

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, APRIL 4, 2019
7:00 p.m.**

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

David H. Smith) – Mayor Presiding

Clark R. Bell)
Edward J. Burks)
Walker B. Moffitt) – Council Members Present
Jane H. Redding)
Katie L. Snuggs)
Charles A. Swiers)

Linda H. Carter) – Council Member Absent

John N. Ogburn, III, City Manager
Timothy E. Cockman, Deputy Fire Chief
Holly H. Doerr, CMC, NCCMC, City Clerk
P. Douglas Kemp, Human Resources Director
Michael L. Leonard, PE, City Engineer
Jody Maness, Assistant Recreation Services Director
Trevor L. Nuttall, Community Development Director
Deborah P. Reaves, Finance Director
Michael D. Rhoney, PE, Water Resources Director
Jonathan L. Sermon, Recreation Services Director
Jeffrey C. Sugg, City Attorney
Willie Summers, Fire Chief
Jody P. Williams, Chief of Police

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. Moment of silent prayer and pledge of allegiance.

After a moment of silence was observed in order to allow for private prayer and meditation, Mayor Smith asked everyone to stand and recite the pledge of allegiance.

3. Presentation of a *Key to the City* to Dr. James M. Rich, Jr. for his many years of dedicated service on the Asheboro Airport Authority.

On behalf of the City of Asheboro, Mayor Smith presented a *Key to the City* to Dr. James M. Rich, Jr. for his many years of positive contributions to the community and his dedicated service on the Asheboro Airport Authority.

4. Discussion of the Randolph County Partnership for Children’s upcoming Children’s Puppet Parade in downtown Asheboro.

Ms. Andee Edelson of the Randolph County Partnership for Children invited Mayor Smith and members of the city council to the children’s puppet parade that is scheduled for April 12, 2019 at 9:30 a.m. in downtown Asheboro.

5. Presentation of Randolph County's application for the Recreation Trails Program grant funding for the Deep River Worthville to Central Falls Blueway.

Ms. Mary Joan Pugh, Trails/Natural Heritage Coordinator for Randolph County presented the county's application for Recreation Trails Program grant funding for the Deep River Worthville to Central Falls Blueway.

No action was taken by the Council during this portion of the meeting.

6. The police department's annual report.

Police Chief Jody Williams presented an overview of the Police Department's activities for 2018. During his presentation, Chief Williams highlighted that there were a total 26,425 calls for service during 2018, with approximately 22.3% of those calls requiring a report.

A copy of the written report is on file in the city clerk's office.

7. Discussion of the 2018 North Carolina Department of Labor safety awards.

Human Resources Director Doug Kemp reported that the North Carolina Department of Labor presented safety awards to nine (9) departments within the City of Asheboro for the calendar year 2018.

8. An invitation for the council members to attend the Asheboro Fire Department's upcoming promotion ceremony and celebration.

Fire Chief Willie Summers invited the mayor and members of the city council to attend the Asheboro Fire Department's upcoming promotional ceremony and celebration that is scheduled for April 25, 2019 at 5:30 p.m. in the Sunset Theatre.

9. Update on the proposed Arboretum Project. [Listed as Agenda Item 17]

Without objection, Mayor Smith moved agenda item 17 (an Update on the Arboretum Project) to the spot on the agenda immediately preceding consideration of the consent agenda.

Mayor Smith reported that the Arboretum Project is proceeding with the help of former Mayor David Jarrell and his wife, Pauline Jarrell. Currently, 120 pledges have been made for a total of \$66,000.00.

No action was taken by the Council on this agenda item.

10. Consent agenda. [Listed as Agenda Item 9]

Upon motion by Mr. Burks and seconded by Mr. Bell, the Council voted unanimously to approve/adopt the following consent agenda items. Council Members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion.

(a) The meeting minutes for the city council's regular meeting on March 7, 2019.

The approved minutes are on file in the city clerk's office, and an electronic copy of the approved minutes is posted on the city's website.

(b) Acknowledgement of the receipt from the Asheboro ABC Board of its meeting minutes for February 4, 2019.

The minutes of the meeting held by the Asheboro ABC Board on February 4, 2019 have been received by the city clerk, distributed to the mayor and members of the city council for review, and are on file and available in the city clerk's office.

- (c) The final decision document for land use case number SUP-19-01.

Case No. SUP-19-01
Final Decision Document
City Council of the City of Asheboro, North Carolina

**IN THE MATTER OF THE APPLICATION BY ASHEBORO RESIDENTIAL, LLC
FOR A SPECIAL USE PERMIT AUTHORIZING A MULTIPLE - FAMILY
DWELLING UNIT DEVELOPMENT WITH A FLOOR AREA RATIO OF UP TO 22%**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THE
REQUESTED SPECIAL USE PERMIT**

THIS LAND USE CASE was brought before the Asheboro City Council (the “Council”) for a quasi-judicial hearing conducted during a regular meeting of the Council on March 7, 2019. After receiving sworn testimony and other evidence, the Council, on the basis of competent, material, and substantial evidence, hereby enters the following:

FINDINGS OF FACT

1. By and through Alex Zarris, Asheboro Residential, LLC (the “Applicant”) has properly submitted an application with the required site plan for a special use permit (“SUP”) that, if approved, will provide continuing authorization for a multiple-family dwelling unit development with a floor area ratio of up to 22%.

2. The multiple family dwelling unit development for which continuing authorization is sought is an apartment complex commonly referred to as Madison Heights.

3. Madison Heights is located on an approximately 8-acre parcel of land (the “Zoning Lot”) owned by the Applicant. The street address for the Zoning Lot is 2280/2282 North Fayetteville Street in Asheboro, and the lot is more specifically identified by Randolph County Parcel Identification Number 7763140433.

4. The Zoning Lot is located within the Asheboro city limits and is in an RA6 zoning district.

5. In Article 200 (Schedule of District Regulations), Section 210 (Schedule of Statements of Intent), Subsection E, the City of Asheboro Zoning Ordinance (the “Ordinance”) provides the following description of the RA6 zoning district:

The RA6 Residential District is intended to produce a high intensity of residential uses in close proximity to major nodes of non-residential development, characterized primarily by group housing, plus the necessary governmental and other support facilities to service that level of development. Land designated RA6 shall normally be located with access to a minor thoroughfare or higher classification street with access to local residential streets discouraged.

6. Pursuant to Article 1100 of the Ordinance, a multiple-family dwelling/residence is a “structure containing three or more dwelling units.”

7. The Madison Heights development currently has 72 dwelling units.

8. Pursuant to Article 1100 of the Ordinance, gross floor area means:

The sum in square feet of the horizontal areas on all floors of a building or buildings measured from the outside faces of the exterior walls including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and enclosed balconies, and any below-grade floor area used for habitation, access and storage. Attic area shall be counted when used for habitation. In calculating attic space, only areas enclosed for habitation shall be counted. Open porches,

balconies, patios, decks, and attached garages and/or carports shall not be considered in floor area calculations.

9. Pursuant to Article 1100 of the Ordinance, floor area ratio means the “ratio of permitted floor area to the area of the lot.”

10. Pursuant to Table 200-2 in the Ordinance, multiple-family dwelling unit developments with a floor area ration of up to 22% are permitted by special use permit in an RA6 zoning district.

11. Prior to the consideration of the current SUP application, the permit applicable to the existing Madison Heights apartment development was the following permit issued under case number SUP-04-06:

*Case No. SUP-04-06
City Council
City of Asheboro*

*IN THE MATTER OF THE APPLICATION OF MADISON HEIGHTS, L.L.C.
FOR A SPECIAL USE PERMIT ALLOWING A FLOOR AREA RATIO OF
UP TO .22*

*FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
THE REQUESTED SPECIAL USE PERMIT*

THIS MATTER came before the Asheboro City Council (hereinafter referred to as the “Council”) for hearing during the Council’s regularly scheduled meeting on January 6, 2005. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. *Madison Heights, L.L.C. (hereinafter referred to as the “Applicant”) properly filed an application with the City of Asheboro Planning Department for a Special Use Permit that would allow a floor area ratio (hereinafter referred to as FAR) of up to .22.*

2. *The parcel of land for which a Special Use Permit is sought is located on the east side of North Fayetteville Street and is more specifically identified by Randolph County Parcel Identification Number 7763140433.*

3. *The Applicant owns the parcel of land referenced in the immediately preceding paragraph (said land shall be hereinafter referred to as the “Zoning Lot”).*

4. *The Zoning Lot is zoned RA6 and consists of approximately 8.28 acres of land.*

5. *The Growth Strategy Map designates the area in which the Zoning Lot is located as “Primary Growth,” and the Proposed Land Development Plan Map indicates that said lot is located in an area designated as “Urban Residential.”*

6. *The land use to the north is multi-family residential, and a mobile home park is located to the west. Single-family residential use is located to the east, and the land use to the south is classified as undeveloped floodplain.*

7. *North Fayetteville Street is a major thoroughfare with a one hundred (100) foot right-of-way.*

8. *The Zoning Lot is located within the corporate limits of the City of Asheboro and all city services are available to the property.*

9. *The proposed development consists of seventy-two (72) total units and a clubhouse consisting of approximately 2,500 square feet.*

10. *A one hundred (100) year floodplain is located along the southern boundary of the Zoning Lot (Hasketts Creek). The Land Development Plan's "Proposed Land Use Map" shows a future greenway following the stream, and the plan recommends "dedication of open space and greenway easements as part of the land development process."*

11. *The Applicant is pursuing this application for the principal purpose of adding amenities to the project, such as a clubhouse and a carwash, and not for the purpose of increasing the total number of units.*

12. *Under the Asheboro Zoning Ordinance, a multi-family project is allowed by right to utilize a FAR of up to .17, and a FAR of up to .22 is allowed with a Special Use Permit.*

13. *The site plan and elevations submitted by the Applicant are in compliance with the provisions of the Asheboro Zoning Ordinance.*

14. *The Applicant has obtained approval from the North Carolina Department of Transportation for a turn lane that will serve the project.*

15. *No testimony was presented in opposition to the Applicant's request.*

Based on the foregoing findings of fact, the Council makes the following:

CONCLUSIONS OF LAW

1. *During the hearing of this matter, the evidence submitted to the Council indicated that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.*

2. *The proposed use meets all required conditions and specifications of the Asheboro Zoning Ordinance.*

3. *The Applicant's proposed use will not substantially injure the value of adjoining or abutting property, and the use is a public necessity.*

4. *The location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.*

Based on the above-recited findings of fact and conclusions of law, the Council hereby enters the following:

ORDER

The above-referenced application submitted by Madison Heights, L.L.C. for a Special Use Permit allowing a floor area ratio of up to .22 is hereby approved on the express condition that the Applicant and its successors and assigns meet and remain in compliance with the following conditions:

1. *Development on the Zoning Lot shall occur according to the approved site plan, with a maximum floor area ratio of .22. No additional*

structures shall be permitted as the proposed development will cover almost 22%.

2. *The developer shall grant public greenway easements along the floodplain of Hasketts Creek as recommended by the City's Land Development Plan.*

Adopted in regular session this 10th day of March, 2005.

*/s/ David H. Jarrell
David H. Jarrell, Mayor*

ATTEST:

*/s/ Carol J. Cole
Carol J. Cole, CMC, City Clerk*

12. Uncontroverted testimony established that the Madison Heights is in compliance with the above-stated Order.

13. Pursuant to Section 606 of the Ordinance, permit modifications require action by the Council. The cited Ordinance provision states:

The Zoning Administrator is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the approving body, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the City Council and shall be handled as a new application.

The following actions shall constitute a modification, unless expressly authorized by the permit:

- A. *(Reserved for future amendments)*
- B. *The erection of a new structure or the addition to an existing structure that:*
 - 1. *exceeds 1,000 square feet, either cumulatively or non-cumulatively;*
 - 2. *exceeds 10% of the useable floor area, either cumulatively or non-cumulatively, approved by the City Council as part of its review of the applicable Special Use Permit; or*
 - 3. *results in any portion of a structure being located closer than thirty (30) feet to an adjoining property developed with a single-family or two-family dwelling.*
- C. *An increase in number of dwelling or lodging units.*
- D. *An increase in outside land area devoted to sales, displays, or demonstrations.*
- E. *Any change in parking areas resulting in an increase or reduction of 5% or more in the number of spaces approved by the City Council. In no case shall the number of spaces be reduced below the minimum required by the ordinance.*
- F. *Structural alterations significantly affecting the basic form, style, ornamentation and the like of the building as shown on the approved plan.*

- G. *Substantial change in the amount and/or location of open space, recreation facilities or landscape buffers/screens.*
- H. *A change in use.*
- I. *Substantial changes in pedestrian or vehicular access or circulation.*

Notwithstanding any other provision within this Section, the Zoning Administrator is expressly prohibited from approving any changes that would be in conflict with the requirements of the Zoning Ordinance or significantly contrary to the Findings of Facts, Conclusions of Law, or Order as outlined (for) the applicable Special Use Permit.

The Zoning Administrator shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for the approval of the Special Use.

The Zoning Administrator shall, if he determines that the proposed action is a modification, require the applicant to file a request for approval of the modification, which shall be submitted to the City Council. The Council may approve or disapprove the application for approval of a modification.

14. The Applicant proposes adding structures to the Zoning Lot for the storage of the residents' personal belongings and/or vehicles. This proposal has to be evaluated as a modification of the existing SUP.

15. Uncontroverted testimony was offered to show that the additional structures do not count toward the maximum floor area ratio of 22% because the proposed structures are not for habitation. No additional dwelling units are proposed.

16. North Fayetteville Street, which serves the Zoning Lot, is a state-maintained major thoroughfare.

17. The land uses to the north and south of the Zoning Lot are multiple-family residential dwellings, single-family residential use is located to the east, and a manufactured home park is located to the west.

18. The site plan for the proposed land use is compliant with the Ordinance.

19. A portion of the Zoning Lot that is adjacent to Hasketts Creek is within a 100-year flood area. However, no new structures or parking areas are proposed for development within the flood area.

20. The building elevations indicate that the proposed structures will be built in a manner that matches the facades of the Zoning Lot's existing buildings.

21. The proposed structures are designed to function as amenities for residents who need storage area. The additional storage space will promote the maintenance of common areas as clean and well-kept areas.

22. Alex Zarris has in excess of thirty years of experience in acquiring and redeveloping properties for commercial and residential use in Florida, Indiana, and North Carolina. Mr. Zarris offered his professional opinion that the proposed land use will enhance the Zoning Lot and not have a negative impact on the area.

23. No evidence was entered in opposition to the issuance of the requested permit.

24. Pursuant to Section 602.1 of the Ordinance, the Council must find that the Applicant has met four general standards before the application for a SUP can be approved. The four standards are as follows:

- (d) The final decision document for land use case number SUP-19-02/SUB-19-01.

Case Nos. SUP-19-02 and SUB-19-01
Final Decision Document
City Council of the City of Asheboro, North Carolina

IN THE MATTER OF LARRY MCKENZIE'S APPLICATION FOR A SPECIAL USE PERMIT, INCLUDING SUBDIVISION SKETCH DESIGN APPROVAL, AUTHORIZING A RESIDENTIAL PLANNED UNIT DEVELOPMENT KNOWN AS SHERWOOD TOWNHOMES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING, WITH CONDITIONS, THE REQUESTED LAND USE APPROVALS

THIS LAND USE CASE came before the Asheboro City Council (the "Council") for a properly advertised quasi-judicial hearing on March 7, 2019. During this hearing, the Council received evidence, including sworn testimony, and considered all competent evidence and argument. On the basis of competent, material, and substantial evidence, the Council does hereby enter the following:

FINDINGS OF FACT

1. Larry McKenzie (the "Applicant") has properly applied for a Special Use Permit (a "SUP") authorizing a residential planned unit development (a "PUD") with 29 dwelling units plus common area. During the hearing of this case, the PUD was referred to as Sherwood Townhomes. Along with the PUD application, the Applicant properly submitted the mandated subdivision sketch design plat for review and approval.

2. The PUD is proposed for an approximately 7.34-acre parcel of land (the "Zoning Lot") owned by the Applicant and located on the north side of Sherwood Avenue. The street addresses currently associated with the Zoning Lot are 145 Whitley Street and 159 Whitley Street. Randolph County Parcel Identification Number 7750249743 more specifically identifies the parcel of land.

3. The Zoning Lot is located in an R10 (Medium-Density Residential) zoning district.

4. The City of Asheboro Zoning Ordinance (the "Ordinance") describes the R10 zoning district in Section 210, Subsection C of the Ordinance as follows:

The R10 Residential District is intended to provide regulations which will produce a moderate intensity of residential uses, usually single family or two family in character and served by central water supply and sewage disposal systems, plus the necessary governmental and other support facilities to service such urban intensity living.

5. A PUD is permitted by special use permit in an R10 zoning district.

6. Section 630, Subsection A of the Ordinance lists the following specific requirements for a PUD:

1. *Residential Planned Unit Developments may be permitted in any R40, R15, R10, R7.5, RA6 or OA6 zoning district as long as the proposed development contains a minimum of 2 acres. Those uses ordinarily permitted by right, by SUP, or as an accessory within the district (where) the development is to be located may be included in the development.*

2. *Review of an application for a PUD SUP shall occur simultaneously with a review of plats submitted in compliance with the Asheboro Subdivision Ordinance. If the PUD requires review as a "major" subdivision the Sketch Design Plat shall be properly submitted, reviewed*

and recommended by the Planning Board for the City Council's consideration as the PUD SUP. The Sketch Design Plat and the site plan required for the SUP may be combined on one plat so long as the requirements for each are met. If the PUD requires a minor subdivision the required subdivision plat shall be properly submitted for approval. Approval shall be subject to any conditions of the PUD SUP and granted only after approval of the SUP by the City Council.

3. *Residential PUDs may have direct access to City streets or State roads which are not major or minor thoroughfares, provided such access will not create safety hazards due to design or congestion.*
4. *Streets within a PUD may be public or private according to the regulations of the Asheboro Subdivision Ordinance.*
5. *The yard and height regulations set forth in Table 200-1 may be modified for a PUD, provided that, for such development as a whole, excluding public street right-of-ways or the area dedicated to private streets but including individual lots, common areas, parks and other permanent open spaces, there shall not be less than the required area per dwelling unit for the district in which such development is located.*
6. *Utilities shall be planned and installed according to the Asheboro Subdivision Ordinance.*
7. *Provisions and plans for garbage and waste collection shall be included with the application.*
8. *Buffers and/or screening shall be installed and maintained based on the types of individual uses contained within the development as per Article 304A.*
9. *Signs will be regulated as per Article 500.*
10. *Off street parking shall be provided as per Article 400.*
11. *General landscaping shall be installed and maintained. Plans indicating all required and non-required landscaping shall be submitted as part of the application.*

7. The land uses surrounding the Zoning Lot are as follows:

North:	Commercial	East:	Single-Family/Two-Family
South:	Single-Family/Two-Family	West:	Single-Family/Commercial

8. With regard to the city's comprehensive development plans, the growth strategy map identifies the area in which the Zoning Lot is located as a primary growth area, and the proposed land development plan map designates the area as commercial/neighborhood residential.

9. The Zoning Lot's existing land use is classified as currently undeveloped. Formerly, there were two single-family dwellings located on the lot.

10. The Zoning Lot is located inside Asheboro's corporate limits.

11. Sherwood Avenue, which provides access to the Zoning Lot, is a city-maintained street. The city engineer has raised no objections to the proposed street connection between Sherwood Avenue and the Zoning Lot.

12. For the PUD, the Applicant proposes a combination of city-maintained and privately maintained streets. Whitley Street will be constructed as a public, city-maintained

street (approximately 640 linear feet), and private streets (approximately 1,000 linear feet) will be connected to Whitley Street.

13. The site plan indicates the dwelling units will consist of single-story units with single-vehicle garages or two-vehicle garages. Of the 29 dwelling units, five are stand-alone detached dwellings and 24 dwelling units are located in duplex structures with two dwellings in each structure.

14. A small recreation area consisting of passive picnic areas is proposed on the north side of the Zoning Lot. The recreation area indicated on the site plan is compliant with the recreation requirements in the Ordinance.

15. The sidewalk connectivity required by the Ordinance is present.

16. The average lot size is 3,072 square feet.

17. As part of his sworn testimony, the Applicant agreed to the following conditions that were recommended by the city's planning staff for attachment to the requested SUP in order to ensure the long-term compliance of the proposed PUD with the Ordinance:

(A) All permits from the North Carolina Department of Environmental Quality shall be obtained as required.

(B) Fire hydrant location(s) shall be coordinated with the Asheboro Fire Department.

(C) As required by the City of Asheboro Subdivision Ordinance, a declaration of restrictive covenants prohibiting recreational vehicle parking, inclusive of boats, shall be submitted and recorded with the final plat.

(D) Except as explicitly noted to the contrary, roads, driveways, parking areas, storm sewer systems, and other improvements shall be maintained by the homeowners' association.

(E) The site plan indicates that mail delivery will be through individual mail boxes. If the United States Postal Service requires a community mail box, such drop-off area shall be designed in accordance with commonly accepted traffic engineering practices. If the developer chooses or is required to construct the community mailbox and any associated vehicular areas in a location completely on private property, such construction shall not be considered a modification of the Special Use Permit under Section 606 of the Ordinance.

(F) The following information shall be included on a revised site plan to be reviewed by city staff for inclusion in the community development division files without further review by the Council:

(1) Additional detail concerning street lighting fixtures.

(2) Correct labeling of Sherwood Avenue as a city-maintained street.

(3) Confirmation as to whether the sight distance triangle located on the west side of Whitley Street, at the intersection of Sherwood Avenue, has the benefit of an easement from the adjoining property owner. If not, this site distance triangle shall be removed.

(4) Detail concerning the proposed front yard landscaping along Whitley Street.

(G) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the Office of the Randolph County Register of Deeds a Memorandum of Land Use

Restrictions prepared by the city attorney for the purpose of placing notice of the conditions attached to this Special Use Permit in the chain of title for the Zoning Lot.

18. The Applicant has many years of experience in real estate and has developed multiple PUDs in the greater Asheboro area. Mr. McKenzie offered his professional opinion that the proposed land use will enhance the Zoning Lot and not have a negative impact on the area

19. The proposed PUD does not pose any elevated risk of generating health and safety concerns.

20. No testimony was offered in direct opposition to either the Applicant's request or the testimony/evidence introduced during the hearing of this land use case.

21. Section 602.1 of the Ordinance provides that the following four general standards must be met for the Council to approve a requested SUP:

1. *That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.*
2. *That the use meets all required conditions and specifications.*
3. *That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.*
4. *That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.*

Based on the foregoing findings of fact, the Council hereby enters the following:

CONCLUSIONS OF LAW

1. When an applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions that the Ordinance requires for the issuance of a special use permit, prima facie the applicant is entitled to the permit. A denial of the permit has to be based upon findings contra that are supported by competent, substantial, and material evidence appearing in the record.

2. In this case, the Applicant properly submitted an application for a SUP authorizing a PUD on the Zoning Lot, which is located in an R10 zoning district.

3. In light of the evidence and the Applicant's acceptance of the conditions attached to the SUP by the Council, the Applicant's proposed land use is compliant with the applicable requirements of the Ordinance.

4. On the basis of substantial evidence in the record, the Council has concluded that, with the clarifications and protections provided by the conditions attached to this permit, the proposed land use meets the four general standards for granting the requested special use permit. The proposed land use will not materially endanger the public health or safety, meets all required conditions and specifications of the Ordinance, will not substantially injure the value of adjoining or abutting property, and will be in harmony with the area in which it is to be located and is in general conformity with Asheboro's plan of development.

5. The Applicant's subdivision sketch design review application, with the comments/conditions noted in the Order, is compliant with the applicable land use regulations.

Based on the above-recited findings of fact and conclusions of law, the Council hereby enters the following:

ORDER

Part 1 – Special Use Permit

Subject to the following conditions, a Special Use Permit authorizing the proposed residential planned unit development on the Zoning Lot is hereby approved and issued to the Applicant and the Applicant's heirs, successors, and assigns. The continuing validity of this Special Use Permit is hereby made expressly contingent upon the Applicant and the Applicant's heirs, successors, and assigns complying at all times with the applicable provisions of the City of Asheboro Zoning Ordinance, the approved site plan, and the following supplementary conditions:

- (A) All permits from the North Carolina Department of Environmental Quality shall be obtained as required.
- (B) Fire hydrant location(s) shall be coordinated with the Asheboro Fire Department.
- (C) As required by the City of Asheboro Subdivision Ordinance, a declaration of restrictive covenants prohibiting recreational vehicle parking, inclusive of boats, shall be submitted and recorded with the final plat.
- (D) Except as explicitly noted to the contrary, roads, driveways, parking areas, storm sewer systems, and other improvements shall be maintained by the homeowners' association.
- (E) The site plan indicates that mail delivery will be through individual mail boxes. If the United States Postal Service requires a community mail box, such drop-off area shall be designed in accordance with commonly accepted traffic engineering practices. If the developer chooses or is required to construct the community mailbox and any associated vehicular areas in a location completely on private property, such construction shall not be considered a modification of the Special Use Permit under Section 606 of the Ordinance.
- (F) The following information shall be included on a revised site plan to be reviewed by city staff for inclusion in the community development division files without further review by the Council:
 - (1) Additional detail concerning street lighting fixtures.
 - (2) Correct labeling of Sherwood Avenue as a city-maintained street.
 - (3) Confirmation as to whether the sight distance triangle located on the west side of Whitley Street, at the intersection of Sherwood Avenue, has the benefit of an easement from the adjoining property owner. If not, this site distance triangle shall be removed.
 - (4) Detail concerning the proposed front yard landscaping along Whitley Street.
- (G) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the Office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the city attorney for the purpose of placing notice of the conditions attached to this Special Use Permit in the chain of title for the Zoning Lot.

Part 2 – Subdivision Sketch Design Approval

The subdivision sketch design plat submitted under Case No. SUB-19-01 for the residential planned unit development known as Sherwood Townhomes is hereby approved with the following comments/conditions:

- (g) A resolution authorizing the city manager to exercise an option to purchase real property for the benefit of the Asheboro Regional Airport.

RESOLUTION NUMBER 15 RES 4-19

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXERCISE AN OPTION TO PURCHASE REAL PROPERTY FOR THE BENEFIT OF THE ASHEBORO REGIONAL AIRPORT

WHEREAS, in an effort to act upon the transportation improvement program adopted for the Asheboro Regional Airport (the "Airport"), the City of Asheboro (the "City") is attentive to opportunities to implement improvements for the Airport; and

WHEREAS, with the assistance of programs supported by the Federal Aviation Administration and the North Carolina Department of Transportation's Division of Aviation, grant funding is available for the City to use to purchase real property from willing sellers who own land identified for acquisition for the Airport's Runway Protection Zone; and

WHEREAS, in furtherance of this grant-supported land acquisition program, the City acquired, in June 2018, an option to purchase the residential property of Michael E. Jones and Tina O. Jones at 2142 DouL Mountain Road; and

WHEREAS, based on the terms and conditions of the option and the requirements of the applicable grant funding program, the city council has decided to exercise the option to purchase the Jones' real property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the city manager is hereby authorized and directed to exercise, on behalf of the City, the option to purchase the residential parcel of land at 2142 DouL Mountain Road by executing and delivering to Michael E. Jones and Tina O. Jones the Notice of Exercise of Option to Purchase Real Property form attached to this Resolution as EXHIBIT 1 and incorporated into this Resolution by reference as if copied fully herein; and

BE IT FURTHER RESOLVED by the City Council of the City of Asheboro that, in addition to the purchase price and closing costs specified in the option agreement, the City will pay any balances owed on the moving expenses and the replacement housing payment prescribed by the approved relocation assistance program for this federally assisted project (the cumulative total of money paid for moving expenses cannot exceed the sum of \$4,000, and the cumulative total of money paid as a replacement housing payment cannot exceed the sum of \$31,000, of which \$15,500 has already been paid to Michael E. Jones and Tina O. Jones, through their attorney, when the option to purchase was acquired in June 2018); and

BE IT FURTHER RESOLVED by the City Council of the City of Asheboro that the city manager, finance officer, and all other city officials needed to complete the purchase of the residential parcel of land at 2142 DouL Mountain Road are hereby authorized and directed to take all of the administrative, financial, and legal actions necessary to successfully implement the land acquisition contemplated by the exercise of the above-described option to purchase real property.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 4th day of April, 2019.

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

ATTEST:

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

11. Community Development Items: [Listed as Agenda Item 10]

(a) Legislative Hearing: Text amendments to the zoning ordinance concerning the maximum allowable floor area ratio and supplementary requirements for multi-family residential developments.

Mayor Smith opened the public hearing which was legislative in nature on the application by Wynnefield Properties, Inc. for text amendments to the Asheboro Zoning Ordinance concerning permissible maximum floor area ratios for multi-family residential developments.

Community Development Director Trevor Nuttall utilized a visual presentation in order to give the Council Members an overview of the proposed text amendments related to permissible floor area ratios for developments with multiple family dwellings.

During his presentation, Mr. Nuttall summarized the planning staff's analysis of the request as follows:

1. The request is to amend the zoning ordinance in order to establish a maximum allowable floor area ratio (FAR) of up to 43% for multiple family developments within the RA6 High-Density Residential zoning district and OA6 Office and Apartment zoning district as long as certain development standards are met and a Special Use Permit is obtained. Open space ratio would be established at 40% and recreation space ratio at 6.6%.
2. Floor Area Ratio (FAR) is a ratio of gross floor area to land area. Gross floor area generally includes enclosed conditioned space that is used for habitation.
3. Current zoning regulations permit a FAR of up to 22% with a Special Use Permit. No specific special use standards apply beyond the general permit standards.
4. For illustration purposes, an allowable FAR of 43% on a lot with 100,000 square feet would permit development with a total gross floor area of 43,000 square feet. This cumulative gross floor area is allowed regardless of the number of stories in a structure (i.e. a single-story structure with 20,000 square feet of floor area would yield the same FAR as a two-story structure with 10,000 square feet of floor area on each level).
5. Floor area ratio provisions do not apply within the Center City Planning Area. Within this area, overall density and bulk is regulated through maximum permitted built-upon area and height restrictions.
6. The Applicant proposes specific use standards for projects seeking a 43% FAR. These standards are provided in new section 653 and include property access requirements, enhanced landscaping and building design requirements, stormwater control requirements, and increased recreational area criteria.

A copy of the visual presentation used to provide the staff's analysis is on file in the city clerk's office.

The Planning Board recommended approval of the request. This recommendation was based on the Planning Board's concurrence with the following analysis from the Community Development Division staff that evaluated the consistency of the request with the adopted comprehensive plans as well as the reasonableness of the request and whether the request is in the public interest:

The Land Development (LDP) generally encourages site design, density, and architecture of new residential development to be compatible with adjoining neighborhoods and land uses. During LDP preparation, significant public input was received related to the appropriate size and scale of multi-family developments. The LDP also states its vision for “urban residential” development to be located “within walking distance of commercial areas and major thoroughfares.” The Applicant’s proposal includes development standards that can achieve these plan objectives and policies while retaining the ability for public participation through the Special Use Permit (SUP) process. The standards and the SUP process should result in developments with a FAR of up to 43% locating in appropriate places that are compatible with surrounding land uses and provide convenient access to supporting commercial services and adequate public infrastructure.

Considering these factors, city staff believes the requested text amendments are reasonable and in the public interest.

Mr. H.R. Gallimore, a real estate broker, presented comments in support of the request.

There being no further comments and no opposition from the public, Mayor Smith transitioned to the deliberative phase of the public hearing.

The city council concurred with the staff and planning board analysis of the general consistency of the request with the land development plan. Council Member Bell moved, and Council Member Swiers seconded the motion, to adopt a plan consistency statement and to approve the requested text amendments to the Asheboro Zoning Ordinance with the following multi-part motion:

1. The Land Development (LDP) generally encourages site design, density, and architecture of new residential development to be compatible with adjoining neighborhoods and land uses. During LDP preparation, significant public input was received related to the appropriate size and scale of multi-family developments. The LDP also states its vision for “urban residential” development to be located “within walking distance of commercial areas and major thoroughfares.” The proposed text amendments include development standards that can achieve these plan objectives and policies while retaining the ability for public participation through the Special Use Permit (SUP) process. The standards and the SUP process should result in developments with a FAR of up to 43% locating in appropriate places that are compatible with surrounding land uses and provide convenient access to supporting commercial services and adequate public infrastructure.
2. With the above-stated standards and due process safeguards provided by the SUP process, the proposed amendments are reasonable and in the public interest.
3. In light of the above-stated analysis, the requested text amendments to the Asheboro Zoning Ordinance are approved as consistent with the adopted plan.

The above-stated motion was approved unanimously by the following Council Members: Bell, Burks, Moffitt, Redding, Snuggs, and Swiers.

The approved text amendments are as follows:

Table 200-1										
Table of Area, Height, Bulk and Placement Regulations										
District	Minimum Lot Size in Sq. Ft.	Lot Width (Frontage) In Feet*	Front Required Yard in Feet*	Side Required Yard In Feet*	Rear Required Yard in Feet*	Maximum Height in Feet*	Maximum Floor Area Ratio*	Open Space Ratio*	Recreation Ratio*	
R40	40,000 SF	100	30	15	25	35	22%			
	80,000 Duplex		1 Single Family or 1 Duplex Only					22%		
	40,000 NonRes						22%			
R15	15,000	100	30	15	25	35	22%			
			1 Single Family Only							
R10	10,000 SF	75	30	10	25	35	22%			
	15,000 Duplex		1 Single Family or 1 Duplex Only					22%		
	10,000 NonRes						22%			
R7.5	7,500 SF	60	25	10	20	35	22%			
	11,500 Duplex		1 Single Family or 1 Duplex Only					22%		
	7,500 NonRes						22%			
RA6	Residential (SF & Duplex)									
	6,000	60	25	10	20	35	22%			
	Multi Family: Maximum 4 Units Permitted Less than 45,000							17%	30%	
	Multi Family: Greater than 45,000							17%	52%	3.3%
	Multi Family: Greater than 45,000 with SUP							22%	52%	3.3%
	<i>Multi Family: Greater than 45,000 with SUP authorized by Article 600, Section 653</i>							<i>43%</i>	<i>40%</i>	<i>6.6%</i>
	Non-residential									
	6,000	60	25	10	20	35	22%			
OA6	Residential (SF & Duplex)									
	6,000	60	25	10	20	35	22%			
	Multi Family: Maximum 4 Units Permitted Less than 45,000							17%	30%	
	Multi Family: Greater than 45,000							17%	52%	3.3%
	Multi Family: Greater than 45,000 with SUP							22%	52%	3.3%
	<i>Multi Family: Greater than 45,000 with SUP authorized by Article 600, Section 653</i>							<i>43%</i>	<i>40%</i>	<i>6.6%</i>
	Non-residential									
	6,000	60	25	10	20	35	30%			
	Multi Use: Minimum 45,000 for 5 or more units							30%		
O&I	6,000	60	25	10	20	35	30%			
	Multi Use: Minimum 45,000 for 5 or more units							30%		
B1	6,000	60	25	15	15	25	33%			
M	10,000	75	25	10	10	25	33%			
B2	10,000	75	25	0 or 5	0 or 5	35	100%			
TH	40,000	100	30	10	10	35	100%			
B3	N/A	N/A	0	0 or 5	0 or 5	50	N/A			
I1	10,000	75	10	10	10	45	N/A			
I2	20,000	100	10	10	10	45	N/A			
I3	30,000	100	50	20	20	45	N/A			

*Except as specifically modified by this Ordinance

Table 200-2
Table of Permitted Uses (Amended 8-6-2015)

Use	Buffer/ Screen	R40	R15	R10	R75	RA6	OA6	O&I	B1	M	B2	TH	B3	I1	I2	I3	Supp. Reg.
Dwelling Multiple Family Units up to .17 FAR	MF					P	P										Note 15
Dwelling Multiple Family Units up to .22 FAR	MF					S	S										Note 15
<u>Dwelling Multiple Family Units up to .43 FAR</u>	<u>Per Section 653</u>					<u>S</u>	<u>S</u>										<u>Section 653</u>
Dwelling Single Family Units	SF	P	P	P	P	P	P										
Dwelling Two Family Units	SF	P		P	P	P	P										
Dwelling within Mixed Use Structure							P						P				Note 16
Eating Establishments - Drivein	2										P	P					
Eating Establishments - Walkin / Carry-out	2								P	P	P	P	P				

P - Permitted as Principal Use in District
S - Permitted by Special Use Permit
A - Permitted as Accessory Use Only

**New Proposed Section 653 of the Asheboro Zoning Ordinance
Residential Development with Multiple Family Structures with a Gross Floor
Area Ratio in Excess of 0.22 and Up to 0.43**

653 Residential Development with Multiple Family Structures with a Gross Floor Area Ratio in Excess of 0.22 and Up to 0.43.

- 653.1 Development shall comply with all applicable zoning and subdivision ordinance standards except as modified herein.
- 653.2 Access shall be from a minor thoroughfare or higher classification street.
- 653.3 No parking shall be permitted within the first 25 feet of the required front yard.
- 653.4 Overflow parking spaces for visitors shall be provided. One overflow parking space shall be provided for every ten (10) required parking spaces within the development.
- 653.5 Parking of recreational vehicles, including but not limited to watercraft, travel trailers, and campers, is not permitted unless such parking occurs within an entirely enclosed structure that complies with the requirements of the Zoning Ordinance.
- 653.6 Within the required front yard, there shall be planted and maintained one tree which is not less than six feet in height at the time of planting, for each twenty linear feet of street frontage or portion thereof, and one evergreen shrub for each ten linear feet of street frontage or portion thereof. The balance of the required front yard shall be covered with evergreen ground cover or mulch.
- 653.7 A Type D buffer or screen shall be provided adjacent to single or two-family uses or zoning districts. A Type A buffer or screen shall be provided adjacent to all other uses or zoning districts.
- 653.8 Foundation plantings consisting of evergreen shrubs shall be installed along the entire front foundation wall of each building. Plant installation shall be a minimum of two feet in height planted at six-foot intervals.
- 653.9 All Facades: One hundred (100) percent of the area below the facia of any building, excluding trim and similar architectural detailing but including doors and windows, shall be finished with any Building Code approved material except:
 - (a) Unfinished wood, concrete block (except split-faced block), vinyl siding, metal panels, metal painted panels and any metal panel with "rib" or "u" configuration.
 - (b) Laminated, composite or press board wood type materials composed of layers of firmly united wood materials made by bonding or impregnating superposed layers with resin and compressed under heat.
- 653.10 All multifamily structures less than three (3) stories in height using a sloped roof shall have a minimum slope of 5 in 12 on the principal roof. All multifamily structures not using a sloped roof shall have a parapet wall above the roof of at least three (3) feet in height.
- 653.11 Stormwater control measures designed by a licensed professional in accordance with the current North Carolina Department of Environmental Quality Stormwater BMP Manual shall be provided. Measures shall control the ten-year post-development peak discharge rates to pre-development peak flow rates. Prior to a Certificate of Occupancy, a licensed professional shall provide certification that the storm water control measures were built according to the plans. Any open water retention or drainage areas shall be managed to control

mosquitos. The maintenance of all runoff control measures shall be the responsibility of the property owner.

653.12 The minimum recreation ratio may be satisfied with a mixture of indoor and outdoor amenity space, provided that no more than fifty (50) percent of the recreated space is located within an enclosed structure.

653.13 A full-time on-site manager shall be provided for multifamily dwellings with a total of 75 units or more. A permanent office shall be provided for the manager. The floor area contained in the on-site manager's office shall not be counted in the total FAR.

(b) Quasi-Judicial Hearing: Combined hearing concerning property located at 481 North Carolina Highway 49 South (Randolph County Parcel Identification Numbers 7740931871 and 7740941140). The application asks for the rezoning of a portion of the property from B2 (General Commercial) to CU-RA6 (Medium-Density Residential) and asks for the issuance of a Conditional Use Permit authorizing a multiple family development.

Mayor Smith opened the public hearing on the combined request to legislatively rezone property and to issue a Conditional Use Permit on the basis of evidence presented during the quasi-judicial process.

Community Development Director Trevor Nuttall was placed under oath and presented the staff's analysis of the request by Wynnefield Properties, Inc. (hereinafter referred to as the "Applicant") to rezone the property located at 481 N.C. Highway 49 South (hereinafter referred to as the "Zoning Lot"), more specifically identified by Randolph County Parcel Identification Numbers 7740931871 and 7740941140, from B2 (General Commercial) zoning to CU-RA6 (Conditional Use High-Density Residential) zoning. Along with the requested rezoning, the Applicant also applied for a Conditional Use Permit for a development with multiple family units with a gross Floor Area Ratio of up to 0.43.

Mr. Nuttall certified that the required notices of the requested rezoning had been provided and utilized a visual presentation to summarize the planning staff's analysis of the rezoning application. The staff report noted the following:

1. The property is inside the city limits.
2. N.C. Highway 49 South is a state-maintained major thoroughfare.
3. The Applicant has requested rezoning to a Conditional Use High-Density Residential zoning district. The zoning ordinance describes the underlying RA6 zoning district as follows: "Intended to produce a high intensity of residential uses in close proximity to major nodes of non-residential development, characterized primarily by group housing, plus the necessary governmental and other support facilities to service that level of classification street with access to local residential streets discouraged."
4. The Applicant has also filed a Conditional Use Permit for a multi-family residential development.
5. The area is characterized by a mix of commercial, industrial, and residential uses, including a multi-family residential development to the southeast consisting of 216 dwelling units.

Mr. Nuttall also presented the staff's analysis of the application for a Conditional Use Permit. This analysis of the Conditional Use Permit application noted as follows:

1. The request is for a multiple family residential development consisting of a total of 72 residential units.
2. One entrance from N.C. Highway 49 South, a state-maintained major thoroughfare, is proposed. Based on feedback from the North Carolina Department of Transportation (NCDOT), no traffic signal will be required. However, some restriping of N.C. Highway 49 south may be required. NCDOT has also indicated that the sidewalk shown within the right-of-way will need to be moved further south away from the travel lanes.
3. The proposed development consists of two 3-story residential structures plus an office/clubhouse and outdoor recreation area for residents' use.
4. In response to comments made at the March Planning Board meeting about potential school impacts, the city staff contacted the administrative staff for Asheboro City Schools. They indicated no concerns related to the impact of this project.

In regards to the request for rezoning, the Planning Board recommended approval of the request. This recommendation was based on the Planning Board's concurrence with the following analysis from the Community Development Division staff that evaluated the consistency of the requested rezoning with the adopted comprehensive plans as well as the reasonableness of the request and whether the requested rezoning is in the public interest:

Although the request doesn't align with the Land Development Plan map designation of the property for commercial use, several factors support the requested Conditional Use High-Density Residential district.

The property is in close proximity to another significant multi-family residential use as well as complementary commercial development. This immediacy supports the Land Development Plan's objective of locating urban residential uses in close proximity to supportive non-residential uses.

The Conditional Use permitting process can also help ensure that the property develops in a manner consistent with the Land Development Plan's "urban residential" description, including design features that promote walkability and harmony with surrounding land uses.

Considering these factors, staff believes that the proposed zoning map amendment is reasonable and in the public interest.

Mr. Davis Ray, a representative of Wynnefield Properties, Inc. (the Applicant) was placed under oath and offered testimony in support of the application. This testimony was focused on addressing the four standards for issuance of a Conditional Use Permit. As part of his testimony, Mr. Ray expressed agreement with the following conditions that were recommended by the planning staff for attachment to the requested Conditional Use Permit.

1. Should additional pedestrian, vehicular and/or driveway connections be proposed to adjoining properties in a manner consistent with the requirements of the Asheboro Zoning Ordinance, the Applicant shall submit a revised site plan to city staff for review and inclusion in the file without further review by the city council.
2. The exact location of the sidewalk parallel to N.C. Highway 49 South shall be subject to approval by NCDOT. Should NCDOT not issue an encroachment agreement for a sidewalk within the public right-of-way, the Applicant may construct a sidewalk parallel to N.C. Highway 49 South on the subject property.

3. Should the Applicant provide additional dumpster(s), such action shall not be considered a modification provided it is consistent with the requirements of the Asheboro Zoning Ordinance.
4. The following information shall be included on a revised site plan to be reviewed by city staff for inclusion into the file without further review by the city council:
 - a. Front yard landscaping details which comply with the zoning ordinance.
 - b. Spelling of “space” in open space.
 - c. Corrected calculation of recreational space. [Staff Note: The Applicant labels less recreation space (3,000 square feet) than the amount shown on the site plan.]
5. Prior to issuance of a zoning compliance permit, the following approvals are required:
 - a. NCDOT driveway permit and encroachment agreement if a sidewalk is to be built within public right-of-way.
 - b. An erosion control permit from the North Carolina Department of Environmental Quality (NCDEQ).
 - c. Plans showing outdoor lighting information compliant with Section 318A of the Asheboro Zoning Ordinance.
6. Prior to the issuance of a certificate of zoning compliance, the developer shall provide a plat, prepared by a licensed surveyor, that is acceptable to the city and identifies easements necessary for public maintenance of any city utility including, but not limited to, water lines serving required fire hydrants. Upon plat acceptance, the property owner shall execute the necessary instrument, prepared by the city’s legal department, to grant such easements to the city.
7. Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the office of the Randolph County Register of Deeds, a Memorandum of Land Use Restrictions prepared by the city attorney for the purpose of placing notice of the conditions attached to this Conditional Use Permit in the chain of title for the Zoning Lot.

No one offered testimony in opposition to the Application. There being no further comments, Mayor Smith transitioned to the deliberative phase of the application process.

With regard to the request to place the property in a different zoning district, the city council concurred with the staff and planning board analysis of the general consistency of the request with the land development plan. Council Member Bell moved, and Council Member Burks seconded the motion, to adopt a plan consistency statement and to approve the requested rezoning with the following multi-part motion:

1. Although the request doesn’t align with the Land Development Plan map designation of the property for commercial use, there is overall consistency with the plan and its objectives. The property is in close proximity to another significant multi-family residential use as well as complementary commercial development. This immediacy supports the Land Development Plan’s objective of locating urban residential uses in close proximity to supportive non-residential uses.

The Conditional Use permitting process helps to ensure that the property develops in a manner consistent with the Land Development Plan's "urban residential" description, including design features that promote walkability and harmony with surrounding land uses.

Considering these factors, the city council has concluded that this application for a zoning map amendment is generally consistent with the Land Development Plan, is generally in the public interest, and supports a reasonable use of the property.

2. In light of the above-stated analysis, the requested zoning map amendment to place the Zoning Lot in a CU-RA6 Conditional Use High-Density Residential zoning district is approved as consistent with the adopted plan.

Council Members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion. There were no dissenting votes. Consequently, the above-stated motion was adopted unanimously.

After its approval of the requested zoning amendment, the Council Members concluded that the standards for granting the requested Conditional Use Permit had been met. Upon motion by Mr. Moffitt and seconded Mr. Burks, the Council voted unanimously to approve the requested Conditional Use Permit, with the staff suggested conditions, for a Development with Multiple Family Units with a gross Floor Area Ratio of up to 0.43. Council members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion. There were no dissenting votes. Consequently, the above-stated motion was adopted unanimously.

The formal finding of fact, conclusions of law, and order authorizing the Conditional Use Permit and specifying the conditions attached to the permit, will be entered by the Council during regular session on May 9, 2019.

A copy of the visual presentation utilized by Mr. Nuttall during his presentation is on file in the city clerk's office.

- (c) Legislative Hearing: An application to rezone the property located at 1644, 1702, and 1712 North Fayetteville Street (portions of Randolph County Parcel Identification Numbers 7762064208, 7762065123, and 7762067634) from R10 (Medium-Density Residential) and RA6 (High-Density Residential) to O&I (Office & Institutional).**

Mayor Smith opened the public hearing, which was legislative in nature, on the request by Balfour Baptist Church (the "Applicant") to rezone approximately 6.3 acres of land from R-10 (Medium-Density Residential) and RA6 (High-Density Residential) to O&I (Office & Institutional). The land to be rezoned (the "Zoning Lot") is owned by Balfour Baptist Church.

Mr. Nuttall certified that the required notices of the requested rezoning had been provided and utilized a visual presentation to summarize the planning staff's analysis of the rezoning application. The staff report noted the following:

1. The property is inside the city limits.
2. North Fayetteville Street is a state-maintained major thoroughfare. East Bailey Street is a local, city-maintained street.
3. The Applicant is requesting that the portion of the property that is currently zoned B2 remain B2. The requested O&I (Office & Institutional) district is only proposed for the portion of the property currently zoned R10 and RA6.

4. The zoning ordinance describes the O&I Commercial District as “intended to produce moderate intensity office and institutional development to serve adjacent residential areas and to provide a transition from residential to commercial uses. Land designated O&I shall normally be located with access to a minor thoroughfare or higher classification street with access to local residential streets discouraged.”
5. There is currently a place of worship occupying the properties. Tax records indicate that the current structures have been in place since 1950 (1644 N. Fayetteville Street), 1967 (1702 N. Fayetteville Street), and 1976 (1712 N. Fayetteville Street). A place of worship is permitted by right in an O&I district along with the other permitted uses (such as medical/professional offices, schools, cultural centers, light services uses such as hair salons.). Significant additions or modifications (such as adding more than 5 percent additional parking) requires a Special Use Permit when located in a residential zoning district.
6. The majority of the property located at 1644 N. Fayetteville Street and 1702 N. Fayetteville Street is developed with structures and/or parking. The majority of the property located at 1712 N. Fayetteville Street (Parcel ID 7762067634) is undeveloped.

The Planning Board recommended approval of the request. This recommendation was based on the Planning Board’s concurrence with the following analysis from the Community Development Division staff that evaluated the consistency of the requested rezoning with the adopted comprehensive plans as well as the reasonableness of the request and whether the requested rezoning is in the public interest:

Staff believes that the request is generally consistent with the Land Development Plan. The LDP directly supports extending commercial zoning an additional 100 feet east of the B2/R10 zoning line. Further the established use of each of the properties is also consistent with an Office & Institutional designation and there are surrounding uses in the vicinity (such as a school, emergency public use facility, and other places of worship) that make an O&I zoning district an appropriate zoning designation. Additionally, the O&I district can serve as an effective transition between the existing B2 zoning on the front portion of the property and residential uses to the east.

While there are a number of residential properties directly abutting parcel 7762067364, the limited number of non-residential uses allowed in the O&I district combined with O&I landscaping requirements help to mitigate concerns over possible adverse impacts to adjoining residential properties.

Mr. Roger Pritchard of Balfour Baptist Church was available to answer questions.

There being no further comments, and no opposition from the public, Mayor Smith transitioned to the deliberative phase of the case.

The city council concurred with the staff and planning board analysis of the general consistency of the request with the land development plan. Council Member Bell moved, and Council Member Swiers seconded the motion, to adopt a plan consistency statement and to approve the requested rezoning with the following multi-part motion:

1. The request is generally consistent with the Land Development Plan. The LDP directly supports extending commercial zoning an additional 100 feet east of the B2/R10 zoning line. Further the established use of each of the properties is also consistent with an Office & Institutional designation and there are surrounding uses in the vicinity (such as a school, emergency

public use facility, and other places of worship) that make an O&I zoning district an appropriate zoning designation. Additionally, the O&I district can serve as an effective transition between the existing B2 zoning on the front portion of the property and residential uses to the east.

While there are a number of residential properties directly abutting parcel 7762067364, the limited number of non-residential uses allowed in the O&I district combined with O&I landscaping requirements help to mitigate concerns over possible adverse impacts to adjoining residential properties.

Considering these factors, the city council has concluded that this application for a zoning map amendment is generally consistent with the Land Development Plan, is generally in the public interest, and supports a reasonable use of the property.

2. In light of the above-stated analysis, the requested zoning map amendment to place R10 and RA6 portions of the Zoning Lot in an O&I (Office and Institutional) zoning district is approved as consistent with the adopted plan.

Council Members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion. There were no dissenting votes. Consequently, the above-stated motion was adopted unanimously.

(d) An update on staff's review of Article 200 of the Zoning Ordinance as recommended by the city council on December 6, 2018.

At the December 6, 2018 regular city council meeting, the city council directed city staff to examine the Asheboro Zoning Ordinance's Table of Permitted Uses in order to identify any potential uses currently permitted by right that may warrant additional scrutiny by the city council due to the potential for adverse community impacts.

During his presentation, Mr. Nuttall reported the following:

1. Certain agricultural-related uses, namely livestock production, are permitted in all residential zoning districts by right and may be incompatible with residential zoning district descriptions.
2. Clean (inert) material landfills are permitted in the I1 and I2 zoning districts by right with no additional development standards beyond customary zoning requirements. There may be need for further investigation of development standards that pertain to size, access, or other criteria.
3. The application of sludge is permitted by right in the majority of the city's zoning districts. While there are state rules that pertain to municipal wastewater sludge applications, the lack of an ordinance definition combined with the allowance of such use within all residential zoning districts may result in land use conflicts.

No action was taken by the city council on this agenda item.

12. Public comment period. [Listed at Agenda Item 11]

Mayor Smith opened the floor for public comments, and none were offered.

Mayor Smith closed the public comment period.

13. Presentation of a bid summary and request for the award of contracts for the supply of chemicals to the water and wastewater treatment plants. [Listed as Agenda Item 12]

Water Resources Director Michael D. Rhoney, PE reported that fifteen (15) bid packages were received on March 12, 2019 in response to the chemical procurement process undertaken for operations at the Water/Wastewater Treatment Plants. These bids included furnishing the chemicals required by the plants for the time period from April 16, 2019 to April 15, 2020.

Mr. Rhoney recommended that the contracts to supply the chemicals required by the plants from April 16, 2019 to April 15, 2020 be awarded to the responsive low bidders as listed below:

<u>Chemical</u>	<u>Company</u>	<u>Price</u>
Liquid Alum	C&S Chemicals	\$286.00/Ton
Liquid Caustic	Brenntag Mid-South	\$553.00/Ton
Fluosilicic Acid	Pennco, Inc.	\$323.75/Ton
Sodium Hypochlorite	JCI Jones Chemicals	\$0.66/Gal
Calcium Nitrate	Lime-Chem	\$1.95/Gal
Sodium Permanganate	Shannon Chemical Corp.	\$8.34/Gal
Magnesium Hydroxide	Polytec, Inc.	\$1.88/Gal

Upon motion by Mr. Moffitt and seconded by Mr. Burks, the Council Members voted unanimously to award to the above-listed lowest responsive, responsible chemical suppliers the respective contracts to supply the chemicals required by the city's plants from April 16, 2019 to April 15, 2020. Council Members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion.

A copy of the bid summary presented by Mr. Rhoney is on file in the city clerk's office.

14. Recreation Services Items: [Listed as Agenda Item 13]

(a) The 2019 operational days and hours, including special events, planned for the Downtown Farmers' Market.

Mr. Jody Maness, Assistant Recreation Services Director reported that the "Pre-Market" Day for 2019 is scheduled for Saturday, April 27, 2019. The opening day for the Downtown Farmers' Market is scheduled May 2, 2019. The market will operate on Tuesdays, Thursdays, and Saturdays from 7:00 a.m. until 1:00 p.m. Strawberry Day is scheduled for Saturday, May 18, 2019 and Peach Day is scheduled for Saturday, July 27, 2019.

No action was taken by the Council Members on this agenda item.

(b) A request for the approval of an ordinance amending Article I (Rec Cards) in the City of Asheboro Cultural and Recreation Services Policy Manual.

Mr. Maness presented and recommended adoption, by reference, of an ordinance amending Article I in the Cultural and Recreation Services Policy Manual.

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

ORDINANCE NUMBER 09 ORD 4-19

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**AN ORDINANCE AMENDING ARTICLE I IN THE
CULTURAL AND RECREATION SERVICES POLICY MANUAL**

WHEREAS, the City of Asheboro Cultural and Recreation Services Policy Manual contains the rules and regulations applicable to the city's cultural and recreational facilities; and

WHEREAS, Section 98.01 (Adoption by Reference) of the Code of Asheboro provides that the City of Asheboro Cultural and Recreation Services Policy Manual (the "Manual") has been adopted by the Asheboro City Council by reference and made a part of the Code of Asheboro; and

WHEREAS, within the Manual, Article I contains the regulatory provisions applicable to the Rec Card used by the city's cultural and recreation services system; and

WHEREAS, the recreation services director and the city manager have recommended updates to the Rec Card that are highlighted in an exhibit attached to this Ordinance as EXHIBIT 1, which is hereby incorporated into this Ordinance by reference as if copied fully herein; and

WHEREAS, the Asheboro City Council concurs with the recommended updates to Article I.

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

Section 1. Article I of the City of Asheboro Cultural and Recreation Services Policy Manual is hereby rewritten to provide as specified in EXHIBIT 1. All articles, sections, and provisions of the Manual that are not expressly modified by the contents of EXHIBIT 1 shall continue in full force and effect without alteration.

Section 2. All ordinances and clauses of ordinances in conflict with this Ordinance are hereby repealed.

Section 3. This Ordinance shall be in full force and effect upon and after April 4, 2019.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 4th day of April, 2019.

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

ATTEST:

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

EXHIBIT 1

ARTICLE I. REC CARD

SECTION 1.1 ~~QUALIFICATIONS~~

- ~~1. The Rec Card is for all Residents who live within the City Limits. The card entitles holders to City Resident rates at the Municipal Golf Course, Lake Lucas, Lake Reese, Memorial Pool, North Asheboro Park Pool and various Recreation Programs.~~
- ~~2. Rec Cards are available at the Cultural and Recreation Services office during regular business hours.~~
- ~~3. In order to qualify for a Rec Card, you must:
 - ~~a. Currently live in the City Limits.~~
 - ~~b. Present a valid Government Issued ID with current Address.~~
 - ~~c. Present a current (within the month) bill with your street address.~~~~
- ~~4. Children age 15 and younger must be accompanied by their parents with the above information plus the following:
 - ~~a. Government Issued Picture ID or:~~
 - ~~b. Birth Certificate or~~
 - ~~c. School ID.~~~~
- ~~5. Rec Cards are valid for 1 year.~~
- ~~6. City Residents who choose not to obtain a Rec Card will be charged the non-resident rate at all Cultural and Recreation Services facilities.~~
- ~~7. The Rec Card must be presented each time to receive the City Resident Rate.~~
- ~~8. The Rec Card is Free of charge. A replacement fee of \$5.00 will be charged if the card is misplaced.~~

SECTION 1.2 SENIOR'S REC CARD QUALIFICATIONS

- ~~1. To qualify, The Senior must:
 - ~~a. Reside in the City Limits.~~
 - ~~b. Be at least 62 years of age.~~
 - ~~c. Present information prescribed in the Rec Card Section.~~~~
- ~~2. The Senior Rec Cards are valid for 1 year periods. At the end of the period, you will need to come back to the Recreation Services Department to reverify that you are still a resident of the city.~~
- ~~3. City Residents who choose not to get a Senior's Rec Card will be charged the non-resident rate at all Cultural and Recreation Services facilities.~~
- ~~4. The Senior's Rec Card must be presented each time to receive the City Resident Rate.~~
- ~~5. The Senior's Rec Card is Free of charge. A replacement fee of \$5.00 will be charged if card is misplaced.~~

SECTION 1.1 QUALIFICATIONS

- (A) The Rec Card is for all residents who live within the city limits. This card entitles holders to city resident rates at the municipal golf course, Lake Lucas, Lake Reese, Memorial Pool, North Asheboro Park Pool, and various recreation programs.
- (B) Rec Cards are available at the cultural and recreation services office during regular business hours.
- (C) In order to qualify for a Rec Card, the adult applying for the card must currently live within Asheboro's city limits, and such an individual must present a valid

government-issued picture ID to verify the individual's current status as a city resident. If the address on the government-issued picture ID is not the applicant's current street address, residency can be proven with one of the following:

- (1) A current (within the month) bill with the applicant's street address; or
 - (2) A current (within the month) bank statement with the applicant's street address.
- (D) A child age 15 and younger for whom a Rec Card is sought must be accompanied by a parent/guardian with a verifiable parental/guardian relationship to the child. In addition to the parent/guardian providing the information specified above in Section 1.1(C), one of the following forms of identification must be provided for the child:
- (1) A government-issued picture ID;
 - (2) A birth certificate; or
 - (3) A school ID.
- (E) Rec Cards are valid for two years. At the end of the 2-year period, a card holder may renew his or her Rec Card. In order to renew the card for another 2-year period, the renewal applicant must comply with the above-stated procedures in order to verify the applicant's continuing status as a city resident.
- (F) City residents who choose not to obtain a Rec Card will be charged the non-resident rate at all of the city's cultural and recreation services facilities.
- (G) The Rec Card must be presented each time to receive the city resident rate.
- (H) The Rec Card is free of charge. A replacement fee of \$5.00 will be charged if the card is misplaced.
- (I) Notwithstanding any other provision in Section 1.1, a non-city resident may acquire a Rec Card with the payment of a biennial fee of \$50.00.

SECTION 1.2 SENIOR'S REC CARD QUALIFICATIONS

- (A) To qualify, the senior must:
- (1) Reside within the city limits;
 - (2) Be at least 50 years of age; and
 - (3) Present the information prescribed by Section 1.1(C).
- (B) A Senior's Rec Card is valid for two years. At the end of the 2-year period, a card holder may renew his or her Senior's Rec Card. In order to renew the card for another 2-year period, the renewal applicant must comply with the above-stated procedures in order to verify the applicant's continuing status as a city resident.
- (C) City residents who choose not to get a Senior's Rec Card will be charged the non-resident rate at all cultural and recreation services facilities.
- (D) The Senior's Rec Card must be presented each time to receive the city resident rate.
- (E) The Senior's Rec Card is free of charge. A replacement fee of \$5.00 will be charged if card is misplaced.
- (F) Notwithstanding any other provision in Section 1.2, a non-city resident may acquire a Senior's Rec Card with the payment of a biennial fee of \$50.00.

15. **Consideration of ordinances designed to address requests for additional alcoholic beverage options at the Asheboro Regional Airport and Sunset Theatre. [Listed as Agenda Item 14]**

As a follow-up to the council's action on March 7, 2019, directing the city attorney to draft ordinances to accommodate the desire of nonprofit entities to engage in the sale of unfortified wine and malt beverages during events held on the premises of the Asheboro Regional Airport and the Sunset Theatre, the city attorney brought forward two proposals. One addressed the situation at the airport, and the second proposal focused on the Sunset Theatre.

Airport Discussion

The question raised at the airport pertained to the North Carolina Aviation Museum and Hall of Fame, Incorporated. In order to address this issue, Mr. Sugg presented an ordinance providing for an exemption from Section 130.03 of the Code of Asheboro.

After some discussion, Mr. Moffitt moved, and Mr. Bell seconded the motion, to approve the following ordinance by reference. Council Members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion.

ORDINANCE NUMBER 10 ORD 4-19

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

AN ORDINANCE PROVIDING FOR THE NORTH CAROLINA AVIATION MUSEUM AND HALL OF FAME, INCORPORATED AN EXEMPTION FROM SECTION 130.03 OF THE CODE OF ASHEBORO

WHEREAS, Section 130.03 of the Code of Asheboro regulates the consumption and possession of alcoholic beverages in certain locations, specifically including the city-owned real property at the Asheboro Regional Airport; and

WHEREAS, the North Carolina Aviation Museum and Hall of Fame, Incorporated, a North Carolina nonprofit corporation, (the "Aviation Museum") is a tenant at the Asheboro Regional Airport; and

WHEREAS, in order to support its operations, the Aviation Museum conducts special fund raising events on the nonprofit corporation's leased premises at the Asheboro Regional Airport; and

WHEREAS, the Aviation Museum would like to have the option to include, in compliance with the proper permit from the North Carolina Alcoholic Beverage Control Commission, the sale of malt beverages and wine as part of these special events; and

WHEREAS, the Asheboro City Council has decided to amend the Code of Asheboro to make certain technical corrections in Section 130.03 and to provide the Aviation Museum with an opportunity to host the above-described special events at the nonprofit corporation's facilities.

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

Section 1. Section 130.03 (Consumption and Possession of Alcoholic Beverages in Certain Locations) of the Code of Asheboro is hereby rewritten to provide as follows:

- (A) *Consumption of malt beverages and unfortified wine.* It shall be unlawful for any person who is not an occupant of a motor vehicle to consume a malt beverage or unfortified wine on any public street, sidewalk, or alley in the city; or on any other property owned, occupied, or controlled by the city.

- (B) *Possession of open containers of malt beverages and unfortified wine.* It shall be unlawful for any person who is not an occupant of a motor vehicle to possess open container(s) of malt beverages and unfortified wines on any public street, sidewalk, or alley in the city; or on any other property owned, occupied, or controlled by the city. For the purposes of this section, an **OPEN CONTAINER** means a container whose seal has been broken or a container other than the manufacturer's unopened original container.
- (C) *Possession of malt beverages and unfortified wines on public streets, alleys, or parking lots which are temporarily closed to regular traffic for special events.* It shall be unlawful for any person to possess any malt beverage or unfortified wine on any public street, alley, or parking lot which has been temporarily closed to regular traffic for a special event.
- (D) *Possession and consumption of fortified wine, spirituous liquor, and mixed beverages.* The possession or consumption of fortified wine, spirituous liquor, or mixed beverages is hereby prohibited on property owned or leased by the city.
- (E) *Exceptions.* Notwithstanding the prohibitions prescribed by the above-listed divisions of this section, the following acts shall not be deemed to be unlawful.
- (1) The possession or consumption of alcoholic beverages by either a sworn law enforcement officer acting in the performance of his or her official duties or a person acting under the immediate and direct supervision of a sworn law enforcement officer discharging his or her official duties.
 - (2) The possession or consumption of malt beverages at McCrary Park as part of collegiate or professional baseball events hosted by legal entities with whom the City of Asheboro has entered into a lease agreement for the use of McCrary Park; provided, however, any such malt beverages found within McCrary Park must have been obtained in accordance with a sale/distribution plan developed and implemented by the hosting ~~of~~ legal entity in compliance with all applicable laws and administrative regulations.
 - (3) The possession or consumption of unfortified wine and malt beverages on the premises of the Sunset Theatre and Bicentennial Park facilities, including without limitation the Rotary Pavilion. The possession or consumption of unfortified wine and malt beverages on these premises will be lawful only if such possession or consumption is conducted in strict compliance with all applicable laws, ordinances, and regulations, specifically including without limitation the regulations adopted for the facilities by the city for these facilities that are part of the municipal cultural and recreation services system, inclusive of any and all sale/distribution plans developed and implemented under the regulations found in specified by the City of Asheboro Cultural and Recreation Services Policy Manual.
 - (4) The possession of unfortified wine on the premises of the Downtown Farmers' Market facility. The possession of unfortified wine on these premises will be lawful only if such possession occurs as part of the retail sale by an approved Downtown Farmers' Market vendor of unfortified wine for off-premise consumption. The retail sale of unfortified wine shall be conducted in strict compliance with all applicable laws,

ordinances, and regulations, specifically including without limitation the regulations prescribed for the Downtown Farmers' Market in the City of Asheboro Cultural and Recreation Services Policy Manual.

(5) The possession or consumption of unfortified wine and malt beverages on the premises leased to the nonprofit North Carolina Aviation Museum and Hall of Fame, Incorporated (these premises are shown as Hangar G and Hangar L on Schedule C of the Asheboro Regional Airport) during events conducted by the nonprofit corporation. The sale or service of wine and malt beverages must be conducted in strict compliance with all applicable laws, ordinances, and regulations, specifically including without limitation any laws and regulations pertaining to either alcoholic beverage control or the operation of the airport by the Asheboro Airport Authority.

(F) *Penalties.* Any person who violates the prohibitions prescribed by divisions (A), (B), and (C) above shall be guilty of a misdemeanor in accordance with G.S. § 14-4.

Section 2. All ordinances and clauses of ordinances in conflict with this Ordinance are hereby repealed.

Section 3. This Ordinance shall be in full force and effect on and after April 4, 2019.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 4th day of April, 2019.

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

ATTEST:

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

Sunset Theatre Discussion

The city attorney explained that, due to the risk management concerns associated with the city obtaining an ABC permit in a retail business capacity, he had drafted a proposal that would enable nonprofit theatrical production companies to apply for a Special One-Time permit from the North Carolina Alcoholic Beverage Control Commission. Such a permit would enable the nonprofit corporation to sell wine and/or malt beverages at the Sunset Theatre.

The following proposal was the document submitted to the council by the city attorney:

ORDINANCE NUMBER _____ [Not Adopted] _____

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**AN ORDINANCE AMENDING ARTICLE XIV IN THE
CULTURAL AND RECREATION SERVICES POLICY MANUAL**

WHEREAS, the City of Asheboro Cultural and Recreation Services Policy Manual contains the rules and regulations applicable to the city's cultural and recreational facilities; and

WHEREAS, Section 98.01 (Adoption by Reference) of the Code of Asheboro provides that the City of Asheboro Cultural and Recreation Services Policy Manual (the “Manual”) has been adopted by the Asheboro City Council by reference and made a part of the Code of Asheboro; and

WHEREAS, within the Manual, Article XIV contains the regulatory provisions applicable to the Sunset Theatre, which is administered as part of the city’s cultural and recreation services system; and

WHEREAS, due to the interest expressed by some nonprofit groups in pursuing the option of using the Sunset Theatre as a venue for events that include the sale of wine and beer, the recreation services director and the city manager have recommended updates to Article XIV; and

WHEREAS, these updates are specified in the attached EXHIBIT 1, which is hereby incorporated into this Ordinance by reference as if copied fully herein; and

WHEREAS, the Asheboro City Council concurs with the recommended updates to Article XIV.

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

Section 1. Article XIV of the City of Asheboro Cultural and Recreation Services Policy Manual is hereby rewritten to provide as specified in EXHIBIT 1. All articles, sections, and provisions of the Manual that are not expressly modified by the contents of EXHIBIT 1 shall continue in full force and effect without alteration.

Section 2. All ordinances and clauses of ordinances in conflict with this Ordinance are hereby repealed.

Section 3. This Ordinance shall be in full force and effect upon and after July 1, 2019.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 4th day of April, 2019.

David H. Smith, Mayor

ATTEST:

Holly H. Doerr, CMC, NCCMC, City Clerk

EXHIBIT 1

ARTICLE XIV. SUNSET THEATRE

~~SECTION 14.1 — APPLICATION~~

~~The City of Asheboro Cultural Services Department is responsible for administering the Sunset Theatre facility in a manner that will provide the citizens of Asheboro with an opportunity for a high quality experience. Under the general supervision of the Recreation Services Superintendent, designated city employees within the Cultural Services Department (hereinafter collectively referred to as the “Staff”) will operate the facility in the best interest of the City of Asheboro.~~

~~Subject to the regulations prescribed herein, this facility may be rented to individuals or other types of legal entities for events or activities that are consistent with the mission of the Cultural Services Department. The decision as~~

~~to whether to rent the facility on any specific occasion is within the ultimate discretion of the Recreation Services Superintendent as he or she evaluates the needs and priorities of the department. In order to request the use of this facility, an applicant shall accurately complete in its entirety the application form prescribed by and available from the Cultural Services Department.~~

SECTION 14.2 — RULES & REGULATIONS

- ~~1. Unless authorization to the contrary is listed on the prescribed application form as part of the written approval of an event by the Cultural Services Department, alcoholic beverages are prohibited in the facility. In those cases where the Recreation Services Superintendent has authorized the sale, possession, and/or consumption of unfortified wines and/or malt beverages on the premises in connection with and for the duration of the approved event, such sale, possession, and/or consumption of the listed beverages must be conducted in strict compliance with Section 14.3 of this manual, any conditions attached by the Recreation Services Superintendent to the event approval, and all applicable laws, ordinances, and regulations. No alcoholic beverages other than unfortified wines and malt beverages are permitted on the premises of the facility at any time.~~
- ~~2. Smoking and tobacco products are prohibited in the facility.~~
- ~~3. A \$100.00 security deposit must be paid at the time of reservation to secure a date. The fee shall be submitted to the Cultural Services Department. Multiple dates will require multiple deposits.~~
- ~~4. The Recreation Services Superintendent reserves the right to co-sponsor an event.~~
- ~~5. Violation of this agreement shall result in forfeiture of security deposit fees.~~
- ~~6. The user fees, as described in the Schedule of Deposits, Fees, and Charges Administered by the Cultural and Recreation Services Departments, must be paid at least 48 hours before the start of the event, or the event will be cancelled. In the event advance tickets have been sold, lessee is responsible for reimbursing ticket holders or to honor any advance tickets sold for a future event sponsored by the same lessee. Lessee is responsible for advertising the cancellation.~~
- ~~7. Failure to pay the rental fee will result in denied access to the facility.~~
- ~~8. The maximum daily rental period is one 8-hour period (unless otherwise noted in the Schedule of Deposits, Fees, and Charges Administered by the Cultural and Recreation Services Departments), which includes load-in and load-out. At the latest, closing time shall be Midnight, unless otherwise stated. Events that exceed their rental period shall result in loss of security deposit.~~
- ~~9. In the event the facility is being rented for an event open to the public, or if admission is being charged, the person/organization renting the facility, hereinafter known as "lessee," shall pay for and maintain, at all times during the individual or entity's use of the facility, Comprehensive and General Liability insurance coverage with primary limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage for any events open to the public. Furthermore, the City will be furnished with a certificate of insurance in a form satisfactory to the City. The certificate of insurance must be in the possession of the City of Asheboro Cultural Services Department no later than 48 hours prior to the scheduled event. Failure to provide proof of insurance will result in the event being cancelled. Furthermore, the Applicant must agree to forever hold harmless and to fully indemnify the City and its personnel, agents, officials, and City Council, in both their official and individual capacities, from any and all judgments, liens, claims, assessments, demands, attorney fees, actions, and causes of action of any sort arising out of any damage or injury sustained by any person or entity by reason of any negligent or willful act or omission of the Applicant or its officers, employees, agents or contractors in connection with the Applicant's use of the Sunset Theatre.~~
- ~~10. If the event is closed to the general public and no admission fee is charged, a liability waiver shall be required in lieu of liability insurance coverage.~~

- ~~11. The Lessee must designate a representative who will be responsible for all phases of the event and who will be on site the entire time the event is taking place.~~
- ~~12. The maximum number of tickets sold for any one event shall be determined by the total number of seats available and set up of the facility.~~
- ~~13. Assignment: Lessee may not assign this lease agreement or any right contained in this lease agreement or sublet the Sunset Theatre or any adjoining property owned by the City of Asheboro.~~
- ~~14. The Cultural and Recreation Services Division shall have by way of illustration and without limitation the right to deny the use of the facility if; 1) It deems such use may result in damage to the facility, 2) It deems such use is inconsistent with the policies of the division, 3) It deems such use may lead to illegal activity at the facility, 4) it deems such use may be detrimental to the character of the theatre as a multipurpose community facility.~~
- ~~15. A Cultural Services Department staff member will be in attendance to oversee and supervise all events held at the theatre. This staff member shall be equipped with a cell phone, first aid kit, be certified in First Aid & CPR, have the knowledge and ability to enforce facility rules & regulations, and knowledge of the electrical, HVAC, and lighting systems. This staff member shall have the authority to require anyone to leave the facility at any time for violation of the rules and regulations prescribed for the Sunset Theatre or for engagement in any other form of inappropriate conduct.~~
- ~~16. Lessee agrees to a "walk through" inspection prior to use of the facility. Any pre-existing, damaged, broken or malfunctioning equipment, or furnishings shall be noted. A second walk through shall be made at the completion of the event, and any variance shall be noted and appropriate charges will be billed and due within 5 business days.~~
- ~~17. No rice or birdseed is to be thrown inside the building.~~
- ~~18. As appropriate, the lessee is responsible for procuring the services of properly trained security/law enforcement personnel.~~
- ~~19. The Asheboro Police Department and staff members in the Cultural and Recreation Services Departments shall have access to all areas of the facility at all times before, during, and after the event.~~
- ~~20. Lessee is responsible for cleaning the facility after the event. The facility must be restored to the condition it was in at the start of the lease period.~~
- ~~21. Failure to clean up as required shall result in loss of security deposit.~~
- ~~22. Cleaning supplies and trash can liners are available for use. Trash shall be disposed of in the appropriate location.~~
- ~~23. Items left after the rental period will result in loss of deposit and shall be deemed to be abandoned property subject to removal and disposition in the sole discretion of the City of Asheboro.~~
- ~~24. No decorations, posters, pictures, banners, or other such items shall be fastened to walls, windows, woodwork, doors, or curtains nor placed on stands in any area of the facility without approval.~~
- ~~25. No nails, tacks, staples, or screws of any kind may be applied to any part of the interior or exterior of the building.~~
- ~~26. Only approved tapes, such as blue painters tape and gaff tape may be applied to the stage floor. If an approved tape is applied to the stage floor it must be removed by the lessee immediately following the event.~~
- ~~27. No painting, wood cutting, or drilling shall be done on the stage or in the adjacent support areas.~~
- ~~28. All scenery elements are to be flame retardant. The use of open flame (candles, matches, lighters, etc.) is expressly prohibited.~~
- ~~29. At no time shall any of the lessee's scenery, stage furniture, props, costumes, or equipment block any exits, loading doors, storage rooms, sidewalks, or parking areas.~~
- ~~30. Any stage props that have power must meet current electrical codes and are subject to inspection and approval. If such props do not pass inspection, they are subject to immediate removal from the facility.~~
- ~~31. Lessee is encouraged to provide posters, banners, and promotional material for the "Coming Attractions" Display Board at the Theatre entrance. Any items to be displayed or distributed are subject to approval.~~

- ~~32. Lessee shall not change the location or use of the lobby displays, easels, or signs without prior approval.~~
- ~~33. The City of Asheboro Cultural Services Department reserves the right to sell any and all concessions during any event held at the facility.~~
- ~~34. Lessee warrants that all copyrighted material to be performed has been duly licensed or authorized by the copyright owners or their representatives and agrees to indemnify and hold the City of Asheboro harmless from any and all claims, losses, or expenses incurred with regard thereto. Lessee shall pay all of the City of Asheboro's costs and expenses, including reasonable attorney's fees, incurred in defense of or as a result of any claims respecting copyrights and related matters.~~
- ~~35. Lessee shall be responsible for payment of any and all taxes, permits, fees (including without limitation fees associated with intellectual property licensing rights), and other charges arising out of or connected with the use of the premises by lessee, and lessee shall save the City of Asheboro harmless from any and all obligations with respect to such taxes, permits, fees, and other charges.~~
- ~~36. If lessee desires to sell any items in or near the facility, including but not limited to concessions items, videos, CDs, DVDs, tapes, clothing, periodicals, etc., lessee must obtain written permission at least 48 hours prior to the event. The Recreation Services Superintendent may refuse with or without cause such permission.~~
- ~~37. If lessee is granted permission to sell concessions, lessee agrees to pay the City of Asheboro a 10% commission on any sales of any concession items sold. A joint inventory will be taken prior to and after the event.~~
- ~~38. If Lessee is approved to sell their own concessions, they shall provide their own workers to sell merchandise, concessions, and supplies, including, food, candy, drinks, cups, napkins, condiments, popcorn supplies, bags, ice, etc. Chewing gum will not be allowed for sale.~~
- ~~39. If lessee is granted permission to hold a catered event (food beyond normal concession products) the food must be served and consumed in areas designated by Cultural and Recreation Services Division staff members.~~
- ~~40. Lessee is responsible for providing the following:
 - ~~a. A designated, responsible adult to operate the Theatre sound system, if needed.~~
 - ~~b. A designated, responsible adult to operate the Theatrical light system, if needed.~~
 - ~~c. Ushers for the event.~~
 - ~~d. Ticket sellers /takers for the event.~~
 - ~~e. Money box and petty cash as needed.~~~~
- ~~41. All persons/groups renting the facility are responsible for knowing the location of all fire extinguishers and exits. A location map shall be provided.~~
- ~~42. Prior to each performance/event, an announcement must be made stating the location of restrooms and emergency exits.~~
- ~~43. Only city staff members may adjust thermostats.~~
- ~~44. The Recreation Services Superintendent reserves the right to cancel any event, at any time, based on rental agreement violations.~~
- ~~45. The following are available for an additional fee, please contact the City of Asheboro Cultural Services Department for additional information:
 - ~~a. Ticket Sellers/Takers (hourly charge).~~
 - ~~b. Ushers (hourly charge).~~
 - ~~c. Ticket design service (\$75.00 for up to 390, 1 side printed tickets)~~
 - ~~d. One poster for display case (\$25.00 per poster)~~~~

~~SECTION 14.3 SALE, POSSESSION, AND CONSUMPTION OF MALT BEVERAGES AND UNFORTIFIED WINES~~

~~The possession and consumption of malt beverages and unfortified wines during the course of approved events is currently authorized and regulated in the sole discretion of the~~

~~Recreation Services Superintendent by means of the Superintendent's attachment of conditions to the written approval of the event. Regulations authorizing the sale of malt beverages and unfortified wines on the premises of this facility are currently under review. Until final adoption of these regulations, the sales of malt beverages and unfortified wines on the premises of this facility are strictly prohibited.~~

SECTION 14.1 APPLICATION

The City of Asheboro Cultural Services Department (the "Department") is responsible for administering the Sunset Theatre facility in a manner that will provide the citizens of Asheboro with an opportunity for a high quality experience. Under the general supervision of the Recreation Services Director, designated city employees within the Department will operate the Sunset Theatre (the "Facility") in the best interest of the City of Asheboro (the "City").

Subject to the regulations prescribed herein, the Facility may be rented to individuals or other types of legal entities for events or activities that are consistent with the Department's mission. The decision as to whether to rent the Facility on any specific occasion is within the ultimate discretion of the Recreation Services Director (the "Director") as he or she evaluates the needs and priorities of the City. In order to use the Facility, an applicant must accurately complete in its entirety the rental form provided by the Department and receive written approval from the Director or the Director's designee.

SECTION 14.2 RULES AND REGULATIONS – EVENTS WITHOUT THE SALE OF UNFORTIFIED WINE AND/OR MALT BEVERAGES

(A) Unless authorization for the possession and consumption of unfortified wine and/or malt beverages is explicitly noted by the Director on the approved rental form, alcoholic beverages are prohibited in the Facility. When authorization for the possession and consumption of unfortified wine and/or malt beverages within the Facility is granted, such an authorization is subject to the following rules and regulations:

- (1) Unfortified wines and/or malt beverages are the only types of alcoholic beverages that the Director may allow in the Facility. All other types of alcoholic beverages are prohibited.
- (2) The sale of wine and/or malt beverages within the Facility is subject to the rules and regulations found in Section 14.3. The possession and consumption of unfortified wine and/or malt beverages within the Facility is subject to strict regulation by the Director.
- (3) The restrictions imposed by the City upon the possession and consumption of wine and/or malt beverages during an event held in the Facility will be specified in a distribution and consumption management plan attached to the approved rental agreement. The applicant requesting approval for the possession and consumption of wine and/or malt beverages must provide a proposed distribution and consumption management plan for review when the rental agreement is submitted to the Department.
- (4) In addition to complying with the approved distribution and consumption management plan, the renter and the renter's agents, contractors, and any other type of representatives must strictly comply with all applicable laws and rules, specifically including without limitation all statutes, ordinances, and regulations pertaining to alcoholic beverage control.

(B) Smoking and tobacco products are prohibited in the Facility.

(C) Sponsorship and fee related regulations:

- (1) The Director reserves the right to co-sponsor an event.

- (2) A \$100 security deposit must be paid at the time of reservation to secure an event date. The fee shall be submitted in the manner prescribed by the Department. Multiple dates will require multiple deposits.
 - (3) Violation of the rental agreement will result in the forfeiture of the security deposit to the City.
 - (4) If the user fees described in the Schedule of Deposits, Fees, and Charges Administered by the Cultural and Recreation Services Departments (the "Fee Schedule") are not paid at least 48 hours before the start of an event, the event will be cancelled.
 - (5) If advance tickets have been sold for a canceled event, the renter is responsible for either reimbursing ticket holders or honoring at a future event sponsored by the same renter the advance tickets that have already been sold. The renter is responsible for advertising the cancellation.
 - (6) Failure to pay the rental fee will result in the denial of access to the Facility.
 - (7) Unless otherwise noted in the Fee Schedule, the maximum daily rental period is one 8-hour period, including load-in and load-out. Unless specific provisions to the contrary are noted in the approved rental agreement, the latest closing time is Midnight. If an event exceeds the approved rental period, the security deposit shall be forfeited to the City.
- (D) Insurance and liability waivers:
- (1) When the Facility is rented for an event open to the public, or if a fee is charged for admission to the event, the renter shall pay for and maintain at all times during the individual or entity's use of the Facility comprehensive and general liability insurance coverage with primary limits of liability of no less than \$1,000,000 per occurrence for bodily injury and property damage. In order to prove the required insurance coverage is in effect, the renter shall furnish to the City a certificate of insurance in a form satisfactory to the City. The certificate of insurance must be in the Department's possession no later than 48 hours prior to the scheduled event. Failure to provide the required proof of insurance will result in the cancellation of the event. Furthermore, the applicant must agree to forever hold harmless and to fully indemnify the City and its personnel, agents, officials, and city council, in both their official and individual capacities, from any and all judgments, liens, claims, assessments, demands, attorney fees, actions, and causes of action of any sort arising out of any damage or injury sustained by any person or entity by reason of any negligent or willful act or omission by the applicant or its officers, employees, agents, or contractors in connection with the applicant's use of the Facility.
 - (2) If the event is closed to the general public, and no admission fee is charged, a liability waiver shall be required in lieu of liability insurance coverage.
- (E) The assignment of a rental agreement pertaining to the Facility, or the assignment of any right found within a Facility rental agreement, is strictly prohibited. Furthermore, the subletting of the Facility is strictly prohibited.
- (F) Facility operational issues:
- (1) The renter must designate with the Department a representative who will be responsible for all phases of the event and who will be on site the entire time the event is taking place.
 - (2) The maximum number of tickets sold for any one event shall be determined by the set-up of the Facility for the event and the total number of seats available under the chosen Facility set-up.
 - (3) By way of illustration and not limitation, the Department may deny to any potential renter the use of the Facility for the following reasons:

- (a) The proposed event may result in damage to the Facility.
 - (b) The proposed event is inconsistent with the Department's policies and practices.
 - (c) The Director forms an articulable opinion that an event creates an environment conducive to the occurrence within the Facility of one or more identifiable unlawful activities.
 - (d) The proposed event has the articulable and realistic potential to be detrimental to the character of the theatre as a multi-purpose community facility.
- (4) A City employee will be in attendance as the Department's representative to oversee and supervise all events held at the Facility. Such a staff member will be certified in first aid and cardio pulmonary resuscitation, will have the knowledge and ability to enforce the Facility's rules & regulations, and will have knowledge of the Facility's electrical, HVAC, and lighting systems. The Department's representative at the event has the authority to require anyone to leave the Facility at any time for violation of the Facility's rules and regulations and for engagement in any other form of unlawful or otherwise improper conduct.
- (5) Prior to using the Facility, either the renter or an authorized representative of the renter must participate in a walk-through inspection of the Facility. Any damaged, broken, or malfunctioning equipment or furnishings present in the Facility shall be recorded at this time. A second walk-through shall be made at the completion of the event, and any variance in the condition of the Facility and its contents between the times of the respective walk-throughs shall be recorded. The renter will be billed for the recorded damages. Payment of this bill for damages is due within five business days of the date of the invoice.
- (6) No rice or birdseed is to be thrown inside the Facility.
- (7) If generally accepted best practices for a venue such as the Sunset Theatre indicate that on-site security should be deployed for a proposed event, the renter is responsible for procuring and paying for the services of properly trained security/off-duty law enforcement personnel.
- (8) Department staff members, in addition to the Asheboro Police Department, shall have access to all areas of the Facility at all times before, during, and after the event.
- (9) The renter is responsible for cleaning the Facility after the event concludes. Before vacating the Facility's premises, the renter must ensure that the Facility is restored, with the exception of ordinary wear and tear, to the condition in which the Facility was found at the time of the pre-event walkthrough previously referenced in these rules and regulations.
- (10) If the renter fails to clean-up the facility as required by the rental agreement and these rules and regulations, the renter's security deposit will be forfeited to the City.
- (11) Cleaning supplies and trash can liners are available for use. Trash shall be deposited in the designated locations.
- (12) Items left in the Facility for disposition and/or disposal by the City will result in the forfeiture of the renter's security deposit to the City. Furthermore, any such items found in the Facility after the termination of the rental agreement will be deemed to be abandoned property that is subject to removal and disposition in the sole discretion of the City.

- (13) In the absence of explicit approval from Department personnel, no decorations, posters, pictures, banners, or other such items shall be fastened to the Facility's walls, windows, woodwork, doors, or curtains.
- (14) In the absence of explicit approval from Department personnel, no decorations, posters, pictures, banners, or other such items may be placed on stands in any area of the Facility.
- (15) No nails, tacks, staples, or screws of any kind may be applied to any part of the interior or exterior of the Facility.
- (16) Only approved tapes, such as blue painter's tape and gaff tape, may be applied to the stage floor. If an approved tape is applied to the stage floor, the tape must be completely removed by the renter prior to the termination of the rental agreement.
- (17) No painting, wood cutting, or drilling shall be done on the stage or in the adjacent support areas.
- (18) All scenery elements are to be flame retardant. The use of open flame (candles, matches, lighters, etc.) is expressly prohibited.
- (19) No scenery, stage furniture, props, costumes, equipment, or other types of items may block any exits, loading doors, storage rooms, sidewalks, or parking areas at any time.
- (20) Any stage props that have power must meet current electrical codes. Such props are subject to inspection and approval. Any props that do not pass inspection are subject to immediate removal from the Facility.
- (21) The renter is encouraged to provide posters, banners, and promotional material for the "Coming Attractions" display board at the theatre's entrance. Any items to be displayed on the "Coming Attractions" board are subject to approval by the Department.
- (22) The renter shall not change the location or use of the lobby displays, easels, or signs without prior approval.
- (G) The renter shall ensure, and does warrant by executing the rental agreement, that all copyrighted material to be performed within the Facility has been duly licensed or consent has been obtained from the copyright owners or their representatives. Furthermore, the renter agrees to indemnify and hold the City harmless from any and all claims, losses, or expenses incurred as a result of intellectual property law compliance issues. By way of illustration and not limitation, the renter shall pay all of the City's costs and expenses, including reasonable attorney's fees, incurred in defense of or as a result of any claims respecting copyrights, trademarks, and related intellectual property matters.
- (H) The renter shall be responsible for the payment of any and all taxes, permits, fees (including without limitation fees associated with intellectual property licensing rights), and other charges arising out of or connected with the renter's use of the Facility. Furthermore, the renter shall, and does agree by executing the rental agreement, to save and hold the City harmless from any and all obligations with respect to such taxes, permits, fees, and other charges.
- (I) Concessions:
 - (1) The Department reserves the right to sell any and all concessions during events held at the Facility.
 - (2) If the renter desires to sell in the Facility or on its associated premises any concession items, including without limitation CDs, DVDs, clothing, periodicals, etc., the renter must obtain written permission from the Director

at least 48 hours prior to the event. The Director may refuse, with or without cause, to grant such permission.

- (3) If permission is granted by the Department for the renter to sell concessions, the renter must pay to the City a 10% commission on any and all concession items sold. A joint inventory will be taken prior to and after the event.
- (4) If permission is granted for the renter to sell its own concessions, the renter shall provide its own workers to sell merchandise, concessions, and supplies, including food, candy, drinks, cups, napkins, condiments, popcorn supplies, bags, ice, etc. Chewing gum is not allowed for sale.
- (J) If permission is granted by the Department for the renter to hold a catered event (food beyond normal concession products), the food must be served and consumed in areas designated by the Department.
- (K) The renter is responsible for providing the following at the renter's own expense:
 - (1) If the Facility's sound system is needed for an event, a responsible adult must be designated to operate the sound system.
 - (2) If the Facility's light system is needed for an event, a responsible adult must be designated to operate the light system.
 - (3) If needed, ushers for the event.
 - (4) If needed, ticket sellers /takers for the event.
 - (5) As needed, a money box and petty cash.
- (L) Fire extinguishers and exits:
 - (1) All renters and any persons/groups acting for or on behalf of a renter are responsible for knowing the location of all fire extinguishers and exits. A location map will be provided by the Department.
 - (2) Prior to each event or each performance, the renter or an individual acting on behalf of the renter must make an announcement stating the location of restrooms and emergency exits.
- (M) Only City employees may adjust the Facility's thermostats.
- (N) The City reserves the right to cancel any event, at any time, on the basis of rental agreement violations.
- (O) For an additional fee, the following items/services are available from the Department:
 - (1) Ticket Sellers/Takers (hourly charge)
 - (2) Ushers (hourly charge)
 - (3) Ticket Design Service (\$75.00 for up to 390, tickets printed on one side)
 - (4) One Poster for Display Case (\$25.00 per poster)

SECTION 14.3 RULES AND REGULATIONS – EVENTS WITH THE SALE OF UNFORTIFIED WINE AND/OR MALT BEVERAGES

- (A) Unless authorization for the sale, possession, and consumption of unfortified wine and/or malt beverages is explicitly noted by the Director on the approved rental form, alcoholic beverages are prohibited in the Facility. When authorization for the sale,

possession, and consumption of unfortified wine and/or malt beverages within the Facility is granted, such an authorization is subject to the following rules and regulations:

- (1) Unfortified wines and/or malt beverages are the only types of alcoholic beverages that may be sold, possessed, and consumed in the Facility. All other types of alcoholic beverages are prohibited.
- (2) The sale of wine and/or malt beverages within the Facility can occur under the following conditions:
 - (a) The renter responsible for the sale of wine and/or malt beverages must be a nonprofit organization that has obtained a Special One-Time permit from the North Carolina Alcoholic Beverage Control Commission. No other type of renter is eligible to hold an event that includes the sale of wine and/or malt beverages in the Facility.
 - (b) The approved Special One-Time permit from the North Carolina Alcoholic Beverage Control Commission shall also function as the sale plan referenced by Section 130.03(E)(3) in the Code of Asheboro.
 - (c) The renter must agree to rent the Facility as the sole and exclusive renter of the premises for the duration of the one-day or multi-day event listed on the Department-approved rental form for events involving the sale of wine and/or malt beverages. Subject to inspections by City staff and officers of the Asheboro Police Department to ensure compliance with the terms of the rental agreement and compliance with all applicable laws and regulations, the nonprofit organization as the approved renter will be exclusively in charge of and responsible for the event throughout the term of the approved rental agreement.
 - (d) Utilizing a diagram available from the City showing the Facility premises, specifically including all entrances and exits, the renter must identify where the sale and/or consumption of beverages will take place.
 - (e) The renter must assume full responsibility for all operational aspects of the event, specifically including without limitation staffing and supplies for any and all concession operations conducted during the event. City-owned concession equipment and personnel will be unavailable during the event.
 - (f) Strict compliance with all applicable laws and rules, specifically including without limitation all statutes, ordinances, and regulations pertaining to alcoholic beverage control, is required.
- (B) Smoking and tobacco products are prohibited in the Facility.
- (C) Fee related regulations:
 - (1) The security deposit listed in the Fee Schedule for this type of event must be paid at the time the rental agreement is submitted for approval. The fee shall be submitted in the manner prescribed by the Department.
 - (2) Violation of the rental agreement will result in the forfeiture of the security deposit to the City.
 - (3) If the rental fee listed in the Fee Schedule is not paid at least 48 hours before the start of an event, the event will be cancelled. If advance tickets have been sold for a canceled event, the renter is responsible for either reimbursing ticket holders or honoring at a future event sponsored by the same renter the advance tickets that have already been sold. The renter is responsible for advertising the cancellation.
 - (4) Failure to pay the rental fee will result in the denial of access to the Facility.

(5) Unless specific provisions to the contrary are noted in the approved rental agreement, the latest closing time is Midnight. If an event exceeds the approved rental period, the security deposit shall be forfeited to the City.

(D) Insurance and hold harmless provisions:

(1) The renter shall pay for and maintain, at all times during the nonprofit organization's use of the Facility, comprehensive and general liability insurance coverage with primary limits of liability of no less than \$1,000,000 per occurrence for bodily injury and property damage. Furthermore, the renter shall furnish to the City a certificate of insurance in a form satisfactory to the City. The certificate of insurance must be in the Department's possession no later than 48 hours prior to the scheduled event. Failure to provide the required proof of insurance will result in the cancellation of the event.

(2) The renter must agree to forever hold harmless and to fully indemnify the City and its personnel, agents, officials, and city council, in both their official and individual capacities, from any and all judgments, liens, claims, assessments, demands, attorney fees, actions, and causes of action of any sort arising out of any damage or injury sustained by any person or entity by reason of any negligent or willful act or omission by the renter or its officers, employees, agents, or contractors in connection with the renter's use of the Facility.

(E) The assignment of a rental agreement pertaining to the Facility, or the assignment of any right found within a Facility rental agreement, is strictly prohibited. Furthermore, the subletting of the Facility is strictly prohibited.

(F) Facility operational issues:

(1) The renter must designate with the Department a representative who will be responsible for all phases of the event and who will be on site the entire time the event is taking place.

(2) The maximum number of tickets sold for any one event shall be determined by the set-up of the Facility for the event and the total number of seats available under the chosen Facility set-up.

(3) By way of illustration and not limitation, the Department may deny to any potential renter the use of the Facility for the following reasons:

(a) The proposed event may result in damage to the Facility.

(b) The proposed event is inconsistent with the Department's policies and practices.

(c) The Director forms an articulable opinion that an event creates an environment conducive to the occurrence within the Facility of one or more identifiable unlawful activities.

(d) The proposed event has the articulable and realistic potential to be detrimental to the character of the theatre as a multi-purpose community facility.

(4) At least 48 hours prior to the commencement of an event, the renter's designated representative must meet with a City employee who will provide to the renter's representative operational instruction pertaining to the Facility's electrical, HVAC, and lighting systems.

(5) Prior to using the Facility, an authorized representative of the renter must participate in a walk-through inspection of the Facility. Any damaged, broken, or malfunctioning equipment or furnishings present in the Facility shall be recorded at this time. A second walk-through shall be made at the completion of the event, and any variance in the condition of the Facility and its contents

- between the times of the respective walk-throughs shall be recorded. The renter will be billed for the recorded damages. Payment of this bill for damages is due within five business days of the date of the invoice.
- (6) If generally accepted best practices for a venue such as the Sunset Theatre indicate that on-site security should be deployed for a proposed event, the renter is responsible for procuring and paying for the services of properly trained security/off-duty law enforcement personnel.
 - (7) No rice or birdseed is to be thrown inside the Facility.
 - (8) No chewing gum is to be offered for sale.
 - (9) The renter is responsible for maintaining the cleanliness and sanitary conditions of the Facility during the event. Before vacating the Facility's premises, the renter must ensure that the Facility is restored, with the exception of ordinary wear and tear, to the condition in which the Facility was found at the time of the pre-event walkthrough previously referenced in these rules and regulations.
 - (10) If the renter fails to clean-up the facility as required by the rental agreement and these rules and regulations, the renter's security deposit will be forfeited to the City.
 - (11) Cleaning supplies and trash can liners are available for use. Trash shall be deposited in the designated locations.
 - (12) Items left in the Facility for disposition and/or disposal by the City will result in the forfeiture of the renter's security deposit to the City. Furthermore, any such items found in the Facility after the termination of the rental agreement shall be deemed to be abandoned property that is subject to removal and disposition in the sole discretion of the City.
 - (13) In the absence of explicit approval from Department personnel, no decorations, posters, pictures, banners, or other such items shall be fastened to the Facility's walls, windows, woodwork, doors, or curtains.
 - (14) In the absence of explicit approval from Department personnel, no decorations, posters, pictures, banners, or other such items may be placed on stands in any area of the Facility.
 - (15) No nails, tacks, staples, or screws of any kind may be applied to any part of the interior or exterior of the Facility.
 - (16) Only approved tapes, such as blue painter's tape and gaff tape, may be applied to the stage floor. If an approved tape is applied to the stage floor, the tape must be completely removed by the renter prior to the termination of the rental agreement.
 - (17) No painting, wood cutting, or drilling shall be done on the stage or in the adjacent support areas.
 - (18) All scenery elements are to be flame retardant. The use of open flame (candles, matches, lighters, etc.) is expressly prohibited.
 - (19) No scenery, stage furniture, props, costumes, equipment, or other types of items may block any exits, loading doors, storage rooms, sidewalks, or parking areas at any time.
 - (20) Any stage props that have power must meet current electrical codes. Such props are subject to inspection and approval. Any props that do not pass inspection are subject to immediate removal from the Facility.
 - (21) The renter is encouraged to provide posters, banners, and promotional material for the "Coming Attractions" display board at the theatre's entrance.

Any items to be displayed on the "Coming Attractions" board are subject to approval by the Department.

- (22) The renter shall not change the location or use of the lobby displays, easels, or signs without prior approval.
- (G) The renter shall ensure, and does warrant by executing the rental agreement, that all copyrighted material to be performed within the Facility has been duly licensed or consent has been obtained from the copyright owners or their representatives. Furthermore, the renter agrees to indemnify and hold the City of Asheboro harmless from any and all claims, losses, or expenses incurred as a result of intellectual property law compliance issues. By way of illustration and not limitation, the renter shall pay all of the City's costs and expenses, including reasonable attorney's fees, incurred in defense of or as a result of any claims respecting copyrights, trademarks, and related intellectual property matters.
- (H) The renter shall be responsible for the payment of any and all taxes, permits, fees (including without limitation alcoholic beverage control permit fees and fees associated with intellectual property licensing rights), and other charges arising out of or connected with the renter's use of the Facility. Furthermore, the renter shall, and does agree by executing the rental agreement, to save and hold the City harmless from any and all obligations with respect to such taxes, permits, fees, and other charges.
- (I) If permission is granted by the Department for the renter to hold a catered event (food beyond normal concession products), the food must be served and consumed in areas approved by the Department during the rental agreement review and approval process.
- (J) The renter is responsible for providing the following at the renter's own expense:
- (1) If the Facility's sound system is needed for an event, a responsible adult must be designated to operate the sound system.
 - (2) If the Facility's light system is needed for an event, a responsible adult must be designated to operate the light system.
 - (3) If needed, ushers for the event.
 - (4) If needed, ticket sellers /takers for the event.
 - (5) As needed, a money box and petty cash.
- (K) Fire extinguishers and exits:
- (1) All persons/groups acting for or on behalf of a renter are responsible for knowing the location of all fire extinguishers and exits. A location map will be provided by the Department.
 - (2) Prior to each event or each performance, an individual acting on behalf of the renter must make an announcement stating the location of restrooms and emergency exits.
- (L) The City reserves the right to cancel any event, at any time, on the basis of rental agreement violations.
- (M) For the listed fees, the following items/services are available:
- (1) Ticket Design Service (\$75.00 for up to 390, tickets printed on one side)
 - (2) One Poster for Display Case (\$25.00 per poster)

Due to this proposal differing from previous discussions about the city obtaining an ABC permit in the city's name, discussions occurred about the best option(s) to pursue. After a substantive discussion of this issue, Council Member Bell moved, and Council Member Burks seconded the motion, to table the discussion of this specific issue indefinitely. Council Members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion.

16. Finance Items: [Listed as Agenda Item 15]

- (a) **Consideration of a resolution authorizing and agreeing to receive distributions from the Peggy Phillips Tufts Memorial Endowment created for the benefit of the City of Asheboro with the restriction that all distributions must be utilized for the upkeep, maintenance, and care of the Asheboro City Cemetery.**

Ms. Reaves presented and recommended adoption, by reference, of a resolution authorizing and agreeing to receive distributions from the Peggy Phillips Tufts Memorial Endowment that was created for the benefit of the City of Asheboro.

Upon motion by Mr. Bell and seconded by Mr. Swiers, the council voted unanimously to adopt the following resolution by reference. Council Members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion.

RESOLUTION NUMBER _____ **16 RES 4-19**

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

BENEFICIARY RESOLUTION

BE IT RESOLVED by the City Council of the City of Asheboro that the City of Asheboro does hereby authorize and agree to receive distributions from the **Peggy Phillips Tufts Memorial Endowment** ("Endowment"), a designated endowment of the North Carolina Community Foundation, Inc. ("Foundation") created for the benefit of the City of Asheboro with the restriction that all distributions must be utilized for the "upkeep, maintenance and care of the Asheboro City Cemetery." The Endowment was established pursuant to the terms of the *Peggy June Phillips Tufts Revocable Trust, dated April 12, 2011, as amended, Heath Dedmond, Trustee*. Peggy Phillips Tufts who made this generous gift possible was residing in Lee County at the time of her passing on August 2, 2017. The Endowment is to be owned and managed by the Foundation and held by the Foundation as a component fund thereof; and

BE IT FURTHER RESOLVED by the City Council of the City of Asheboro that the City of Asheboro hereby authorizes the Foundation and its officers and agents to accept contributions to the Endowment on its behalf, and further authorizes its own officers and agents, including its Finance Director, to execute and deliver to the Foundation any instruments or documents necessary or useful to effect the authorization, establishment, use and continued maintenance of said Endowment and further agrees to use the distributions from the Endowment for the purpose set forth in the above paragraph.

ADOPTED on April 4, 2019, by the governing body of the City of Asheboro at a meeting duly called and held, at which a quorum was present and acting throughout.

Signed this the 4th day of April, 2019.

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

ATTEST:

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

(b) Consideration of an ordinance to amend the General Fund.

Ms. Reaves presented and recommended adoption, by reference, of an ordinance to amend the General Fund.

Upon motion by Mr. Bell and seconded by Mr. Swiers, the council voted unanimously to adopt, subject to a modification of the ordinance to reflect the current fiscal year, the following ordinance by reference. Council Members Bell, Burks, Moffitt, Redding, Snuggs, and Swiers voted in favor of the motion.

11 ORD 4-19

ORDINANCE TO AMEND THE GENERAL FUND FY 2018-2019

WHEREAS, The City of Asheboro received an unexpected distribution from the Asheboro ABC board, and;

WHEREAS, the Airport needs new access gate controllers and keypad / proximity readers, a new 2.5 Ton Heat pump and to replace some hangar doors, and;

WHEREAS, The City Council of the City of Asheboro desires to amend the budget as required by law to adjust for changes in revenue and 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 Revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>
10-320-0000	ABC Board Distribution	25,000

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

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>
10-650-1500	Maint. & Repair Buildings	25,000

Adopted this 4th day of April, 2019.

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

ATTEST:

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

17. Presentation of a bid summary and a request for an award of contract to replace the HVAC system at the police department. [Listed as Agenda Item 16]

City Engineer Michael Leonard, PE reported that three (3) bids were received on April 1, 2019, at 2:00 p.m. for the replacement of the HVAC system at the Asheboro Police

