

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
THURSDAY, JANUARY 10, 2008  
7:00 p.m.**

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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 S. Baker )  
Edward J. Burks )  
Linda H. Carter )  
J. Keith Crisco ) – Council Members Present  
Walker B. Moffitt )  
Archie B. Priest, Sr. )  
David H. Smith )

John N. Ogburn, III, City Manager  
Edsel L. Brown, Code Compliance Inspector  
Dumont Bunker, P.E., City Engineer  
Richard L. Cox, Jr., Community Planning and Development Department Intern  
Holly H. Doerr, City Clerk/Senior Legal Assistant  
John L. Evans, Planner  
Deborah P. Juberg, Finance Director  
Gary L. Mason, Chief of Police  
R. Reynolds Neely, Jr., Planning Director  
O. Lynn Priest, Community Development Director  
Jeffrey C. Sugg, City Attorney

**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 Mark Beane, Pastor of First Wesleyan Church, gave the invocation.

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

Mayor Jarrell welcomed everyone in attendance.

**4. Without objection from the Council, Mayor Jarrell moved Agenda Item 6(c) ahead of the Consent Agenda.**

**RZ-CUP-08-05: Request to rezone from R-15 (Low-Density Residential) to CU-O&I (Conditional Use Office and Institutional) and Issue a Conditional Use Permit for an Office Facility.** The properties of B&G Properties are located at 1000 Park Drive and consist of approximately 2.897 acres of land. Randolph County Parcel Identification Numbers 7751484515 and 7751484500 more specifically describe the properties.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely affirmed his testimony and presented a written request from the Applicant to continue the above-referenced item to the Council's regular February meeting.

Upon motion by Mr. Smith and seconded by Mr. Baker, Council voted unanimously to continue the above-referenced item to the Council's regular February meeting.

**5. Consent Agenda [Agenda Item Number 4]:**

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

- (a) **The minutes of the regular meeting of the City Council that was held on December 6, 2007.**
- (b) **The findings of fact, conclusions of law, and order in the matter of SUP-07-11.**

Case No. SUP-07-11  
City Council  
City of Asheboro

IN THE MATTER OF THE APPLICATION BY BISHOP PETER JUGIS FOR A SPECIAL USE PERMIT  
AUTHORIZING THE CONSTRUCTION AND OPERATION OF A  
CHURCH IN A RESIDENTIAL ZONING DISTRICT

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

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THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on December 6, 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. On the authority of Bishop Peter Jugis, an application was submitted to the City of Asheboro Planning Department for a Special Use Permit that would allow the existing congregation of St. Joseph's Catholic Church to move to a new facility that the church proposes to construct on the north side of Hub Morris Road. Bishop Peter Jugis and the connectional Church of which the congregation of St. Joseph's Catholic Church is a part shall be hereinafter referred to as the "Applicant."

2. The parcel of land upon which the proposed church facility is to be constructed encompasses approximately 44.17 acres of land and is more specifically identified by Randolph County Parcel Identification Number 7763544550. This parcel of land shall be hereinafter referred to as the "Zoning Lot."

3. The Zoning Lot is split between different zoning districts. A portion of the lot is located in a R-40 low density residential zoning district and the other portion of the lot is located in a R-10 medium density residential zoning district.

4. The Growth Strategy Map designates the area in which the Zoning Lot is located as a "Long Range Growth" area, and the Proposed Land Development Plan Map indicates that this property is located in an area designated as "Neighborhood Residential."

5. The land to the south and west of the Zoning Lot is either vacant or subject to low density residential use. Vacant land and manufactured housing are located to the north of the Zoning Lot, while a governmental use, the City of Asheboro Wastewater Treatment Plant, is located to the east.

6. A church is permitted in R-40 and R-10 zoning districts with the issuance by the City Council of a Special Use Permit authorizing such a use.

7. The Zoning Lot is currently located outside the corporate limits of the City of Asheboro, but municipal water service is available along the frontage of Hub Morris Road. The municipal sanitary sewer system is available to the rear of the Zoning Lot. The Applicant will have to petition for annexation into the City of Asheboro in order for the proposed facility to be connected to the public water and sewer systems.

8. This segment of Hub Morris Road is a major thoroughfare.

9. The Applicant's site plan indicates that a sanctuary, picnic shelter, soccer field, and softball field are to be constructed on the Zoning Lot.

10. The Applicant's site plan indicates that an entrance for the facility is to be constructed along Hub Morris Road.

11. The city's planning department staff has reviewed the submitted site plan and building elevations, and the planning director provided uncontroverted testimony that the site plan and building elevations do comply with the Asheboro Zoning Ordinance.

12. In addition to specifying the type of land use authorization sought by the Applicant, the planning director suggested the following conditions to any permit that might be issued by the Council in response to this application:

a. An engineering study of storm water runoff shall be made. If such study indicates that post development runoff will exceed predevelopment conditions, plans for runoff control shall be designed and certified by a professional engineer. Such controls shall be designed to reduce the runoff during the occurrence of a 10-year storm to predevelopment volumes and rates. Prior to the issuance of a Certificate of Occupancy, a professional engineer shall provide certification that the storm water controls were built according to the plans. Any open water retention or drainage areas shall be sprayed regularly for mosquito control. The continued maintenance of all runoff control measures shall be the responsibility of the property owner.

b. Significant existing vegetation shall be preserved. Clearing and grading shall be permitted where necessary for construction of the parking areas, structures approved with the issuance of a Special Use Permit, and infrastructure/required improvements such as the installation of water and sewer lines.

13. Mr. Jim Wright, who is a certified real estate appraiser in North Carolina with approximately twenty-five (25) years of experience, testified as to his expert opinion that the proposed church facility would not injure the value of properties adjoining the Zoning Lot.

14. 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 Applicant's 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 approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

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

#### ORDER

The Applicant is hereby issued a Special Use Permit that authorizes the development of a church and related activities on the Zoning Lot. This Special Use Permit shall remain valid so long as the Applicant, and its heirs, successors, and assigns, conduct the approved church land use in compliance with the approved site plan, the provisions of the Asheboro Zoning Ordinance, and the following conditions that are hereby attached to this permit:

a. An engineering study of storm water runoff shall be made. If such study indicates that post development runoff will exceed predevelopment conditions, plans for runoff control shall be designed and certified by a professional engineer. Such controls shall be designed to reduce the runoff during the occurrence of a 10-year storm to predevelopment volumes and rates. Prior to the issuance of a Certificate of Occupancy, a professional engineer shall provide certification that the storm water controls were built according to the plans. Any open water retention or drainage areas shall be sprayed regularly for mosquito control. The continued maintenance of all runoff control measures shall be the responsibility of the property owner.

b. Significant existing vegetation shall be preserved. Clearing and grading shall be permitted where necessary for construction of the parking areas, structures approved with the issuance of a Special Use Permit, and infrastructure/required improvements such as the installation of water and sewer lines.

Adopted by the Asheboro City Council in regular session on the 10<sup>th</sup> day of January, 2008.

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

ATTEST:

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

**(c) Amendments to the budget ordinance for fiscal year 2007-2008:**

- i. Amendment to allocate funds from the fund balance of the General Fund to the Economic Development Fund as part of the city's financial commitment to the development of Randolph Hospital's Cancer Center.**

**01 ORD 01-08**

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

- ii. Amendment of the revenue and expense line items within the Economic Development Fund as part of the city's financial commitment to the development of Randolph Hospital's Cancer Center.**

**02 ORD 01-08**

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

- iii. Amendment to allocate funds from the fund balance of the General Fund to the Economic Development Fund as part of the city's economic development agreement with Technimark, Inc.**

**03 ORD 01-08**

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

**(d) A resolution approving a change in the job description and pay grade of the Information Technologist.**

**01 RES 01-08**

**RESOLUTION APPROVING A CHANGE IN THE JOB DESCRIPTION AND PAY GRADE OF THE INFORMATION TECHNOLOGIST**

**WHEREAS**, the City of Asheboro Personnel Policies and Procedures Manual, which was promulgated by the City Manager and approved by resolution of the City Council of the City of Asheboro on March 4, 2004, and as amended, provides in Section 1 of Article II that a position classification plan shall be prepared by the City Manager and adopted by the City Council; and

**WHEREAS**, such a position classification plan has been duly adopted by the City Council; and

**WHEREAS**, the adopted position classification plan includes within its inventory of the city's full-time positions of employment the position of Information Technologist with a pay grade of 27; and

**WHEREAS**, Section 10 of Article II of the City of Asheboro Personnel Policies and Procedures Manual provides, in pertinent part, as follows:

When . . . the duties of an existing position change, the department head shall submit in writing a comprehensive job description describing in detail the duties of such a position. The city manager shall investigate the actual or suggested duties and recommend the appropriate class allocation or the establishment of a new class to the City Council for approval; and

**WHEREAS**, the Human Resources Director has made the determination that the job description for the Information Technologist should be changed to reflect the Information Technologist's added supervisory responsibilities for the GIS/IT Specialist; and

**WHEREAS**, a revised comprehensive job description (hereinafter referred to as the "Job Description"), which reflects the additional supervisory responsibilities assigned to the Information Technologist, is attached to this resolution as Exhibit 1 and is hereby incorporated into this resolution by reference as if copied fully herein; and

**WHEREAS**, the City Manager has approved the Job Description and has determined that the Information Technologist's additional supervisory responsibilities warrant a correspondingly higher pay grade for this position.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that, effective February 1, 2008, the Job Description attached hereto as Exhibit 1 is hereby approved without modification; and

**BE IT FURTHER RESOLVED** that, effective February 1, 2008, the recommendation of the City Manager to increase the pay grade of the Information Technologist from grade 27 to grade 28 is adopted and approved without modification.

Adopted by the Asheboro City Council in regular session on the 10<sup>th</sup> day of January, 2008.

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

ATTEST:

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

## **EXHIBIT 1**

### **INFORMATION TECHNOLOGIST** Information Technologist's Office

F.L.S.A.  
EXEMPT

#### **General Statement of Duties**

Performs administrative, supervisory and professional work in managing the information technology needs of the City of Asheboro. In addition to supervising and directing the work of the GIS/IT Specialist assigned to the Information Technologist's Office, an employee in this position plans, directs, and evaluates all aspects of information technology for all city departments. Work includes scheduling and monitoring the preparation and production of all computer systems. Work also involves devising new methods and procedures to increase equipment utilization and enhance city services.

#### **Distinguishing Features of the Class**

An employee in this class is responsible for installing or directing the installation of requested computer equipment in all office locations, troubleshooting equipment problems, and repairing or arranging for the repair of faulty equipment. Work involves providing technical support and expertise concerning various types of computer software. Work also involves providing training for employees in the use of technology. Employee must exercise tact and courtesy with co-workers, administrators, and supervisors. Employee reports to the City Manager.

#### **Illustrative Examples of Work**

- Supervises the administration of the city's information technology program;
- Receives installation requests, installs computer hardware and software at all city office sites;
- Plans for and installs network hardware/software;
- Provides technical expertise with respect to networking hardware/software;
- Troubleshoots hardware and software problems and errors in computer equipment or software, determines cause of error or stoppage, applies corrective techniques in cases where problems can be corrected or arranges for repair of faulty equipment;
- Maintains software license agreements and inventory of equipment as required;
- Assists with training for all city employees in the use of technology;
- Reviews and evaluates software applications;
- Answers telephone and provides technical support expertise;
- Performs other related work as required.

#### **Minimum Experience and Training**

BS degree in Computer Science, or related field and 2 to 3 years of experience developing technical expertise in a networking environment and related technologies; or any equivalent combination of training and experience, including some supervisory experience, which provides the required knowledge, skills and abilities.

#### **Physical Requirements**

Must be physically able to operate a variety of equipment and tools including computer software, computer hardware, cables, etc. Must be able to exert up to 50 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects. Work will take place mainly in a climate-controlled office setting.

- (e) **An ordinance prohibiting on-street parking along a certain portion of the north side of West Kivett Street.**

**04 ORD 01-08**

**ORDINANCE PROHIBITING ON-STREET PARKING ON A CERTAIN PORTION OF THE NORTH SIDE OF WEST KIVETT STREET**

**WHEREAS**, Section 160A-296 of the North Carolina General Statutes provides that a city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits; and

**WHEREAS**, Section 71.01(A)(1) of the Code of Asheboro provides as follows:

Pursuant to instructions given to him by the City Council from time to time and entered in the council minute book, the City Manager shall [c]ause all streets and parts of streets where parking shall be prohibited at all times to be posted accordingly, or cause the curbs thereof to be painted yellow. He shall then notify the City Clerk, who shall enter the description of such streets or parts of streets in Schedule 1 of § 72.02; and

**WHEREAS**, West Kivett Street is located within the corporate limits of the City of Asheboro; and

**WHEREAS**, Mr. Ronnie E. Tew, who resides at 402 West Kivett Street, has previously appeared before this council in order to call attention to the traffic hazards posed by the on-street parking currently permitted in front of his residence; and

**WHEREAS**, in light of Mr. Tew's representations to the council, the prohibition of on-street parking in the vicinity of 402 West Kivett Street, which is located on the north side of the street, is consistent with the council's interest in promoting the safe flow of vehicular traffic.

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

**Section 1.** In accordance with Section 71.01(A)(1) of the Code of Asheboro, on-street parking is hereby prohibited at all times on the portion of the north side of West Kivett Street located between a point that is approximately three hundred twenty feet (320') east of the centerline of South Park Street and a point that is approximately four hundred forty-five feet (445') east of the centerline of South Park Street.

**Section 2.** The City Manager is hereby authorized and directed to cause the portion of West Kivett Street described in the immediately preceding paragraph to be posted and/or painted in accordance with the provisions of Section 71.01(A)(1) of the Code of Asheboro and in accordance with the provisions of Section 1 of this ordinance.

**Section 3.** The City Manager and the City Clerk are hereby directed to revise Schedule 1 of Section 72.02 of the Code of Asheboro to reflect the on-street parking prohibition imposed by this ordinance.

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

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

Adopted by the Asheboro City Council in regular session on this 10<sup>th</sup> day of January, 2008.

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

ATTEST:

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

- (f) **A resolution authorizing the mayor to enter into a utility agreement between the City of Asheboro and the North Carolina Department of Transportation to relocate a 12" sewer force main along Pine Hill Road (SR 2824) at Richland Creek for the NCDOT bridge replacement project (B-4245), wherein the estimated cost to the city is \$13,452.00.**

02 RES 01-08

**RESOLUTION APPROVING A UTILITY AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the North Carolina Department of Transportation (hereinafter referred to as the "NCDOT") has prepared and adopted plans for the replacement of Bridge # 257 over Richland Creek on SR 2824 in Asheboro; and

**WHEREAS**, the NCDOT and the City of Asheboro (hereinafter referred to as the "City") propose to enter into an agreement whereby the NCDOT will include in its construction contract provisions for the relocation and adjustment of municipally owned sewer lines; and

**WHEREAS**, the City agrees to reimburse the NCDOT for the entire cost (estimated cost is \$13,452.00) of said utility work with reimbursement to be made in one final payment upon completion of the work.

**NOW, THEREFORE, BE IT RESOLVED** that Project B-4245, Randolph County, is hereby formally approved by the City Council of the City of Asheboro, North Carolina and that the Mayor and the City Clerk are hereby empowered to sign and execute the required agreement between the City and NCDOT.

Adopted by the Asheboro City Council in regular session on the 10<sup>th</sup> day of January, 2008.

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

ATTEST:

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

- (g) **Change Order #1 on the 16" water line from Park Drive to Pineview Street Project (Terry's Plumbing and Utilities, Inc.) increasing the contract amount by \$8,300.00 to \$1,614,922.00 and increasing the contract time by 9 days to 279 days for installation of a culvert and additional depth of water line required by unforeseen conditions.**

[A copy of the actual change order is on file in the City Clerk's office.]

- (h) **A request by W.K. Dickson & Company, Inc. for a contract amendment for engineering services for the Hangar Taxiway/Taxilane and Hangar Access Road Project increasing the contract amount by \$5,000 to \$42,400 for additional construction phase and inspection time required when the project was separated into two (2) phases to be compatible with the grant funding.**

[A copy of the document effectuating this contract amendment is on file in the City Clerk's office.]

**OLD BUSINESS:**

6. **Consideration of an ordinance regulating the operation of the Asheboro Police Department's rotation wrecker list. [Agenda Item Number 5]**

Mr. Sugg presented and summarized the provisions of a proposed ordinance regulating the operation of the Asheboro Police Department's rotation wrecker list.

Chief Mason commented that he has not received any unresolved complaints in regards to the performance and service of any wrecker service currently on the Police Department's rotation list. On the basis of the rarity of complaints, he has assumed that customers of the wrecker services have been generally satisfied with the services provided. Chief Mason further emphasized that the decision to seek regulation of the operation of the rotation wrecker list by means of the adoption of an ordinance was brought about by the assertion by certain wrecker service owners that the rotation wrecker list would not remain economically viable without change.

With one exception, Mr. Sidney Lowe of City Towing expressed that he had no significant disagreement with the current draft of the proposed ordinance. But, he felt that the Police Department should only use those wrecker services that are located within the corporate limits of the city. Mr. Lowe contends that wrecker operators perform a public safety function at wreck scenes. Yet, the city government does not fund this service with public funds. Therefore, if the city police department is to have access to sufficient wrecker services to efficiently and safely clear highways of disabled vehicles, the city's rotation wrecker list should be limited to qualified wrecker companies within the city in order to maintain the economic viability of the system.

Mr. Tim Hess of Big Tim's Towing, a Ramseur based operation, commented that the regulation of the rotation wrecker list should be based on performance and service as opposed to who pays city taxes. Mr. Hess asserted that his record of performance compared favorably to any other wrecker service currently on the rotation wrecker service list.

Mr. John Kennedy of Quality Auto and Mr. Larry Embler of Tator's Towing also offered comments in support of the proposition that wrecker services on the city's rotation list should be located within the city limits.

After substantive discussion in regards to the location of wrecker services and the number of services to be included on the rotation list, and upon motion by Mr. Moffitt and seconded by Ms. Carter, Council directed the City Attorney to redraft the proposed ordinance to reflect that wrecker services wishing to be on the city's rotation wrecker list must have their operations located within the corporate limits of the City of Asheboro. Mr. Crisco and Mr. Baker voted no.

This amended proposed ordinance is to be placed on the consent agenda for Council's consideration at its regular February meeting.

## **NEW BUSINESS:**

### **7. LAND USE ISSUES: [Agenda Item Number 6]**

- (a) RZ-08-02: Request to rezone from Low-Density Residential (R-40) to General Business (B-2). The property of Linda Cox Wilson (Trustee) is located at 2115 U.S. Highway 64 East and consists of approximately 2.1 acres of land. Randolph County Parcel Identification Numbers 7771041527 and 7771040488 more specifically describe the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Stephen B. Davidson and Jay B. Hammer to rezone the above-described property from R-40 Low Density Residential to B-2 General Business. The Planning Department Staff and the Planning Board recommended approval of the request based on the following:

"The rezoning request complies with the goals, policies, and map of the Land Development Plan. The area has been transitioning into commercial land uses and is located along a major thoroughfare, which decreases the likelihood of the property being utilized as low density residential land uses. Therefore, considering that the request is generally supported by the Land Development Plan text and map, staff believes that the rezoning is in the public's interest as it implements the recommendations of the Land Development Plan and encourages a reasonable use of the property."

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

Mr. Steve Defour and Mr. Bob Ward, neighboring property owners, presented comments and concerns in opposition to the request. Mr. Defour and Mr. Ward were concerned that the commercial zoning would negatively impact their residential property.

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

Upon motion by Ms. Carter and seconded by Mr. Burks, Council voted unanimously to follow the recommendation of the Planning Board and placed the above-described property in a B-2 General Business zoning district.

- (b) RZ-08-03: Technical Amendments to the Zoning Ordinance (Office and Institutional Districts). An Application filed by the City of Asheboro to amend the Zoning Ordinance by updating the language throughout the text of the Ordinance relating to the Office and Institutional (O&I) zoning district in Article 100 (General Regulations), Article 300

(Modification of Yard and Height Requirements), Article 300A (Supplemental Regulations), Article 500 (Sign Regulations) and Article 600 (Special Uses).

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented the Planning Department Staff's proposed amendments to Article 100, Article 300, Article 300A, Article 500, and Article 600 of the Asheboro Zoning Ordinance. The general intent of the proposed amendments is to clarify various portions of the Zoning Ordinance concerning regulations impacted by the creation of the Office and Institutional zoning district.

The Planning Department Staff and the Planning Board recommended approval of the requested amendments to the Asheboro Zoning Ordinance based on the following:

"These technical amendments clarify existing language in the Zoning Ordinance by including reference to the office and institutional district throughout the text of the Zoning Ordinance. These technical amendments do not alter the fundamental spirit of the regulations pertaining to office and institutional uses but reduce ambiguity in administering the Ordinance by including the Office and Institutional zoning district in the same locations throughout the text of the Ordinance as the other primary zoning district (OA-6 district) that accommodates the office and institutional uses."

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

Upon motion by Mr. Baker and seconded by Mr. Crisco, Council voted unanimously to adopt the recommendation of the Planning Board and approved, as presented, the amendments to Article 100, Article 300, Article 300A, Article 500, and Article 600 of the Asheboro Zoning Ordinance. A copy of the approved text of the amendments is on file in the City Clerk's office.

- (c) RZ-CUP-08-05: Request to rezone from R-15 (Low Density Residential) to CU-O&I (Conditional Use Office and Institutional) and issue a Conditional Use Permit for an Office Facility.

This item was continued to the Council's regular February meeting pursuant to a motion adopted by the Council immediately prior to the Council's consideration of the Consent Agenda.

#### **SUBDIVISIONS:**

- (d) SUB-07-02: Patriot Woods. Final Plat.

Mr. Neely presented the staff's analysis of the request by Herman K. McDowell, III for final plat approval for Patriot Woods. This subdivision is located on the South side of Tory Lane and contains approximately 64.478 acres of land, consisting of approximately twenty-one (21) lots.

All departments have reviewed the plat. The Planning Department Staff and the Planning Board recommended approval of the request.

Upon motion by Ms. Carter and seconded by Mr. Baker, Council accepted the recommendation of the Planning Board and approved the final plat.

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

- (e) SUB-06-03: Waterford Meadows Phase 1. Final Plat.

Mr. Neely presented the staff's analysis of the request by Waterford Meadows Development Co., LLC for final plat approval for Waterford Meadows Phase 1. This phase of the subdivision is located on the North side of Hub Morris Road and contains approximately 12.238 acres of land (the entire development encompasses a total of approximately 47.8 acres). Within this phase, there are 28 lots (the entire development is to consist of a total of 108 lots).

All departments have reviewed the plat. The Planning Department Staff and the Planning Board recommended approval of the request.

Upon motion by Mr. Moffitt and seconded by Mr. Priest, Council accepted the recommendation of the Planning Board and approved the final plat.

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

**8. Consideration of a petition received from Neely of Asheboro, Inc. and Cleveland Harper Thayer requesting contiguous annexation of 20.74 acres along the east and west side of Oakmont Drive. [Agenda Item Number 7]**

Mayor Jarrell opened the public hearing on the annexation of 20.74 acres of land located along the east and west side of Oakmont Drive.

There being no comments and no 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. Priest and seconded by Mr. Smith, Council voted unanimously to adopt the following ordinance by reference.

**Ordinance Number 05 ORD 01-08**  
**ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEBORO, NORTH CAROLINA**  
**(20.74 Acres of Land along the East Side and West Side of Oakmont Drive)**

**WHEREAS**, pursuant to Section 160A-31 of the North Carolina General Statutes, a petition signed by the owners of all of the real property located within the area hereinafter described was heretofore presented to the City Council, by which petition a request was made that said area be annexed to the City of Asheboro; and

**WHEREAS**, the City Council has by resolution directed the City Clerk of the City of Asheboro to investigate the sufficiency of the petition, and the City Clerk has certified the sufficiency of the said petition; and

**WHEREAS**, the City Council did publish notice to the public on the 28<sup>th</sup> day of December, 2007, in *The Courier-Tribune*, a newspaper having general circulation in the City of Asheboro, setting forth that a public hearing would be held during the City Council's regular meeting at 7:00 o'clock p.m. on the 10<sup>th</sup> day of January, 2008, at the City of Asheboro Municipal Building to consider the adoption of an ordinance annexing the said area to the City of Asheboro; and

**WHEREAS**, the said public hearing was in fact held on the 10<sup>th</sup> day of January, 2008; and

**WHEREAS**, the City Council has determined that the petition meets the requirements of Section 160A-31 of the North Carolina General Statutes.

**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 the North Carolina General Statutes, Chapter 160A, Article 4A, Part 1, the following described area is hereby annexed and made part of the City of Asheboro, North Carolina:

Asheboro Township, Randolph County, North Carolina:

BEGINNING at a computed point in the eastern margin of the 50-foot right-of-way for Oakmont Drive (North Carolina Secondary Road 1870), this computed point is located South 08 degrees 20 minutes 33 seconds West 328.75 feet from a computed point in the center of the intersection of Oakmont Drive and Greenmont Drive (North Carolina Secondary Road 1871); thence from the said Beginning point South 89 degrees 01 minute 01 second East 51.01 feet to a computed point; thence along the Vernon and Billie Wilson property described in Deed Book 1125, Page 297, Randolph County Public Registry the following courses and distances: South 87 degrees 55 minutes 56 seconds East 245.67 feet to a computed point; thence South 88 degrees 26 minutes 47 seconds East 53.02 feet to a computed point; thence South 88 degrees 33 minutes 10 seconds East 59.39 feet along the Chandra and Bhavana Vyas property described in Deed Book 1230, Page 10, Randolph County Public Registry to a computed point; thence along the southern property line of the Matthew Gates McArthur and Holly B. McArthur property described in the Randolph County Public Registry in Deed Book 1904, Page 2146 and in Deed Book 1984, Page 1774 the following courses and distances: South 88 degrees 00 minutes 42 seconds East 149.21 feet to a computed point; thence South 88 degrees 24 minutes 40 seconds East 259.61 feet to a computed point; thence South 88 degrees

33 minutes 43 seconds East 303.86 feet along the William J. Armfield, IV and S.A. McMillion property described in Deed Book 1050, Page 500, Randolph County Public Registry to a computed point; thence South 03 degrees 29 minutes 58 seconds West 778.35 feet along the William R. Allred and Glendon B. McCain property described in Deed Book 1067, Page 656, Randolph County Public Registry to a computed point; thence along the existing primary corporate limits of the City of Asheboro the following courses and distances: South 65 degrees 32 minutes 26 seconds West 120.58 feet to a computed point; thence North 41 degrees 59 minutes 33 seconds West 125.37 feet to a computed point; thence North 51 degrees 01 minute 09 seconds West 209.04 feet to a computed point; thence North 56 degrees 19 minutes 19 seconds West 218.22 feet to a computed point; thence North 66 degrees 17 minutes 47 seconds West 154.54 feet to a computed point; thence North 77 degrees 31 minutes 51 seconds West 145.31 feet to a computed point; thence North 88 degrees 03 minutes 12 seconds West 139.83 feet to a computed point; thence South 77 degrees 17 minutes 23 seconds West 140.94 feet to a computed point; thence South 64 degrees 31 minutes 06 seconds West 136.27 feet to a computed point; thence South 58 degrees 58 minutes 36 seconds West 97.74 feet to a computed point; thence North 44 degrees 17 minutes 30 seconds West 221.08 feet along the M. Pressley and Barbara Barnette property described in Deed Book 1128, Page 41, Randolph County Public Registry to a computed point in the eastern margin of the right-of-way for Oakmont Drive; thence South 66 degrees 32 minutes 01 second West 134.35 feet across Oakmont Drive to a computed point in the western margin of the right-of-way for Oakmont Drive; thence North 43 degrees 06 minutes 01 second West 194.65 feet along the Edward L. Clayton, Jr. and Joyia Clayton property described in Deed Book 1466, Page 1779, Randolph County Public Registry to a computed point; thence along the Theodore S. and Sara F. Anderson property described in Deed Book 1662, Page 1024, Randolph County Public Registry the following courses and distances: North 39 degrees 42 minutes 59 seconds East 55.75 feet to a computed point; thence North 00 degrees 41 minutes 57 seconds East 286.77 feet to a computed point; thence South 87 degrees 42 minutes 39 seconds East 184.65 feet along the Thomas W. and Mary M. White property described in Deed Book 1093, Page 429, Randolph County Public Registry to a computed point; thence South 88 degrees 17 minutes 14 seconds East 133.13 feet along the Douglas S. and Debbie R. Shiflet property described in Deed Book 1357, Page 1194, Randolph County Public Registry to a computed point; thence South 88 degrees 20 minutes 27 seconds East 138.87 feet along the Jill Stuart property described in Deed Book 1200, Page 2051, Randolph County Public Registry to a computed point; thence South 88 degrees 26 minutes 46 seconds East 86.43 feet along the Carl Stephen Jones, Jr. and Barbara Ann Jones property described in Deed Book 1224, Page 542, Randolph County Public Registry to a computed point in the western margin of the right-of-way for Oakmont Drive; thence across Oakmont Drive the following course and distance: South 88 degrees 36 minutes 06 seconds East 62.75 feet to the point and place of the BEGINNING, and containing 20.74 acres of land, more or less, to be annexed.

This description is in accordance with an annexation map prepared by the City of Asheboro Engineering Department and dated November 26, 2007. This plat of survey is identified as Job No. 07034.

**Section 2.** Upon and after January 10, 2008, the above-described territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Asheboro and shall be entitled to the same privileges and benefits as other parts of the City of Asheboro. Said territory shall be subject to municipal taxes according to section 160A-58.10 of the North Carolina General Statutes.

**Section 3.** 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 at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, 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 4.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

**Section 5.** This ordinance shall be in full force and effect upon and after the 10<sup>th</sup> day of January, 2008.

Adopted by the Asheboro City Council in regular session on the 10<sup>th</sup> day of January, 2008.

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

ATTEST:

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

Approved as to form:

s/ Jeffrey C. Sugg  
Jeffrey C. Sugg, City Attorney  
146 North Church Street  
Asheboro, North Carolina 27203

**9. Public Comment Period. [Agenda Item Number 8]**

No comments were offered by the public during this portion of the meeting.

**10. Consideration of solid waste management contracts: [Agenda Item Number 9]**

**(a) Solid waste disposal agreement**

Mr. Sugg presented and recommended adoption, by reference, of a resolution approving a solid waste disposal agreement with Republic Services of North Carolina, LLC. The proposed agreement continues an existing contractual relationship between the city and Republic Services of North Carolina, LLC.

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

**03 RES 01-08**

**RESOLUTION APPROVING A SOLID WASTE DISPOSAL AGREEMENT WITH REPUBLIC SERVICES OF NORTH CAROLINA, LLC**

**WHEREAS**, Republic Services of North Carolina, LLC, a North Carolina limited liability company d/b/a Uwharrie Environmental, operates a landfill located at 500 Landfill Road, Mt. Gilead, Montgomery County, North Carolina 27306; and

**WHEREAS**, the City of Asheboro operates a transfer station that receives non-hazardous solid waste collected by the city's sanitation department and then loads this solid waste onto trailers that are staged for transport to a landfill; and

**WHEREAS**, Republic Services of North Carolina, LLC (hereinafter referred to as the "Contractor") wishes to accept and dispose of non-hazardous solid waste delivered from the city's transfer station to the company's landfill in Montgomery County; and

**WHEREAS**, city staff members have presented to the City Council a proposed contract between the city and the Contractor for the acceptance and disposal by the Contractor of non-hazardous solid waste transported to the Montgomery County landfill from the city's transfer station; 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**, 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 the Contractor that conforms with Exhibit 1.

Adopted by the Asheboro City Council in regular session on the 10<sup>th</sup> day of January, 2008.

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

ATTEST:

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

**EXHIBIT 1**

**STATE OF NORTH CAROLINA**

**DISPOSAL AGREEMENT**

**COUNTY OF RANDOLPH**

**THIS DISPOSAL AGREEMENT** is entered into as of this \_\_\_ day of \_\_\_\_\_, 2008, by and between the **CITY OF ASHEBORO**, a municipal corporation under the laws of the State of North Carolina (the "Customer"), and **REPUBLIC SERVICES OF NORTH CAROLINA, LLC**, a limited liability company organized and existing under the laws of the State of North Carolina d/b/a Uwharrie Environmental (the "Disposal Operator").

**RECITALS**

**WHEREAS**, the Disposal Operator operates a landfill; and

**WHEREAS**, the Customer operates a transfer station; and

**WHEREAS**, the Disposal Operator desires to dispose of waste delivered to its facility by the Customer upon the terms and conditions set forth below.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, agree as follows:

1. **Definitions.** For the purpose of this Disposal Agreement, the following terms shall have the meanings set forth below:

(a) "**Affiliate**" shall have the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities and Exchange Act of 1934, as amended.

(b) "**Agreement**" means this Agreement between the Customer and the Disposal Operator, as modified, supplemented, or restated from time to time, together with any exhibits, schedules, or attachments hereto.

(c) "**Disposal Facility**" means that certain landfill operated by the Disposal Operator at 500 Landfill Road, Mt. Gilead, Montgomery County, North Carolina 27306, as of the Effective Date hereof, and which is otherwise known as Uwharrie Environmental Landfill.

(d) "**Effective Date**" means the date first above written.

(e) "**Environmental Laws**" means all applicable laws, directives, rules, ordinances, codes, guidelines, regulations, orders or decrees, regardless of whether such orders or decrees are classified as governmental, administrative, or judicial in nature, or other legal requirements of any kind, including, without limitation, the common law, whether currently in existence or hereafter promulgated, enacted, adopted, or amended that relate to the safety, preservation, or protection of human health and the environment (including, without limitation, ambient air, surface water, groundwater, land, or subsurface strata) and/or relating to the handling, treatment, transportation, or disposal of waste, substances, or materials, including, without limitation, any matters related to Releases and threatened Releases of materials and substances.

(f) "**Fees and Taxes**" means any federal, state, local, or other taxes, assessments, fees, host charges, surcharges, or similar charges directly or indirectly related to the acceptance and/or disposal of Waste which are imposed on the Disposal Facility or the Disposal Operator by law, ordinance, rule, regulation, and/or agreement with a governmental authority, whether imposed retroactively or prospectively. Notwithstanding the foregoing, any change in the federal, state, or local income or withholding tax laws is expressly excluded from the above definition.

(g) "**Force Majeure**" means any event reasonably relied upon by the Disposal Operator as justification for delay in or excuse from complying with any obligation required of the Disposal Operator under this Agreement, including, without limitation: (i) an act of God, landslide, lightning, earthquake, fire, explosion, storm, flood, or similar occurrence; (ii) any act of any federal, state, county, or local court, administrative agency, or governmental office or body that stays, invalidates, or otherwise affects this Agreement, the operation of, or any permits or licenses associated with or related to, the Disposal Facility with respect to the acceptance and/or disposal of Waste; (iii) (a) the denial, loss,

suspension, expiration, termination, failure of renewal, or (b) the attainment of any maximum disposal amounts within any applicable time period, of any permit, license, or other governmental approval required to accept and/or dispose of Waste; (iv) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county, or local law, rule, permit, regulation, or ordinance, after the Effective Date hereof, applicable to the obligations hereunder, including, without limitation, such changes that have a substantial, material, and adverse effect on the cost of performing the contractual obligations herein; (v) the institution of a legal or administrative action, or similar proceeding, by any person or entity which delays or prevents any aspect of the acceptance and/or disposal of Waste; or (vi) the failure of the Disposal Operator to obtain an expansion of the Disposal Facility for the acceptance and disposal of Waste.

(h) "Hazardous Materials" means any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substances, regulated under or pursuant to any Environmental Laws. The term "Hazardous Materials" also includes any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substance that is, after the Effective Date of this Agreement, deemed hazardous by any judicial or governmental entity, body, or agency having jurisdiction to make that determination.

(i) "Hazardous Waste" means any waste regulated under or pursuant to any Environmental Laws. The term "Hazardous Waste" also includes any waste that is, after the Effective Date of this Agreement, deemed hazardous by any judicial or governmental entity, body, or agency having jurisdiction to make that determination.

(j) "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through the ambient air, soil, subsurface water, groundwater, wetlands, lands, or subsurface strata.

(k) "Special Waste" means non-hazardous waste that requires special handling or management due to its composition or volume. All such waste must comply with the Disposal Operator's Special Waste procedures prior to acceptance.

(l) "Ton" means 2,000 pounds.

(m) "Transfer Station" means that certain transfer station located at 630 Transfer Station Place, Asheboro, North Carolina 27203 that is owned and/or operated by the Customer as of the Effective Date. The Transfer Station operates under permit # 76-05-T.

(n) "Unacceptable Waste" means any and all solid waste which the Disposal Facility is not authorized to accept for disposal pursuant to its permits and licenses, including, without limitation, highly flammable substances, Hazardous Materials, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, radioactive materials, and other materials deemed by state or federal law or deemed by the Disposal Operator, in its reasonable discretion, to be dangerous or threatening to the environment or the operations conducted at the Disposal Facility.

(o) "Waste" means any and all non-hazardous solid waste, including any Special Waste, delivered to the Disposal Facility by the Customer which the Disposal Facility is authorized to accept for disposal pursuant to its permits and licenses in existence at such time, and specifically excludes any Unacceptable Waste.

(p) "Commencement Date" means February 14, 2008, which is the first date upon which the Customer will deliver Waste for disposal at the Disposal Facility pursuant to this Agreement.

2. Term. Unless earlier terminated pursuant to Section 5 of this Agreement, the term of this Agreement shall commence on the Commencement Date, and shall remain in full force until midnight on June 30, 2010. The parties shall have the right to extend the terms of this Agreement for two (2) additional two (2) year terms upon the mutual agreement of both of the parties, and such renewal term(s) shall be upon the same terms and conditions set out in this Agreement.

### 3. Disposal Fees.

3.01 The Customer shall pay the Disposal Operator disposal fees of \$23.35 per Ton, which is the current rate as of the Effective Date of this Agreement, for the disposal of Waste at the Disposal Facility, plus any (i) increase in Fees and Taxes in excess of those in effect as of the Effective Date, and (ii) increased operational costs or expenses incurred by the Disposal Operator caused by the adoption or change (including a change in interpretation or enforcement) of any Environmental Laws, whether imposed retroactively or prospectively (such amount as adjusted by (i) and (ii) is referred to herein as the "Disposal Rate"). The Disposal Rate may be adjusted on an annual basis in accordance with the Consumer Price Index - All Urban Consumers (South Region, All Items, Not Seasonally Adjusted) as published by the U. S. Department of Labor, Bureau of Labor Statistics with an index base period of 1982-84 = 100. Such an adjustment shall be made on the 1<sup>st</sup> day of July of each year that this Agreement is in full force and effect. On the adjustment date, the Disposal Rate may be increased by a

percentage equal to the percent change, if any, in the above-referenced index during the twelve (12) month period preceding March 1<sup>st</sup> of the calendar year in which the adjustment is to be made. If the Consumer Price Index (hereinafter referred to as the "CPI") ceases to use as the basis of calculation the standard of 1982-84 = 100, or if a change is made in the items contained in the CPI, or if the CPI is altered, modified, converted, or revised in any other manner, then the foregoing computations shall be made with the use of such conversion factor, formula, or table for converting the CPI as may be published by the Bureau of Labor Statistics. If the Bureau of Labor Statistics does not publish such conversion information, then the foregoing computations shall be made with the use of a conversion factor that adjusts the modified CPI to the figure that would have been calculated had the manner of computing the CPI not been altered. The term "Disposal Rate" as used in this Agreement shall include any adjustments made to reflect the percentage change in the CPI. The parties hereto agree that the Disposal Rate only applies to Waste delivered by the Customer to the Disposal Facility if such Waste is collected from the Transfer Station and delivered to the Disposal Facility by or on behalf of the Customer.

3.02 If the Disposal Operator performs disposal services outside its regular business hours or any additional services, the Disposal Operator may adjust the disposal fees to offset the additional costs in performing such services. The normal operating hours of the Disposal Facility are from 6:00 a.m. to 5:00 p.m. Monday through Friday, and from 7:00 a.m. to 12:00 p.m. on Saturdays. The Disposal Operator shall provide the Customer with thirty (30) days advance notice of the observance of any holidays which are not Regular Holidays (as hereinafter defined). "Regular Holidays" shall mean Thanksgiving Day, Christmas Day, New Year's Day and Independence Day.

3.03 The Disposal Operator shall send the Customer an invoice for the disposal fees. The Customer shall pay the Disposal Operator the full amount within twenty (20) days of receipt of the invoice. Unpaid invoices shall carry interest at the lesser of (i) of one and one half percent (1.5%) per month, or (ii) the maximum amount permitted under applicable law. The obligations of the Customer to pay the disposal fees and other amounts payable hereunder shall be absolute and unconditional. In the event that the Customer fails to timely pay any outstanding amount, the Disposal Operator may, in addition to any other remedies available to the Disposal Operator, suspend the Customer's right to dispose of Waste at the Disposal Facility pursuant to this Agreement and/or terminate this Agreement, by giving fifteen (15) days written notice to the Customer.

3.04 In the event that (i) any Waste requires special handling or management due to its composition or volume, or (ii) the Disposal Operator agrees to dispose of any Unacceptable Waste, the Customer and the Disposal Operator shall determine in advance, on a case-by-case basis, the charge to the Customer for the Disposal Operator's disposal of such wastes. Payment for such disposal shall be upon the same terms as the payment of other disposal fees.

#### 4. Delivery and Acceptance of Waste.

4.01 The Customer agrees to deliver to the Disposal Facility all of the Waste it receives and processes through the Transfer Station. In the event that the Disposal Facility does not accept a delivery of Waste from or on behalf of the Customer, the Customer shall have the right to dispose of such rejected delivery at any other disposal facility selected by the Customer.

4.02 The Disposal Operator shall have the right to weigh all vehicles delivering Waste to the Disposal Facility. At any time, the Disposal Operator may confirm the tare weight of any vehicle delivering Waste to the Disposal Facility by or on behalf of the Customer.

4.03 The Customer acknowledges that the Disposal Operator intends to reject Waste that, in the Disposal Operator's sole and reasonable determination, would be in violation of this Agreement, the Disposal Operator's then existing licenses or permits, or would result in a violation of applicable federal, state, or local laws, rules, regulations, or ordinances.

4.04 Ownership of Waste delivered to the Disposal Facility by or on behalf of the Customer shall pass to and be accepted by the Disposal Operator when the vehicle transporting the Waste is fully unloaded at the Disposal Facility. Ownership of Unacceptable Waste delivered to the Disposal Facility by or on behalf of the Customer shall not pass to the Disposal Operator at any time unless the Disposal Operator agrees in writing in advance to accept such Unacceptable Waste.

4.05 The Disposal Operator may detain and inspect the contents of all vehicles owned or operated by, or delivering Waste on behalf of, the Customer that are delivering Waste to the Disposal Facility. The Customer agrees to monitor and inspect on a regular basis the contents of its vehicles in order to ensure that the Waste being delivered to the Disposal Facility contains no Unacceptable Waste.

4.06 The Customer shall not deliver to the Disposal Facility or dispose of any Unacceptable Waste at the Disposal Facility. If any Unacceptable Waste is delivered to the Disposal Facility by or on behalf of the Customer, the Disposal Operator shall have the right to refuse or reject such waste or, if not detected prior to acceptance at the Disposal Facility, the Disposal Operator may remove such waste and assure its proper disposal, all at the Customer's expense, which expense the Customer agrees to promptly pay upon presentation by the Disposal Operator of an invoice setting forth the costs in reasonable detail.

4.07 To the extent that any improper delivery of waste, including, without limitation, Unacceptable Waste, is made by the Customer, and that delivery disrupts, or otherwise affects, the normal operations of the Disposal Facility, or to the extent that the Disposal Operator incurs any liabilities, obligations, costs, expenses (including reasonable attorneys' fees and costs), or damages as a result of the delivery of such waste, the Customer shall be liable to the Disposal Operator, and upon presentation by the Disposal Operator of an accounting in reasonable detail, the Customer shall promptly pay, perform and discharge the Disposal Operator for and indemnify and hold the Disposal Operator harmless against all such liabilities, obligations, costs, expenses, or damages that the Disposal Operator incurs as a result of the improper delivery.

4.08 In addition to other remedies provided in this Agreement, the Disposal Operator may suspend the Customer's right to dispose of Waste at the Disposal Facility pursuant to this Agreement and/or terminate this Agreement upon repeated deliveries or the one-time intentional delivery of Unacceptable Waste by the Customer, as such are reasonably determined by the Disposal Operator. In such event, the Disposal Operator shall notify the Customer in writing of its intention to suspend and/or terminate, and such suspension and/or termination shall become effective upon receipt of such notice by the Customer.

4.09 The Disposal Operator shall not be responsible for the transportation of Waste to the Disposal Facility. (The Town of Troy would like for haulers not to use Rt # 134 and would prefer the use of Rt # 220 or 24/27.) The Disposal Operator shall not be responsible for the transportation or redelivery to the Customer, or elsewhere, of any waste, including, without limitation, Unacceptable Waste to the Disposal Facility by or on behalf of the Customer.

4.10 All vehicles containing Waste shall be covered with a tarpaulin to insure that no litter blows or falls from the vehicles. In the event any spillage occurs, the Customer shall require immediate clean up of the litter, and perform such other clean up or removal in compliance with all applicable Environmental Laws.

5. Termination. In addition to the rights of the Disposal Operator to suspend and/or terminate this Agreement pursuant to Sections 3.03 and 4.08 of this Agreement, either party hereto may terminate this Agreement, and, in addition to its right of termination, the Disposal Operator shall have the right to suspend the Customer's right to dispose of Waste at the Disposal Facility pursuant to this Agreement, upon (i) any breach or default of any representation or warranty of the other party hereto set forth in this Agreement upon thirty (30) days written notice and such breach or default remaining uncured at the end of such thirty (30) day period, unless such breach or default can be cured and the other party is undertaking reasonable, good faith efforts to cure the same, in which case an additional thirty (30) days shall be allowed to cure such breach or default prior to any rights of termination, or (ii) any breach or default of any covenant or agreement of the other party hereto set forth in this Agreement upon thirty (30) days written notice and such breach or default remaining uncured at the end of such thirty (30) day period, unless such breach or default can be cured (except for Sections 3.03 and 4.08 hereof which shall not be subject to any cure) and the other party is undertaking reasonable, good faith efforts to cure the same, in which case an additional thirty (30) days shall be allowed to cure such breach or default prior to any rights of termination. Upon any such termination pursuant to the preceding sentence, either party shall have the right to recover any damages against the other party including, without limitation, any amount necessary to compensate the aggrieved party for all detriment or damages proximately caused by the breaching party's failure to perform its obligations under this Agreement or which in the ordinary course of events would be likely to result therefrom. Upon any such suspension and/or termination pursuant to Sections 3.03 and 4.08 hereof or the immediately preceding sentence, the Disposal Operator shall have the right to recover any damages against the Customer, including, without limitation, to recover from the Customer as damages any unpaid amounts due at the time of such suspension and/or termination plus interest thereon pursuant to this Agreement. In the event of an event of Force Majeure, the Disposal Operator may suspend the Customer's right to dispose of Waste at the Disposal Facility pursuant to this Agreement, the Customer may utilize without any penalty any other facility or facilities capable of handling the Waste received and processed at its Transfer Station during such period of Force Majeure, and neither party shall have any liability to the other party due to such Force Majeure or such suspension, and, furthermore, in the event that an event of Force Majeure continues unabated for a period of sixty (60) days and renders the Disposal Operator unable, wholly or in part, to carry out any material part of its obligations under this Agreement, then the Disposal Operator shall have the right to terminate this Agreement and shall not have any liability to the Customer due to such Force Majeure or such termination.

6. Representations and Warranties of the Customer. The Customer represents and warrants to the Disposal Operator as follows:

6.01 The Customer is a political subdivision duly organized, validly existing, and in good standing under the laws of the State of North Carolina.

6.02 This Agreement has been duly executed and delivered by the Customer and constitutes a legal, valid, and binding obligation of the Customer that is enforceable against the Customer in accordance with its terms, except as the same may be limited by applicable laws, including, without limitation, bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is

considered in a proceeding at law or in equity.

6.03 The Customer has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Customer has taken all action necessary to authorize the execution and delivery of this Agreement, the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby to be consummated by it.

7. Indemnification.

7.01 By the Customer. The Customer agrees to indemnify and save harmless the Disposal Operator, its parent corporations, subsidiaries, and Affiliates, and the officers, directors, shareholders, agents, employees, and attorneys thereof from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement, court costs, reasonable attorneys' fees, and expert witness and consultation fees) caused by or resulting from (i) any negligent or willful act or omission of the Customer, its agents, or employees in connection with this Agreement, (ii) a breach by the Customer of any of the covenants, agreements, representations, or warranties of the Customer set forth in this Agreement, or (iii) the disposal of Unacceptable Waste in the Disposal Facility which was delivered to the Disposal Facility by the Customer.

7.02 By the Disposal Operator. The Disposal Operator agrees to indemnify and save harmless the Customer and its personnel, agents, officials, and City Council, in both their individual and official capacities, from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement, court costs, reasonable attorneys' fees, and expert witness and consultation fees) caused by or resulting from (i) any negligent or willful act or omission of the Disposal Operator, its agents, or employees in connection with this Agreement; or (ii) a breach by the Disposal Operator of any of the covenants, agreements, representations, or warranties of the Disposal Operator set forth in this Agreement.

8. Notices. All notices or other communications to be given hereunder shall be in writing and shall be sent by facsimile, overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

To the Disposal Operator:

Republic Services of North Carolina, LLC  
1220 Commerce St. SW  
Suite A  
Conover, NC 28613  
Facsimile: (828) 464-6922  
Attn: Area President

With a copy to:

Republic Services, Inc.  
110 Southeast 6<sup>th</sup> Street  
28<sup>th</sup> Floor  
Fort Lauderdale, FL 33301  
Facsimile: (954) 769-6411  
Attn: General Counsel

To the Customer:

City of Asheboro  
P.O. Box 1106  
146 N. Church Street  
Asheboro, NC 27204-1106  
Facsimile: 336-626-1218  
Attn: City Manager

9. Right to Compete. The Customer agrees to inform upon request the Disposal Operator of any offer that the Customer receives relating to the provision of disposal services upon the expiration of this Agreement, and agrees to give the Disposal Operator, to the extent permitted by law, a reasonable opportunity to respond to such offer.

10. Transfer or Assignment of Agreement. This Agreement, and the rights and privileges granted to the parties hereto pursuant to this Agreement, shall be binding upon and inure to the benefit of the successors and assigns of such parties hereto; provided, however, that no party hereto may transfer or assign (whether by operation of law, merger, or otherwise) this Agreement, or its rights or obligations under this Agreement, without the prior written consent of the other party hereto (such consent to be exercised in such party's sole discretion), except that the Disposal Operator may transfer and/or assign (whether by operation of law, merger, or otherwise) this Agreement, and its rights and obligations under

this Agreement, to any Affiliate, subsidiary, and/or successor of the Disposal Operator or any successor to the ownership or operation of the Disposal Facility; provided, further, that in the event of the sale of the assets and/or customer accounts of the Customer which generate the Waste disposed of at the Disposal Facility pursuant to this Agreement, or in the event of the sale or transfer of the Transfer Station, the purchaser of such assets, customer accounts, and/or Transfer Station shall be automatically subject to the terms and conditions of this Agreement. In the event (a) of any such transfer or assignment (whether by operation of law, merger, or otherwise) by the Customer of this Agreement, or the Customer's rights or obligations under this Agreement, or (b) that the Disposal Operator does not consent (in its sole discretion) to any such requested transfer or assignment by the Customer of this Agreement, or the Customer's rights or obligations under this Agreement, the Customer shall remain liable to the Disposal Operator for the Customer's agreements and obligations set forth in this Agreement.

11. Miscellaneous. This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representations, or warranties, whether oral or written, by any officer, employee, or representative of either party hereto. This Agreement may not be modified, amended, supplemented, canceled, or discharged, except by written instrument executed by all of the parties hereto. There are no restrictions, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to herein. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted the waiver. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part. Except as contemplated in Section 10 of this Agreement, this Agreement is not intended to confer upon any third parties, other than the parties hereto, any rights or remedies. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. All covenants with respect to any payment obligations of any party hereto and Sections 4.04, 4.06, 4.07, 4.09, 6, 7, 8, 10, 11, 12, 13 and 14 of this Agreement shall survive the termination of this Agreement for any reason. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. In the event of any legal action or proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to recover from such losing party all of its costs and expenses incurred in connection with such proceeding, including, without limitation, court costs reasonable attorney's fees and expert witness and consultation fees, incurred at either the trial level or the appellate level.

12. Confidentiality. The Customer agrees that it shall not, except as required by law or valid legal process or with the written consent of the other party to this Agreement, disclose the terms of this Agreement, or any documents or information obtained through or by way of this Agreement, to any person, firm, corporation, association, or other entity for any purpose or reason whatsoever, unless required by law or judicial order.

13. Arm's Length Negotiations. Each party herein expressly represents and warrants to all other parties hereto that (a) before executing this Agreement, said party has fully informed itself of the terms, contents, conditions, and effects of this Agreement; (b) said party has relied solely and completely upon its own judgment in executing this Agreement; (c) said party has had the opportunity to seek and has obtained the advice of counsel before executing this Agreement; (d) said party has acted voluntarily and of its own free will in executing this Agreement; (e) said party is not acting under duress, whether economic or physical, in executing this Agreement; and (f) this Agreement is the result of arm's length negotiations conducted by and among the parties and their respective counsel.

14. Construction. The parties agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. If any party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant.

**IN WITNESS WHEREOF**, the parties execute this Agreement as of the date first above written.

**DISPOSAL OPERATOR:**

**REPUBLIC SERVICES OF NORTH CAROLINA, LLC**, a  
North Carolina limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CUSTOMER:**

**CITY OF ASHEBORO**, a municipal corporation under the laws of the State of North Carolina

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This instrument has been preaudited in the manner prescribed by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Deborah P. Juberg  
Finance Officer  
City of Asheboro, North Carolina

**(b) Solid waste transportation agreement**

At the request of city staff and upon motion by Mr. Smith and seconded by Mr. Burks, Council voted unanimously to continue the above-referenced item to the Council's regular February meeting. City staff needs more time to conclude negotiations with the proposed hauler.

**11. Notice of a special meeting of the city council at 6:00 p.m. on January 22, 2008, and a joint meeting of the city council and planning board at 7:00 p.m. on January 22, 2008. [Agenda Item Number 10]**

Mayor Jarrell announced that a special meeting of the city council will be held at the City of Asheboro Public Works Facility on Tuesday, January 22, 2008 at 6:00 p.m., and that a joint meeting of the city council and the planning board will be held at 7:00 p.m.

**12. Discussion of Items not on the agenda. [Agenda Item Number 11]**

Mr. Baker announced that the North Carolina Department of Transportation has scheduled a series of meetings throughout North Carolina. The following meetings would most likely affect the City of Asheboro:

- a) January 19, 2008 – Hamlet, North Carolina
- b) January 28, 2008 – Winston Salem, North Carolina

There being no further business, the meeting was adjourned at 9:29 p.m.

\_\_\_\_\_  
Holly H. Doerr, City Clerk

\_\_\_\_\_  
David H. Jarrell, Mayor