

**REGULAR MEETING
ASHEBORO CITY COUNCIL
THURSDAY, MAY 10, 2007
7:00 p.m.**

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

David H. Jarrell) – Mayor Presiding

Talmadge Baker)
Linda Cater)
Keith Crisco)
Nancy Hunter)
Walker Moffitt)
Archie Priest)
David Smith)

John N. Ogburn, III, City Manager
Eddie Brown, Code Compliance Inspector
Dumont Bunker, P.E., City Engineer
John Evans, Planner
Holly J. Hartman, City Clerk/Senior Legal Assistant
Wendell Holland, Zoning Administrator
Foster Hughes, Recreation Director
Deborah P. Juberg, Finance Director
R. Reynolds Neely, Jr., Planning Director
O. Lynn Priest, Community Development Director
James W. Smith, Fire Chief
Jeffrey C. Sugg, City Attorney
Ricky Wilson, Police Captain

1. Call to Order.

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

2. Pledge of Allegiance and Invocation.

Mayor Jarrell asked everyone to stand and repeat the Pledge of Allegiance. Reverend David Cox gave the invocation.

3. Appearance and recognition of guests and citizens.

Mayor Jarrell welcomed everyone in attendance.

4. Consent Agenda.

Upon motion by Mr. Smith and seconded by Ms. Carter, Council voted unanimously to approve the following consent agenda items:

- Approval of the minutes of a special meeting of the City Council held on March 13, 2007.
- Approval of the minutes of the regular meeting of the City Council held on April 5, 2007.
- Findings of fact, conclusions of law, and order in the matter of CUP-07-05.

CUP-07-05
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF BRAD PARKER FOR A CONDITIONAL USE PERMIT
ALLOWING A MULTI-FAMILY DEVELOPMENT WITH A
FLOOR AREA RATIO OF UP TO 22%

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING THE REQUESTED
CONDITIONAL USE PERMIT

THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on April 5, 2007. This case was originally brought before the Council on March 8, 2007, but the hearing was continued to the Council's regular April meeting upon the request of the applicant. 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. Brad Parker of Greenway Development properly filed an application with the City of Asheboro Planning Department for a legislative rezoning of approximately 7.82 acres of land (hereinafter referred to as the "Zoning Lot") from a R10 medium-density residential zoning district to a CU-RA6 conditional use high-density residential zoning district. Concurrent with the filing of an application to rezone the Zoning Lot, Brad Parker (hereinafter referred to as the "Applicant") filed an application for a Conditional Use Permit that would allow the development on the Zoning Lot of a multi-family development with a floor area ratio of up to 22%.

2. The Zoning Lot is located on the south side of Ridge Street and on the west side of Zoo Parkway. Macon Properties, LLC owns approximately 5.17 acres of the land comprising the Zoning Lot, and the portion of the Zoning Lot owned by Macon Properties is more specifically identified by Randolph County Parcel Identification Number 7750940407. Joseph E. and Lena Brown own the remaining portion of the Zoning Lot, which is comprised of approximately 2.65 acres of land. Randolph County Parcel Identification Number 7750943464 more specifically identifies the portion of the Zoning Lot owned by the Browns.

3. Prior to formally evaluating the evidence submitted in support of the requested Conditional Use Permit, the Council denied the Applicant's request to rezone the Zoning Lot from a R10 zoning district to a Conditional Use RA6 zoning district. Currently, the Zoning Lot remains in a R10 medium-density residential zoning district.

4. Section 1102 of the Asheboro Zoning Ordinance provides that a "Conditional Use Permit" is a "permit required to be issued by the Asheboro City Council which establishes permitted uses within a Conditional Use District and sets forth conditions."

5. Section 1013.2 of the Asheboro Zoning Ordinance provides as follows:

In considering an application for a Conditional Use Permit, the City Council, (sic) shall give due regard that the purpose and intent of this ordinance shall be served, public safety and welfare secured and substantial justice done. If the City Council should find, after a public hearing, that the proposed Conditional Use Permit should not be granted, such proposed permit shall be denied. Specifically the following general standards shall be met:

- 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 (sic).

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

CONCLUSIONS OF LAW

1. The Asheboro Zoning Ordinance does not permit the Council to issue a Conditional Use Permit that purports to authorize a land use on a lot or parcel of land that is not located in a Conditional Use District. The Council is only authorized to issue a Conditional Use Permit, with all of its encumbrances upon the land uses that may occur on a lot or parcel of land that is subject to the permit, when the said lot or parcel of land is located within a Conditional Use District.

2. The Council cannot approve the Applicant's request for a Conditional Use Permit because the Zoning Lot is located within a R10 medium-density residential zoning district, not a Conditional Use District of any kind.

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

ORDER

The application filed by Brad Parker for a Conditional Use Permit authorizing a multi-family development with a floor area ratio of up to 22% on the Zoning Lot is hereby denied.

Adopted by the Asheboro City Council in regular session on the 10th day of May, 2007.

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

ATTEST:

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

- Findings of fact, conclusions of law, and order in the matter of CUP-07-07.

Case No. CUP-07-07
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF GLENN KING OF TRIANGLE PARK ASSOCIATES FOR
AN AMENDMENT TO AN EXISTING
CONDITIONAL USE PERMIT

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

THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on April 5, 2007. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINIDNGS OF FACT

1. Glenn King of Triangle Park Associates (hereinafter referred to as the "Applicant") properly submitted an application to amend the existing Conditional Use Permit that regulates certain real property located at 3140 Zoo Parkway (this property is hereinafter referred to as the "Zoning Lot").
2. The Zoning Lot is comprised of approximately 8.0 acres and is owned by Triangle Park Associates and others.
3. The development located upon the Zoning Lot is known as the Parkways South Planned Unit Development. This development is more specifically described in Condo Book 1, Page 64 and Condo Book 1, Page 83 in the Randolph County Public Registry.
4. The Zoning Lot is located in an area that is designated on the Growth Strategy Map as a "Resource Conservation" area, and said area is identified on the Proposed Land Development Plan Map as "Conservation Residential."
5. The existing land use on the Zoning Lot is a townhouse development.
6. Low-density residential land use is found to the north of the Zoning Lot while a combination of undeveloped land and low-density residential use is located to the south. Undeveloped land is found to the west of the Zoning Lot, and an institutional land use (Cross Road Rest and Retirement Center) is located to the east.
7. The single goal of this application for a new Conditional Use Permit is to remove a condition attached to the previous Conditional Use Permits (CUP-00-02 and CUP-04-23) pertaining to the maintenance of the sewage pumping station that provides service for the townhouse development. The permit condition at issue requires private maintenance of the sewage pump station. The Applicant, as well as other individuals who reside within the development, now want the City of Asheboro to take ownership of and responsibility for the maintenance of this sewage pumping station.
8. The Zoning Lot is located within the corporate limits of the City of Asheboro, and the lot is served by city services.

9. The Applicant's proposal does not seek to change the development's previously approved number of dwelling units, which is thirty-five (35), nor does the proposal seek to change the design of the development.

10. Members of the planning department's staff have reviewed the site plan submitted by the Applicant, and the said site plan does comply with the requirements of the Asheboro Zoning Ordinance. However, in order to ensure continuing compliance with the Asheboro Zoning Ordinance, the planning department staff did offer the following suggested conditions:

a. The requested Conditional Use Permit shall not become effective unless and until the Council formally accepts fee simple conveyance of the sewage pump station to the City of Asheboro.

b. Except as expressly provided to the contrary by the approved permit, the existing storm and sanitary sewer infrastructure requirements shall continue unabated.

c. The dumpster and required screening shall be redesigned and relocated to provide proper accessibility. The dumpster and required screening shall not encroach on any proposed sewer easement that has been or will be granted to the City of Asheboro.

11. The Applicant testified during the hearing of this matter that he is prepared to accept the conditions that have been proposed by the Planning Department staff.

12. The proposed amendment of the existing Conditional Use Permit does not change or call into question the credibility or reliability of the evidence originally relied upon by the Council as the basis for the issuance of the existing Conditional Use Permit for the Parkways South Planned Unit Development.

13. The assumption of ownership and maintenance responsibilities for the sewage pump station by the City of Asheboro will have a positive impact on the residents of the townhouse development.

14. Prior to the city taking ownership and maintenance responsibility for the sewage pump station, an engineering upgrade of the pump station has to be completed.

15. No testimony or other form of evidence was submitted to the Council during the hearing of this matter in opposition to the Applicant's requested amendment of the existing Conditional Use Permit.

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

CONCLUSIONS OF LAW

1. The Council has concluded that the proposed use, as modified to include public ownership and maintenance of the sewage pump station that serves the development, will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.

2. The evidence received during the public hearing established that the proposed use, as amended, does meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. The evidence presented during the course of the hearing of this matter established that the amendment of the existing use to include public ownership and maintenance of the sewage pump station would not substantially injure the value of adjoining or abutting property.

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

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

ORDER

With the modification that the City of Asheboro may assume ownership and maintenance responsibilities for the development's existing sewage pump station, Glenn King of Triangle Park Associates is hereby issued a Conditional Use Permit for the existing Parkways South Planned Unit Development. This Conditional Use Permit shall be valid so long as, and only so long as, the Applicant, and his heirs, successors, and assigns, conduct the approved land use in complete compliance with the revised site plan presented to the Council during the hearing of this matter, the provisions of the Asheboro Zoning Ordinance, and the following supplemental conditions:

a. This Conditional Use Permit shall not become effective unless and until the Council formally accepts fee simple conveyance of the sewage pump station to the City of Asheboro.

b. Except as amended by the express terms of this Order, the existing storm and sanitary sewer infrastructure requirements shall continue unabated.

c. The development's dumpster and required screening shall be redesigned and relocated to provide proper accessibility. Furthermore, the dumpster and required screening shall not encroach on any proposed sewer easement that has been or will be granted to the City of Asheboro.

If any conflicts in interpretation are discovered between the approved site plan and the supplementary conditions, the specifications found within the supplementary conditions shall be deemed to be controlling.

Adopted by the Asheboro City Council in regular session on the 10th day of May, 2007.

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

ATTEST:

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

- Findings of fact, conclusions of law, and order in the matter of CUP-07-08.

CUP-07-08
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF RODNEY AND BETSY MOODY FOR A CONDITIONAL
USE PERMIT ALLOWING A HOTEL

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING A CONDITIONAL USE
PERMIT

THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on April 5, 2007. 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. Rodney and Betsy Moody (hereinafter referred to as the "Applicants") properly filed an application with the City of Asheboro Planning Department for a legislative rezoning of certain lots from a combination of a CU-OA6 Conditional Use Office and Apartment zoning district and a B2 General Business zoning district to a single CU-B2 Conditional Use General Business zoning district. Concurrent with the filing of an application for this legislative rezoning, the Applicants also properly filed an application for a Conditional Use Permit that would allow the construction and operation of a hotel on the rezoned property.

2. The Applicants propose to construct this hotel on approximately 2.83 acres of land that, at the time of the submission of the application for a Conditional Use Permit, was identified by two (2) Randolph County Parcel Identification Numbers. The parcel of land owned by the Century 21 Integrity Group, Inc. was identified by parcel identification number 7760399101, and the parcel of land owned by Rodney and Betsy Moody was identified by parcel identification number 7760492166. The combination of these two (2) parcels of land constitutes the zoning lot for which a Conditional Use Permit has been sought. This 2.83-acre zoning lot (hereinafter referred to as the "Zoning Lot") is located on the east side of Dublin Road and the west side of Executive Way.

3. Prior to formally considering the evidence submitted in support of the requested Conditional Use Permit, the Council placed the Zoning Lot into the requested CU-B2 Conditional Use General Business zoning district. This action was consistent with the recommendations received from the planning department staff and the City of Asheboro Planning Board. The staff recommendation from the planning department, which was adopted by the Planning Board, stated in pertinent part that the requested rezoning was "supported by several goals and policies of the Land Development Plan as well as its Proposed Land Use Map."

4. 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 "Commercial."

5. Under the Asheboro Zoning Ordinance, hotels are a permitted land use in the underlying B2 zoning district.

6. The land uses surrounding the Zoning Lot are commercial uses to the south and east, while undeveloped commercial property is located to the north. Single-family residential land uses are located to the west. The Zoning Lot itself is currently undeveloped.

7. The Applicants have requested a Conditional Use Permit for a 95-room hotel with four (4) floors. The average building height is to be 839.5 feet, more or less, while the maximum building height is to 846.5 feet, more or less.

8. Executive Way is the street to be utilized to access the proposed hotel. Dublin Road is not to be utilized for access to the proposed hotel.

9. The Applicants propose to leave existing vegetation along Dublin Road as a buffer and to provide a 25-foot type C buffer along the western boundary of the Zoning Lot as required by the Asheboro Zoning Ordinance.

10. The Zoning Lot is located within the corporate limits of the City of Asheboro. Municipal water and sewer service is available to the site from Executive Way.

11. Members of the planning department's staff have reviewed the site plan and elevations submitted by the Applicants, and the said site plan and elevations do comply with the requirements of the Asheboro Zoning Ordinance.

12. The testimony provided during the hearing of this matter indicated that no noxious fumes or unusually hazardous materials are associated with the proposed use.

13. The traffic associated with the hotel is directed to a street, Executive Way, that is designed to handle commercial traffic.

14. There are two (2) other motels/hotels located in the immediate vicinity of the proposed land use, and the evidence introduced during the hearing of this matter did not indicate the presence of any substantive negative impacts on the area surrounding the Zoning Lot as a consequence of these similar land uses.

15. Mr. Jim Wright, who is a certified real estate appraiser in North Carolina with twenty-five (25) years of experience, testified under oath on behalf of the Applicants. Mr. Wright testified that he had formed a professional opinion, on the basis of the available data for hotels in this area, that the proposed hotel use would not injure the value of properties adjoining the Zoning Lot.

16. Two (2) adjoining property owners did express their opposition to the granting of the requested Conditional Use Permit, and there was some testimony as to concerns about the impact of the proposed land use on the value of adjoining properties. However, no competent, material, and substantial evidence was introduced to undermine the expert testimony provided by Mr. Wright as to the impact of the proposed hotel land use on the value of the adjoining properties. Similarly, the testimony offered in opposition to the permit application did not significantly challenge the appropriateness of building and operating a hotel on the Zoning Lot. The opposition expressed during the hearing was directed at the specific location of the proposed hotel building on the Zoning Lot and the perceived negative impact on the property owners' personal enjoyment of their homes due to the proximity of the proposed structure to the existing residential dwellings.

17. Section 1013.2 of the Asheboro Zoning Ordinance provides as follows:

In considering an application for a Conditional Use Permit, the City Council, (sic) shall give due regard that the purpose and intent of this ordinance shall be served, public safety and welfare secured and substantial justice done. If the City Council should find, after a public hearing, that the proposed Conditional Use Permit should not be granted, such proposed permit shall be denied. Specifically the following general standards shall be met:

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 (sic).

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 Conditional 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 Applicants have properly submitted an application for a Conditional Use Permit authorizing the development of a hotel on the Zoning Lot, and the Zoning Lot is located within a CU-B2 zoning district.

3. The site plan submitted by the Applicants as part of the application for the requested Conditional Use Permit complies with all of 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 Conditional 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 compliance of the 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 Applicants, subject to certain conditions designed to address the concerns raised by the adjoining residential property owners, are to be issued a Conditional Use Permit for a hotel.

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

ORDER

The Applicants are hereby issued a Conditional Use Permit authorizing the development of a hotel on the Zoning Lot. This Conditional Use Permit shall be valid so long as, and only so long as, the Applicants, and their heirs, successors and assigns, develop and conduct the approved land use in compliance with the approved site plan and elevations, the provisions of the Asheboro Zoning Ordinance, and the following supplementary conditions that are attached to this permit:

a. Additional screening/buffering measures shall be taken along the Zoning Lot's western boundary that adjoins existing residential land uses. More specifically, an earthen berm that is to be a minimum of six and one-quarter feet (6¼') in height with 2 to 1 slopes is to be constructed in combination with an 8-foot high solid fence. This solid fence is to be constructed in a manner that is architecturally compatible with the surrounding development and in a manner that maximizes the height of this screening/buffering measure. Furthermore, on the residential side of the fence, Leyland Cyprus trees that are a minimum of twelve feet (12') in height at the time of planting shall be installed not more than twenty feet (20') apart on center. Unless more stringent requirements are imposed by the approved site plan, these supplementary conditions, or elsewhere in this Order, the provisions of the Asheboro Zoning Ordinance shall regulate the location, installation, and maintenance of all buffering and screening measures undertaken on the Zoning Lot.

b. The exterior lighting utilized by the proposed hotel shall consist of indirect and accent lighting. No lighting shall be attached to the west side of the building. All lighting, including parking lot lighting, is to be directed away from the western boundary of the Zoning Lot where existing residential land uses are located.

c. Illuminated signage is prohibited on the north and west side of the hotel building.

d. As indicated on the approved site plan, a no cut zone shall be established on the portion of the Zoning Lot located between Dublin Road, a parcel of land owned by Billy Essick, and the parcel of land upon which the Eckerd's drug store is located. This no cut zone shall be maintained so long as this Conditional Use Permit is in effect.

If any conflicts in interpretation are discovered between the approved site plan and the supplementary conditions, the specifications found within the supplementary conditions shall be deemed to be controlling.

Adopted by the Asheboro City Council in regular session on the 10th day of May, 2007.

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

ATTEST:

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

- Findings of fact, conclusions of law, and order in the matter of SUP-07-01.

Case No. SUP-07-01
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF ANDREW AND LAURA LAMBERT FOR A SPECIAL USE PERMIT AUTHORIZING A CHILD DAY CARE CENTER – MEDIUM (30- 79 CHILDREN)

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

THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on April 5, 2007. This case was originally brought before the Council on March 8, 2007, but the hearing was continued to the Council's regular April meeting upon the request of the applicant. 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. Andrew and Laura Lambert (hereinafter referred to as the "Applicants") properly filed an application with the City of Asheboro Planning Department for a Special Use Permit that would authorize them to utilize the lot located at 3036 Forest Park Drive (hereinafter referred to as the "Zoning Lot") for a land use classified by the Asheboro Zoning Ordinance as a child day care center – medium (30 to 79 children).
2. The Zoning Lot is more specifically identified by Randolph County Parcel Identification Number 7764101572 and is comprised of approximately 1.06 acres of land.
3. The existing land use for the Zoning Lot is classified as vacant commercial, and the Zoning Lot is located in B2 zoning district.
4. The Growth Strategy Map designates the area in which the Zoning Lot is located as a "Primary Growth" area, and the Proposed Land Development Plan Map indicates that this lot is located in an area designated as "Neighborhood Residential."
5. The land uses to the north, south, east, and west of the Zoning Lot are single-family residential.
6. The land use of Child Day Care Center – Medium (30 – 79 children) is permitted under the Asheboro Zoning Ordinance in a B2 zoning district with the issuance of a Special Use Permit.
7. The Applicants propose to employ fourteen (14) persons and serve up to seventy-five (75) children.
8. The Zoning Lot is located within the corporate limits of the City of Asheboro and is served by all city services.
9. Forest Park Drive is a state-maintained street. The North Carolina Department of Transportation will have to approve any driveway.
10. If the requested Special Use Permit is approved, the following improvements to the Zoning Lot would be made: (A) An additional paved parking area will have to be installed as indicated on the site plan submitted by the Applicants; (B) A landscaping screen will have to be installed along the northern boundary line of the Zoning Lot; (C) Plantings will have to be installed within the 10-foot front yard landscape area in accordance with the Asheboro Zoning Ordinance; (D) The dumpster area will have to be screened in accordance with the city's specifications; and (E) Evergreen trees will be planted to the west of the new parking area.
11. No encroachments or plantings are permitted within the easement areas established upon the Zoning Lot by existing sanitary sewer easements granted in favor of the city.

12. No landscaping buffers or screens are required along the eastern or western property lines due to the current commercial zoning boundaries extending beyond the Zoning Lot itself.

13. Child day cares are licensed by the North Carolina Department of Health and Human Services. Evidence of proper licensing by the State of North Carolina will be required prior to the issuance of a Certificate of Zoning Compliance.

14. Prior to the Council's consideration of this application, the City of Asheboro Board of Adjustment reviewed aspects of the proposed land use under file number BOA-07-03 and approved certain variances from the specifications prescribed by the Asheboro Zoning Ordinance. In essence, the approved variances eliminated a portion of the landscape screening requirements and allowed a vinyl fence to be utilized as part of the Applicant's compliance with the screening requirements.

15. Members of the planning department staff reviewed the Applicant's proposed site plan prior to the Council's hearing of this matter and subsequent to the granting by the Board of Adjustment of the above-described variances. On the basis of this review, the city's planning director testified that the submitted site plan does comply with the requirements of the Asheboro Zoning Ordinance.

16. In order to comply with the parking requirements established by the Asheboro Zoning Ordinance, no more than fourteen (14) employees, seventy-five (75) children, and two (2) facility vehicles may be on the premises of the proposed facility at any single point in time.

17. Laura Lambert provided uncontroverted testimony that she has received child care training as required by the appropriate North Carolina regulatory agencies and that she is experienced in the field of child care.

18. Ms. Lambert also offered uncontroverted testimony that the proposed child care facility will improve the Zoning Lot, which is currently vacant, and that the child care facility is compatible with the surrounding residential uses. Ms. Lambert does live on Forest Brook Drive and walks to the existing building located upon the Zoning Lot.

19. No testimony or any other form of evidence was offered in opposition to the Applicant's request for the issuance of a Special Use Permit.

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

CONCLUSIONS OF LAW

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

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

3. The Applicants' proposed use will not substantially injure the value of adjoining or abutting property.

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

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

ORDER

Andrew and Laura Lambert are hereby issued a Special Use Permit that authorizes a land use classified under the Asheboro Zoning Ordinance as a Child Day Care Center – Medium (30 to 79 children) to be conducted on the Zoning Lot. This Special Use Permit shall be valid so long as, and only so long as, Andrew and Laura Lambert, and their heirs, successors, and assigns, develop and conduct the approved land use in compliance with the site plan submitted to the Council during the hearing of this matter, the provisions of the Asheboro Zoning Ordinance, and the following supplemental conditions:

1. No encroachments or plantings shall be permitted within the sewer easements granted to the City of Asheboro.

2. No more than fourteen (14) employees, seventy-five (75) children, and two (2) facility vehicles shall be permitted at the facility at any single point in time. This condition is necessary in order to ensure compliance with the parking requirements established by the Asheboro Zoning Ordinance.

Adopted by the Asheboro City Council in regular session on the 10th day of May, 2007.

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

ATTEST:

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

- Approval of audit contract with Maxton McDowell, CPA for the fiscal year ending June 30, 2007.

(A copy of the above-referenced item is on file in the City Clerk's office.)

- Approval of a resolution authorizing the mayor and the city clerk to enter into a municipal agreement with the North Carolina Department of Transportation to obtain Federal-Aid highway funds necessary to install railroad crossing signals at Peachtree Street, with the City of Asheboro's share of the installation cost estimated at \$15,000 (10% of the project cost), and the City of Asheboro's share of the maintenance cost estimated at \$1,290 per year (50% of the total maintenance cost).

23 RES 5-07

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT
BETWEEN THE CITY OF ASHEBORO AND THE NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION**

WHEREAS, the North Carolina Department of Transportation (NCDOT), an agency of the State of North Carolina, pursuant to the provisions of G.S. 136-18(12) proposes to contract with the Federal Highway Administration to obtain Federal-Aid funds for improvements in the protective devices at a certain highway-railway grade crossing on the Municipal Street System for which the Municipality is responsible; and

WHEREAS, this project (Project Z-4708Q) shall consist of the installation of certain automatic warning devices at the intersection of Peachtree Street and Norfolk Southern Railway Tracks in Asheboro (Crossing No. 722478G; Milepost M 27.25); and

WHEREAS, the Municipality will reimburse the NCDOT for ten percent (10%) of any and all expenses incurred in the planning, design and installation of the protective devices by the NCDOT, and 100% of the cost not reimbursed by the Federal Highway Administration; and

WHEREAS, in order to carry out Project Z-4708Q and to promote the public interest and general welfare of the Municipality, it is necessary for the Municipality to enter into a contract with the NCDOT to provide for the installation and maintenance of the protective devices at the highway-railway grade crossing described above.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that Project Z-4708Q is hereby formally approved; and

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized and directed to sign and execute on behalf of the municipal corporation a contract with NCDOT to obtain Federal-Aid highway funds necessary to improve the protective devices at the said grade crossing under Project Z-4708Q and for NCDOT to perform certain work.

Adopted by the Asheboro City Council in regular session on the 10th day of May, 2007.

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

ATTEST:

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

5. Land Use Issues.

- (a) CUP-07-13: Request for a Conditional Use Permit Modification of Lexington Commons Subdivision. The property of Mid-Atlantic Town Homes, LLC is located at 131 Southway Road and consists of approximately 0.65 of an acre of land. Randolph County Parcel Identification Number 7751348407 more specifically describes the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely affirmed his testimony and presented the staff's analysis of the proposed site plan and the request by Mid-Atlantic Townhomes, LLC for a Conditional Use Permit modification

authorizing the removal of the parcel of land located at 131 Southway Road from the permit authorizing the Lexington Commons development.

Mr. Jon Megerian, Esq., was sworn in and addressed the four standard tests.

There being no further comments nor opposition from the public, Mayor Jarrell closed the public hearing. An audio tape recording of the testimony presented during the public hearing is on file in the City Clerk's office.

Upon motion by Mr. Baker and seconded by Ms. Hunter, Council voted unanimously to approve the requested Conditional Use Permit. The issuance of this permit was based on the four standard tests being met.

The formal findings of fact, conclusions of law, and order granting the Conditional Use Permit will be entered by Council in regular session on June 7, 2007.

- (b) RZ-07-14: Request to rezone from R7.5 Conditional Use Medium-Density Residential to R10 Medium-Density Residential. The property of Mid-Atlantic Townhomes, LLC is located at 131 Southway Road and consists of approximately 0.65 of an acre of land. Randolph County Parcel Identification Number 7751348407 more specifically describes the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Mid-Atlantic Townhomes, LLC to rezone the above-described property from CU-R7.5 Conditional Use Medium-Density Residential to R10 Medium-Density Residential. The Planning Department Staff and the Planning Board recommended approval based on the following:

"This request seeks to resolve the zoning status of the subject area. At the time of the permit issuance for the development in 2001, the future status of the previous dwelling on the property and how the property was to be used was unclear. The area was identified only as a future phase. Under the existing zoning and permit, any development of the site would require Council's review and approval. The applicant requests a general R10 medium-density residential district for the property; a district that would allow the subdivision of the property and the development of single or two-family dwellings under staff review. Considering all factors, staff concludes that the requested district is reasonable and in general harmony with the Land Development Plan and the area's zoning pattern."

On behalf of the Applicant, Mr. Jon Megerian presented comments in support of the requested rezoning.

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

Upon motion by Ms. Carter and seconded by Mr. Crisco, Council agreed with the uncontroverted comments made by Mr. Megerian as well as the planning board recommendation and voted unanimously to approve the request and place the above-described property in a R10 Medium-Density Residential zoning district.

- (c) RZ-07-15: Request to rezone from Conditional Use B-3 Central Commercial District to B-2 General Business District. The property of Carolina Farmers Mutual Insurance Company is located at 515 West Salisbury Street and consists of approximately 2.48 acres of land. Randolph County Parcel Identification Number 7751631608 more specifically describes the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Carolina Farmers Mutual Insurance Company to rezone the above-described property from CU-B3 Conditional Use Central Business to B2 General Business. The Planning Department Staff and the Planning Board recommended approval in that the current zoning regulations, which were not in place when this property was put in a CU-B3 zoning district, are "adequate to protect public health, safety, and welfare. The applicant's assertion of the need for development flexibility is reasonable. . ."

On behalf of the applicant, Mr. Mack Summey with Summey Engineering presented comments in support of the requested rezoning.

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

Upon motion by Mr. Baker and seconded by Ms. Hunter, Council voted unanimously to adopt the recommendation of the Planning Board and placed the above-described property in a B2 General Business zoning district.

- (d) RZ/CUP-07-16: Request to rezone from R-10 Medium-Density Residential to CU-B2 Conditional Use General Business and issue a Conditional Use Permit for a Health Practitioner's Office. The property of Matthew Ryan and Lisa Ann Salyer is located along the west side of Browers Chapel Road approximately 700 feet south of East Dixie Drive and consists of approximately 2.1 acres of land. Randolph County Parcel Identification Number 7760378608 more specifically describes the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely affirmed his testimony and presented the staff's analysis of the applicant's combined request for the Council to rezone the entirety of the above-described property from R10 Medium-Density Residential to CU-B2 Conditional Use General Business and issue a Conditional Use Permit for a Health Practitioner's Office to be located on a portion of the property (approximately 1.2 acres).

The Planning Board previously considered the requested rezoning and was concerned that storm water runoff issues should be considered for the entirety of the site and not just the portion of the property subject to a Conditional Use Permit. Additionally, the Planning Board recommended denial of the requested rezoning and adopted the following analysis by the Planning Department Staff:

"The Land Development offers some support for the request and the applicant's decision to request a conditional use zoning district will afford the City Council the ability to thoroughly review the potential impact of the site's development on the surrounding area during the May hearing. Staff, however, recommends following the LDP Proposed Land Use map's guidance which does not encourage continued commercial development south along Brower's Chapel Road. Staff believes that the site can be reasonably development under the existing zoning designation and such development could provide a transition from the commercial corridor along Dixie Drive to the residential areas south of Dixie Drive."

Mr. Mack Summey with Summey Engineering, affirmed his testimony and spoke in support of the Applicant's request.

Ms. Tari Johnson, Mr. Dave Forrest, Mr. Thomas Johnson, Mr. Fred Baker, and Mr. Sam Hussey affirmed their testimony and presented comments and concerns in opposition to the request.

Mr. Kenny McDowell, P.E. affirmed his testimony and presented comments in regards to storm water runoff issues.

After initially closing the public hearing and re-opening it in order to conduct additional fact finding, Mayor Jarrell closed the public hearing when no new information or speakers were offered. An audiotape of the testimony presented during this hearing is on file in the City Clerk's office along with any documentary evidence submitted during this hearing.

Upon motion by Mr. Moffitt and seconded by Mr. Smith, Council voted unanimously to place the above-described property in a CU-B2 Conditional Use General Business zoning district on the basis of the Council's disagreement with the guidance from the Land Development Plan that had been relied upon by the Planning Board.

During the hearing of this matter, the Salyers offered to subject the entirety of the above-described property to the requested Conditional Use Permit. Upon motion by Mr. Moffitt and seconded by Mr. Smith, Council voted unanimously to approve a Conditional Use Permit to allow a Health Practitioner's Office to be located on the property. The issuance of this permit was based on the four standard tests being met and was conditioned on the permit holder complying with certain conditions.

The formal findings of fact, conclusions of law, and order authorizing this Conditional Use Permit will be entered by the Council in regular session on June 7, 2007. This order will reflect the conditions imposed upon this permit as a consequence of the testimony presented during the hearing of this matter.

Mayor Jarrell asked Mr. Crisco, Mr. Moffitt, and Mr. Priest to research solutions for certain storm water runoff issues impacting the area surrounding the applicant's property.

- (e) SUP-07-03: Request for a Special Use Permit for a Public Facility. 40,000 square feet of property owned by Paul D. Trollinger and located along Old Cedar Falls Road. This property is a portion of Randolph County Parcel Identification Number 7761992469.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely affirmed his testimony and presented the staff's analysis of the proposed site plan and the request by Paul D. Trollinger for a Special Use Permit to allow a public facility.

Mr. Mark Trollinger affirmed his testimony and addressed the four standard tests.

There being no further comments nor opposition from the public, Mayor Jarrell closed the public hearing. An audio tape recording of the testimony presented during the public hearing is on file in the City Clerk's office.

Upon motion by Mr. Smith and seconded by Mr. Priest, Council voted unanimously to approve the requested Special Use Permit. The issuance of this permit was based on the four standard tests being met.

The formal findings of fact, conclusions of law, and order authorizing the Special Use Permit will be entered by the Council in regular session on June 7, 2007.

- (f) SUB-07-01: Olde Towne Village Sections I and II. Preliminary Plat Approval.

Mr. Neely presented the preliminary plat for the proposed Olde Towne Village Section I and II Subdivision. Routh Builders, LLC requested the approval of a preliminary plat for a subdivision to be located along the south side of Old Lexington Road. The proposed subdivision contains approximately 21.61 acres of land with approximately 52 lots plus common area.

All departments have reviewed the plat. The Planning Board recommended approval of the preliminary plat with the comment that certain items needed to be corrected or completed. Prior to Council's consideration of the preliminary plat, the Applicant submitted a revised preliminary plat, however, the Planning Department Staff has not had time to review the revisions. The Planning Department Staff recommended approval of the revised preliminary plat on the condition that no construction commence until the revisions are thoroughly checked by city staff and any technical deficiencies are corrected by the applicant.

Upon motion by Mr. Moffitt and seconded by Mr. Priest, Council voted unanimously to approve the preliminary plat with the condition noted above.

(The aforementioned preliminary plat is on file in the City Clerk's office.)

- (g) SUB-07-01: Olde Towne Village Section III. Preliminary Plat Approval.

Mr. Neely presented the preliminary plat for the proposed Olde Towne Village Section III Subdivision. Routh Builders, LLC requested the approval of a preliminary plat for Section III of the proposed subdivision to be located along the south side of Old Lexington Road. The proposed Section III of the above-referenced subdivision contains approximately 18.86 acres of land with approximately four (4) lots.

The Planning Department Staff and the Planning Board recommended approval of the preliminary plat with the following comments:

1. Section III is a traditional subdivision layout and is accessed through Sections I and II. This section is not part of CUP-07-06.
2. The developer has been granted two subdivision variances for this section, as follows:
 - A. Subdivision Ordinance Article IX Section B.11: "Cul-De-Sac" length.
 - B. Subdivision Ordinance Article IX Section B.5: "Access to Adjacent Property."

Prior to Council's consideration of the preliminary plat, the Applicant submitted a revised preliminary plat, however, the Planning Department Staff has not had time to review the revisions. The Planning Department Staff recommended approval of the revised preliminary plat on the condition that no construction commence until the revisions are thoroughly checked by city staff and any technical deficiencies are corrected by the applicant.

Upon motion by Mr. Baker and seconded by Mr. Moffitt, Council accepted the recommendation of the Planning Board and approved, with the comments from the Planning Board, the preliminary plat for Olde Towne Village Section III.

(The aforementioned preliminary plat is on file in the City Clerk's office.)

(h) SUB-07-RV: Lawson RV Park. Variance Request.

Mr. Neely presented the request for a variance from the subdivision ordinance. David and Ginger Gail Lawson requested a variance from the Subdivision Ordinance Article XII Section IV, B.1: "Improvements" for the proposed Lawson RV Park to be located at 2513 Old Cedar Falls Road. Specifically, the Applicants proposed that one-way streets be built within the proposed subdivision.

Mr. Steve Grant, representative for the Applicants, David and Ginger Gail Lawson, presented comments in support of the requested variance.

Upon motion by Mr. Crisco and seconded by Mr. Smith, Council voted unanimously to approve the requested variance from Article XII Section IV, B.1 of the Subdivision Ordinance.

(i) SUB-07-02: Patriot Woods. Variance Request.

Mr. Neely presented the request for a variance from the subdivision ordinance. Mr. Herman K. McDowell, III requested a variance from Article IX Section B.5 "Access to Adjacent Property" for the proposed Patriot Woods Subdivision. Specifically, the Applicant proposed to "provide a single stub in lieu of two stubs to the east portion of the property to allow this one stub to be located in an area that will provide for future connectivity of undeveloped property in a suitable location for construction within standard right of way width and aligned for future connectivity and access."

The Applicant, Mr. McDowell presented comments in support of the requested variance.

Upon motion by Mr. Baker and seconded by Mr. Priest, Council voted unanimously to approve the requested variance from Article IX Section B.5 of the Subdivision Ordinance.

6. Consideration of annexation of 64.94 acres of City owned property on the east side of Zoo Parkway (Proposed Zoo City Park).

Mayor Jarrell opened the public hearing on the annexation of 64.94 acres of city-owned land located on the east side of Zoo Parkway (proposed Zoo City Park).

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

Mr. Bunker presented and recommended adoption, by reference, of an ordinance to extend the corporate limits of the City of Asheboro, North Carolina.

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

Ordinance Number 17 ORD 5-07
AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEBORO, NORTH CAROLINA
(64.94 Acres of City-Owned Land Located on the East Side of Zoo Parkway)

WHEREAS, pursuant to Section 160A-58.7 of the North Carolina General Statutes, the City Council of the City of Asheboro has adopted a resolution stating the intent of the City Council to annex the area described below; and

WHEREAS, after due notice, a public hearing on the question of this annexation was conducted during a regular meeting of the City Council that was held at 7:00 o'clock p.m. on May 10, 2007 in the Council Chamber at the Asheboro Municipal Building; and

WHEREAS, the City Council finds that the area for which annexation is proposed meets the standards of Section 160A-58.1(b) of the North Carolina General Statutes, to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the primary corporate limits of the City of Asheboro; and
- b. No point on the proposed satellite corporate limits is closer to the primary corporate limits of another municipality than to the primary corporate limits of the City of Asheboro; and
- c. The described area is so situated that the City of Asheboro will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits; and
- d. No subdivision, as defined in Section 160A-376 of the North Carolina General Statutes, will be fragmented by this proposed annexation; and

- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed twenty percent (20%) of the area within the primary corporate limits of the City of Asheboro; and

WHEREAS, the City Council further finds that the annexation of the area described below is in the public interest.

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

Section 1. By virtue of the authority granted in Section 160A-58.7 of the North Carolina General Statutes, the following described non-contiguous property owned by the City of Asheboro is hereby annexed and made part of the City of Asheboro:

Grant Township, Randolph County, North Carolina:

BEGINNING at a new iron pin that is located the following courses and distances from the point of intersection between the existing centerline of Zoo Parkway (North Carolina Highway 159) and the centerline of Old Cox Road (North Carolina Secondary Road 2834) (this point of intersection is not set, but it is located by means of the North Carolina Coordinate System at the coordinates of North 697,126.36 feet and East 1,764,540.32 feet (NAD 27): A chord bearing and distance of North 21 degrees 27 minutes 11 seconds West 389.77 from the intersection and along the existing centerline of Zoo Parkway following the arc of a curve with a radius of 952.54 feet to a point not set in the centerline of the road; thence North 55 degrees 19 minutes 25 seconds East 31.18 feet to an existing iron pin or pipe; thence North 55 degrees 19 minutes 25 seconds East 28.82 feet to the new iron pin that is the beginning point for this legal description; thence from the said Beginning point along the existing satellite corporate limits of the City of Asheboro the following courses and distances: North 55 degrees 19 minutes 25 seconds East 220.84 feet to an existing iron pin or pipe; thence North 55 degrees 18 minutes 28 seconds East 130.30 feet to an existing iron pin or pipe; thence North 34 degrees 41 minutes 19 seconds West 662.39 feet to an existing iron pin or pipe; thence along the Minnie Yates and Others property described in Deed Book 1085, Page 557, Randolph County Public Registry the following courses and distances: North 80 degrees 24 minutes 49 seconds East 981.48 feet to a new iron pin; thence North 03 degrees 42 minutes 09 seconds East 1529.97 feet to an existing iron pin or pipe; thence along the Pine Lake Partners, L.L.C. property described in Deed Book 1850, Page 1733, Randolph County Public Registry the following courses and distances: North 01 degree 23 minutes 25 seconds East 198.67 feet to an existing iron pin or pipe; thence North 01 degree 23 minutes 25 seconds East 33.58 feet to a point not set in the centerline of Richland Creek; thence along the centerline of Richland Creek the following courses and distances: South 16 degrees 41 minutes 28 seconds East 25.49 feet to a point not set; thence South 49 degrees 38 minutes 51 seconds East 76.49 feet to a point not set; thence South 37 degrees 43 minutes 46 seconds East 87.68 feet to a point not set; thence South 44 degrees 55 minutes 16 seconds East 55.24 feet to a point not set; thence South 86 degrees 40 minutes 06 seconds East 95.35 feet to a point not set; thence South 67 degrees 38 minutes 17 seconds East 101.67 feet to a point not set; thence South 43 degrees 05 minutes 36 seconds East 31.94 feet to a point not set; thence South 37 degrees 31 minutes 57 seconds East 118.81 feet to a point not set; thence South 30 degrees 38 minutes 19 seconds East 54.01 feet to a point not set; thence South 50 degrees 37 minutes 15 seconds East 32.42 feet to a point not set; thence South 87 degrees 13 minutes 31 seconds East 70.66 feet to a point not set; thence South 67 degrees 34 minutes 03 seconds East 56.80 feet to a point not set; thence South 50 degrees 27 minutes 39 seconds East 95.79 feet to a point not set; thence South 53 degrees 05 minutes 25 seconds East 128.97 feet to a point not set; thence South 55 degrees 13 minutes 13 seconds East 132.81 feet to a point not set; thence South 58 degrees 19 minutes 50 seconds East 163.69 feet to a point not set; thence South 52 degrees 21 minutes 30 seconds East 67.46 feet to a point not set; thence South 43 degrees 55 minutes 42 seconds East 98.70 feet to a point not set; thence South 47 degrees 57 minutes 02 seconds East 118.76 feet to a point not set; thence South 53 degrees 13 minutes 48 seconds East 67.63 feet to a point not set; thence South 12 degrees 54 minutes 12 seconds East 49.75 feet to a point not set; thence South 05 degrees 42 minutes 04 seconds West 82.40 feet to a point not set; thence South 48 degrees 57 minutes 58 seconds East 79.65 feet to a point not set; thence North 59 degrees 31 minutes 16 seconds East 48.03 feet to a point not set; thence departing from the centerline of Richland Creek South 38 degrees 21 minutes 30 seconds West 46.79 feet to an existing iron pin or pipe; thence along the Samuel Grantham property described in Deed Book 1875, Page 297, Randolph County Public Registry and in Plat Book 68, Page 10, Randolph

County Public Registry the following course and distance: South 36 degrees 33 minutes 37 seconds West 1600.22 feet to an existing iron pin or pipe in a branch; thence South 12 degrees 41 minutes 47 seconds West 64.21 feet along Lot 8 of the Walden Subdivision described in Plat Book 10, Page 50, Randolph County Public Registry to an existing iron pin or pipe; thence South 11 degrees 19 minutes 02 seconds West 91.03 feet along Lot 7 of the Walden Subdivision described in Plat Book 10, Page 50, Randolph County Public Registry to an existing iron pin or pipe; thence along the Pine Lake Partners, LLC property described in the Randolph County Public Registry in Deed Book 1840, Page 2590; Deed Book 1840, Page 2588; Plat Book 108, Page 8; Plat Book 68, Page 10; and in Plat Book 84, Page 80 the following courses and distances: North 83 degrees 00 minutes 20 seconds West 1010.39 feet to a new iron pin; thence South 55 degrees 18 minutes 28 seconds West 197.68 feet to a new iron pin; thence South 55 degrees 19 minutes 25 seconds West 95.36 feet to a new iron pin; thence South 46 degrees 47 minutes 34 seconds West 101.12 feet to a new iron pin; thence South 55 degrees 19 minutes 25 seconds West 30.00 feet to a new iron pin; thence North 31 degrees 13 minutes 46 seconds West 75.14 feet along the eastern margin of the right-of-way for Zoo Parkway to the point and place of the BEGINNING, and containing 64.94 acres of land, more or less, to be annexed.

This description is in accordance with a plat of survey entitled "Annexation Survey For City of Asheboro" and drawn under the supervision of Rodney G. Maness, Professional Land Surveyor with Registration No. L-4594. This plat of survey is dated January 29, 2007 and is identified as Job # 06047.

Section 2. The Mayor of the City of Asheboro shall cause to be recorded in the Office of the Register of Deeds of Randolph County, and in the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Randolph County Board of Elections, as required by Section 163-288.1 of the North Carolina General Statutes.

Section 3. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 4. This ordinance shall take effect and be in force from and after the date of its adoption.

Adopted by the Asheboro City Council in regular session on the 10th day of May, 2007.

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

ATTEST:

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

Approved as to form:

s/ Jeffrey C. Sugg
Jeffrey C. Sugg, City Attorney

7. Consideration of closing a portion of West Kivett Street between South Fayetteville Street and the railroad, to reduce the right-of-way width from 60 feet to 50 feet.

Mayor Jarrell opened the public hearing on the closing of certain portions of West Kivett Street.

Mr. Bunker reported that the resolution declaring the city council's intent to permanently close certain portions of West Kivett Street was published in *The Courier Tribune* once a week for four successive weeks, property owners have been notified by mail in accordance with the North Carolina General Statutes, and signs were posted along the street.

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

Mr. Bunker presented and recommended adoption, by reference, of an ordinance/order to permanently close certain portions of West Kivett Street.

Upon motion by Mr. Priest and seconded by Ms. Hunter, Council voted unanimously to adopt the following ordinance/order by reference.

CITY OF ASHEBORO STREET CLOSURE ORDINANCE NO. 18 ORD 5-07

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

IN RE THE CLOSING OF CERTAIN
PORTIONS OF WEST KIVETT 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 5th day of April, 2007, during a regular meeting, a resolution (21 RES 4-07) declaring the intent of the City Council to permanently close certain portions of West Kivett Street in order to reduce the width of the right-of-way for West Kivett Street between South Fayetteville Street and the railroad right-of-way from a 60-foot right-of-way to a 50-foot right-of-way; and

WHEREAS, Resolution Number 21 RES 4-07 properly called for a public hearing to be held on the question of whether or not such closing would be detrimental to the public interest or the property rights of any individual. The said resolution of intent called for the public hearing to be held at 7:00 o'clock p.m. on the 10th day of May, 2007, in the Council Chamber of the City of Asheboro Municipal Building which is located at 146 North Church Street in Asheboro; and

WHEREAS, pursuant to Section 160A-299 of the North Carolina General Statutes, the 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 (4) successive weeks prior to the above-referenced public hearing (this notice was published on the 13th, 20th, and 27th days of April, 2007, as well as the 4th day of May, 2007); and

WHEREAS, a copy of the 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 section of West Kivett Street located between South Fayetteville Street and the railroad right-of-way, said property owners are more particularly identified as follows:

1. Branson – McKenzie, LLC
2. Ronald R. Autry
3. Jeffrey Schwarz/Schwarz Properties, LLC
4. S.E. Trogdon & Sons, Inc.

WHEREAS, notice of the city council's intention to permanently close the described portions of West Kivett Street, including the call for a public hearing on the question of the proposed street closure, was prominently posted in two (2) places along West Kivett Street between South Fayetteville Street and the railroad right-of-way; and

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

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

Section 1. The portions of West Kivett Street described below are hereby permanently closed. The permanently closed portions of West Kivett Street are located within the corporate limits of the City of Asheboro and are more particularly described by metes and bounds as follows:

Southern Portion of the Existing 60-Foot Right-of-Way Claimed by the City of Asheboro That Is to Be Closed

Asheboro Township, Randolph County, North Carolina:

BEGINNING at an existing iron pipe set at the intersection of the western margin of the right-of-way for South Fayetteville Street (United States Highway 220 Business) and the southern margin of the 60-foot right-of-way currently claimed by the City of Asheboro for West Kivett Street; thence from the said Beginning point along the southern margin of the 60-foot right-of-way claimed by the City of Asheboro for West Kivett Street the following courses and distances: North 88

degrees 12 minutes 08 seconds West 149.97 feet to a railroad spike; thence North 88 degrees 06 minutes 44 seconds West 60.01 feet to a point not set; thence North 88 degrees 06 minutes 44 seconds West 68.40 feet to a point not set; thence North 88 degrees 06 minutes 44 seconds West 141.87 feet to a point not set; thence North 06 degrees 12 minutes 57 seconds East 5.00 feet along the eastern margin of the Norfolk Southern Railroad right-of-way to a point not set; thence along the southern margin of the proposed 50-foot right-of-way for West Kivett Street the following courses and distances: South 88 degrees 07 minutes 54 seconds East 141.66 feet to a point not set; thence South 88 degrees 07 minutes 54 seconds East 68.44 feet to a point not set; thence South 88 degrees 07 minutes 54 seconds East 209.77 feet to a point not set; thence South 01 degree 52 minutes 06 seconds West 4.91 feet along the western margin of the right-of-way for South Fayetteville Street to the point and place of the BEGINNING, and being all of that certain 2,112 square feet (0.05 of an acre) of land, more or less, encompassed by the preceding metes and bounds description.

Northern Portion of the Existing 60-Foot Right-of-Way Claimed by the City of Asheboro That Is to Be Closed

Asheboro Township, Randolph County, North Carolina:

BEGINNING at the intersection of the western margin of the right-of-way for South Fayetteville Street (United States Highway 220 Business) and the northern margin of the 60-foot right-of-way claimed by the City of Asheboro for West Kivett Street; thence from the said Beginning point along the northern margin of the 60-foot right-of-way currently claimed by the City of Asheboro for West Kivett Street the following courses and distances: North 88 degrees 03 minutes 17 seconds West 236.76 feet to a point not set; thence North 88 degrees 03 minutes 17 seconds West 87.82 feet to a railroad spike; thence North 88 degrees 17 minutes 20 seconds West 92.92 feet to a railroad spike; thence South 01 degree 52 minutes 06 seconds West 5.17 feet along the eastern margin of the right-of-way for Norfolk Southern Railroad to a point not set; thence along the northern margin of the proposed 50-foot right-of-way for West Kivett Street the following courses and distances: South 88 degrees 07 minutes 54 seconds East 92.70 feet to a point not set; thence South 88 degrees 07 minutes 54 seconds East 87.99 feet to a point not set; thence South 88 degrees 07 minutes 54 seconds East 236.69 feet to a point not set; thence North 04 degrees 59 minutes 21 seconds East 5.00 feet along the western margin of the right-of-way for South Fayetteville Street to the point and place of the BEGINNING, and being all of that certain 2,182 square feet (0.05 of an acre) of land, more or less, encompassed by the preceding metes and bounds description.

The two preceding (2) legal descriptions are in accordance with a plat of survey entitled "Survey Plat For Proposed Closing Of A Portion Of Right Of Way On West Kivett Street To Reduce The Right Of Way Width From 60 Feet To 50 Feet" that was drawn under the supervision of Rodney G. Maness, a professional land surveyor with registration number L-4594. The said plat of survey is dated April 2, 2007, identified as Job No. 07004, and is hereby incorporated into this resolution by reference as if copied fully herein.

Section 2. This ordinance shall take effect and be in force from and after the date of its adoption.

Section 3. Any person aggrieved by the permanent closure of the above-described portions of West Kivett 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 the 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 this ordinance and order shall be filed in the Office of the Register of Deeds of Randolph County, North Carolina as provided by law.

Adopted by the Asheboro City Council in regular session on the 10th day of May, 2007.

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

ATTEST:

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

8. Public Comment Period.

Mayor Jarrell opened the public comment period and invited members of the public to address the Council.

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

9. Update on Asheboro Pedestrian Master Plan by Mary Joan Pugh.

Ms. Mary Joan Pugh, Vice Chairperson for the Asheboro Pedestrian Plan Steering Committee, presented an update on the pedestrian master plan. The Steering Committee has researched certain policies for making the City of Asheboro a pedestrian friendly community. According to a survey conducted by the Piedmont Triad Council of Governments, citizens within Asheboro would like to see more trails, greenways, and parks be constructed within the community.

The Steering Committee hopes to have a draft of a master plan to present to the Council in October, 2007.

No formal action was taken by the Council.

10. Consideration of a resolution requesting the North Carolina Department of Transportation to make necessary traffic safety improvements on Zoo Parkway (North Carolina Highway 159).

Mr. Ogburn presented and recommended adoption, by reference, of the above-referenced resolution.

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

24 RES 5-07

**RESOLUTION REQUESTING NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION MAKE NECESSARY TRAFFIC SAFETY
IMPROVEMENTS ON ZOO PARKWAY (NC Hwy. 159)**

WHEREAS, Zoo Parkway (NC Hwy 159) is a major corridor for traffic into and out of Asheboro; and

WHEREAS, Zoo Parkway (NC Hwy 159) is a major corridor for traffic into and out of the North Carolina Zoological Park; and

WHEREAS, Zoo Parkway (NC Hwy 159) is extremely congested most Zoo attendance days; and

WHEREAS, Tour buses travel NC Zoo Parkway carrying hundreds of school children daily to the Zoo; and

WHEREAS, the NC Zoo is one of the world's premiere zoological parks;

NOW, THEREFORE, BE IT RESOLVED, by the Asheboro City Council that the North Carolina Department of Transportation make all the necessary safety and congestion relief improvements including, increased signage and signalization to ease egress and ingress to the world renowned facility; and, the Asheboro City Council does further resolve that these improvements will make the NC Zoo a safer and more pleasant experience for it's nearly 1 million annual visitors.

Adopted by the Asheboro City Council this 10th day of May, 2007.

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

ATTEST:

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

11. Consideration of fire protection service contracts between the City of Asheboro and the Ulah Volunteer Fire Protective Association, Inc. for fire protection service at the Asheboro Regional Airport and the Farmer Volunteer Fire Department, Inc. for fire protection service at Lake Reese.

Chief Smith presented the terms of the proposed contracts to the Council and explained that the contracts are needed to maintain the current fire insurance rating at these city-owned facilities

which are located a significant distance from the city's corporate limits. The Asheboro Fire Department will continue to respond to calls for service at these locations.

Upon motion by Ms. Carter and seconded by Ms. Hunter, Council voted unanimously to approve the aforementioned contracts.

(The original contracts referenced above are on file in the City Clerk's office.)

12. Consideration of a resolution authorizing the City Manager to execute a contract for the provision of market manager services at the Downtown Farmers' Market.

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

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

25 RES 5-07

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE PROVISION OF MARKET MANAGER SERVICES AT THE DOWNTOWN FARMERS' MARKET

WHEREAS, the Asheboro Parks and Recreation Department Policy Manual, which has been incorporated by reference into the Code of Asheboro, provides that if the Market Manager for the Downtown Farmers' Market is to be a designated not-for-profit agency, such an agency shall provide the desired services on the basis of a 12-month contract that must be approved by the Asheboro City Council; and

WHEREAS, the Director of the Asheboro Parks and Recreation Department has determined that the Downtown Farmers' Market can be operated in an optimal manner by utilizing Regional Consolidated Services, which does function as a not-for-profit agency, as the Market Manager during the operational hours of the Downtown Farmers' Market; and

WHEREAS, upon the recommendation of the Director of the Asheboro Parks and Recreation Department, the City Manager has submitted to the City Council for approval a proposed contract for the provision of Market Manager services at the Downtown Farmers' Market by Regional Consolidated Services for a term of one (1) year; and

WHEREAS, the proposed contract has been attached to this resolution as Exhibit 1 and is hereby incorporated into this resolution by reference as if copied fully herein; and

WHEREAS, on the basis of its review of the contents of the proposed contract, the City Council has determined that the terms and conditions of the proposed contract are satisfactory.

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

Section 1. The proposed contract that is attached to this resolution as Exhibit 1 is hereby approved.

Section 2. The City Manager is hereby authorized and directed to execute on behalf of the City of Asheboro a contract with Regional Consolidated Service that conforms with Exhibit 1.

Adopted by the Asheboro City Council in regular session on the 10th day of May, 2007.

ATTEST: s/ David H. Jarrell
David H. Jarrell, Mayor

s/ Holly J. Hartman
Holly J. Hartman, City Clerk

EXHIBIT 1

STATE OF NORTH CAROLINA

CONTRACT FOR MARKET MANAGER SERVICES AT THE DOWNTOWN FARMERS' MARKET

COUNTY OF RANDOLPH

THIS AGREEMENT is made the ____ day of May, 2007, by and between RANDOLPH COMMUNITY SERVICES, INC. (hereinafter referred to as "RCS"), a North Carolina non-profit corporation d/b/a Regional Consolidated Services with its principal office located at 221 South Fayetteville Street,

Asheboro, North Carolina 27203, and the CITY OF ASHEBORO (hereinafter referred to as the "City"), a North Carolina municipal corporation with its principal office located at 146 North Church Street, Asheboro, North Carolina 27203.

RECITALS:

WHEREAS, the City has constructed a facility that, in addition to performing other functions, can host a farmers' market known as the Downtown Farmers' Market; and

WHEREAS, the structures and the premises upon which these structures are located (hereinafter collectively referred to as the "Facility") are located upon certain real property owned by the City and located at 134 South Church Street in Asheboro; and

WHEREAS, the City's Parks and Recreation Department has been designated as the unit of the municipal corporation responsible for ensuring that the Facility is utilized in a comprehensive manner for the purpose of providing the citizens of Asheboro and Randolph County with an opportunity for a quality recreation experience; and

WHEREAS, the Director of the City's Parks and Recreation Department has determined that the Facility can be operated in the most optimal manner by utilizing RCS as the Market Manager during the operational hours of the Downtown Farmers' Market (hereinafter referred to as the "Market"); and

WHEREAS, RCS has agreed to function as the manager of the Market in exchange for the sole and only consideration of the receipt by RCS of the fees collected from vendors at the Market in accordance with the terms and conditions of this ordinance.

NOW, THEREFORE, in consideration of the RECITALS set forth above, the parties hereby agree as follows:

Section 1. RCS Designated Official Custodian of Property. Subject to the limitations imposed by the Code of Asheboro and the terms and conditions of this agreement, RCS shall act as the official custodian of the Facility during the operational hours of the Market and at no other time.

Section 2. RCS to Enforce Laws, Ordinances, and Regulations. The duties and responsibilities of RCS under this agreement shall include without limitation the duty to comply with and enforce, to the maximum extent permitted by law, all ordinances, rules, and regulations adopted by the City's governing board and to enforce all applicable State and Federal laws and regulations. By way of illustration and without limitation, RCS is to enforce and abide by the applicable policies, rules, and regulations found in the Asheboro Parks and Recreation Policy Manual, as amended from time to time, and which, pursuant to Section 98.01 of the Code of Asheboro, is incorporated by reference into the Code of Asheboro. The provisions of the said Asheboro Parks and Recreation Policy Manual applicable to the Market are attached to this agreement as Attachment A and are hereby incorporated by reference into this agreement as if fully copied herein.

Section 3. General Responsibilities of Market Manager. The general responsibilities of the Market Manager are specified in the document attached to this agreement as Attachment B. Attachment B is hereby incorporated into this agreement by reference as if copied fully herein. RCS shall discharge the entirety of the listed responsibilities of the Market Manager in a manner that is reasonable and consistent with the generally accepted standards set for the performance of similarly situated managers of farmers' markets.

Section 4. Limitation of Authority of Market Manager. RCS is expressly prohibited from adopting any policy or taking any action that is beyond the scope of this agreement or is in conflict with any ordinances, rules, regulations, or policies adopted by the City's governing board.

Section 5. Complete Work without Extra Cost. Unless otherwise provided herein, RCS shall obtain and provide, without cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work. As used throughout this agreement, the term "Work" means the services and duties that RCS is required to perform and discharge pursuant to this agreement.

Section 6. Term. The term of this agreement shall be for one year (365 days) with the term of the contract commencing at 12:01 a.m. on June 1, 2007, and expiring at midnight on May 31, 2008.

Section 7. Compensation. RCS shall retain for its own use the fees charged to vendors utilizing the Facility for the Market. RCS hereby expressly acknowledges that, except as prescribed by this section, RCS has no claim to compensation, monetary or otherwise, from the City for past, present, or future services rendered under this agreement.

Section 8. Concessions. The City shall retain exclusive possession and control of any and all automated vending machines located at the Facility. RCS is strictly prohibited from selling beverages or any other type of concession item on the premises of the Facility.

Section 9. Tax Obligations. As an independent contractor, RCS expressly acknowledges that all remittances of taxes, fees, and related documentation are the sole responsibility of the Contractor.

Section 10. Signage. No signage shall be erected on any portion of the Facility unless (1) such signage complies with all applicable statutes, ordinances, and regulations and (2) such signage has received express approval from the City's Director of Parks and Recreation. Any signage displayed in contravention of this section is subject to immediate removal by city forces without notice.

Section 11. Consequences of Breach of Contract by RCS. If RCS should fail to comply with any of the terms and conditions of this agreement, the City shall provide RCS with written notice of the failure and shall provide RCS with a thirty (30) calendar day period to cure such failure. RCS agrees that, upon such notification of a violation or breach of the terms and conditions of this agreement, RCS shall immediately and diligently undertake to correct any such condition. RCS must, without delay or excuse, absolutely correct the defect or violation on or before the exact date specified by the City. In the event the failure to perform or comply with any term and condition of this agreement is not cured by RCS within the above-referenced thirty (30) calendar day period to cure or within any other time period specified by the City in its written notice of the breach or failure to perform, whichever is later, the City may, at its option, terminate this agreement immediately. Upon such termination, this agreement shall become null and void, and the City and RCS shall have no other further obligations to each other, other than the obligation of RCS to immediately remove any of its personal property that it may have brought to the Facility. In addition, the City may order the Facility closed immediately when any condition exists on the premises of the Facility that an agency of the city, county, state, or federal government, which is charged with public health and safety responsibilities, deems to constitute a threat to health or safety.

Section 12. Performance of Work by City. Furthermore, if RCS fails to perform the Work in accordance with this contract, the City may, in its discretion, perform or cause to be performed some or all of the Work, and doing so shall not constitute a breach by the City of any of the terms and conditions of this agreement. Furthermore, the City's act of performing or causing to be performed some or all of the Work shall not waive any of the City's rights and remedies. Before performing the Work or causing the Work to be performed, the City shall give RCS notice, either written or verbal, of its intention. RCS shall reimburse the City for additional costs incurred by the City in exercising its right to perform or causing to be performed some or all of the Work pursuant to this section.

Section 13. Inability of RCS to Perform Obligations. In the event that RCS is for any reason unable to fulfill the obligations that arise under this agreement and so notifies the City in either a written or verbal manner, the City has the right to immediately terminate the agreement and take any measures reasonably calculated to cure the breach of contract by RCS.

Section 14. Termination of Agreement by RCS. If RCS desires to terminate this agreement without cause prior to its expiration, a thirty (30) day written notice of intent to terminate the agreement shall be submitted to the City's Director of Parks and Recreation. Upon termination of this agreement, RCS forfeits any right or claim to fees generated either directly or indirectly by the Market for the month(s) following the termination of the agreement.

Section 15. Notices. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
Director of Parks and Recreation
City of Asheboro
Post Office Box 1106
Asheboro, North Carolina 27204-1106
The fax number is (336) 626-1218.

To RCS:
[Insert name and address]

The fax number is _____.

Section 16. Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Section 17. Indemnification. To the maximum extent allowed by law, RCS shall defend, indemnify and save harmless the City from and against all Charges that arise in any manner from, in

connection with, or out of this contract as a result of acts or omissions of RCS or anyone directly or indirectly employed by RCS or anyone for whose acts RCS may be liable. "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "charges" are interest and reasonable attorneys' fees assessed as part of any such item). The provisions of this section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of RCS under this contract. The provisions of this contract shall not require RCS to defend, indemnify, or save harmless the City against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or part, of the City, its officials, or employees.

Section 18. City's Right of Inspection. The City reserves the right to inspect the operations of RCS at the Facility at announced and unannounced times and intervals; however, such inspection shall not unreasonably interfere with any operations of RCS.

Section 19. Choice of Law and Forum. This agreement shall be deemed made in Randolph County, North Carolina. This agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this agreement shall be the North Carolina General Court of Justice in Randolph County. The provisions of this section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to the provisions of this section.

Section 20. Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this contract, except as may be specifically agreed in writing.

Section 21. Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

Section 22. Severability. If any provision of this contract shall be found to be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

Section 23. Assignment. Successors and Assigns. Unless the City's written consent is obtained in advance, RCS shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. Unless the City otherwise agrees in writing, RCS and all assignees shall be subject to all of the City's defenses and shall be liable for all of the duties of RCS that arise out of this contract and all of the City's claims that arise out of this contract.

Section 24. No Third Party Rights Created. This contract is intended for the benefit of the City and RCS and not any other person.

Section 25. Attachments. In case of a conflict between any of the previously referenced attachments and the text of this contract excluding the attachment, the text of this contract shall control.

Section 26. Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and the feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include", "including", etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement", whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

Section 27. Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

IN WITNESS WHEREOF, the City and RCS have caused this contract to be executed under seal by their respective duly authorized agents or officers.

CITY:

RCS:

John N. Ogburn, III
City Manager
City of Asheboro

Signature of Authorized Official

Title

Printed Name

ATTACHMENT A

ARTICLE XI. FARMER'S MARKET

SECTION 11.1 OPERATION AND CONTROL

The Farmers Market Facility shall be administered by the City of Asheboro, Department of Parks & Recreation in a manner that will provide the citizens of Asheboro and Randolph County with an opportunity for a quality experience.

Subject to the ordinances and regulations governing the Parks & Recreation Department and the general authority of the Parks & Recreation Director, the Market Manager or another designee, shall operate the Facility as a Farmer's Market on days and times specified in the Rules and Regulations section of this document. At other times, the facility shall be programmed by the Parks & Recreation Department.

The Market Manager may be a City or County employee or a designated not-for-profit agency. If the Market Manager is a designated not-for-profit agency, they shall serve on a 12-month contract approved by Asheboro City Council.

SECTION 11.2 HOURS OF OPERATION

- A. The Hours of Operation of the Farmer's Market shall vary with the season and activities permitted. The Market Manager shall produce a Farmer's Market Schedule no later than March 15 for the upcoming year.
- B. The Operating days shall be Tuesday, Thursday and Saturday. Operating Days may be added or deleted, depending on supply of produce. The Market Manager reserves the right to adjust hours of operation, as needed.

SECTION 11.3 FEES AND CHARGES

An annual Membership is available for \$25.00. Membership affords the vendor one daily vendor fees per season and an assigned space for the season. The space will be held until 8:00am on market days. Other than the one daily fees included in membership, members will be required to pay a daily \$5.00 fee. Non-members will be required to pay a \$8.00 daily vendor fee. Prices are subject to change at the discretion of the Market Manager.

SECTION 11.4 RULES AND REGULATIONS

- A. The Market Manager or it's designee shall enforce all rules and regulations during the operation of the Farmer's Market.
- B. All products sold at the market must be grown or made by the person selling the product or his/her authorized representative. An authorized representative must be listed on the application and approved. Only home grown or home made products from the following counties may be sold: Randolph, Alamance, Chatham, Davidson, Forsyth, Guilford, Moore, Montgomery, and Stanley. The market manager shall assign spaces to all vendors.
- C. Each Seller shall be responsible for keeping their assigned space clean during use and when leaving the facility. Excess produce must be removed from the market and not dumped in market trash containers.
- D. In order to sell at the Farmer's Market, an Application in a form prescribed by the Market Manager must be filled out and returned to the Market Manager with the appropriate fees.
- E. The Market Manager shall review and approve each application. Applications should be received at least two weeks before the vendor plans to begin selling at the Market.
- F. All vendors must have received a "Growers Certification" from their local Cooperative Extension service and have the certificate or a copy on hand in order to sell at the market.
- G. All Vendors shall display a sign bearing their name and address. The vendor shall prominently display this sign while selling at the market. Sign shall provided by the Market manager.
- H. Prices must be posted for all items to be sold.

- I. Products that can be sold include:
 - a. Vegetables grown from seeds, sets or seedlings.
 - b. Fruits, nuts or berries grown on land owned or leased by the seller.
 - c. Plants grown by the seller from seed, seedling transplant or cutting.
 - d. Bulbs propagated by the seller.
 - e. Eggs produced by the seller's hens.
 - f. Meats produced from animals raised by the seller.
 - g. Dairy products from animals raised by and made by the seller.
 - h. Honey produced from the seller's bees.
 - i. Cut or dried flowers grown by the seller.
 - j. Straw baled by the seller.
 - k. Preserves, pickles, relishes, jams and jellies made by the seller.
 - l. Baked goods baked by the seller.
 - m. Baskets
 - n. Pottery
 - o. Woodwork
 - p. Candles
 - q. Coffee and Tea served in single serve containers that are not reused on the premises.
- J. No low-acid canned foods such as green beans, corn, peas, carrots, etc... may be sold. In addition, no canned tomato products may be sold.
- K. All products must be of top quality.
- L. All food must meet NCDA and local health regulations. Members selling prepared foods must provide verification of current NCDA inspection when submitting their application.
- M. Food items must be labeled prior to sale with at least the following information:
 - a. Common or usual name of product.
 - b. Net contents, i.e.: net weight in ounces or pounds and ounces if the product is solid or semisolid; net contents in fluid ounces if the product is liquid.
 - c. List of ingredients in the product by decreasing order of predominance by weight of each ingredient.
 - d. Name, address including zip code and phone number of the person responsible for the product.
 - e. Date processed.
- N. Only standard canning jars with new rings and lids may be used.
- O. Home baked cakes, pies, cookies and breads may be sold except cream pies.
- P. All products produced under certification such as organic, licensed meat, poultry, or dairy products or products requiring inspection, such as baked goods or preserves must display certification or license and have a copy on file with the Market Manager.
- Q. No live animals may be sold or given away at the market.
- R. No pets are allowed at the Farmer's Market.
- S. Any vendor selling meat, dairy, poultry, or other animal products that are regulated by the NCDA and/or USDA are responsible for satisfying any regulatory requirements prior to selling of product. Vendors must file a copy of Department of Agriculture Form MP-2 (Registration of Poultry and Meat Handlers) with the market manager and keep a copy of this license with them at all times while selling at the market. Vendors also must inform the market manager of any change in licensing status immediately upon receiving notice of a change. All products must be stored in a new or like new condition refrigerator or freezer.
- T. Scales should be the type that can be or is approved and certified by the NCDA.
- U. Any complaints, disputes or violations of the rules shall be directed to the market manager for resolution.
- V. Neither the City of Asheboro nor its elected officials, officers, employees, agents, representatives, or contractors shall be responsible, in either an official or individual capacity, for loss through theft or otherwise of private property at the market. The Farmer's market shall not be responsible for personal injuries or damages to individuals or personal property arising out of the actions or conduct of guests, invitees, or any type of third party not directly affiliated with the City of Asheboro.
- W. Each vendor shall be responsible for their own records, taxes and compliance with all applicable regulations.

SECTION 11.5 EXECUTIVE COMMITTEE

An Executive Committee shall be established and include the following as members, Parks & Recreation Director, Market Manager and Cooperative Extension agent.

Regular meetings of the committee shall be held before and after the Farmer's Market season. Other meetings may be held on an as needed basis. The Parks & Recreation Director shall preside at all meetings.

Proposed changes to the Farmer's Market rules and regulations shall be approved by the Executive Committee. Rule changes shall be presented at the February City Council meeting each year, provided, however, the City Council may on its own motion address issues at the Farmer's Market on a more frequent basis as deemed appropriate by the City Council.

SECTION 11.6 FARMERS MARKET FACILITY

1. No Alcoholic beverages or drugs are permitted.
2. No pets, other than service animals are allowed.
3. No flea market items may be sold or displayed at any time.
4. Yard Sales may not be held at the Facility.
5. Rental of the facility must be approved by the parks & recreation department.
6. Security deposit and Rental Fees shall be set by City Council.
7. Vendors requiring electricity shall provide their own extension cords properly rated to meet their electrical requirements.
8. No items may be attached to any area of the Farmer's Market structure, trees, etc...
9. Holding an event at the Farmer's Market without authorization shall subject the event to immediate termination and other enforcement actions as deemed appropriate by the Parks & Recreation Director.

ATTACHMENT B

GENERAL RESPONSIBILITIES OF MARKET MANAGER:

- a. Market Manager or his designee shall be on site throughout the duration of the time period when the Market is in progress.
- b. Market Manager shall keep the Parks & Recreation Director informed of any complaints or disputes related to the Market.
- c. Market Manager shall be responsible for policing the Facility for trash.
- d. Market Manager shall be responsible for promoting the Market by press releases, paid advertisement and providing information for the Market's Website.
- e. Market Manager shall provide and display a suggestion box for vendors and patrons to provide feedback.
- f. Market Manager shall provide a yearly Market appraisal within 3 weeks of the end of the season, to include the following: dates of markets, number of vendors for each date, total amount of revenue generated, and a break down of expenses.
- g. On a daily basis, the Market Manager must provide to a representative of the Asheboro Parks and Recreation Department updated copies of the applications and "Growers Certification" forms submitted by vendors who are utilizing the Facilities.

13. Discussion of items not on the agenda.

Mr. Neely announced the following changes within the Planning Department. Mr. John Evans will serve as Planner, while Mr. Eddie Brown will serve as Code Compliance Inspector.

- **Upcoming Events:**

Monday, May 14, 2007 - Randolph Hospital Dedication – 5:30 p.m.

Monday, May 14, 2007 – Asheboro Housing Authority Dinner - 6:30 p.m.

Council Retreat at Camp Caraway – Thursday, May 17, 2007 – 9:00 a.m. until 5:00 p.m.
Friday, May 18, 2007 – 9:00 a.m. until 12:00 p.m.

Tuesday, May 22, 2007 – NCDOT Meeting – 1:00 p.m. – Asheboro Public Works Conference Room

There being no further business, the meeting was adjourned at 10:13 p.m.