

**REGULAR MEETING
ASHEBORO CITY COUNCIL
THURSDAY, DECEMBER 9, 2004
7:00 PM**

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

David Jarrell) – Mayor Presiding

Talmadge Baker)

Linda Carter)

Keith Crisco)

Nancy Hunter) – Council Members Present

John McGlohon)

Archie Priest)

David Smith)

John N. Ogburn, City Manager
Carol J. Cole, CMC, City Clerk
Dumont Bunker, P. E., City Engineer
Debbie Juberg, Finance Director
Reynolds Neely, Planning Director
Lynn Priest, CD Director
Wendell Holland, Zoning Administrator
John Evans, Code Enforcement Officer
Trevor Nuttall, Planner
Gary Mason, Police Chief
Allen Oliver, Parks & Recreation Director
Foster Hughes, Asst. Parks & Recreation Director
Holly Hartman, Legal Assistant
Jeff Sugg, City Attorney

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

1. Pledge of Allegiance and Invocation.

Mayor Jarrell asked everyone to stand and repeat the Pledge of Allegiance. Reverend Johnny Henderson, pastor of Cross Road Baptist Church, gave the invocation.

2. Appearance and Recognition of Guests and Citizens.

Mayor Jarrell welcomed everyone in attendance.

3. Recognition of Donation From Asheboro and Randolph Rotary Clubs for Shelter and Stage at Bicentennial Park.

Mary Joan Pugh, president of the Asheboro Rotary Club, and Steve Rumbley, president of the Randolph Rotary Club, presented symbolic checks in the amounts of \$25,000 and \$15,000, respectively, to the city council. The Rotary Clubs' donations are for the shelter and stage at the Bicentennial Park. Mayor Jarrell thanked Mrs. Pugh and Mr. Rumbley for their generous donations.

4. Announcement of Grant Award Notification From Golden LEAF in the Amount of \$65,000 for the Downtown Farmers Market.

Mayor Jarrell announced that the Golden LEAF Board of Directors has awarded the City of Asheboro a grant in the amount of \$65,000 for the Downtown Farmers Market, which will be located at the corner of Hill and Church Streets.

5. Request From Angie Barr for City Funding of Fisher Circle Water Line to be Refunded by Property Owners.

Mrs. Angie Barr reported that the NCDENR has run a water line within 560 feet of her house on Fisher Circle, which is outside of the city limits. The residents of Fisher Circle have groundwater contamination and wish to hook on to the city's water system. Eight (8) residences have expressed an interest in hooking on to the city's system, but only four (4) residences are willing

to participate at this time. The cost would be \$5,700 per residence if only four (4) participated. Mrs. Barr requested the city to allow the residents to pay one-eighth (1/8) of the total cost when the residence hooks on to the city's water system.

After some discussion, Mr. Smith moved and Mr. McGlohon seconded the motion to authorize the city manager, city attorney and city engineer to draft the necessary paperwork to allow this request, which will be considered at the January council meeting.

6. Consent Agenda.

Mayor Jarrell asked council if it wanted to consider any of the consent agenda items separately or to vote on all of the items collectively.

Mr. Sugg requested that Item No. 2 (approval of Findings of Fact for SUP-04-05) be deferred until the January meeting,

Upon motion by Mr. Baker and seconded by Mrs. Carter, council voted unanimously to approve the following consent agenda items and to defer Item No. 2 as requested by Mr. Sugg.

(1) Approval of Minutes of Previous Meeting

The minutes of the November 4, 2004 council meeting were approved as corrected by the city clerk.

(2) Resolution Approving a Right-of-Way Agreement With the NC Department of Transportation for Fairview Farm Road (State Road #2831) Adjacent to City-Owned Property at Panther Creek Sewer Pump Station #11

51 RES 12-04

**RESOLUTION APPROVING A RIGHT-OF-WAY AGREEMENT WITH THE
NC DEPARTMENT OF TRANSPORTATION FOR FAIRVIEW FARM ROAD
(STATE ROAD #2831) ADJACENT TO CITY OWNED PROPERTY
AT PANTHER CREEK SEWER PUMP STATION #11**

WHEREAS, the North Carolina Department of Transportation has prepared a Right-of-Way Agreement and requested that the City of Asheboro approve the agreement to provide a right-of-way 60 feet wide along Fairview Farm Road (State Road #2831) adjacent to City owned property located at Panther Creek Sewer Pump Station #11, and;

WHEREAS, the City of Asheboro agrees to approve the right-of-way agreement so that the NC Department of Transportation can make necessary paving improvements to Fairview Farm Road (State Road #2831).

NOW, THEREFORE, BE IT RESOLVED by the Asheboro City Council that the Right-of-Way Agreement is hereby formally approved by the Asheboro City Council and that the Mayor and City Clerk are hereby empowered to sign and execute the Agreement with the NC Department of Transportation.

Adopted by the Asheboro City Council this 9th day of December, 2004.

By S/ David H. Jarrell
Mayor

ATTEST:

S/ Carol J. Cole
City Clerk

- (3) Resolution Approving a Deed of Easement for Highway Right-of-Way to be Granted by the City of Asheboro to the NC Department of Transportation for the Portion of Carl Drive Adjacent to Property Owned by Klaussner Furniture Industries, Inc. and Norfolk Southern Railway Company

52 RES 12-04

RESOLUTION APPROVING A DEED OF EASEMENT FOR HIGHWAY RIGHT-OF-WAY TO BE GRANTED BY THE CITY OF ASHEBORO TO THE NC DEPARTMENT OF TRANSPORTATION FOR THE PORTION OF CARL DRIVE ADJACENT TO PROPERTY OWNED BY KLAUSSNER FURNITURE INDUSTRIES, INC. AND NORFOLK SOUTHERN RAILWAY COMPANY

WHEREAS, the City of Asheboro acquired real property on August 1, 1997 and September 21, 2000 for use as right-of-way to extend Carl Drive to Energizer Battery Company, said real property being described in Deed Book 1521, Page 61, Book 1525, Page 163 and Book 1679, Page 593, Randolph County Registry, and;

WHEREAS, the NC Department of Transportation (NCDOT) has prepared a Deed of Easement for Highway Right-of-Way to be granted by the City of Asheboro to the NCDOT to add the said extension of Carl Drive, located adjacent to property owned by Klaussner Furniture Industries, Inc. and Norfolk Southern Railway Company, to the NCDOT Secondary Road System, and;

WHEREAS, the City Council desires that the NCDOT add the said extension of Carl Drive to the NCDOT Secondary Road System.

NOW, THEREFORE, BE IT RESOLVED by the Asheboro City Council that the above described Deed of Easement for Highway Right-of-Way is hereby formally approved by the Asheboro City Council and that the Mayor and City Clerk are hereby empowered to sign and execute the Deed of Easement for Highway Right-of-Way.

Adopted by the Asheboro City Council this 9th day of December, 2004.

By S/ David H. Jarrell
Mayor

ATTEST:

S/ Carol J. Cole
City Clerk

- (4) Change Order #1 on the Sewer Pump Stations #2 and #6 Improvements Project (Dellinger, Inc.) Increasing the Contract Amount by \$24,897.30 to \$577,322.30 for Additional Work Required to Add Motor Space Heaters, Wet Well Concrete Repair and Rail Supports for a Future Grinder at Pump Station #2
- (5) Resolution Petitioning the NC Department of Transportation to Maintain Walnut Ridge Road Between Forest Park Drive (SR 2150) and the Asheboro City Limits

53 RES 12-04

RESOLUTION PETITIONING THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION TO MAINTAIN WALNUT RIDGE ROAD BETWEEN FOREST PARK DRIVE (SR 2150) AND THE ASHEBORO CITY LIMITS BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

WHEREAS, the NC Department of Transportation (NCDOT) is proposing to add a portion of Walnut Ridge Road and Boundary Drive to the NCDOT Secondary Road System, said portion being located between Forest Park Drive (SR 2150) and Old Castle Drive in the Heathwood Acres Subdivision, and;

WHEREAS, the City of Asheboro currently maintains a portion of Walnut Ridge Road approximately 300 feet long between Forest Park Drive (SR 2150) and the Asheboro City Limits, and;

WHEREAS, it would be desirable for the NCDOT to maintain all of Walnut Ridge Road, including the portion currently maintained by the City of Asheboro.

THEREFORE, BE IT RESOLVED by the Asheboro City Council, that the City of Asheboro hereby petitions the NC Department of Transportation to maintain Walnut Ridge Road between Forest Park Drive (SR 2150) and the Asheboro City Limits, and to add said portion of Walnut Ridge Road to the NCDOT Road System with the understanding that said portion of Walnut Ridge Road will no longer be maintained by the City of Asheboro.

Adopted by the Asheboro City Council this 9th day of December, 2004.

By S/ David H. Jarrell
Mayor

ATTEST:

S/ Carol J. Cole
City Clerk

7. Public Hearings on Zoning Matters.

Rezoning:

Mayor Jarrell opened the public hearing on the following request:

- (a) From R-40 Residential to I-2 Industrial (RZ-04-27): The property of Randolph Bank and Trust located on the southern side of NC 49 South immediately southwest of Klausner Distribution Center, totaling approximately 12 acres, further identified by Randolph County Parcel ID Number 7740511663. JAECO General Contracting is the applicant.

Mr. Neely described the aforementioned property and stated that NC 49 South is a major thoroughfare. The property is not located within the corporate limits but is in the ETJ. City utilities are not requested. Surrounding land uses include industrial, low-density residential, and undeveloped. The property is currently undeveloped and just east of an identified "Employment Center" (LDP's Proposed Land Use Map). This area is identified by the LDP's "Growth Strategy Map" as "Adjacent Developed." As such, the area should receive careful consideration for annexation and full provision of urban services over the next one to five years. According to the LDP's "Physical Development Limitations Map," a significant portion of the property is comprised of slopes greater than 20%.

Mr. Neely reported that the planning board recommended approval, as the request complies with the goals, maps and policies of the LDP. Although the environmental goals seeking to discourage intensive development of very steep slopes do not directly support this rezoning request, the economic and growth management goals are supportive.

Mrs. Kay Wells, a representative from RE/MAX Realty, was available to answer questions.

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

Upon motion by Mr. Baker and seconded by Mr. Crisco, council unanimously ordained to accept the recommendation from the planning board for approval.

Mayor Jarrell opened the public hearing on the following request:

- (b) From R-7.5 to CU-OA-6 for a Health Practitioner's Office (Dental) (RZ-CUP-0428): The property of MERCE, Inc. located on the south side of Brewer Street, totaling approximately 17,400 sq. ft., further identified as Randolph County Parcel ID Number 7751949866.

Mr. Neely described the aforementioned property and stated that Brewer Street is a local street. The property is in the city limits and all services are available. The area is characterized by a mix of land uses. The property to the east was rezoned in 1999 to CU-OA-6 for construction of a Red Cross office. That development never occurred. In September, the aforementioned property and subject property were combined to total 2.26 acres. This rezoning, if approved, will allow the property to be used for a Health Practitioner's office (dental). The property is identified by the LDP as Urban Residential, which recommends a "pedestrian friendly atmosphere" in close proximity to commercial areas. The LDP also encourages building placement close to the street.

The planning board recommended approval of the rezoning, as the request complies with goals, policies and maps of the LDP.

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

Upon motion by Mr. Smith and seconded by Mrs. Hunter, council unanimously ordained to accept the recommendation from the planning board for approval of the rezoning.

Mayor Jarrell opened the public hearing on the Conditional Use Permit to allow a Health Practitioner's office (dental) on the subject property.

Mr. Neely was sworn in and presented the site plan and building elevations and stated that they are in compliance with the zoning ordinance. He stated some suggested conditions for council's consideration if it finds in favor of the CUP.

Dr. Jack Atwater, representing the applicant, was sworn in and addressed the four standard tests as follows: (1) The use will not endanger the public health or safety, as the proposed use is to improve the dental health of the public. (2) The use meets all required conditions and specifications of the Asheboro Zoning Ordinance, as per the site plan and building elevations submitted. The use will also meet state regulations. (3) The use will not injure the value of adjoining or abutting property, and the use is a public necessity. Doctor Atwater feels that the property value will be enhanced by the proposed dental office, and dental care is greatly needed for low-income citizens. (4) The use is in harmony with the area, as it is in compliance with the city's Land Development Plan.

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

Mayor Jarrell asked Doctor Atwater if he agreed to the conditions that were stated by Mr. Neely. Doctor Atwater accepted the conditions.

Upon motion by Mr. McGlohon and seconded by Mr. Priest, council voted unanimously to approve the Conditional Use Permit with the conditions as stated by Mr. Neely, based on the four standard tests being met per testimony by Doctor Atwater.

The conditions will be detailed in the city attorney's Findings of Fact, Conclusions of Law, and Order Granting the Conditional Use Permit that will be submitted for approval by council at its January meeting.

Mayor Jarrell opened the public hearing on the following request:

- (c) Amend Asheboro Zoning Ordinance: Amend Articles 200, 300A and add Article 200A to implement the 2020 Land Development Plan. Amend Article 500 (Signs) to improve clarity, enhance administration, and alter dimensional allowances that will further enhance the visual attractiveness of the City of Asheboro while providing adequate allowance for various types of advertising.

Planner Trevor Nuttall distributed copies of "Article 500: Signs" of the Asheboro Zoning Ordinance and stated that these handouts are different than those presented at last month's meeting. The planning board recommended approval of the proposed amendments, as they are supported by the goals and policies of the LDP. However, the board believes that council's consideration of the following would improve the amendments: (1) Requiring non-conforming signs to come into compliance upon change of occupancies would speed implementation of this amendment and prevent the prolonged continuation of existing non-conformities. (2) Limiting wall signs to five (5) per wall would prevent the use of excess signs. (3) Note #9.f has the potential to negatively affect the existing conditions along Dixie Drive by permitting additional large signs.

Mr. Phil Skeen stated that as the ordinance is written now, along Dixie Drive; 71 of 154 properties will become eligible for free-standing signs. This would be approximately 50 more signs if the businesses opted to erect signs. Mr. Skeen feels that the city should address what we have now and "clean it up."

Mr. Neely presented new handouts of the amendments to Articles 200 and 300A and the addition of Article 200A. The planning board recommended approval of these amendments, as they are supported by the goals and policies of the LDP. A recommendation on sidewalk requirements was deferred because an official "Sidewalk Policy and Design Standards" has not been developed yet.

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

Mr. Crisco moved and Mr. Priest seconded that council accept the planning board's recommendation for approval of the sign amendments except delete #9 (f) 1. c. of Article 500 Notes. After discussion, Mayor Jarrell called for the vote. All council members chose not to vote in favor of the motion; therefore, the motion died.

Mrs. Carter asked Mr. George Gusler, executive vice-president of the Chamber of Commerce, for his opinion of the proposed sign amendments concerning Dixie Drive and Fayetteville Street. Mr. Gusler stated that more signs in these areas would not be a bad thing since these areas are commercial. The city is moving towards being a tourist town and signs are needed.

Mr. Walker Moffitt, a member of the planning board and board of adjustment, stated that he supports Mr. Gusler's statement.

Upon motion by Mr. Smith and seconded by Mr. Crisco, council voted unanimously to approve the proposed amendments to "Article 500: Signs," which include additional advertising allowances along Dixie Drive and Fayetteville Streets. The existing conditions in these areas such as wider rights-of-way, more traffic, etc. justify the additional allowances for advertising.

Upon motion by Mr. Baker and seconded by Mrs. Carter, council voted unanimously to accept the recommendation from the planning board for approval of the amendments to Articles 200 and 300A, the addition of Article 200A to the Asheboro Zoning Ordinance, and deferral of amending sections pertaining to sidewalk requirements.

Special Use Permits

Mayor Jarrell opened the public hearing on the following request:

- (a) SUP for an Allowable Floor Area Ratio of up to 22% (SUP-04-06): Madison Heights, LLC/East side of North Fayetteville Street

Mayor Jarrell announced that the applicant has requested that this item be deferred. He called for a motion to continue the public hearing and defer action until the January meeting since the request has already been advertised.

Upon motion by Mr. McGlohon and seconded by Mr. Baker, council voted unanimously to continue the public hearing and defer action until the January meeting.

Mayor Jarrell opened the public hearing on the following request:

- (b) SUP for Expansion of a Church in a Residential Zoning District (SUP-04-07): Dexter L. Trogdon, Sr./418 Loach Street

Mayor Jarrell announced that the applicant has also requested that this item be deferred. He called for a motion to continue the public hearing and defer action until the January meeting since the request has already been advertised.

Upon motion by Mr. McGlohon and seconded by Mr. Baker, council voted unanimously to continue the public hearing and defer action until the January meeting.

Subdivision

- (a) Sketch Design Approval for Westover Estates (SUB-04-07)

Mr. Neely presented the sketch design for Westover Estates, which is located on the north side of Westmont Drive. This subdivision contains 22.7 acres and consists of 13 lots, with the average lot size being 1.75 acres.

The planning board recommended approval of the sketch design, subject to the comments from the planning, engineering, and fire departments. (The developer was present to answer questions.)

Mrs. Jane Owen Parker, a resident of Westmont Drive, stated that there are no sidewalks nor curbing on Westmont Drive, and the street is narrow. Small children live in the neighborhood and people walk and run in the neighborhood. Mrs. Parker is concerned that the traffic on this road will triple when the subdivision is developed. She wants the neighborhood protected and is requesting that a cul-de-sac be required.

Upon motion by Mr. McGlohon and seconded by Mrs. Carter, council voted unanimously to accept the recommendation from the planning board for approval of the sketch design.

8. Consideration of a Proposed Closing of an Abandoned Street Right-of-Way at the Loach Street/Cross Street Intersection.

Mayor Jarrell moved this item (#15) up on the agenda for council's consideration.

Mr. Bunker reported that a resolution of the city's intent to close the abandoned portion of Loach Street was advertised in *The Courier-Tribune* once a week for four (4) successive weeks as required by law.

Mayor Jarrell opened the public hearing on said closing.

Mr. Walker Moffitt had issues that pertained to land use regulations but not with the proposed street closing.

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

Upon motion by Mr. Smith and seconded by Mrs. Carter, council voted unanimously to approve the following Order to Close a Certain Abandoned Portion of Loach Street:

CITY OF ASHEBORO STREET CLOSURE ORDINANCE NO. 36 ORD 12-04

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

**IN RE THE CLOSING OF A
CERTAIN ABANDONED
PORTION OF LOACH STREET**

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ORDER

WHEREAS, pursuant to the provisions of Section 160A-299 of the North Carolina General Statutes, the City Council of the City of Asheboro adopted on the 7th day of October, 2004, at its regularly scheduled October meeting, a resolution (45 RES 10-04) declaring the intent of the City Council to permanently close a certain abandoned portion of Loach Street that is located in the vicinity of the intersection of Loach Street and Cross Street; and

WHEREAS, Resolution Number 45 RES 10-04 properly called for a public hearing to be held at 7:00 o'clock p.m. on the 9th day of December, 2004, in the Council Chamber of the City of Asheboro Municipal Building located at 146 North Church Street in Asheboro, on the question of whether or not such closing would be detrimental to the public interest or the property rights of any individual; and

WHEREAS, pursuant to Section 160A-299 of the North Carolina General Statutes, said resolution of intent was published in the Courier Tribune, a newspaper published in the City of Asheboro, Randolph County, North Carolina, once a week for four successive weeks prior to the public hearing called on the question of the permanent closure of the above-described abandoned portion of Loach Street; and

WHEREAS, a copy of said resolution of intent was sent by certified mail to all of the owners, as determined by reviewing the county tax records, of property adjoining the above-described abandoned portion of Loach Street, said property owners are more particularly identified as follows:

1. Rev. Barney L. Trogdon, Jr.
2. Otis and Stella Brown Heirs c/o Virginia Martin
3. Lee McQueen, Jr., Jean McQueen, and Dazzie McQueen

WHEREAS, notice of both the City Council's intention to permanently close the above-described abandoned portion of Loach Street and the call for a public hearing on the question of the closure of said abandoned portion of the street was prominently posted in two places along the portion of Loach Street for which permanent closure is proposed; and

WHEREAS, after holding the public hearing called by the adopted resolution of intent to permanently close the above-described abandoned portion of Loach Street, it appears to the satisfaction of the City Council of the City of Asheboro that the permanent closure of said portion of Loach Street is not contrary to the public interest and that no individual owning property in the vicinity of the said portion of Loach Street would thereby be deprived of reasonable means of ingress and egress to his property:

NOW, THEREFORE, BE IT ORDAINED AND ORDERED by the City Council of the City of Asheboro as follows.

Section 1. The abandoned portion of Loach Street that is located in the vicinity of the intersection of Loach Street and Cross Street is hereby permanently closed. Said permanently closed portion of Loach Street is located within the corporate limits of the City of Asheboro and is more particularly described by metes and bounds as follows:

Asheboro Township, Randolph County, North Carolina:

BEGINNING at a new iron pipe that is set on the eastern line of the existing right-of-way for Loach Street and that is located North 25 degrees 26 minutes 04 seconds East 16.33 feet from an existing iron pipe that is itself located South 77 degrees 58 minutes 29 seconds East 2235.93 feet from City of Asheboro Monument 103, said monument is located by means of the North Carolina Coordinate System at the coordinates of North 715,918.921 feet and East 1,760,603.013 feet (NAD 27); thence from said Beginning point along the eastern line of the existing right-of-way for Loach Street the following courses and distances: North 02 degrees 46 minutes 02 seconds East 38.83 feet to a new iron pipe; thence North 02 degrees 46 minutes 02 seconds East 42.26 feet to a new iron pipe; thence along the western line of the former right-of-way for the abandoned portion of Loach Street North 24 degrees 32 minutes 30 seconds East 93.94 feet to a new iron pipe; thence across the abandoned street right-of-way the following courses and distances: North 89 degrees 55 minutes 04 seconds East 17.04 feet to a new iron pipe; thence North 89 degrees 55 minutes 04 seconds East 17.04 feet to an existing iron pipe; thence along the eastern line of the abandoned Loach Street right-of-way the following courses and distances: South 23 degrees 08 minutes 48 seconds West 49.43 feet to an existing iron pipe; thence South 25 degrees 26 minutes 35 seconds West 50 feet to a new iron pipe; thence South 25 degrees 26 minutes 35 seconds West 49.97 feet to an existing iron pipe; thence South 25 degrees 26 minutes 04 seconds West 34.08 feet to the point and place of the BEGINNING and being all of that certain abandoned portion of Loach Street located within the 0.101 of an acre encompassed by the preceding metes and bounds description.

Also included is the right-of-way for the abandoned portion of Loach Street, said abandoned right-of-way is shown on the below-referenced plat of survey.

This description is in accordance with a plat of survey entitled "**Survey Of Proposed Closing Of An Abandoned Street Right Of Way At The Loach St./Cross St. Intersection** For City Of Asheboro", dated October 7, 2004, and drawn under the supervision of Philip M. Henley, P.L.S. with Registration Number L-1494.

Section 2. The City of Asheboro, pursuant to the provisions of Section 160A-299 of the North Carolina General Statutes, hereby reserves its perpetual right, title, and interest in and to both the water line and sanitary sewer line shown on the above-referenced plat of survey. This express reservation of a perpetual right, title, and interest in the said water and sewer lines includes, without limitation, an express reservation of a perpetual right, title, and interest in an easement for each line. The easements referenced in the immediately preceding sentence shall be twenty (20) feet in width (10 feet on each side of a particular line) and shall be utilized for the operation and maintenance of said water and sewer lines. Furthermore, this reservation by the City of Asheboro of its right, title, and interest in the existing utility improvements expressly includes, without limitation, the city's perpetual right and privilege of going in, upon, and over the area within the respective water and sewer line easements at any time or times, and from time to time, at the city's option, for the purpose of constructing, inspecting, operating, repairing, and maintaining water and sewer lines, including such alterations, replacements, and expansions of capacity as may, in the city's sole judgment, be

necessary or proper as a part of the Municipal Water System and Sanitary Sewer System of the City of Asheboro, North Carolina.

Furthermore, this reservation of right, title, and interest in utility improvements and easements extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city. In particular, this reservation of right, title, and interest extends to the gas line depicted on the above-referenced plat of survey.

Section 3. This ordinance and order shall become effective upon adoption.

Section 4. Any person aggrieved by the permanent closure of the above-described portion of Loach Street may appeal the adoption of this ordinance and order to the General Court of Justice of Randolph County, North Carolina within thirty (30) days after the adoption of said ordinance and order.

Section 5. In the event there is no appeal within thirty (30) days after the adoption of this ordinance and order, a certified copy of said ordinance and order shall be filed in the Office of the Register of Deeds of Randolph County, North Carolina as provided by law.

Adopted in regular session on this the 9th day of December, 2004.

S/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

S/ Carol J. Cole
Carol J. Cole, CMC, City Clerk

9. Presentation of a 5-Year Update of the Comprehensive Parks and Recreation Master Plan.

Mr. Allen Oliver presented and reviewed the 5-year Update of the City of Asheboro Parks and Recreation Comprehensive Master Plan Through Year 2020.

Upon motion by Mr. Smith and seconded by Mr. Crisco, council voted unanimously to approve the update.

10. Discussion of a Skate Board Park at the Old Armory Site on South Church Street.

Mr. Oliver reported that the cost to renovate the old NC National Guard Armory building into an indoor/outdoor skate park will be approximately \$200,000. He presented and reviewed the skate park concept designed by Jim Rees, which would consist of three phases: Phase 1 – Indoor Ramps; Phase 2 – Outdoor Concrete Plaza; and Phase 3 – Outdoor Concrete Bowl.

11. Consideration of Approval of Basic Facts and Assurance Form for PARTF Grant.

Mr. Oliver recommended that he be authorized to apply for a grant in the amount of \$100,000 from the N. C. Parks and Recreation Trust Fund (PARTF) to help fund a skate park project. The city would have to provide \$100,000 in matching funds. (These amounts would cover two phases of the project.)

Upon motion by Mrs. Carter and seconded by Mr. Baker, council voted unanimously to authorize Mr. Oliver to proceed with the grant application.

12. Setting of Date for Public Input Meeting for Skate Board Park Plan.

A public meeting for discussion of a skate board park is scheduled for 7:00 PM on Tuesday, January 18, 2005, in the Council Chamber at City Hall.

13. Discussion of Changes in Fees and Charges for Parks and Recreation Programs and Facilities.

Mr. Oliver reported that he and his staff are working on a new fee schedule for recreation programs and facilities that will be presented to council for its consideration.

Upon motion by Mrs. Carter and seconded by Mr. Crisco, council voted unanimously to have the parks and recreation advisory committee to review the proposed recreation fees and make a recommendation to council.

14. Consideration of a Petition Received From BSR, LLC Requesting Non-Contiguous Annexation of 2.318 Acres Along the West Side of US Highway 220 Business South.

Mayor Jarrell opened the public hearing on the aforementioned annexation request. He called for a motion to continue the public hearing until the January meeting so that the staff can investigate the subdivision aspect of the request.

Upon motion by Mrs. Carter and seconded by Mr. Smith, council voted unanimously to continue the public hearing until the January meeting.

15. Consideration of Proposed Closing of Lumber Street Right-of-Way (Located Between Ross Street and the Railroad With no Existing Street) as Requested by a Petition Signed by John A. Matkins and Other Adjacent Property Owners.

Mr. Bunker reported that a resolution of the city's intent to close an unopened street identified as Lumber Street was advertised in *The Courier-Tribune* once a week for four (4) successive weeks as required by law.

Mayor Jarrell opened the public hearing on said closing.

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

Upon motion by Mrs. Carter and seconded by Mr. Smith, council voted unanimously to adopt the following Order to Close an Unopened Street Identified as Lumber Street:

CITY OF ASHEBORO STREET CLOSURE ORDINANCE NO. 37 ORD 12-04

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

IN RE THE CLOSING OF AN UNOPENED STREET IDENTIFIED AS LUMBER STREET)
) **ORDER**
)

WHEREAS, pursuant to the provisions of Section 160A-299 of the North Carolina General Statutes, the City Council of the City of Asheboro adopted on the 4th day of November, 2004, at its regularly scheduled November meeting, a resolution (49 RES 11-04) declaring the intent of the City Council to permanently close Lumber Street, which is an unopened street located between Ross Street and the railroad; and

WHEREAS, Resolution Number 49 RES 11-04 properly called for a public hearing to be held at 7:00 o'clock p.m. on the 9th day of December, 2004, in the Council Chambers of the City of Asheboro Municipal Building located at 146 North Church Street in Asheboro, on the question of whether or not such closing would be detrimental to the public interest or property rights of any individual; and

WHEREAS, pursuant to Section 160A-299 of the North Carolina General Statutes, said resolution of intent was published in the Courier Tribune, a newspaper published in the City of Asheboro, Randolph County, North Carolina, once a week for four successive weeks prior to the public hearing called on the question of the permanent closure of Lumber Street; and

WHEREAS, a copy of said resolution of intent was sent by certified mail to all of the owners, as determined by reviewing the county tax records, of property adjoining Lumber Street, said property owners are more particularly identified as follows:

1. Hedgecock Builders Supply, Inc.
2. Lewis H. & Joyce G. Kelly
3. John A. & Emily Matkins
4. Stephen J. & Beth S. Davidson
5. Jeffrey S. & Amy M. Ferree

WHEREAS, notice of both the City Council's intention to permanently close Lumber Street and the call for a public hearing on the question of the closure of said street was prominently posted in two places along the Lumber Street right-of-way for which permanent closure is proposed; and

WHEREAS, after holding the public hearing called by the adopted resolution of intent to permanently close Lumber Street, it appears to the satisfaction of the City Council of the City of Asheboro that the permanent closure of Lumber Street is not contrary to the public interest and that no individual owning property in the vicinity of Lumber Street would thereby be deprived of reasonable means of ingress and egress to his property.

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

Section 1. Lumber Street, which is unopened and is located between Ross Street and the railroad, is hereby permanently closed. Lumber Street is located within the corporate limits of the City of Asheboro and is more particularly described by metes and bounds as follows:

Asheboro Township, Randolph County, North Carolina

BEGINNING at an existing iron pin or pipe that is set in the eastern margin of the right-of-way for Ross Street and that is located South 07 degrees 34 minutes 57 seconds West 129.91 feet from an existing PK nail set at the intersection of the eastern margin of the Ross Street right-of-way with the southern margin of the West Ward Street right-of-way; thence from said Beginning point along the northern margin of the unopened right-of-way for Lumber Street the following courses and distances: South 81 degrees 04 minutes 07 seconds East 105.11 feet along the Hedgecock Builders Supply, Inc. property described in Deed Book 1663, Page 1062, Randolph County Registry to an existing iron pin or pipe; thence South 81 degrees 35 minutes 48 seconds East 60.05 feet along the Jeffrey S. Ferree et ux Amy M. Ferree property described in Deed Book 1815, Page 563, Randolph County Registry to a new iron pin; thence South 81 degrees 35 minutes 48 seconds East 60.05 feet along the Lewis H. Kelley et ux Joyce E. Kelly property described in Deed Book 1317, Page 2034, Randolph County Registry to an existing iron pin or pipe; thence continuing along the Kelly property South 81 degrees 20 minutes 57 seconds East 60.02 feet to an existing iron pin or pipe; thence South 81 degrees 20 minutes 57 seconds East 60.00 feet along the Stephen J. Davidson et ux Beth S. Davidson property described in Deed Book 1694, Page 896, Randolph County Registry to a new iron pin; thence South 81 degrees 20 minutes 57 seconds East 100.00 feet along the John A. Matkins et ux Emily Matkins property described in Deed Book 1113, Page 440, Randolph County Registry to a new iron pin; thence along the Matkins property described in Deed Book 1116, Page 236, Randolph County Registry South 81 degrees 20 minutes 57 seconds East 54.54 feet to a new iron pin set in the western margin of the railroad right-of-way; thence following the curve of the western margin of the railroad right-of-way a course and chord distance of South 43 degrees 03 minutes 00 seconds West 18.17 feet (said curve having a radius of 477.31 feet) to a new iron pin; thence continuing along the curve of the western margin of the railroad right-of-way a course and chord distance of South 45 degrees 15 minutes 46 seconds West 18.69 feet (said curve having a radius of 477.31 feet) to a new iron pin; thence along the Hedgecock Home Building, Inc. property described in Deed Book 667, Page 20, Randolph County Registry the following course and distance: North 81 degrees 21 minutes 01 second West 477.79 feet to a PK nail set in the eastern margin of the Ross Street right-of-way; thence North 07 degrees 34 minutes 57 seconds East 30.01 feet along the eastern margin of Ross Street to the point and place of the BEGINNING and being all of that certain unopened street known as Lumber Street located within a 30-foot wide right-of-way shown in the "Arthur Ross Subdivision" recorded in Plat Book 1 at Page 321 of the Randolph County Registry.

Also included is the right-of-way itself for the unopened Lumber Street, said unopened right-of-way is shown on the below-referenced plat of survey.

This description is in accordance with a plat of survey entitled "Plat Prepared For THE CITY OF ASHEBORO", dated July 16, 2004, and drawn under the supervision of Steven D. Brown, R.L.S. with Registration Number L-1435.

Section 2. This ordinance and order shall become effective upon adoption.

Section 3. Any person aggrieved by the permanent closure of Lumber Street may appeal the adoption of this ordinance and order to the General Court of Justice of Randolph County, North Carolina within thirty (30) days after the adoption of said ordinance and order.

Section 4. In the event there is no appeal within thirty (30) days after the adoption of this ordinance and order, a certified copy of said ordinance and order shall be filed in the Office of the Register of Deeds of Randolph County, North Carolina as provided by law.

Adopted in regular session on this the 9th day of December, 2004.

S/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

S/ Carol J. Cole
Carol J. Cole, CMC, City Clerk

16. Consideration of a Petition Received From James C. and Shirley P. Allred and Patsy Lee Haynes Requesting Contiguous Annexation of 1.50 Acres at the Intersection of Idlewild Drive Extension and Rockaway Drive.

Mayor Jarrell deferred this item until the January 6, 2005 meeting.

17. Report From the Police Department for Proposed Governor Highway Safety Grants From NC Crime Commission.

Police Chief Gary Mason requested authorization from council to apply for the aforementioned safety grants from the NC Crime Commission. The funds will be used to hire an additional police officer for the traffic division, a police car, radar, etc. This will be a 75% state grant for one year, and the city will participate in 25% of the funding. After one year, the city will assume the costs for the police officer.

Upon motion by Mrs. Carter and seconded by Mrs. Hunter, council voted unanimously to authorize Chief Mason to proceed with the grant application.

18. Ordinance Amending Section 130.05 of the Code of Asheboro.

Mr. Sugg presented and reviewed an ordinance amending Section 130.05 of the Code of Asheboro that pertains to begging or panhandling on city streets, sidewalks, bikeways or other public places. The amendment addresses specific aggressive conduct. Mr. Sugg recommended that the ordinance be adopted by reference.

Upon motion by Mr. Priest and seconded by Mrs. Carter, council voted unanimously to adopt the following ordinance by reference:

38 ORD 12-04

AN ORDINANCE AMENDING § 130.05 OF THE CODE OF ASHEBORO

WHEREAS, § 160A-179 of the North Carolina General Statutes provides that "a city may by ordinance prohibit or regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person;" and

WHEREAS, on the basis of the authority granted by the above-cited statutory provision, § 130.05 of the Code of Asheboro provides as follows:

BEGGING OR PANDHANDLING PROHIBITED ON CITY STREETS, SIDEWALKS, BIKEWAYS OR OTHER PUBLIC PLACES

(A) The City Council finds that begging or panhandling within the right-of-way of any city street, sidewalk, bikeway or other public place is disruptive to the safe and convenient use of such street, sidewalk, bikeway or public place by the general public, discourages potential customers from patronizing nearby

businesses, detracts from the character or residential neighborhoods, and is generally inimical to the public safety and welfare.

(B) For the reasons set forth in division (A), no person may engage in begging or panhandling within the right-of-way of any public street, sidewalk, bikeway or other public place.

(C) For purposes of this section, the terms begging or panhandling are used interchangeably and refer to an act, verbal or otherwise, by which a person solicits a monetary donation from another person for the principal benefit of the person making the solicitation. The fact that small items, such as pencils, chewing gum, and the like are exchanged in return for the donation shall not remove a solicitation from the definition of begging or panhandling. The terms begging and panhandling do not include solicitations made by authorized representatives of non-profit corporations, organizations or groups in order to obtain funds designed principally to further the purpose of such non-profit corporations, organizations or groups, or solicitations among family members; and

WHEREAS, the City Council of the City of Asheboro has determined that § 130.05 of the Code of Asheboro does not currently address the concerns and harmful effects of aggressive solicitation practices in a satisfactory manner; and

WHEREAS, the City Council finds that aggressive solicitation practices are disturbing and disruptive to residents and businesses and contribute not only to the loss of access to and enjoyment of public places, but also to an enhanced sense of fear, intimidation, and disorder; and

WHEREAS, aggressive solicitation usually includes approaching or following pedestrians, repetitive solicitation despite refusals, the use of abusive or profane language to cause fear and intimidation, unwanted physical contact, or the intentional blocking of pedestrian and vehicular traffic; and

WHEREAS, the City Council further finds that the presence of individuals who solicit money from persons at or near banks or automated teller machines is especially troublesome because of the enhanced fear of crime in those confined environments; and

WHEREAS, this ordinance is not intended to limit any persons from exercising their constitutional right to solicit funds, picket, protest, or engage in other constitutionally protected activity.

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

Section 1. Section 130.05 of Chapter 130 of the Code of Asheboro is hereby amended to provide as follows:

§ 130.05 AGGRESSIVE SOLICITATION PROHIBITED. BEGGING OR PANHANDLING PROHIBITED. ON CITY STREETS, SIDEWALKS, BIKEWAYS OR OTHER PUBLIC PLACES.

~~(A) The City Council finds that begging or panhandling within the right-of-way of any city street, sidewalk, bikeway or other public place is disruptive to the safe and convenient use of such street, sidewalk, bikeway or public place by the general public, discourages potential customers from patronizing nearby businesses, detracts from the character or residential neighborhoods, and is generally inimical to the public safety and welfare.~~

~~(B) For the reasons set forth in division (A), no person may engage in begging or panhandling within the right-of-way of any public street, sidewalk, bikeway or other public place.~~

~~(C) For purposes of this section, the terms begging or panhandling are used interchangeably and refer to an act, verbal or otherwise, by which a person solicits a monetary donation from another person for the principal benefit of the person making the solicitation. The fact that small items, such as pencils, chewing gum, and the like are exchanged in return for the donation shall not remove a solicitation from the definition of begging or panhandling. The terms begging and panhandling do not include solicitations made by authorized representatives of non-profit corporations, organizations or groups in order to~~

~~obtain funds designed principally to further the purpose of such non-profit corporations, organizations or groups, or solicitations among family members.~~

(A) Definitions.

For purposes of this Ordinance:

- (1) Solicit means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.
- (2) Aggressive manner means and includes:
 - (a) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;
 - (b) Following the person being solicited, if that conduct is: (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - (c) Continuing to solicit within five (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is: (i) intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - (d) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a permit issued pursuant to Chapter 97 of the Code of Asheboro shall not constitute obstruction of pedestrian or vehicular traffic;
 - (e) Intentionally or recklessly using obscene or abusive language or gestures: (i) intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or
 - (f) Approaching the person being solicited in a manner that: (i) is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession; or (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
- (3) Automated teller machine means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers, deposits, cash, withdrawals, balance inquiries, and mortgage and loan payments.
- (4) Automated teller machine facility means the area comprised of one or more automatic teller machines, and any adjacent space which is made available to banking customers after regular banking hours.
- (5) Public area means an area to which the public or a substantial group of persons has access and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks,

and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

(B) Prohibited Acts.

It shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services:

(1) In an aggressive manner in a public area:

(2) Within fifteen (15) feet of any entrance or exit of any bank or within fifteen (15) feet of any automated teller machine during the hours of operation of such bank or automated teller machine without the consent of the owner or other person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility:

(3) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property; or

(4) From any operator of a motor vehicle that is in traffic on a public street, whether in exchange for cleaning the vehicle's windows, or for blocking, occupying, or reserving a public parking space, or directing the occupant to a public parking space; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle.

(C) Penalty.

If any person shall violate this section, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500 in accordance with G.S. § 14-4.

(D) Construction and Severability.

(1) Severability is intended throughout and within the provisions of the Ordinance. If any section, sentence, clause, or phrase of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, then such judgment shall in no way affect or impair the validity of the remaining portions of this Ordinance.

(2) This Ordinance is not intended to prescribe any demand for payment for services rendered or goods delivered.

(3) This Ordinance is not intended to create a result through enforcement that is absurd, impossible or unreasonable. The Ordinance should be held inapplicable in any such cases where its application would be unconstitutional under the Constitution of the State of North Carolina or the Constitution of the United States of America.

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

Section 3. This ordinance shall become effective upon adoption.

Adopted in regular session on this the 9th day of December, 2004.

S/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

S/ Carol J. Cole
Carol J. Cole, CMC, City Clerk

19. Setting of Dates for 2005 Council Meetings.

Mr. Ogburn announced the following scheduled dates for the 2005 council meetings:

January 6, 2005
February 10, 2005
March 10, 2005
April 7, 2005
May 5, 2005
June 9, 2005
July 7, 2005
August 4, 2005
September 8, 2005
October 6, 2005
November 10, 2005
December 8, 2005

20. Finance and Public Safety & Public Works Matters.

No official meetings were held.

21. Discussion of Items Not on the Agenda.

Mr. Baker reported that the Early Action Compact (EAC) Emission Statement will be submitted December 15, 2004.

There being no further business, the meeting adjourned at 10:25 PM.

Carol J. Cole, CMC, City Clerk

David H. Jarrell, Mayor

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