animal control officer or his/her designee.

- (4) Upon receipt of written permission from the Chief of Police or his/her designee, blank cartridges may be discharged during historical reenactments, military or similar displays, or during theatrical, athletic, or like performances. Such written permission from the Chief of Police or his/her designee cannot be granted unless and until the applicant establishes that the proposed activity for which the use of blank cartridges is requested will occur with the consent of the property owner and in compliance with the city's noise ordinance and zoning ordinance.
- (5) A person twenty-one years of age or older may use an exploding device or similar scare device for the purpose of dispersing birds, fowl, or other wildlife on the condition that the device does not have the capacity to physically harm such bird, fowl, or other wildlife and on the additional condition that the use of the device conforms with all federal and state laws as well as the regulations adopted by the North Carolina Wildlife Resources Commission. The person utilizing such a device shall exercise due care in the use of the device so as not to cause injury to persons or damage to another person's property. Prior to the utilization of such a device, the person using the device shall notify his/her adjacent property owners (or lessees) and the Asheboro Police Department of the intended use of such a device, including the location, the date, and the approximate time of day of such use. Such a device shall not be used between the hours of 11:00 p.m. and 8:00 a.m. on any day of the week.
- (6) The use of a firearm for hunting ducks and dark geese (includes Canada geese and white-fronted geese) is permitted at Lake Reese when such hunting is undertaken in compliance with Chapter 91 of the Code of Asheboro.

(C) Subject to the exceptions listed in subsection (D), it is unlawful for a person to shoot or project any arrow, shot, pellet, stone, rock, or other hard substance by means of a bow, air rifle, pellet gun, paintball gun, popgun, slingshot, bean shooter, or other similar type of device or contrivance within the city or within the boundary lines of any city-owned property that is located beyond the city limits.

(D) The prohibition listed above in subsection (C) is subject to the following exceptions:

- (1) Archery is permitted at an archery range that is operating in compliance with the Asheboro Zoning Ordinance.
- (2) The discharge of air rifles, pellet guns, paintball guns, and similar devices is permitted at shooting galleries or ranges that are operating in compliance with the Asheboro Zoning Ordinance.
- (3) Activities undertaken by a person in self-defense, in the lawful defense of others, and/or pursuant to a duty established by federal, state, or local statute or ordinance, specifically including by way of illustration and not limitation the use of a device that would otherwise fall within the scope of subsection (C) by a duly appointed animal control officer or his/her designee.

Section 2. Section 91.36 of the Code of Asheboro is hereby rewritten as follows:

§ 91.36 PROHIBITED ACTIVITIES; EXCEPTIONS

~~(A) It shall be unlawful to trap, hunt, shoot or otherwise kill within the sanctuary established by this subchapter any native wild bird; provided, that it shall be lawful to trap or shoot starlings or similar birds or fowl when such birds or fowl are found to be congregating in such numbers in a particular locality that they constitute a nuisance or a menace to health or property.~~

~~(B) The City Council shall each year, prior to the start of duck season, in a regular stated meeting approve and post the date(s) and time(s) whereby duck hunting is to be allowed upon the waters of Lake Reese.~~

(A) Within the bird sanctuary established by Section 91.35 of the Code of Asheboro, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any native wild birds.

(B) Notwithstanding subsection (A), the protection afforded to native wild birds within the established sanctuary does not extend to the following situations:

- (1) No bird classed as a pest under Article 22A of Chapter 113 of the General Statutes and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971 is protected.

- (2) A person may hunt, kill, trap, or otherwise take any bird pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. 113-274(c)(1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within the city limits.
- (3) The use of a firearm for hunting ducks and dark geese (includes Canada geese and white-fronted geese) is permitted at Lake Reese when such hunting is undertaken in compliance with Section 91.37 and Section 91.45 of the Code of Asheboro.

Section 3. Section 91.37 of the Code of Asheboro is hereby rewritten as follows:

~~§ 91.37~~ ~~USE OF FIREARMS RESTRICTED~~

~~(A) It shall be unlawful for any person, within the bird sanctuary established by this subchapter, to fire any pistol, gun or other firearm except on firing ranges or in legally established shooting galleries or ranges, or in the discharge of duty by law enforcement officers; provided, that the use of firearms in the destruction of rodents or similar animals or reptiles that are considered a nuisance to public health or property may be permitted by special permission of the Chief of Police and; provided, further, that the provisions of this section shall not prevent the firing of shot guns, using shot no larger in size than No. 9, in connection with the operation of target shoots organized, and operated for charitable or civic purposes and for which special permission has theretofore been granted by the City Council.~~

~~(B) The City Council, by its approval and posting of the date(s) and time(s) whereby duck hunting is to be allowed upon the waters of Lake Reese, shall permit the use of and firing of a gun in the taking of said ducks. The gun and ammunition used shall comply with state and federal regulations.~~

§ 91.37 USE OF FIREARMS AT LAKE REESE

(A) In its discretion, the City Council may approve the date(s) and time(s) each year when the hunting of ducks and dark geese (including Canada geese and white-fronted geese) is allowed upon the waters of Lake Reese.

(B) During the date(s) and time(s) of the hunting season authorized by the City Council in accordance with subsection (A), the use of a gun for the limited purpose of hunting ducks and dark geese (including Canada geese and white-fronted geese) upon the waters of Lake Reese is permitted. Any guns and ammunition used for such hunting shall comply with all applicable state and federal regulations.

Section 4. Section 91.45 of the Code of Asheboro is hereby rewritten as follows:

§ 91.45 HUNTING PROHIBITED ON CITY PROPERTY BEYOND CITY LIMITS

(A) No person shall hunt, trap or snare, with or without firearms, any wild animals or birds, on any property owned by the city which is located outside the city limits.

(B) Exceptions. Duck and dark geese (including Canada geese and white-fronted geese) hunting will be permitted upon the waters of Lake Reese only during the date(s) and time(s) established by the City Council prior to the season opening each year. Additionally, city employees and/or contractors may hunt, trap, or snare wild animals or birds in compliance with the adopted rules and regulations of the North Carolina Wildlife Resources Commission when such action is deemed necessary by the City Manager in order to ensure the safe and efficient operation of city-owned infrastructure.

Section 5. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 6. This ordinance shall take effect and be in force from and after November 1, 2010.

Section 7. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this ordinance shall be abated or otherwise affected by the adoption of this ordinance.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on October 7, 2010.

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

ATTEST:

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

- (e) **An ordinance to eliminate two (2) existing on-street parking spaces on the east side of North Church Street in an area immediately adjacent to the southern edge of the City Hall driveway located next to the Building Inspection Department.**

48 ORD 10-10

**AN ORDINANCE ELIMINATING TWO (2) ON-STREET PARKING SPACES
ON THE EAST SIDE OF NORTH CHURCH STREET**

WHEREAS, Section 160A-301(a) of the North Carolina General Statutes provides that the "city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city;" and

WHEREAS, the Asheboro City Council has been informed that the ability of drivers to observe on-coming traffic as they exit onto North Church Street from the southernmost driveway at City Hall will be improved by eliminating two (2) on-street parking spaces located on the east side of North Church Street in close proximity to the said driveway; and

WHEREAS, the Asheboro City Council has concluded that the benefits from enhancing the safety of motorists outweighs the negative impact associated with losing two (2) on-street parking spaces.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:

Section 1. In order to eliminate two (2) existing on-street parking spaces located on the east side of North Church Street (North Carolina Secondary Road 1707) in close proximity to the City Hall driveway that is on the south side of the municipal building, an existing no parking zone on the east side of North Church Street is hereby expanded to extend between a point on the curb line that is approximately 240 feet north of the centerline of Sunset Avenue and another point on the curb line of the east side of North Church Street that is approximately 371 feet north of the centerline of Sunset Avenue. The existing no parking zones that are not located between the above-described points are unaltered by this ordinance.

Section 2. The city manager is hereby authorized and directed to cause the above-described no parking zone to be marked or posted in accordance with Section 71.01(A)(1) of the Code of Asheboro.

Section 3. The city clerk shall enter a description of the no parking zone established by this Ordinance in Schedule 1 of Section 72.02 of the Code of Asheboro.

Section 4. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 5. This ordinance shall take effect and be in force from and after the date of its adoption.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 7th day of October, 2010.

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

ATTEST:

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

- (f) **An ordinance modifying the parking regulations applicable to the municipal parking lots located at Bicentennial Park and accessible from West Academy Street.**

49 ORD 10-10

AN ORDINANCE UPDATING THE REGULATIONS FOR OFF-STREET PARKING FACILITIES OWNED BY THE CITY OF ASHEBORO

WHEREAS, Section 160A-302 of the North Carolina General Statutes provides that “a city shall have authority to own, acquire, establish, regulate, operate, and control off-street parking lots, parking garages, and other facilities for parking motor vehicles, and to make a charge for the use of such facilities;” and

WHEREAS, the Asheboro City Council has concluded that the days and hours when the adopted regulations for municipal off-street parking lots are effective and enforceable should be updated; and

WHEREAS, the Asheboro City Council has also concluded that a schedule should be created in the Code of Asheboro for the recording of regulations adopted for municipal off-street parking lots; and

WHEREAS, the Asheboro City Council wishes to clarify the parking restrictions that are applicable to the municipal off-street parking lots located at Bicentennial Park and West Academy Street.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:

Section 1. Section 71.53 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 71.53 DAYS AND HOURS REGULATED

~~The~~ With the exception of Saturdays, Sundays, and legal holidays, the regulation of parking within city parking lots shall be effective and enforceable daily, ~~Sundays and holidays excepted,~~ between the hours of ~~9:00 a.m. and 6:00 p.m.~~ 7:00 a.m. and 7:00 p.m.

Section 2. Section 72.02 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 72.02 ENUMERATED BY SUBJECT MATTER.

- Schedule 1. Where parking prohibited.
- Schedule 2. Where parking limited to one hour.
- Schedule 3. Where parking limited to two hours.
- Schedule 4. Where parking limited to 15 minutes.
- Schedule 5. Places reserved for stands for specific purposes.
- Schedule 6. Through streets.
- Schedule 7. Stop intersections.
- Schedule 8. One-way streets.
- Schedule 9. Where left turns to be made at left of center of intersection.
- Schedule 10. Intersections at which left turns prohibited.
- Schedule 11. Intersections at which right turns prohibited.
- Schedule 12. Intersections at which U turns prohibited.
- Schedule 13. Places where angle parking required.
- Schedule 14. Places where “children playing” signs erected.
- Schedule 15. Places where “yield right of way” signs erected.
- Schedule 16. Speed restrictions.
- Schedule 17. Parking prohibited on privately owned property.

- Schedule 18. Parking limited to 30 minutes.
- Schedule 19. Restrictions on use of play vehicles on private property.
- Schedule 20. Municipal off-street parking lot regulations (adopted on or after October 1, 2010).

Section 3. In addition to any and all generally applicable provisions in the North Carolina General Statutes and the Code of Asheboro, the following parking regulations are hereby specifically enacted for the municipal off-street parking lot (hereinafter referred to as the "Bicentennial Park Lot") that is contiguous with the southern margin of the right-of-way for Sunset Avenue and is located north of the stage at Bicentennial Park:

- (a) The existing parking area located on the west side of the above-described parking lot between a point on the western edge of the paved parking area that is approximately 64 feet south of the centerline of Sunset Avenue and another point on the western edge of the paved parking area that is approximately 97 feet south of the centerline of Sunset Avenue is hereby established and designated as a parking area for handicapped persons.
- (b) The city manager is hereby authorized and directed to cause the above-described parking area to be properly posted as designated for handicapped persons in compliance with Section 20-37.6(d) of the North Carolina General Statutes.
- (c) All of the remaining marked parking spaces within the Bicentennial Park Lot shall be subject to a 2-hour parking limit between 7:00 a.m. and 7:00 p.m. that is in effect and enforceable Monday through Friday, except on legal holidays. The city manager is hereby authorized and directed to cause the above-described marked parking spaces to be properly posted to give adequate notice of the 2-hour daily parking restriction.

Section 4. In addition to any and all generally applicable provisions in the North Carolina General Statutes and the Code of Asheboro, the following parking regulations are hereby specifically enacted for the municipal off-street parking lot (hereinafter referred to as the "West Academy Street Lot") that is contiguous with the northern margin of the right-of-way for West Academy Street and is located to the east of the Bicentennial Park Lot:

- (a) The existing parking area located on the west side of the above-described parking lot between a point on the western edge of the paved parking area that is approximately 26 feet south of the centerline of the northernmost driveway connecting the Bicentennial Park Lot with the West Academy Street Lot (this specific driveway shall be hereinafter referred to as the "Driveway") and another point on the western edge of the paved parking area that is approximately 59 feet south of the centerline of the Driveway is hereby established and designated as a parking area for handicapped persons.
- (b) The existing parking area located on the west side of the above-described parking lot between a point on the western edge of the paved parking area that is approximately 281 feet south of the centerline of the Driveway and another point on the western edge of the paved parking area that is approximately 316 feet south of the centerline of the Driveway is hereby established and designated as a second parking area for handicapped persons within the West Academy Street Lot.
- (c) The city manager is hereby authorized and directed to cause the above-described parking areas to be properly posted as designated for handicapped persons in compliance with Section 20-37.6(d) of the North Carolina General Statutes.
- (d) The marked parking spaces located on the west side of the West Academy Street Lot between a point on the western edge of the paved parking area that is approximately 59 feet south of the centerline of the Driveway and a point located on the western edge of the paved parking area at the northern margin of the southernmost driveway connecting the Bicentennial Park Lot with the West Academy Street Lot shall be subject to a 2-hour parking limit between 7:00 a.m. and 7:00 p.m. that is in effect and enforceable Monday through Friday, except on legal holidays. The city manager is hereby authorized and directed to cause the above-described marked parking spaces to be properly posted to give adequate notice of the 2-hour daily parking restriction.
- (e) The remaining marked parking spaces within the West Academy Street Lot shall be available for all day parking.

Section 5. The city clerk shall enter a description of the parking regulations described in Section 3 and Section 4 of this Ordinance in Schedule 20 of Section 72.02 of the Code of Asheboro.

Section 6. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 7. This ordinance shall take effect and be in force from and after the date of its adoption.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 7th day of October, 2010.

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

ATTEST:

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

- (g) An agreement with Henderson and Tugwell, P.A. for a timber inventory and appraisal of the "City Lakes" property for a fee of \$5,000.00**

[A copy of the above-referenced agreement is on file in the City Clerk's office.]

- (h) The closing of the following streets for a tractor parade on October 9, 2010 from 10:00 a.m. until 11:30 a.m.: Hoover Street, Davis Street, Church Street from Hoover Street to Sunset Avenue, Sunset Avenue from Church Street to South Fayetteville Street, South Fayetteville Street from Sunset Avenue to West Academy Street, and West Academy Street from South Fayetteville Street to Church Street.**

- (i) The closing of the following streets for a horse parade on November 7, 2010 from 3:00 p.m. until 4:00 p.m.: Park Street from Sunset Avenue to West Taft Avenue, West Taft Avenue from South Park Street to South Church Street, South Church Street from West Taft Avenue to Sunset Avenue, and Sunset Avenue from Church Street to Park Street.**

- (j) The 2010-2011 duck and dark geese (includes Canada geese and white-fronted geese) hunting dates at Lake Reese.**

The dates for the 2010-2011 duck and dark geese (includes Canada geese and white-fronted geese) hunting at Lake Reese are as follows:

November 18th, 27th
December 18th, 28th
January 6th, 13th, 22nd

Hunting hours are ½ hour before sunrise to sunset. The Lake will be closed to other activities while hunting takes place. Hunters are required to call Lake Reese at least 24 hours in advance to reserve a space. If hunting reservations are not made, the Lake will operate on its regular winter schedule.

- (k) The appointment of Deputy Fire Chief Roy Wright, AFD to the Board of Trustees of the Firemen's Relief Fund.**
- (l) Two (2) budget ordinances amending the Water and Sewer Fund and the General Fund for fiscal year 2010-2011.**

50 ORD 10-10

ORDINANCE TO AMEND THE WATER & SEWER FUND FY 2010-2011

WHEREAS, The City Council of the City of Asheboro desires to amend the budget as required by law to adjust for changes in expenditures in comparison to the current fiscal year adopted budget, 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 Expense line item be decreased:

<u>Account #</u>	<u>Expense Description</u>	<u>Decrease</u>	<u>Amended budget</u>
30-820- 0200	Salaries and Wages	121,000	472,417
0201	Overtime Expense	2,000	500
0701	Fringe Benefits: Christmas Baskets	300	800
0702	Fringe Benefits: FICA	7,502	29,445
0703	Fringe Benefits: Medicare	1,728	6,913
0704	Fringe Benefits: Insurance	14,000	46,000
0705	Fringe Benefits: Retirement	7,930	31,103

	1100	Telephone	4,500	4,500
	1400	Travel, Schools & Conferences	1,000	1,500
	3100	Gas	1,000	2,400
	3450	Lab Chemicals & Supplies	29,700	5,300
	3600	Uniforms	3,300	5,300
	4501	Lab	34,000	1,000
	5100	Permits, Fees & Certifications	1,000	2,500
	5800	Worker's Compensation	5,000	8,000
	6000	Small Equipment Non Cap	3,500	4,000
	7400	Capital Outlay: Equipment	31,000	-
30-830-	0200	Salaries and Wages	686,500	506,427
	0201	Overtime Expense	4,500	1,500
	0701	Fringe Benefits: Christmas Baskets	1,500	1,200
	0702	Fringe Benefits: FICA	42,563	31,770
	0703	Fringe Benefits: Medicare	9,762	7,620
	0704	Fringe Benefits: Insurance	96,000	64,000
	0705	Fringe Benefits: Retirement	44,970	33,560
	1100	Telephone	10,000	4,000
	1300	Utilities, Fuel & Lights	120,000	280,000
	1400	Travel, Schools & Conferences	5,500	4,500
	1700	Maint. & Repair Vehicles	11,000	9,000
	1800	Maint. & Repair Pump Stations	140,000	10,000
	3100	Gas, Oil & Tires	20,000	5,000
	3300	Office Supplies & Printing	4,500	1,500
	3400	Other Supplies & Materials	44,000	12,000
	3450	Lab Supplies & Materials	46,800	8,200
	3500	Chemicals	90,000	190,000
	3600	Uniforms	7,500	7,500
	4501	Lab.	18,500	16,500
	5100	Permits, Fees & Certification	1,000	14,500
	5300	Dues & Subscriptions	3,000	6,000
	5700	Miscellaneous Expense	2,000	1,000
	5800	Worker's Compensation	13,000	11,000
	6000	Small Equipment Non Cap	1,000	2,000
	7400	Capital Outlay: Equipment	70,000	307,000
			<u>1,762,055</u>	
		Decrease		

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

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>	<u>Amended budget</u>
30-860-	0200 Salaries and Wages	103,000	103,000
	0701 Fringe Benefits: Christmas Baskets	200	200
	0702 Fringe Benefits: FICA	6,385	6,385
	0703 Fringe Benefits: Medicare	1,470	1,470
	0704 Fringe Benefits: Insurance	15,000	15,000
	0705 Fringe Benefits: Retirement	6,750	6,750
	1100 Telephone	1,500	1,500
	1400 Travel, Schools & Conferences	1,000	1,000
	1700 Maint. & Repair Vehicles	1,500	1,500
	3100 Gas, Oil & Tires	5,000	5,000
	3300 Office Supplies & Printing	2,000	2,000
	3400 Other Supplies & Materials	22,000	22,000
	3600 Uniforms	900	900
	5300 Dues & Subscriptions	1,000	1,000
	5700 Miscellaneous Expense	500	500
	5800 Worker's Compensation	2,000	2,000
	6000 Small Equipment Non Cap	1,000	1,000
	7400 Capital Outlay: Equipment	20,000	20,000
30-870-	0200 Salaries and Wages	444,500	444,500
	0201 Overtime Expense	6,500	6,500
	0701 Fringe Benefits: Christmas Baskets	1,100	1,100
	0702 Fringe Benefits: FICA	27,560	27,560
	0703 Fringe Benefits: Medicare	6,320	6,320
	0704 Fringe Benefits: Insurance	65,000	65,000
	0705 Fringe Benefits: Retirement	29,120	29,120
	1100 Telephone	11,500	11,500
	1300 Utilities, Fuel & Lights	120,000	120,000
	1400 Travel, Schools & Conferences	3,500	4,000
	1700 Maint. & Repair Vehicles	8,000	8,000
	1800 Maint. & Repair Pump Stations	140,000	140,000
	3100 Gas, Oil & Tires	13,500	13,500
	3300 Office Supplies & Printing	500	500
	3400 Other Supplies & Materials	12,000	12,000

	3500	Chemicals-odor control bioxide	90,000	90,000
	3600	Uniforms	7,200	7,200
	5300	Dues & Subscriptions	1,000	1,000
	5700	Miscellaneous Expense	1,000	1,000
	5800	Worker's Compensation	11,000	11,000
	6000	Small Equipment Non Cap	2,000	2,000
	7400	Capital Outlay: Equipment	40,000	40,000
30-880-	0200	Salaries and Wages	260,000	260,000
	0701	Fringe Benefits: Christmas Baskets	500	500
	0702	Fringe Benefits: FICA	16,120	16,120
	0703	Fringe Benefits: Medicare	3,700	3,700
	0704	Fringe Benefits: Insurance	30,000	30,000
	0705	Fringe Benefits: Retirement	17,030	17,030
	1100	Telephone	1,500	1,500
	1400	Travel, Schools & Conferences	2,000	2,000
	1700	Maint. & Repair Vehicles	1,500	1,500
	3100	Gas, Oil & Tires	2,500	2,500
	3300	Office Supplies & Printing	2,000	2,000
	3400	Other Supplies & Materials	10,000	10,000
	3451	Lab Supplies & Materials WWTP	46,800	46,800
	3452	Lab Supplies & Materials WTP	29,700	29,700
	3600	Uniforms	2,700	2,700
	4601	Contracted Serv. Lab WW	18,500	18,500
	4602	Contracted Serv. Lab H2O	34,000	34,000
	5101	Permits, Fees & Certification WW	1,000	1,000
	5102	Permits, Fees & Certification H2O	1,000	1,000
	5300	Dues & Subscriptions	1,000	1,000
	5700	Miscellaneous Expense	500	500
	5800	Worker's Compensation	5,000	5,000
	6000	Small Equipment Non Cap	1,500	1,500
	7400	Capital Outlay: Equipment	41,000	41,000
		Increase	1,762,055	
		Net Change	0	

Adopted this 7th day of October, 2010.

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

ATTEST:

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

51 ORD 10-10

ORDINANCE TO AMEND THE GENERAL FUND FY 2010-2011

WHEREAS, The City Council of the City of Asheboro desires to amend the budget as required by law to adjust for changes in expenditures in comparison to the current fiscal year adopted budget, 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:

That the following Expense line item be increased (decreased):

<u>Account #</u>	<u>Expense Description</u>	<u>increase / (decrease)</u>
10-530-0201	Overtime	(3,480)
10-540-1101	Telephone- Fire Inspection	880
10-540-1401	Travel, Schools- Fire Inspection	1,000
10-540-5301	Dues & Subscription- Fire Inspection	500
10-540-3601	Uniforms & accessories- Fire Inspection	700
10-540-1701	Maint & Repair Vehicles- Fire Inspection	400
	Increase / (Decrease)	0

Adopted this 7th day of October 2010.

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

ATTEST:

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

- (m) **The publication of notice of the Asheboro City Council's intent to authorize, during its regular meeting on November 4, 2010, a lease agreement that will enable Fairway Outdoor Advertising to continue to lease city property located along U.S. Highway 220 Business South at McCranford Road.**

[A copy of the above-referenced notice is on file in the City Clerk's office.]

5. **Land use issues:**

- (a) **RZ-10-16: Request to rezone from R7.5 (Medium-Density Residential) to OA6 (Office-Apartment).** The property of Trustee Irene Stuart Wallace of the Irene Wallace Family Trust is located at 842 South Cox Street and consists of approximately 15,323 square feet. Randolph County Parcel Identification Number 7750890196.

Mayor Smith opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Irene Stuart Wallace, Trustee for the Irene Wallace Family Trust to rezone the above-referenced property from R7.5 (Medium-Density Residential) to OA6 (Office-Apartment). The Planning Board recommended approval of the requested rezoning because the Board concurred with the analysis provided by the planning department staff. The staff's analysis is as follows:

"The Land Development Plan map identifies the property as part of the city activity center which encourages a pedestrian friendly mix of land uses, including single and multi-family residential, office, and institutional. South Cox Street continues to serve as a transitional area between the more intensive commercial uses to the west along South Fayetteville Street and areas to the east that are primarily residential in character. The requested OA6 zoning would continue to accommodate residential use while also allowing office and institutional uses that are of an appropriate scale for this type of transitional area. Additionally, both multi-family residential uses and office and institutional uses are within close proximity to this property, making an OA-6 designation appropriate to the context of the area. Considering these factors, staff believes the request generally is consistent with the map, goals, and policies of the Land Development Plan. Staff therefore believes the request is generally within the public interest and supports a reasonable use of the property."

On behalf of the applicant, Mr. Ben Morgan, Esq. presented comments in support of the requested rezoning.

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

Upon motion by Dr. Fountain and seconded by Mr. Burks, Council followed the recommendation of the Planning Board and voted unanimously to approve the requested rezoning.

- (b) **RZ-10-17: Request for technical amendments to the Zoning Ordinance.** An application filed by Greg McElreath to amend Section 317A regarding the performance standards related to permissible noise levels.

Mayor Smith opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Mr. Greg McElreath to amend Subsection B of Section 317A of the Asheboro Zoning Ordinance. The Applicant proposed the following amendment to Subsection B.8 of Section 317A of the Asheboro Zoning Ordinance:

"In the case of uses in the OA6, O&I, B1, B2, and B3 districts, all measurements to determine compliance shall be made at the boundaries of the zoning lot containing the use generating the noise. Exception Recreation and Amusement Services Outdoors: Sound levels shall not exceed the standards that are in Section 317 B.5. However, sound levels shall be measured at the receiving property line."

After reviewing the applicant's proposal, the planning department staff agreed that an amendment to the existing ordinance was needed but could not concur with the proposed text. Instead, staff proposed the following amendment to Subsection B of Section 317A of the Asheboro Zoning Ordinance: (Added text is underlined and in italics.)

B. Noise

1. A decibel is a measure of a unit of sound pressure. Since sound waves having the same decibel level "sound" louder or softer to the human ear depending upon the frequency of the sound wave in cycles per second (i.e. whether the pitch of the sound is high or low) an A-weighted filter constructed in accordance with the specification of the American National Standards Institute, which automatically takes account of the varying effect on the human ear of different pitches, shall be used on any sound level meter taking measurements required by this section. And accordingly, all measurements are expressed in dbA to reflect the use of this A-weighted filter.

~~2. Construction projects shall be subject to the maximum permissible noise levels specified for industrial zones for the period within which a valid permit issued by proper authority is in effect. Issuance of a Certificate of Zoning Compliance is evidence that such construction project is complete.~~

~~3. All railroad rights-of-way shall not be subject to the requirements of this Article.~~

4.2. Impact noises are sounds that occur intermittently rather than continuously. Impact noises generated by sources that do not operate more than one minute in any one hour period are permissible up to a level of 10 dbA in excess of the figure listed except that this higher level of permissible noise shall not apply from 7:00 p.m. to 7:00 a.m. when the adjacent lot is zone residential. Impact noises generated by sources that operate at a frequency greater for a total duration of more than one minute in any one hour period (regardless of the duration of each incidence of the noise occurring) are regulated as a continuous noise and are subject to the sound levels given in ~~5~~ 3 below. All impact noise shall be measured using the fast response of the sounds level meter.

~~5~~ 3. Sound levels shall not exceed the following standards:

If the receiving use is in a residential district:

Between 7:00 a.m. and 7:00 p.m. – 65 dbA
Between 7:00 p.m. and 10:00 p.m. – 60 dbA
Between 10:00 p.m. and 7:00 a.m. – 55 dbA

If the receiving use is in a commercial district:

Between 7:00 a.m. and 7:00 p.m. – 70 dbA
Between 7:00 p.m. and 10:00 p.m. – 65 dbA
Between 10:00 p.m. and 7:00 a.m. – 60 dbA

If the receiving use is in an industrial district:

Anytime – 80 dbA

~~6~~ 4. Sound levels of noise radiating from a zoning lot line in excess of the ~~above~~ dbA levels specified in (3) above shall constitute prima facia evidence the noise is a public nuisance and a violation of this chapter.

~~7~~ 5. **Measurement for Compliance** ~~In the case of uses in the OA6, O&I, B1, B2, and B3 districts, a.)~~ All measurements to determine compliance shall be made at the boundaries of the zoning lot containing the use generating the noise.

b.) When a boundary line of property generating the sound is adjacent to a public street right-of-way, sound measurements shall occur on the opposite side of the public street right-of-way.

c.) Noise measurement shall be taken four (4) feet above the ground.

~~8~~ 6. A.) The requirements in Section 317A,B, (Noise) shall apply to new uses or additions to existing uses and shall not be considered to apply to any existing use which is operating on the effective date of this section; nor shall this section make any such existing use nonconforming.

Existing uses shall mean any use of property that is legally permitted and any operation, equipment, process or system that is in operation prior to the above date. Additions to use include any additional operations, equipment, processes or systems ~~which~~ that were not operational on the above date.

7. Note: The requirements, prohibitions and terms of this chapter shall not apply to the following:

a.) ~~Nor shall these terms apply to~~ Warning signal devices of any authorized emergency vehicle acting in time of emergency.

b.) Activities of a temporary duration permitted by law and for which a license or permit has been granted by the city, including, but not limited to, parades and fireworks displays.

c.) Yard and lawn maintenance equipment engaged in normal yard and lawn maintenance operations ~~are not subject to these regulations.~~

d.) All Noise emanating from normal railroad operations within railroad rights-of-way ~~shall not be subject to the requirements of this Article.~~

e.) ~~2.~~ Construction projects occurring from 7 a.m. to dusk ~~shall be subject to the maximum permissible noise levels specified for industrial zones~~ for the period within which a valid permit issued by proper authority is in effect. Issuance of a Certificate of Zoning Compliance is evidence that such construction project is complete.

f.) The unamplified human voice.

The planning department staff recommended a modified version of the request based on the following analysis:

“Staff has been consulting with the applicant to address concerns that were discussed at the August 30th Planning Board meeting.

Staff supports the concept of measuring noise levels for commercial zoning districts on the opposite side of a public right-of-way from the noise source. This will help obtain a more accurate noise decibel (db) reading that is less sensitive to noises that are unrelated (i.e. traffic) to the noise sources being measured.

In instances when a property boundary of the property generating the noise is contiguous to the property receiving the noise (and no public right-of-way separates the properties), staff believes the existing decibel requirements are reasonable because the owner of property generating the noise has the responsibility to ensure the property meets Performance Standards. Due to the logarithmic nature of noise intensity and how it decreases most drastically near its source, staff contends that locating a noise source at an appropriate location away from property lines is the most viable option to allow reasonable use of property without infringing on the rights of quiet enjoyment of adjoining properties.

Considering these factors, staff believes the revised amendments are in the public interest in supporting a reasonable use of property.”

The Planning Board concurred with the planning department staff's analysis, but the Board also felt the staff's proposed text amendment should be refined by referencing “dusk” in Subsection B.3 of Section 317A. The text proposed by the Planning Board is as follows:

~~5.~~ 3. Sound levels shall not exceed the following standards:

If the receiving use is in a residential district:

Between 7:00 a.m. and 7:00 p.m. <u>or dusk*</u> -	65dbA
Between 7:00 p.m. <u>or dusk*</u> and 10:00 p.m. -	60dbA
Between 10:00 p.m. and 7:00 a.m. -	55dbA

If the receiving use is in a commercial district:

Between 7:00 a.m. and 7:00 p.m. <u>or dusk*</u> -	70dbA
Between 7:00 p.m. <u>or dusk*</u> and 10:00 p.m. -	65dbA
Between 10:00 p.m. and 7:00 a.m. -	60dbA

**Whichever is later (7:00 p.m. or dusk)*

The Applicant, Mr. Greg McElreath presented comments in support of the Planning Board's recommendation.

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

Upon motion by Mr. Bell and seconded by Mr. Burks, Council voted unanimously to follow the Planning Board's recommendation and adopt the analysis and text put forward by the Planning Board, to amend the Asheboro Zoning Ordinance.

- (c) **RZ-10-18: Request to amend the Center City Planning Area Designation (Tier 2 to Tier 3).** The property of Branson-McKenzie is located at the northeast corner of Lanier Avenue and Hammer Avenue and consists of approximately 23,500 square feet of land. Randolph County Parcel Identification Number 7751708409 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 Mr. Larry McKenzie to remove a 23,500 square feet portion of the parcel of land located at the northeast corner of Lanier Avenue and Hammer Avenue (Randolph County Parcel Identification Number 7751708409) from Tier 2 Center City Planning Area designation and place it in a Tier 3 designation.

The Planning Board recommended approval of the request because the Board concurred with the analysis provided by the planning department staff. The staff's analysis is as follows:

"The property is in a transitional area between buildings that are set close to the street and properties with a wider street yard. The Center City Planning Area designated properties into different tiers based on the property boundaries. The subject property is in a transition area between Tier 2 and Tier 3 development patterns. Adjusting the Tier boundary to account for a new configuration of property boundaries is reasonable considering that the Tier 3 area surrounds the subject property on three sides. Considering these factors, staff believes that the request is supported by the Land Development Plan in supporting a reasonable use of property."

The Applicant, Mr. Larry McKenzie, was available to answer any questions in regards to the request.

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

Upon motion by Mr. Moffitt and seconded by Ms. Carter, Council voted unanimously to adopt the Planning Board's recommendation and approved the requested re-designation.

- (d) **SUP-10-05: Request for Special Use Permit for an Agricultural Tourism Facility.** Consideration of a request from city staff to advertise the reopening of the public hearing held on September 9, 2010 in order to correct some evidentiary issues.

Mr. Neely recommended that the Council authorize the planning department staff to advertise the reopening of the public hearing that was held on September 9, 2010 in order to correct some evidentiary issues regarding the application for a special use permit that was submitted under file number SUP-10-05.

Upon motion by Ms. Carter and seconded by Dr. Fountain, Council voted unanimously to authorize the planning department staff to advertise the reopening of the public hearing that was originally held on September 9, 2010 in order to correct some evidentiary issues regarding the application for a special use permit that was submitted under file number SUP-10-05.

6. Public comment period.

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

7. **Consideration of a petition received from Richard C. and Mildred B. Shaw requesting contiguous annexation of 0.154 of an acre of land located at 530 Glovinia Street.**

- (a) Mr. Bunker presented and recommended adoption, by reference, of a resolution directing the city clerk to investigate a petition requesting contiguous annexation of 0.154 of an acre of land located at 530 Glovinia Street.

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

41 RES 10-10

RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE AN ANNEXATION PETITION RECEIVED PURSUANT TO SECTION 160A-31 OF THE NORTH CAROLINA GENERAL STATUTES
(A Total of 0.154 of an Acre of Land Located at 530 Glovinia Street)

WHEREAS, a petition and a plat of survey have been received by the City of Asheboro from Richard C. Shaw and Mildred B. Shaw as part of a request for the annexation into the corporate limits of the City of Asheboro of approximately 0.144 of an acre of land that is contiguous to the municipality's existing primary corporate limits at 530 Glovinia Street (the submitted plat of survey indicates that approximately 0.144 of an acre of land is owned in fee simple by the petitioners and approximately 0.010 of an acre of land is part of the public right-of-way for Glovinia Street; and

WHEREAS, Section 160A-31 of the North Carolina General Statutes provides that the sufficiency of the petition shall be investigated by the city clerk before further annexation proceedings may take place; and

WHEREAS, in response to this petition, the Asheboro City Council has decided to proceed with the statutorily prescribed voluntary annexation proceedings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that the city clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify as soon as possible to the city council the results of her investigation.

This resolution was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 7th day of October, 2010.

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

ATTEST:

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

CERTIFICATE OF SUFFICIENCY
(A Total of 0.154 of an Acre of Land Located at 530 Glovinia Street)

TO: The City Council of the City of Asheboro, North Carolina

I, Holly H. Doerr, City Clerk of the City of Asheboro, North Carolina, do hereby certify that I have investigated the petition attached hereto. As a consequence of that investigation, I have found as a fact that all owners of real property lying in the area described therein have signed the said petition, and the petition appears to be sufficient to satisfy the provisions of Section 160A-31 of the North Carolina General Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Asheboro, North Carolina in order to make this certification effective as of the 7th day of October, 2010.

(SEAL)

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

- (b) As a consequence of the receipt of written certification from the City Clerk as to the sufficiency of said annexation petition, Mr. Bunker presented and recommended adoption, by reference, of a resolution setting the date for a public hearing on the question of annexation.

42 RES 10-10

RESOLUTION SETTING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO SECTION 160A-31 OF THE NORTH CAROLINA GENERAL STATUTES
(A Total of 0.154 of an Acre of Land Located at 530 Glovinia Street)

WHEREAS, the City of Asheboro has received a petition and plat of survey requesting the combined annexation of approximately 0.144 of an acre of land located at 530 Glovinia Street along with approximately 0.010 of an acre of land located within the public right-of-way for Glovinia Street; and

WHEREAS, the City Council of the City of Asheboro, North Carolina has, by resolution, directed the city clerk to investigate the sufficiency of the annexation petition; and

WHEREAS, on the basis of her review of information gathered by city staff members during an investigation of the submitted petition, the city clerk has certified to the Asheboro City Council the sufficiency of this petition to proceed with setting a date for a public hearing on the question of annexation pursuant to Section 160A-31 of the North Carolina General Statutes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina as follows:

Section 1. A public hearing on the question of annexing the area described herein will be held in the Council Chamber of the City of Asheboro Municipal Building, which is located at 146 North Church Street, Asheboro, North Carolina 27203, during a regular meeting of the city council that will begin at 7:00 o'clock p.m. on the 4th day of November, 2010.

Section 2. A metes and bounds description of the area proposed for annexation is attached to this resolution as EXHIBIT 1 and is hereby incorporated into this resolution by reference as if copied fully herein.

Section 3. Notice of the public hearing shall be published in *The Courier-Tribune*, a newspaper having general circulation in the City of Asheboro, at least ten (10) days prior to the date of the public hearing.

This resolution was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 7th day of October, 2010.

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

ATTEST:

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

EXHIBIT 1

Asheboro Township, Randolph County, North Carolina:

BEGINNING on the northern boundary line, which is also the proposed primary corporate limits line for the City of Asheboro, of the Richard C. Shaw and wife, Mildred B. Shaw property described as Tract Two in Deed Book 1666, Page 1442, Randolph County Public Registry at a 5/8" existing iron rod that is located by means of the North Carolina Coordinate System at the coordinates of North 715,335.909 feet and East 1,763,567.466 feet (NAD 27); thence from the said beginning point following the proposed primary corporate limits line for the City of Asheboro along the above-described boundary line North 83 degrees 26 minutes 59 seconds East 1.31 feet to a point not set in a trash pile; thence continuing to follow the proposed corporate limits line along the Woodrow P. Liles property described in Deed Book 2140, Page 836, Randolph County Public Registry the following course and distance: South 03 degrees 26 minutes 57 seconds West 50.24 feet to a 1" existing iron pipe set in the existing primary corporate limits line; thence along the existing primary corporate limits line for the City of Asheboro the following courses and distances: South 83 degrees 19 minutes 57 seconds West 114.54 feet to a new iron rod; thence South 83 degrees 19 minutes 57 seconds West 1.18 feet to a point not set; thence South 83 degrees 19 minutes 57 seconds West 10.11 feet to a point not set; thence continuing along the existing primary corporate limits line North 19 degrees 00 minutes 40 seconds West 50.94 feet to a point not set; thence North 83 degrees 26 minutes 59 seconds East 8.06 feet along the proposed primary corporate limits line to a new iron rod; thence continuing to follow the proposed primary corporate limits by going along the Melvin B. Marley property described in Deed Book 1727, Page 2830, Randolph County Public Registry the following course and distance: North 83 degrees 26 minutes 59 seconds East 136.18 feet to the point and place of BEGINNING, and containing 6,731 square feet (0.154 acres) of land, more or less, to be annexed.

The above-listed description is in accordance with a plat of survey entitled "ANNEXATION SURVEY FOR THE CITY OF ASHEBORO." This plat was drawn under the supervision of Jerry A. King, Professional Land Surveyor with Registration Number L-3373, from an actual survey made under his supervision. The said plat is dated September 27, 2010, and the job number listed on the plat is 6030 S 10.

8. Economic Development items:

- (a) **Consideration of a resolution approving a recommendation by city staff to utilize the North Carolina Industrial Development Fund as a funding source of the previously approved engineering and surveying services to be provided by Deep River Engineering, PLLC as part of the Allen Precision Industries Economic Development Project.**

Ms. Fletcher presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to adopt the following resolution by reference.

43 RES 10-10

RESOLUTION APPROVING THE UTILIZATION OF ALTERNATIVE FUNDING FOR THE ENGINEERING AND SURVEYING SERVICES NEEDED FOR THE ALLEN PRECISION INDUSTRIES ECONOMIC DEVELOPMENT PROJECT

WHEREAS, the City of Asheboro is attempting to foster new investment and job creation in the City of Asheboro by undertaking an economic development project with Allen Precision Industries; and

WHEREAS, the proposed economic development project includes the extension of municipal water and sewer lines to Veterans Loop Road as well as the relocation on Veterans Loop Road of a cul-de-sac that, with the concurrence of the North Carolina Department of Transportation, is to be maintained by the City of Asheboro; and

WHEREAS, based on the demonstrated competence of Deep River Engineering, PLLC and the firm's preexisting knowledge of the land that must be traversed in order to complete the contemplated extension of municipal water and sewer services to Veterans Loop Road, the Asheboro City Council, by means of adopting Resolution Number 31 RES 8-10, previously exempted the economic development project with Allen Precision Industries from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes; and

WHEREAS, Resolution Number 31 RES 8-10 also stated that, subject to the award of funding for the project from the Community Development Block Grant Program, the City Manager could execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with Deep River Engineering, PLLC for the provision of the engineering and surveying services needed to complete the economic development project; and

WHEREAS, subsequent to the adoption of Resolution Number 31 RES 8-10 on August 5, 2010, city staff members concluded that the most efficient means of enabling the proposed economic development project to foster new investment and job creation in the City of Asheboro would be to utilize funding from the North Carolina Industrial Development Fund rather than the Community Development Block Grant Program to offset some of the costs associated with the engineering and surveying services needed to complete the proposed economic development project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, subject to the award of funding for the project from the North Carolina Industrial Development Fund, the City Manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with Deep River Engineering, PLLC for the provision of the engineering and surveying services needed to complete the Allen Precision Industries Economic Development Project; and

BE IT FURTHER RESOLVED that if any conflict is discovered between the terms of this Resolution and the terms found in Resolution Number 31 RES 8-10, the provisions found in this Resolution, which was adopted on October 7, 2010, shall be deemed to be controlling.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 7th day of October, 2010.

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

ATTEST:

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

- (b) **Consideration of a resolution exempting the Wetland Delineation and Field Verification of Jurisdiction Project, which is one component of the Allen Precision Industries Economic Development Project, from the advertisement/qualification based selection process of Chapter 143, Article 3D of the North Carolina General Statutes in order to contract with Froehling & Robertson, Inc. for engineering services at a cost of \$2,945.00**

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

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

44 RES 10-10

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

(Wetland Delineation and Field Verification of Jurisdiction Services for the Allen Precision Industries Economic Development Project)

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 explore the possibility of applying for grant funding in furtherance of a potential economic development project with Allen Precision Industries; and

WHEREAS, one of the funding sources that may be utilized by the city is the Community Development Block Grant Program administered by the North Carolina Department of Commerce; and

WHEREAS, during a pre-application meeting attended by personnel from the North Carolina Department of Commerce, city staff members learned that the firm of Froehling & Robertson, Inc. has provided for a significant number of economic development projects the engineering services needed to prepare an environmental assessment that complies with the requirements of the Community Development Block Grant Program; and

WHEREAS, on the basis of the estimated professional fee and the firm's demonstrated competence in preparing environmental assessments that comply with the requirements of the Community Development Block Grant Program, the Asheboro City Council previously exempted the environmental assessment component of the proposed economic development project from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes and authorized the

execution of a contract with Froehling & Robertson, Inc. to procure the engineering services needed to successfully prepare the requisite environmental assessment; and

WHEREAS, due to site conditions encountered during the course of performing the environmental assessment, wetland delineation and field verification of jurisdiction services will be needed in order to successfully complete the environmental assessment project; and

WHEREAS, wetland delineation and field verification of jurisdiction services are outside the scope of the city's existing contract with Froehling & Robertson, Inc.; and

WHEREAS, Froehling & Robertson, Inc. has submitted to the City of Asheboro a proposal to provide, in consideration of the payment of estimated professional services fees in the amount of two thousand nine hundred forty-five and no/100 dollars (\$2,945.00), the engineering services needed to complete in a timely manner the wetland delineation and field verification of jurisdiction services needed to successfully prepare an environmental assessment for submission as part of the application for Community Development Block Grant funding for the proposed economic development project with Allen Precision Industries; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the wetland delineation and field verification of jurisdiction component of the economic development project with Allen Precision Industries is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes on the basis of Froehling & Robertson, Inc.'s demonstrated competence and 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 Froehling & Robertson, Inc. for the provision of the engineering services needed to complete the wetland delineation and field verification of jurisdiction project.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 7th day of October, 2010.

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

ATTEST:

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

- (c) **Approval of a resolution authorizing the submission of an application on behalf of the City of Asheboro to the North Carolina Department of Commerce for approval of an urban progress zone.**

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

Upon motion by Ms. Carter and seconded by Mr. Bell, Council voted unanimously to adopt the following resolution by reference.

45 RES 10-10

RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION ON BEHALF OF THE CITY OF ASHEBORO TO THE NORTH CAROLINA DEPARTMENT OF COMMERCE FOR APPROVAL OF AN URBAN PROGRESS ZONE

WHEREAS, the City Council of the City of Asheboro has determined that a certain area within the City of Asheboro may require economic incentives to assist in economic development efforts; and

WHEREAS, the City Council of the City of Asheboro has determined that incentives provided by the State of North Carolina are desirable; and

WHEREAS, the City Council of the City of Asheboro wishes to pursue re-designation of the qualifying area as a North Carolina Urban Progress Zone.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the City's elected and appointed officials and employees are hereby authorized to submit a formal application to the North Carolina Department of Commerce for re-designation of the identified area as a North Carolina Urban Progress Zone.

Adopted by the Asheboro City Council in regular session on the 7th day of October, 2010 in Asheboro, North Carolina.

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

ATTEST:

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

9. Public Works items:

- (a) **Consideration of a resolution authorizing the execution and recording of an easement agreement between DR Partners, a Nevada general partnership, and the City of Asheboro for the miniature park/garden spot at the northwest corner of the intersection of Sunset Avenue and North Park Street.**

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

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

46 RES 10-10

**RESOLUTION APPROVING AN EASEMENT AGREEMENT WITH
DR PARTNERS, A NEVADA GENERAL PARTNERHSIP**

WHEREAS, DR Partners is a Nevada general partnership that is doing business as Donrey Media Group – The Courier-Tribune at 500 Sunset Avenue, Asheboro, North Carolina 27203; and

WHEREAS, the City of Asheboro would like to obtain an easement over a portion of DR Partners' parcel of land at 500 Sunset Avenue in order to enhance the physical appearance of the entrance to downtown Asheboro along Sunset Avenue by establishing a miniature park/garden spot that has been proposed as the Sunset Avenue Gateway Park; and

WHEREAS, DR Partners is a contributing corporate citizen in the Asheboro community and is willing to grant, without monetary consideration, an easement for the city to utilize a portion of the existing public vehicular area at the offices of *The Courier-Tribune* for the proposed Sunset Avenue Gateway Park so long as the city bears the cost of constructing and maintaining the improvements constructed within the easement area, including indemnifying DR Partners for certain costs directly and proximately caused by the city's construction and maintenance of a miniature park/garden spot; and

WHEREAS, the proposed easement agreement between DR Partners and the City of Asheboro is attached hereto as EXHIBIT A; and

WHEREAS, the attached exhibits are hereby incorporated into this resolution by reference as if copied fully herein; and

WHEREAS, the Asheboro City Council has concluded that it wishes to proceed with the proposed Sunset Avenue Gateway Park.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the proposed easement agreement attached hereto as EXHIBIT A is hereby approved; and

BE IT FURTHER RESOLVED that the elected and appointed officials of the City of Asheboro are hereby authorized and directed to take all of the steps necessary to ensure the proper execution and recording in the office of the Randolph County Register of Deeds of the instrument attached hereto as EXHIBIT A.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting of the council that was held on the 7th day of October, 2010.

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

ATTEST:

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

EXHIBIT A

DEED OF EASEMENT

Excise Tax: \$0.00

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

Please return the recorded instrument to the City of Asheboro, Post Office Box 1106, Asheboro, North Carolina 27204-1106.

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

THIS DEED OF EASEMENT is made this ____ day of _____, 2010, by and between the following Grantor and Grantee:

GRANTOR: DR PARTNERS, a Nevada general partnership, d/b/a Donrey Media Group – The Courier-Tribune with an office located at 500 Sunset Avenue, Asheboro, North Carolina 27203

GRANTEE: CITY OF ASHEBORO, a North Carolina municipal corporation with its principal office located at 146 North Church Street, Asheboro, North Carolina 27203

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

WITNESSETH:

WHEREAS, the Grantor owns an approximately 3.23 acre parcel of land identified by Randolph County Parcel Identification Number 7751631087 and located at 500 Sunset Avenue, Asheboro, North Carolina 27203; and

WHEREAS, this parcel of land (hereinafter referred to as “The Courier-Tribune Parcel”) is more particularly described in a corrected deed of conveyance recorded in book 1339 at page 590 in the office of the Register of Deeds for Randolph County, North Carolina; and

WHEREAS, the Grantor recorded in book 1389 at page 560 in the office of the Register of Deeds for Randolph County, North Carolina a CERTIFICATE OF ASSUMED NAME FOR A SOLE PROPRIETORSHIP, PARTNERSHIP, LIMITED PARTNERSHIP that stated the Grantor would be conducting business under the assumed name of Donrey Media Group – The Courier-Tribune (d/b/a); and

WHEREAS, the above-described certificate listed Stephens Group, Inc. as the Managing General Partner of DR Partners; and

WHEREAS, Stephens Group, Inc., an Arkansas corporation, has changed its corporate name to SF Holding Corp.; and

WHEREAS, the Grantee would like to obtain an easement over a portion of The Courier-Tribune Parcel in order to enhance the physical appearance of the entrance to downtown Asheboro along Sunset Avenue by establishing a miniature park/garden spot that has been proposed as the Sunset Avenue Gateway Park; and

WHEREAS, the Grantor is a contributing corporate citizen in the Asheboro community and is willing to grant, without monetary consideration, an easement for the Grantee to utilize a portion of The Courier-Tribune Parcel’s existing public vehicular area for the proposed Sunset Avenue Gateway Park so long as the Grantee bears the cost of constructing and maintaining the improvements constructed within the easement area; and

WHEREAS, the Grantor and Grantee wish to set forth their agreement regarding their respective commitments toward the creation of the Sunset Avenue Gateway Park.

NOW, THEREFORE, for and in consideration of the contributions to be made hereunder and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the Grantor and Grantee hereby covenant, stipulate, and agree as follows:

Section 1. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated by the parties as part of this Agreement as if fully restated herein.

Section 2. Grant of Easement for Miniature Park/Garden Spot. Grantor has and by these presents does grant, bargain, and convey unto the Grantee a permanent right-of-way and easement in, along, through, and over a defined easement area of approximately 5,899 square feet, which is described in Section 3 of this Agreement, for a miniature park/garden spot with facilities, structures, or improvements that support a passive recreation experience. The facilities, structures, or improvements that support a passive recreation experience include, by way of illustration and not limitation, art work, paved walkways, litter receptacles, benches, gates, fencing, landscaping, and other facilities necessary or convenient thereto and including the right of ingress and egress to the Grantee and members of the general public.

The Grantee is hereby given and shall have the perpetual right, privilege, and easement of going in, upon, and over the easement area described in Section 3 of this Agreement at any and all times deemed necessary or appropriate by the Grantee for the purpose of constructing, maintaining, repairing, and reconstructing a landscaped miniature park/garden spot with benches, litter receptacles, and other types of passive recreation improvements that may be used to enhance Sunset Avenue as a gateway to Asheboro's downtown area. This grant of a perpetual right, privilege, and easement over the area described in Section 3 includes without limitation the right of the Grantee to do all things necessary to keep the easement area cleared of trees, shrubs, undergrowth, earthen features, structures, or any other types of obstructions that hinder or interfere with the construction, maintenance, repair, and reconstruction of the miniature park/garden spot in accordance with the plans and specifications adopted in the sole discretion of the Grantee.

Section 3. Metes and Bounds Description of the Easement Area. The said permanent easement area is more particularly defined and described as follows:

Asheboro Township, Randolph County, North Carolina:

BEGINNING at a new nail set at the intersection of the northern margin of the right-of-way for Sunset Avenue (North Carolina Secondary Road 1442) with the western margin of the right-of-way for North Park Street (North Carolina Secondary Road 1451); thence from the said beginning point proceeding west along the northern margin of the right-of-way for Sunset Avenue the following course and distance: North 77 degrees 02 minutes 00 seconds West 100.00 feet to a new nail; thence along the easement area boundary located within the parcel of land conveyed to DR Partners in a deed recorded in Deed Book 1339, Page 590, Randolph County Public Registry the following courses and distances: North 07 degrees 22 minutes 44 seconds East 35.26 feet to a new nail; thence northeastward along the arc of a curve with a radius of 20.00 feet a chord bearing and distance of North 52 degrees 22 minutes 44 seconds East 28.28 feet to a new nail; thence continuing along the said easement boundary line South 82 degrees 37 minutes 16 seconds East 79.52 feet to a new nail set in the western margin of the right-of-way for North Park Street; thence along the western margin of the right-of-way for North Park Street the following course and distance: South 07 degrees 22 minutes 44 seconds West 65.00 feet to the point and place of the BEGINNING , and containing 5,899 square feet of land, more or less.

This description is in accordance with a plat of survey that was drawn under the supervision of Thomas Scaramastra, who is a professional land surveyor with registration No. 4421. The said plat of survey is (a) entitled "Proposed Easement For City of Asheboro," (b) originally dated July 15, 2009, with a revision date of March 22, 2010, (c) identified as Job # 09033, and (d) hereby incorporated into this instrument by reference as if copied fully herein.

Section 4. Maintenance of the Easement Area. The Grantee shall maintain all landscaping and improvements constructed or installed within the easement area at the sole cost and expense of the Grantee.

Section 5. Indemnification. The Grantee agrees to indemnify, defend, and hold harmless Grantor from and against any and all injury, loss, damage, or liability directly and proximately caused by the Grantee's construction, operation, maintenance, repair, and/or reconstruction of the miniature park/garden spot. However, the Grantee shall not indemnify or save harmless Grantor from such injuries, losses, damages, or liabilities as may be attributed to the acts or omissions of Grantor and its officers, representatives, agents, contractors, and employees.

Section 6. Waiver or Forfeiture of Rights. The parties do not waive or forfeit the right to take action to ensure compliance with the terms, conditions, and purposes of this Agreement as a consequence of prior failures to act to ensure compliance with the terms, conditions, and purposes of the Agreement.

Section 7. Entire Agreement. This instrument contains the entire agreement of the parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon either party hereto unless such amendment is in writing and executed by the Grantor and Grantee.

TO HAVE AND TO HOLD the aforesaid easement interest and all rights, privileges, and appurtenances thereunto belonging or in any wise appertaining to the said City of Asheboro, North Carolina forever.

Grantor covenants and warrants that it is the sole owner of the said property; that it solely has the right to convey the easement interest described herein; and that it will forever warrant and defend title to the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the parties to this agreement have caused this instrument to be executed under authority given the day and year first above written.

GRANTOR:

DR PARTNERS, a Nevada general partnership

**By: SF HOLDING CORP. (f.k.a. STEPHENS GROUP, INC.),
its Managing General Partner**

By: _____
Signature of Authorized Officer

Printed Name of Authorized Officer

Title of Authorized Officer

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ (Name of Corporate Officer Executing the Instrument), either being personally known to me or proven to me by satisfactory evidence, personally came before me this day and acknowledged that he/she is _____ (Title of Authorized Officer) of SF Holding Corp., an Arkansas corporation, Managing General Partner of DR Partners, a Nevada general partnership, and that he/she, as _____ (Title of Authorized Officer), being authorized to do so and as the act of the corporation on behalf of said partnership, voluntarily executed the foregoing instrument on behalf of said corporation and general partnership for the purposes stated therein.

Witness my hand and official stamp or seal, this ____ day of _____, 2010.

Notary Public

My commission expires:

(Name of Notary Public, typed or printed)

GRANTEE:

**City of Asheboro,
a North Carolina municipal corporation**

By: _____
David H. Smith, Mayor

ATTEST:

Holly H. Doerr, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF RANDOLPH

I, the undersigned Notary Public for the state and county aforesaid, do hereby certify that Holly H. Doerr, who is personally known to me, appeared before me this day and acknowledged that she is the City Clerk for the City of Asheboro and that, by authority duly given and as the act of the municipal corporation, the foregoing instrument was voluntarily executed on behalf of the municipal corporation by its Mayor, sealed with the municipal corporation's seal, and attested by her as the City Clerk for the purposes stated therein.

Witness my hand and official stamp or seal, this _____ day of _____, 2010.

Notary Public

(Name of Notary Public, typed or printed)

My commission expires: _____

- (b) Consideration of a resolution exempting the Tot Hill Farm Sewer Pump Station #21 Standby Generator Project, which is one of the components that must be completed in order to successfully conclude the Airport/Tot Hill Farm Sewer Project, from the advertisement/qualification based selection process of Chapter 143, Article 3D of the North Carolina General Statutes in order to contract with Sturgill Engineering, PA for engineering services at a cost not to exceed \$2,500.00.**

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

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

47 RES 10-10

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

(Standby Generator for Tot Hill Farm Sewer Pump Station No. 21 Project)

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 the Airport/Tot Hill Farm Sewer Project; and

WHEREAS, in order to successfully complete this existing project, the City of Asheboro must satisfy certain requirements imposed by the North Carolina Department of Environment and Natural Resources; and

WHEREAS, one of these requirements is the installation of a standby generator for Tot Hill Farm Sewer Pump Station No. 21; and

WHEREAS, in order to satisfy this standby generator requirement, the city needs to contract for electrical engineering services that can be used to successfully install an existing standby generator that will be moved from the Wastewater Treatment Plant and installed at Tot Hill Farm Sewer Pump Station No. 21 along with a new automatic transfer switch; and

WHEREAS, Sturgill Engineering, PA has offered to provide the electrical engineering services needed for the project in consideration of the payment by the city of a professional services fee that is not to exceed two thousand five hundred and no/100 dollars (\$2,500.00); and

WHEREAS, on the basis of the firm's demonstrated competence and the estimated professional fee for this project, the city manager and the city engineer have recommended that Sturgill Engineering, PA should be utilized to provide the electrical engineering services needed for this project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the project to install a standby generator at Tot Hill Farm Sewer Pump Station No. 21 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 Sturgill Engineering, PA and on the basis of the fact that the estimated professional fee for the needed electrical engineering services is not to exceed two thousand five hundred and no/100 dollars (\$2,500.00); 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 Sturgill Engineering, PA for the provision of the electrical engineering services described above.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 7th day of October, 2010.

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

ATTEST:

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

- (c) Consideration of the apparent lowest responsive, responsible bid to supply a mechanically cleaned bar screen for the Wastewater Treatment Plant that was submitted by Duperon Corporation in the amount of \$111,000.00 (without sales tax).**

Mr. Bunker presented the bid summary for the mechanically cleaned bar screen for the Wastewater Treatment Plant. Three (3) bids were received on September 28, 2010. The bid submitted by Duperon Corporation was the lowest responsive bid at \$111,000.00.

Upon motion by Mr. Moffitt and seconded by Mr. Burks, Council voted unanimously to accept the bid by Duperon Corporation in the amount of \$111,000.00.

[A copy of the above-referenced bid summary is on file in the City Clerk's office.]

- (d) Consideration of the apparent lowest responsive, responsible bid to supply an automated side loading refuse truck that was submitted by Carolina Environmental Systems, Inc. in the amount of \$231,981.00 (without sales tax).**

Mr. Bunker presented the bid summary for an automated side loading refuse truck. Eight (8) bids were received on September 30, 2010. Due to the fact that the apparent low bidder, Amick Equipment Company, Inc., did not include all of the equipment as specified in the bid form, Mr.

Bunker recommended that the Council accept the lowest responsive bid, which was received from Carolina Environmental Systems, Inc. of Kernersville, North Carolina, at \$231,981.00.

Upon motion by Mr. Bell and seconded by Mr. Hunter, Council voted unanimously to accept the bid by Carolina Environmental Systems, Inc. in the amount of \$231,981.00.

[A copy of the above-referenced bid summary is on file in the City Clerk's office.]

10. Upcoming events:

- City of Asheboro Health Fair on October 13, 2010 from 8:30 a.m. until 2:00 p.m. at the Public Works Facility.
- NCLM Annual Conference on October 24-26, 2010 in Winston-Salem.

There being no further business, the meeting was adjourned at 8:15 p.m.

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

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