

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, DECEMBER 8, 2011  
7:00 p.m.**

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

David H. Smith ) – Mayor Presiding

Talmadge S. Baker )  
Clark R. Bell )  
Edward J. Burks ) – Council Members Present  
Stuart B. Fountain )  
Michael W. Hunter )  
Walker B. Moffitt )

Linda H. Carter ) – Council Member Absent

John N. Ogburn, III, City Manager  
Dumont Bunker, P.E., City Engineer  
Edsel L. Brown, Code Enforcement Officer  
John L. Evans, Senior Planner  
Tamela D. Garner, Permits Technician/Deputy City Clerk  
Justin T. Luck, Zoning Administrator/Planner  
Bradley W. Morton, Planning Technician/Deputy City Clerk  
R. Reynolds Neely, Jr., Community Development Director  
Deborah P. Reaves, Finance Director  
Michael D. Rhoney, Water Resources Director  
Jeffrey C. Sugg, City Attorney  
J.P. Williams, Police Captain

**1. Call to order.**

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

**2. Silent prayer and pledge of allegiance.**

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

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

Mayor Smith welcomed everyone in attendance.

**4. Consent agenda:**

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

- (a) The minutes of the City Council’s regular meeting on November 10, 2011.**
- (b) Final approval of an ordinance renewing Red Bird Cab, LLC’s taxicab franchise.**

**AN ORDINANCE GRANTING A RENEWAL OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO RED BIRD CAB, LLC**

**WHEREAS**, Red Bird Cab, LLC, which has an office in Asheboro at 106 Beasley Street, operates a taxicab service within the corporate limits of the City of Asheboro pursuant to an existing Certificate of Convenience and Necessity; and

**WHEREAS**, Red Bird Cab, LLC’s franchise expires on December 9, 2011, and the limited liability company must properly renew its Certificate of Convenience and Necessity in order to lawfully continue to operate taxicabs within the jurisdiction of the City of Asheboro; and

**WHEREAS**, the available evidence indicates that Red Bird Cab, LLC is providing taxicab service within the City of Asheboro in a manner that furthers the public's convenience and addresses the public necessity for the operation of adequate taxicab services within the city;

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

**Section 1.** A renewed Certificate of Convenience and Necessity to operate four (4) taxicabs upon and over the streets of the City of Asheboro is hereby granted to Red Bird Cab, LLC (hereinafter referred to as the "Grantee").

**Section 2.** This franchise is granted for a term of one (1) year from and after the 9<sup>th</sup> day of December, 2011. Thereafter, applications for renewals shall be filed annually in accordance with the Code of Asheboro.

**Section 3.** This franchise is granted upon the following specific conditions and requirements:

- (a) Prior to 12:01 a.m. on December 9, 2011, the Grantee shall furnish to the City Clerk of the City of Asheboro, during the city's normal business hours, an accurate list of each taxicab to be operated in Asheboro pursuant to this franchise. This list must include the make, model, model year, and vehicle identification number of each taxicab to be operated in Asheboro, and such documentation must have upon it the written acknowledgment of an Asheboro Police Department official designated by the Chief of Police to indicate that the officer has visually examined the taxicabs listed in the documentation and confirmed the accuracy of this list to be submitted to the City Clerk.
- (b) Prior to 12:01 a.m. on December 9, 2011, the Grantee shall furnish to the City Clerk of the City of Asheboro, during the city's normal business hours, a certificate of insurance from an insurance carrier duly authorized to do business in the State of North Carolina evidencing that insurance coverage for the taxicabs referenced in subsection (a) of this ordinance is in effect in an amount that complies with Section 114.14 of the Code of Asheboro for the duration of the Certificate of Convenience and Necessity issued pursuant to this ordinance.
- (c) Prior to 12:01 a.m. on December 9, 2011, the Grantee shall pay to the City Clerk of the City of Asheboro the sum of eighty-six and 04/100 dollars (\$86.04) in order to satisfy the privilege license tax of fifteen and no/100 dollars (\$15.00) charged for each taxicab operated within the city and in order to reimburse the city for the cost of running the legal notice of the public hearing conducted on November 10, 2011. These fees and charges are collected pursuant to Sections 114.02, 114.12, and 114.17 of the Code of Asheboro.
- (d) The Grantee shall otherwise comply at all times with any and all applicable laws and regulations pertaining to the operation of taxicabs in the City of Asheboro, specifically including without limitation Chapter 114 of the Code of Asheboro.

**Section 4.** If a conflict is discovered between the provisions of this ordinance granting a Certificate of Convenience and Necessity to Red Bird Cab, LLC and Chapter 114 of the Code of Asheboro, the provisions found in Chapter 114 of the Code of Asheboro shall control.

**Section 5.** This ordinance shall be deemed to have been finally adopted by the Asheboro City Council after receiving approval during two (2) regular meetings of the governing board.

This ordinance was read and approved by the Asheboro City Council for the first time in open session during a regular meeting held on the 10<sup>th</sup> day of November, 2011.

This ordinance was read and approved by the Asheboro City Council for the second time in open session during a regular meeting held on the 8<sup>th</sup> day of December, 2011.

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

ATTEST:

s/ Tamela D. Garner  
\_\_\_\_\_  
Tamela D. Garner, Deputy City Clerk

**(c) Acknowledgment of the filing of the oath of office form executed by James Curtis Williams as a new member of the Asheboro Airport Authority.**

The following oath of office form was executed by James Curtis Williams on November 23, 2011, and has been filed with the City Council in compliance with the City Charter:

OATH OF ASHEBORO AIRPORT AUTHORITY MEMBER

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, James Curtis Williams, do solemnly and sincerely affirm that I will support and maintain the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution and laws of said State, not inconsistent with the Constitution of the United States; and that I will faithfully, well, and truly execute the duties of the office of a member of the Asheboro Airport Authority according to the best of my skill and ability, and according to the law.

s/ James Curtis Williams  
James Curtis Williams

Affirmed and subscribed before me this the 23<sup>rd</sup> day of November, 2011.

s/ Tamela D. Garner  
Tamela D. Garner  
Deputy City Clerk  
City of Asheboro, North Carolina

**(d) Acknowledgment of the receipt from the Randolph County Board of Elections of an abstract of the legal ballots cast during the November 2011 municipal elections.**

The official canvass report received from the Randolph County Board of Elections indicated the following ballots were cast on November 8, 2011, for the three (3) seats available on the Asheboro City Council:

Talmadge Baker	904
Eddie Burks	755
Valinda Norton	195
Charles Swiers	960
Dave Whitaker	646
Write-In	23

**Old Business:**

**5. Land Use Cases:**

**(a) SUB-11-02 and SUP-11-02: A combined public hearing on a subdivision ordinance variance request (File No. SUB-11-02) and an application for a special use permit (SUP-11-02). Both applications pertain to the same proposed residential planned unit development.**

These land use cases pertain to a previously opened combined public hearing on an application for variances from the subdivision ordinance and an application for a Special Use Permit authorizing a residential planned unit development on approximately 57.47 acres of land owned by Gerald D. Hedrick and Ann Hedrick and Carrington Hills II, Inc. The site of the proposed development is located west of the intersection of Abby Lane with Westminster court and is more specifically identified by Randolph County Parcel Identification Numbers 7741432762, 7741338154, and 7741434336.

As part of the continuing public hearing on the requested subdivision ordinance variances and Special Use Permit, Mayor Smith opened the floor for Mr. Neely to testify, and Mr. Neely testified that he had received a joint request from R. Thompson Wright, Esq., who is representing certain residents of Carrington Hills Subdivision, and Alan V. Pugh, Esq., who is representing the applicant, for a continuance of this matter. According to an email message received from Mr. Wright, the parties are discussing a framework for resolving the concerns of the neighbors. A hard copy of this email message is on file in the city clerk's office and in the offices of the Community Development Division.

Upon a motion by Dr. Fountain and seconded by Mr. Burks, the City Council voted unanimously to continue this matter to the Council's next regular meeting on January 5, 2012.

- (b) **SUP-11-03: This land use case pertaining to a proposed residential planned unit development known as Fairway Townhomes was originally considered during a public hearing held on November 10, 2011. Due to the subsequent discovery that erroneous testimony had been inadvertently provided during the November hearing on the question of the application for a Special Use Permit authorizing a planned unit development (PUD), the land use case identified by file number SUP-11-03 has been brought back before the City Council so that the public hearing can be reopened and the erroneous testimony corrected.**

After Mayor Smith opened the public hearing, Mr. Neely was placed under oath and gave a brief review of the previous proceedings pertaining to the land use cases identified by file numbers SUP-11-03 and SUB-11-03, specifically including the Special Use Permit and subdivision sketch design approval initially granted, with conditions, by the City Council on November 10, 2011. The developer seeking these land use approvals is Mr. Larry McKenzie, and he is seeking these approvals for a zoning lot identified as Tract # 3 on a plat of survey recorded in the Office of the Randolph County Register of Deeds in plat book 121 at page 89. The approximately 2.682 acre zoning lot is located along the south side of Sherwood Road, immediately west of 1767 and 1801 Fairway Road.

The proposed development is referred to as the Fairway Townhomes Planned Unit Development. The developer is seeking regulatory approval for a residential planned unit development consisting of seven (7) two-family structures with a total of fourteen (14) residential units. The subdivision sketch design plat submitted for this project was approved by the City Council on November 10, 2011, and this sketch design approval is not currently under review. The reopened public hearing conducted during the December 2011 City Council meeting focused solely on the application for a Special Use Permit authorizing the proposed planned unit development.

During the initial hearing of this matter on November 10, 2011, Mr. McKenzie and city staff members relied on calculations listed on the combined site plan and sketch design plat to make representations to the Council as to whether or not the proposed land use could comply with a maximum floor area ratio (FAR) of .22. Subsequent to the hearing on November 10, 2011, city staff members discovered that the earlier representations pertaining to FAR had been erroneous due to problems with some of the data displayed on the original site plan and sketch design plat. After advertising and reopening the public hearing on December 8, 2011, the Council received amended testimony that corrected the earlier errors by relying upon updated information found on a revised site plan dated December 8, 2011. With the corrected information, the proposed land use is definitively in compliance with a maximum FAR of .22.

Upon being sworn in, Mr. McKenzie testified that he accepted the conditions recommended by city staff for attachment to the requested Special Use Permit.

Mayor Smith then closed the public hearing. A copy of Mr. Neely's power point presentation and a copy of the revised site plan are on file in the city clerk's office.

Upon motion by Mr. Moffitt, and seconded by Mr. Bell, the City Council voted unanimously to adopt the following findings, conclusions, and order granting the requested Special Use Permit:

Case No. SUP-11-03  
City Council  
City of Asheboro

IN THE MATTER OF THE APPLICATION OF LARRY MCKENZIE FOR A SPECIAL USE PERMIT  
AUTHORIZING A RESIDENTIAL PLANNED UNIT DEVELOPMENT WITH  
A MAXIMUM FLOOR AREA RATIO OF UP TO .22

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

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THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for properly advertised public hearings during two (2) regular meetings of the Council that were held on November 10, 2011, and December 8, 2011. 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. Mr. Larry McKenzie (hereinafter referred to as the "Applicant") has submitted to the City of Asheboro an application, which includes a combined site plan and subdivision sketch design plat, for a Special Use Permit that, if issued by the Council, would authorize a residential planned unit development consisting of seven (7) two-family structures with a total of fourteen (14) residential units. The proposed development (hereinafter referred to as the "PUD") is to be known as "Fairway Townhomes."

2. The Applicant proposes to develop the PUD on approximately 2.682 acres of land that he owns along with others on the south side of Sherwood Road, immediately west of 1767 and 1801 Fairway Road. The land upon which the PUD is to be developed and that is subject to the Special Use Permit issued herein is described as Tract # 3 on a plat of survey recorded in Plat Book 121, Page 89, Randolph County Public Registry. The said Tract # 3 shall be hereinafter referred to as the "Zoning Lot."

3. The Zoning Lot is currently undeveloped.

4. The land uses surrounding the Zoning Lot are as follows:
- Single-family residential land use and a municipal golf course are located to the north;
  - Single-family residential land use and undeveloped land are located to the south;
  - Multi-family, office, and industrial land uses are located to the east; and
  - Single-family residential land use is located to the west.

5. 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 in question as a "neighborhood residential" area.

6. The Zoning Lot is split by two (2) zoning districts. One portion of the lot is in an R7.5 zoning district, which is classified as a medium density residential district, and the other portion of the Zoning Lot is in an OA6 zoning district, which is classified as an office-apartment high density district.

7. A residential planned unit development is permitted in both the R7.5 and OA6 zoning districts with the issuance of a Special Use Permit by the Council.

8. Pursuant to Table 200-1 of the Asheboro Zoning Ordinance, a maximum floor area ratio of .22 is permitted within an R7.5 zoning district.

9. Without the benefit of a Special Use Permit authorizing an increase in the floor area ratio (hereinafter referred to as the "FAR"), the maximum FAR permitted in the OA6 zoning district is .17. Pursuant to Table 200-1 of the Asheboro Zoning Ordinance, the maximum FAR permitted in an OA6 zoning district can be increased to .22 with the issuance of a Special Use Permit that expressly authorizes such an increase in the FAR.

10. The Applicant requested, as part of his application, that the maximum FAR to be used for compliance evaluation purposes be increased to .22. If granted, the maximum FAR for the entire Zoning Lot will be .22.

11. During the initial hearing of this matter on November 10, 2011, the Applicant and city staff members relied on calculations listed on the combined site plan and sketch design plat to make representations to the Council as to whether or not the proposed land use could comply with a maximum FAR of .22.

12. Subsequent to the hearing on November 10, 2011, city staff members discovered that the earlier representations pertaining to FAR had been erroneous due to problems with some of the data displayed on the original site plan and sketch design plat. After advertising and reopening the public hearing on December 8, 2011, the Council received amended testimony that corrected the earlier errors by relying upon updated information found on a revised site plan dated December 8, 2011. With the corrected information, the proposed land use is definitively in compliance with a maximum FAR of .22.

13. Uncontroverted testimony established that the sketch design plat reviewed on November 10, 2011 was in compliance with the Asheboro Subdivision Ordinance. The sketch design review and approval on November 10, 2011, was not called into question by the errors found in the data utilized for the Special Use Permit site plan review. The subsequent public hearing on December 8, 2011, on the question of issuing the requested Special Use Permit, did not impair in any manner or to any degree the sketch design approval with conditions that was granted by the Council on November 10, 2011. The conditions attached to the said sketch design approval were as follows: (a) Declarations of covenants restricting RV parking as required by the subdivision ordinance shall be submitted and recorded with the final plat, and (b) Fire hydrant locations shall be coordinated with the Asheboro Fire Department.

14. The Zoning Lot is located on the south side of Sherwood Road, which turns into Fairway Road. A private street (Bogey Lane) is to be constructed within the PUD and maintained by the homeowners' association. Sherwood Road and Fairway Road are both city-maintained streets.

15. The Zoning Lot is located within the corporate limits of the City of Asheboro, and all city services are available to the lot.

16. Uncontroverted testimony offered by the city's Community Development Director established that the revised site plan submitted by the Applicant and dated December 8, 2011, does comply with the specifications mandated by the Asheboro Zoning Ordinance, specifically including without limitation the proposed building elevations and specifications for residential planned unit developments found in Article 600 of the Asheboro Zoning Ordinance.

17. The Applicant is an experienced property developer, and, as emphasized by the fact that his father is an adjoining property owner, the Applicant is familiar with the land and land uses adjoining the Zoning Lot. Based on his first hand knowledge of real estate development and the area in which the Zoning Lot is located, the Applicant testified that the proposed land use will not have a negative impact on the value of real property abutting or adjoining the Zoning Lot.

18. An adjoining property owner, Mr. Forrest Hardwick, expressed concerns during the hearing of this case about the buffering/screening of his property from the proposed land use. On the revised site plan dated December 8, 2011, the Applicant addressed these concerns with the following commitment:

Red tip Photinia (to be) planted 10' on center(,) 4' high at time of planting. Plantings will be maintained in accordance with Section 304A.8 (Maintenance (sic) of Landscaping) (of the Asheboro Zoning Ordinance).

19. During the final hearing of this matter on December 8, 2011, the city's Community Development Director submitted potential conditions to attach to a Special Use Permit as a means of ensuring that the purpose and intent of the Asheboro Zoning Ordinance is served and the public welfare promoted. The potential conditions suggested by the Community Development Division staff are as follows:

(a) All permits from the North Carolina Department of Environment and Natural Resources shall be obtained as required.

(b) Significant existing vegetation (as indicated on the revised site plan dated December 8, 2011) shall be preserved where possible. Clearing and grading shall be permitted where necessary for the installation of infrastructure and required improvements as well as where necessary for the construction of any structures associated with the Special Use Permit.

(c) Fire hydrant locations(s) shall be coordinated with the Asheboro Fire Department.

(d) A declaration of restrictive covenants prohibiting recreational vehicle (including boat) parking as required by the subdivision ordinance shall be submitted and recorded with the final plat.

(e) All roads, driveways, parking areas, storm sewer systems, and other improvements shall be maintained by the homeowners' association.

(f) The approval of this Special Use Permit incorporates the revised site plan dated December 8, 2011.

(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.

20. During the hearing of this matter, the Applicant accepted the above-listed conditions.

21. Section 602.1 of the Asheboro Zoning Ordinance provides as follows:

Except as provided in Section 602.2 of this Ordinance, the City Council shall find that the following general standards shall be met by all applicants for approval of Special Uses:

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, and*

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.*

*The City Council shall make these general findings based upon substantial evidence contained in its proceedings. It shall be the responsibility of the applicant to present evidence in the form of testimony, exhibits, documents, models, plans and the like to support the application for approval of a Special Use.*

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 has properly submitted an application for a Special Use Permit authorizing on the Zoning Lot, which is located in R7.5 and OA6 zoning districts, the development of a residential planned unit development consisting of seven (7) two-family structures with a total of fourteen (14) residential dwelling units.
3. The revised site plan submitted by the Applicant and dated December 8, 2011, complies with the applicable requirements of the Asheboro Zoning Ordinance.
4. On the basis of the evidence presented during the hearing of this matter, the Council has concluded that the proposed use meets the four (4) general standards for the granting of a Special Use Permit. More specifically, the proposed use will not materially endanger the public health or safety, meets all required conditions and specifications of the zoning 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. Given the conformance of the submitted site plan with the requirements of the Asheboro Zoning Ordinance, and the totality of the evidence submitted by the Applicant during the hearing of this matter, the Applicant, subject to certain conditions, is to be issued a Special Use Permit for a residential planned unit development.

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

#### ORDER

The Applicant is hereby issued a Special Use Permit authorizing on the Zoning Lot, with a maximum FAR of .22, the development of a residential planned unit development consisting of seven (7) two-family structures with a total of fourteen (14) residential dwelling units. This Special Use Permit shall be valid so long as, and only so long as, the Applicant, and his heirs, successors, and assigns, develop and conduct the approved land use in compliance with this permit, the approved revised site plan dated December 8, 2011, all applicable provisions of the Asheboro Zoning Ordinance, and the following supplementary conditions that are attached to this permit:

- (a) All permits from the North Carolina Department of Environment and Natural Resources shall be obtained as required.
- (b) Significant existing vegetation (as indicated on the revised site plan dated December 8, 2011) shall be preserved where possible. Clearing and grading shall be permitted where necessary for the installation of infrastructure and required improvements as well as where necessary for the construction of any structures associated with the Special Use Permit.
- (c) Fire hydrant locations(s) shall be coordinated with the Asheboro Fire Department.
- (d) A declaration of restrictive covenants prohibiting recreational vehicle (including boat) parking as required by the subdivision ordinance shall be submitted and recorded with the final plat.
- (e) All roads, driveways, parking areas, storm sewer systems, and other improvements shall be maintained by the homeowners' association.
- (f) The approval of this Special Use Permit incorporates the revised site plan dated December 8, 2011.

(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.

These findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting of the Council that was held on December 8, 2011.

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

ATTEST:

s/ Tamela D. Garner  
Tamela D. Garner, Deputy City Clerk

**6. Consideration of awarding a contract in the amount of \$275,610.00 to Terry's Plumbing & Utilities, Inc. for construction of the Veterans Loop Road Industrial Development Water and Sanitary Sewer Improvements Project.**

Mr. Bunker presented this item. There were 5 bids received for this project. Terry's Plumbing & Utilities, Inc. submitted the lowest responsive bid in the amount of \$275,610.00, including sales tax. This amount is within the budget allocated for the project, and the recommendation of the city staff is to accept the bid from Terry's Plumbing and Utilities, Inc..

Upon motion by Mr. Burks, and seconded by Mr. Baker, the City Council voted unanimously to accept the lowest responsive bid and awarded the contract for the Veterans Loop Road Industrial Development Water and Sanitary Sewer Improvements Project to Terry's Plumbing and Utilities, Inc.

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

**7. Potential acquisition of a parcel of land for a third fire station to serve eastern Asheboro.**

**(a) Consideration of an agreement for the purchase of land at 1431 East Salisbury Street.**

This site has received a favorable recommendation from the fire chief because of the location of the property and the fact that the lot's size, approximately 2.7 acres, can be used for a station and as a future training area. The owners/sellers of the property have executed an Agreement for Purchase and Sale of Real Property that states the purchase price for the property at 1431 E. Salisbury Street is \$201,000.00 and further provides that the closing on the property shall occur on or before December 30, 2011.

Upon motion by Dr. Fountain, and seconded by Mr. Hunter, the City Council voted unanimously to approve this purchase agreement and to authorize the city manager to execute all of the legal instruments necessary to convey fee simple title to this property from the Inez Lewallen Spence Estate to the City of Asheboro.

**(b) Budget ordinance amendment to amend the General Fund to provide funds for the purchase of the lot at 1431 East Salisbury Street.**

Ms. Reaves stated that, in order to be in compliance with generally accepted accounting principles, the city's budget ordinance has to be amended in order to properly allocate funding for the purchase of the lot to be used for the future fire station no. 3. Upon motion by Mr. Baker, and seconded by Mr. Burks, the City Council voted unanimously to approve the following ordinance:

**ORDINANCE TO AMEND THE GENERAL FUND  
FY 2011-2012**

WHEREAS, on October 6, 2011, the City Council of the City of Asheboro voted unanimously to authorize the City Manager to negotiate a purchase price for the parcel of land located at 1431 East Salisbury Street for construction of a third fire station to serve eastern Asheboro, and;

WHEREAS this parcel of land, identified on the Randolph County records as Parcel #7761525272 and is commonly referred to as the property upon which the former Randolph Farm Equipment Dealership was located, and;

WHEREAS, the City Manger has negotiated with the Inez Lewallen Spence Estate on this matter and both parties have agreed upon a purchase price of Two Hundred One Thousand Dollars (\$201,000), and:

WHEREAS, estimated closing costs such as recording fees, attorney fees, title insurance and other contingencies are estimated not to exceed Two Thousand dollars (\$2,000), and;

WHEREAS, upon approval of the purchase terms by the City Council of the City of Asheboro, the anticipated closing date will be established to be on or before December 31, 2011, and:

WHEREAS, the General Operating Fund budget as adopted requires amendment to allocate proper funding for this purchase, and;

WHEREAS, the budget as adopted requires amendment to be in compliance with all generally accepted accounting principles, and;

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

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

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Total Appropriation</u>
10-399-0000	Fund Balance Appropriation	203,000	427,428

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

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>	<u>Amended Budget</u>
10-530-7100	Capital Outlay - Land	203,000	203,000

Adopted this the 8th day of December 2011.

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

ATTEST:

s/ Tamela D. Garner  
Tamela D Garner, Deputy City Clerk

**8. Public comment period**

Mayor Smith opened the public comment period. After no one indicated that they would like to speak, the Mayor closed the public comment period.

**New Business:**

With the conclusion of old business, Mayor Smith asked the Council members to turn their attention to the City Council's organizational meeting.

**9. Organizational meeting:**

**(a) Administer Oath of Office for the City Council Members.**

Mayor Smith asked Deputy City Clerk Tamela D. Garner to administer the oaths of office to Mr. Talmadge S. Baker, Mr. Edward J. Burks, and Mr. Charles A. Swiers, and the oaths of office were administered as follows:

**OATH OF COUNCIL MEMBER**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, Talmadge S. Baker, do solemnly swear (or affirm) that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Council Member for the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

s/ Talmadge S. Baker  
Talmadge S. Baker

Sworn to and subscribed before me this 8<sup>th</sup> day of December, 2011.

s/ Tamela D. Garner  
Tamela D. Garner  
Deputy City Clerk

**OATH OF COUNCIL MEMBER**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, Edward J. Burks, do solemnly swear (or affirm) that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Council Member for the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

s/ Edward J. Burks  
Edward J. Burks

Sworn to and subscribed before me this 8<sup>th</sup> day of December, 2011.

s/ Tamela D. Garner  
Tamela D. Garner  
Deputy City Clerk

**OATH OF COUNCIL MEMBER**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, Charles A. Swiers, do solemnly swear (or affirm) that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Council Member for the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

s/ Charles A. Swiers  
Charles A. Swiers

Sworn to and subscribed before me this 8<sup>th</sup> day of December, 2011.

s/ Tamela D. Garner  
Tamela D. Garner  
Deputy City Clerk

**REGULAR MEETING  
NEWLY ORGANIZED ASHEBORO CITY COUNCIL  
COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, DECEMBER 8, 2011**

\*\*\*\*\*

- David H. Smith           ) – Mayor Presiding
- Talmadge S. Baker       )  
Clark R. Bell            )  
Edward J. Burks         ) – Council Members Present  
Michael W. Hunter       )  
Walker B. Moffitt       )  
Charles A. Swiers       )
- Linda H. Carter         ) – Council Member Absent

**(b) Election of Mayor Pro Tempore.**

Mr. Moffitt nominated Talmadge S. Baker for re-election as Mayor Pro Tempore, and Mr. Burks seconded this nomination. Mayor Smith asked if there was agreement to elect Mr. Baker as Mayor Pro Tempore by acclamation, and Mr. Moffitt and Mr. Burks agreed to so move and second. This motion to close nominations and elect Talmadge S. Baker as Mayor Pro Tempore by acclamation was approved unanimously by the City Council.

**(c) Committee appointments.**

Mayor Smith presented the following list of committee appointments for the concurrence of the City Council:

- I. Finance and Public Safety Committee
  - 1. Mayor, Chair
  - 2. Linda Carter
  - 3. Clark Bell
  - 4. Charles Swiers
  
- II. Public Works Committee
  - 1. Mayor Pro Tem, Chair
  - 2. Eddie Burks
  - 3. Mike Hunter
  - 4. Walker Moffitt
  
- III. Personnel Evaluation Committee
  - 1. Mayor, Chair
  - 2. Mayor Pro Tem
  - 3. Linda Carter
  
- IV. Tourism and Marketing Committee
  - 1. Mayor, Chair
  - 2. Eddie Burks
  - 3. Walker Moffitt
  
- V. Identify Theft Prevention Program Committee
  - 1. Mayor, Chair
  - 2. Linda Carter
  - 3. Mike Hunter

NC League of Municipalities Voting Delegate: Mayor Pro Tem  
Piedmont Triad Regional Council Delegate: Mayor

Upon motion by Mr. Moffitt, and seconded by Mr. Burks, the City Council voted unanimously to concur with the mayoral appointments listed above.

**10. Resolution honoring Council Member Dr. Stuart Fountain.**

Mayor Smith read the resolution honoring Dr. Fountain for his service on the City Council.

Upon motion by Mr. Burks, and seconded by Mr. Bell, the City Council voted unanimously to approve the following resolution:

**RESOLUTION HONORING DR. STUART FOUNTAIN**

**WHEREAS**, Dr. Stuart Fountain has served as a member of the City Council for two years and during which time he has given generously and unselfishly of his time and efforts in a dignified, faithful, and businesslike manner; and

**WHEREAS**, the City Council of the City of Asheboro, North Carolina desires to express commendation and appreciation for the untiring and valuable service rendered to the City by Dr. Stuart Fountain as a member of the City Council;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Asheboro extends to Dr. Stuart Fountain the City Council's humble expression of its esteem for him in serving the City faithfully and well, and its best wishes for good health, success, and prosperity for many years to come; and

**BE IT FURTHER RESOLVED** that the City Clerk is hereby authorized and instructed to spread a copy of this resolution upon the city records and to transmit a copy thereof to Dr. Fountain.

Adopted this the eighth day of December, 2011.

ATTEST:

s/ Tamela D. Garner  
Tamela D. Garner  
Deputy City Clerk

s/ John N. Ogburn, III  
John N. Ogburn, III  
City Manager

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

s/ Talmadge Baker  
Talmadge Baker

s/ Clark Bell  
Clark Bell

s/ Eddie Burks  
Eddie Burks

s/ Linda Carter  
Linda Carter

s/ Michael Hunter  
Michael Hunter

s/ Walker Moffitt  
Walker Moffitt

s/ Charles Swiers  
Charles Swiers

Mayor Smith presented Dr. Fountain with this resolution. Additionally, Mr. Ogburn presented to Dr. Fountain a gold watch with the city seal, a pottery plate, and a replica of a street sign with Dr. Fountain's name on it. These tokens of appreciations were presented by the city manager on behalf of the City Council members and all of the employees. After which, Dr. Fountain thanked the Council members, Mayor Smith, and Mr. Ogburn and briefly spoke of his positive feelings about the time spent working with the City Council and the city's employees.

**11. Land Use Cases:**

**(a) Sub 11-03: Review of preliminary plat for Fairway Townhomes subdivision.**

The developer, Mr. Larry McKenzie, of the Fairway Townhomes Planned Unit Development previously described in item no. 5(b) of these minutes has submitted a preliminary subdivision plat for approval. The Community Development Division staff and the Planning Board have recommended approval of the preliminary plat. However, the review process has led city staff to recommend the attachment of three (3) conditions to this plat approval.

Upon motion by Mr. Moffitt, and seconded by Mr. Bell, the City Council voted unanimously to approve, with conditions, the preliminary plat submitted to the City Council for review. The conditions attached to this preliminary plat approval are as follows:

- (i) Construction on this subdivision shall not begin until all regulatory approvals are received.
- (ii) Homeowners' documents restricting RV parking as required by the ordinance shall be submitted and recorded with the final plat.
- (iii) Corrections to water and sewer plans shall be made and submitted to the Engineering Department for approval prior to beginning construction.

A copy of the power point presentation utilized to present this request to the Council as well as the approved preliminary plat are on file in the Community Development Division and in the city clerk's office.

**(b) A request from Waterford RE, LLC for an extension of time between the approval of the preliminary plat and certification of a final plat for portions of the development in which a final plat has not been certified.**

Mr. Neely presented this request from Mr. Kevin Jessup, the manager of Waterford RE, LLC. The preliminary plat for this project was approved on January 4, 2007. Article VII, Section II.E. provides that a final plat must be submitted within twelve (12) months of the date of the preliminary plat approval. Due to state legislation, this 1-year time period has been tolled between January 1, 2008, and December 31, 2011.

As stated in a letter from Mr. Jessup, Waterford RE, LLC has requested a 12-month extension beyond the above-described statutorily imposed tolling period because of a continuing soft building market and financing issues. A copy of this letter is on file in the Community Development Division and in the city clerk's office.

Upon motion by Mr. Baker, and seconded by Mr. Bell, the City Council voted unanimously to approve this request for a 12-month extension of time.

**12. Update on status of federal and state grant applications by Asheboro Fire Department.**

Due to the illness of Chief Smith, this update will be provided at a subsequent City Council meeting. The exact date of the presentation has not yet been determined.

**13. Funding request from MERCE Clinic.**

Prior to Mayor Smith opening the floor for a discussion of this item, Council members Bell and Baker disclosed that they have previously served on the Board of Directors for the MERCE Clinic. This service occurred prior to the clinic's designation as a federally qualified health center, and these Council members have not been involved in recent events at the clinic that led to the need for a recovery plan. None of the Council members, city staff members, or members of the public in attendance at this meeting identified any conflict of interest that would prohibit Mr. Bell and Mr. Baker from participating in the discussion and resolution of the following funding request.

Ms. Mimi Cooper, Chair of the Board of Directors of MERCE Clinic, and Teresa Shackelford, Chief Executive Officer of MERCE Clinic, spoke in support of the request for funding for the clinic. Ms. Cooper and Ms. Shackelford reported that the clinic is experiencing a significant cash flow deficit as a result of past management mistakes that have been corrected or are in the process of being corrected. The specific funding request is for a one-time grant of \$40,000 that is needed to move forward with the clinic's recovery plan.

A copy of a fact sheet distributed to the Council by the clinic's representatives is on file in the City Clerk's office.

After posing questions to the MERCE Clinic representatives, and after a substantive discussion of the issue, the Council members unanimously concluded that, due to the exigent circumstances associated with this situation and the need to preserve the unique asset of having a clinic with the federally qualified health center designation, the one-time funding request would be granted by means of approving a budget ordinance amendment. Upon motion by Mr. Bell, and seconded by Mr. Burks, the City Council voted unanimously to approve the following ordinance:

ORDINANCE TO AMEND THE GENERAL FUND  
FY 2011-2012

WHEREAS, the City Council of the City of Asheboro is strongly committed to supporting and improving economic development and quality of life in the City of Asheboro as outlined in the Asheboro 20/20 Strategic Planning Report, and;

WHEREAS, the MERCE Clinic located at 1831 N. Fayetteville Street opened its doors for service in 1993 to meet a Randolph County community need for healthcare for individuals with no means of insurance for medical care and expanded in 2006 to provide dental care to these individuals, and;

WHEREAS, the MERCE Clinic currently provides medical and dental services to approximately 4,500 individuals, encompassing over 15,600 visits, and has become is a pivotal medical resource center servicing Randolph County and in doing so is participating in the City of Asheboro's strategic goal of enhancing the quality of live for individuals in the City of Asheboro, and;

WHEREAS, MERCE Clinic is the ongoing recipient of annual federal grants of over \$816,000 that is spent in Randolph County to meet individual medical and dental needs, and;

WHEREAS, as a result of their designation as a federally qualified health center (FQHC), MERCE is the recipient of an additional \$365,000 annually in federal funding, and;

WHEREAS, the MERCE Clinic is in need of approximately \$405,000 in order to allow for the continued operation and to protect their FQRC status and the annual receipt of the above referenced \$1.1 million dollars of federal funds, and;

WHEREAS, the flow of \$1.1 million dollars annually into the City of Asheboro and Randolph County helps support the economic development and viability of the City of Asheboro and Randolph County, and;

WHEREAS, the City of Asheboro wishes to partner with Randolph Hospital and Randolph County in meeting this funding need to protect the eligibility for \$1.1 million dollars to be received annually and spent in Randolph County, and;

WHEREAS, Randolph Hospital has agreed to provide up to \$150,000 and Randolph County Board of Commissioners have approved to provide up to \$215,000 of this required \$405,000, and;

WHEREAS, the City Council of the City of Asheboro wishes to provide a one-time grant of \$40,000 to MERCE Clinic which will allow MERCE Clinic to meet their funding needs, and;

WHEREAS, the budget as adopted requires amendment to be in compliance with all generally accepted accounting principles, and;

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

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

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Total Appropriation</u>
10-399-0000	Fund Balance Appropriation	40,000	467,428

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

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>	<u>Amended Budget</u>
10-490-5600	Community Development	40,000	40,000

Adopted this the 8th day of December 2011.

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

ATTEST:

s/ Tamela D. Garner  
Tamela D. Garner, Deputy City Clerk

**14. Discussion of items not on the agenda**

Mayor Smith acknowledged the Council's receipt of the minutes of the meeting of the Asheboro ABC Board that was held on November 7, 2011.

Christmas on Sunset will be Friday December 9<sup>th</sup>, 2011.

Chamber of Commerce Christmas party at the Exchange Thursday December 15<sup>th</sup>, 2011.

"*Handles' Messiah*" will be performed by the Winston Salem Orchestra in the Asheboro High School Auditorium Friday December 16, 2011.

There being no further business, the meeting was adjourned at 8:43 p.m.

s/ Tamela D. Garner  
Tamela D. Garner, Deputy City Clerk

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