

**REGULAR MEETING
ASHEBORO CITY COUNCIL
COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, JANUARY 8, 2009
7:00 p.m.**

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

David H. 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 Enforcement Officer
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
R. Wendell Holland, Jr., Zoning Administrator
R. Reynolds Neely, Jr., Planning Director
O. Lynn Priest, Community Development Director
Deborah P. Reaves, Finance Director
James O. Smith, Police Captain
James W. Smith, Fire Chief
Jeffrey C. Sugg, City Attorney
Sanford A. Vuncannon, Jr., 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. Invocation and Pledge of Allegiance.

Mayor Jarrell asked everyone to stand and repeat the Pledge of Allegiance, after which Reverend Dale Kennedy of First E & R United Church of Christ gave the invocation.

3. Appearance and recognition of guests and citizens.

Mayor Jarrell welcomed everyone in attendance and congratulated Mr. Crisco for being appointed the Secretary of the North Carolina Department of Commerce. Mr. Crisco thanked everyone for allowing him to serve the City of Asheboro. Additionally, Mr. Crisco stated that he would resign his position as Council Member at the close of the meeting.

4. Presentation of annual report of Randolph County Economic Development Corporation by Bonnie Renfro, President.

Ms. Bonnie Renfro, President of Randolph County Economic Development Corporation, and Mr. Harry Lane, Existing Industry and Business Coordinator, presented the corporation's Annual Report for 2008. Throughout the year, more than \$30 million was invested in new and expanding industries, and 289 new jobs were created. The largest project of the year was the Kennametal expansion decision, investing \$20 million and adding 70 new jobs. A copy of the annual report presented by Ms. Renfro is on file in the City Clerk's office.

5. Consent Agenda.

Upon motion by Mr. Smith and seconded by Mr. Crisco, Council voted unanimously to continue consent agenda item numbers 5(c), 5(d), and 5(f) while approving the remainder of the consent agenda items. The status of each consent agenda item is as follows:

- (a) **The minutes of the City Council's regular meeting that was held on December 4, 2008 were approved.**
- (b) **The findings of fact, conclusions of law, and order in the matter of CUP-08-37 were approved.**

**Case No. CUP-08-37
City Council
City of Asheboro**

**IN THE MATTER OF THE APPLICATION OF GLENN KING FOR A CONDITIONAL USE PERMIT
ALLOWING AN OFFICE DEVELOPMENT WITH MULTIPLE USES**

**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 December 4, 2008. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. Mr. Glenn King (hereinafter referred to as the "Applicant") properly filed an application with the City of Asheboro Planning Department for a legislative rezoning of approximately 2.897 acres of land that, if approved, would place the property in a CU-O&I zoning district, which is also known as a conditional use office and institutional zoning district. When the Applicant applied for this legislative rezoning, he also filed an application for a Conditional Use Permit that would allow the use of this land for an office development with multiple uses.

2. The land upon which the Applicant wishes to construct an office development with multiple uses is located at 1000 Park Drive and is more specifically identified by Randolph County Parcel Identification Numbers 7751484500 and 7751484515.

3. The said land (hereinafter referred to as the "Zoning Lot") is currently located in low-density residential zoning district known as an R-15 zoning district.

4. The city's growth strategy map identifies this area as adjacent developed, and the proposed land development plan map designates the area as suburban residential.

5. The Asheboro Zoning Ordinance does not permit an office development with multiple uses in an R-15 zoning district, but such a land use is permitted in an O&I zoning district.

6. Prior to formally evaluating the evidence submitted in support of the requested Conditional Use Permit, the Council concurred with the planning department staff's analysis of the application in relation to the city's adopted comprehensive land development plan and denied the Applicant's request to place the Zoning Lot in a Conditional Use O&I zoning district. As of the date of these findings, the Zoning Lot remains in an R-15 low-density residential zoning district.

7. 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."

8. 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 zoning 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 an R-15 low-density residential zoning district that prohibits office developments with multiple uses. In the absence of a conditional use zoning district with an underlying zoning district that permits the requested land use, a Conditional Use Permit cannot be issued.

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

ORDER

The application filed by Glenn King for a Conditional Use Permit authorizing an office development with multiple uses on the Zoning Lot is hereby denied.

The above-stated findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January 2009.

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

ATTEST:

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

- (c) **The findings of fact, conclusions of law, and order in the matter of SUP-08-06 were continued to the Council's regular February meeting.**
- (d) **The findings of fact, conclusions of law, and order in the matter of SUP-08-04 were continued to the Council's regular February meeting.**
- (e) **The following budget ordinance amendments were approved:**
 - (i) **Ordinance to amend the General Fund for Mackie Avenue Extension.**

01 ORD 1-09

ORDINANCE TO AMEND THE GENERAL FUND

WHEREAS, the City of Asheboro received Construction bids for the Mackie Avenue Extension and Timberlane Storm Sewer Improvements Construction Project on October 16, 2008, and;

WHEREAS, the low bid for this project was from Triangle Grading & Paving, Inc. in the amount of \$519,671.00, and;

WHEREAS, an amount of \$483,891 of this total bid is for Street & Storm Sewer construction and only \$150,000 of this total cost is currently budgeted in the FY 2008-2009 adopted budget, and;

WHEREAS, expenditures in the General Fund need to be adjusted to reflect appropriation for the cost of construction, and;

WHEREAS, the City of Asheboro desires to be in compliance with all generally accepted accounting principles.

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

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

10-399-0000	Fund Balance Allocation	\$333,891
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Section 2: That the following expense line items be increased:

10-565-4500	Contracted Services	\$333,891
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Adopted this the 8th day of January 2009.

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

ATTEST:

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

(ii) Ordinance to amend the Water and Sewer Fund for Mackie Avenue Extension.

02 ORD 1-09

ORDINANCE TO AMEND THE WATER & SEWER FUND

WHEREAS, the City of Asheboro received Construction bids for the Mackie Avenue Extension and Timberlane Storm Sewer Improvements Construction Project on October 16, 2008, and;

WHEREAS, the low bid for this project was from Triangle Grading & Paving, Inc. in the amount of \$519,671.00, and;

WHEREAS, an amount of \$35,780 of this total bid is for water line construction, and;

WHEREAS, expenditures in the Water & Sewer Fund need to be adjusted to reflect appropriation for the cost of construction, and;

WHEREAS, the City of Asheboro desires to be in compliance with all generally accepted accounting principles.

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

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

30-399-0000	Fund Balance Allocation	\$35,780
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Section 2: That the following expense line items be increased:

30-840-4501	Contracted Services	\$35,780
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Adopted this the 8th day of January 2009.

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

ATTEST:

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

- (f) The resolution establishing the position of Customer Relations and Communications Officer was continued to the Council's regular February meeting.
- (g) A resolution per G.S. 143-64.32 exempting the City of Asheboro from the advertisement/qualification based selection procedure to contract with David Ward Surveying of Asheboro, North Carolina for surveying services to prepare a street

right-of-way and utility easement plat for the Tot Hill Farm annexation area, for the amount of \$1,350.00 was approved.

01- RES 1-09

RESOLUTION EXEMPTING A SURVEY PROJECT FROM ARTICLE 3D OF CHAPTER 143 OF THE NORTH CAROLINA GENERAL STATUTES

WHEREAS, Section 143-64.31 of Chapter 143, Article 3D of the North Carolina General Statutes provides in pertinent part as follows:

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof . . . to announce all requirements for . . . surveying . . . services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Section 143-64.32 of the North Carolina General Statutes provides in pertinent part as follows:

Units of local government . . . may in writing exempt particular projects from the provisions of this Article (Article 3D) in the case of:

- (a) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000), or
- (b) Other particular projects exempted in the sole discretion of . . . the unit of local government, stating the reasons therefore and the circumstances attendant thereto; and

WHEREAS, the City of Asheboro needs to procure the services of a professional land surveyor in order to prepare for recordation in the office of the Randolph County Register of Deeds a street right-of-way and utility easement plat for the Tot Hill Farm annexation area; and

WHEREAS, David Ward Surveying of 428 S. Fayetteville Street, Asheboro, North Carolina 27203 has estimated that it can provide the requisite surveying services in consideration of a professional fee of one thousand three hundred fifty and no/100 dollars (\$1,350.00); and

WHEREAS, on the basis of the amount of the quoted professional fee and Mr. David Ward's past experience in surveying the Tot Hill Farm annexation area, the city's staff has concluded that David Ward Surveying should be utilized to provide the surveying services required for this project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, on the basis of the amount of the professional fee to be charged by David Ward Surveying and Mr. Ward's past experience in surveying the Tot Hill Farm annexation area, the aforementioned street right-of-way and utility easement designation project is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes; and

BE IT FURTHER RESOLVED that the city manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with David Ward Surveying for the provision of the surveying services needed for this project.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January 2009.

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

ATTEST:

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

(h) A resolution per G. S. 143-64.32 exempting the City of Asheboro from the advertisement/qualification based selection procedure to contract with Glenn Brown Surveying, Inc. of Asheboro, North Carolina for surveying services to prepare a street right-of-way plat for Transfer Station Place, for the amount of \$1,250.00 was approved.

RESOLUTION EXEMPTING A SURVEY PROJECT FROM ARTICLE 3D OF CHAPTER 143 OF THE NORTH CAROLINA GENERAL STATUTES

WHEREAS, Section 143-64.31 of Chapter 143, Article 3D of the North Carolina General Statutes provides in pertinent part as follows:

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof . . . to announce all requirements for . . . surveying . . . services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Section 143-64.32 of the North Carolina General Statutes provides in pertinent part as follows:

Units of local government . . . may in writing exempt particular projects from the provisions of this Article (Article 3D) in the case of:

- (c) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000), or
- (d) Other particular projects exempted in the sole discretion of . . . the unit of local government, stating the reasons therefore and the circumstances attendant thereto; and

WHEREAS, the City of Asheboro needs to procure the services of a professional land surveyor in order to prepare for recordation in the office of the Randolph County Register of Deeds a right-of-way plat for Transfer Station Place, which is a city-maintained street; and

WHEREAS, Glenn Brown Surveying, Inc. of 912 Sequoia Avenue, Asheboro, North Carolina 27205 has estimated that it can provide the requisite surveying services in consideration of a professional fee of one thousand two hundred fifty and no/100 dollars (\$1,250.00); and

WHEREAS, on the basis of the amount of the quoted professional fee and the past professional competence demonstrated by Mr. Glenn Brown, the city's staff has concluded that Glenn Brown Surveying, Inc. should be utilized to provide the surveying services required for this project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, on the basis of the amount of the professional fee to be charged by Glenn Brown Surveying, Inc. and the firm's demonstrated competence, the aforementioned street right-of-way designation project is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes; and

BE IT FURTHER RESOLVED that the city manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with Glenn Brown Surveying, Inc. for the provision of the surveying services needed for this project.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January 2009.

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

ATTEST:

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

6. Old Business:

- (a) Consideration of a resolution approving a lease agreement between the City of Asheboro and Fairway Outdoor Advertising.**

Mr. Sugg reported to the Council that Fairway Outdoor Advertising is not interested in selling their existing outdoor advertising structure, but the company's representatives are interested in exploring partnering with the city with the aim of conducting community promotions that utilize the

company's advertising footprint rather than a single sign. As an interim measure, Mr. Sugg presented and recommended adoption, by reference, of the aforementioned resolution.

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

03 RES 1-09

**RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF ASHEBORO AND
FAIRWAY OUTDOOR ADVERTISING**

WHEREAS, the City of Asheboro (hereinafter referred to as the "City") owns a certain parcel of land located along United States Highway 220 Business South at McCranford Road and upon which is located an outdoor advertising structure titled to Fairway Outdoor Advertising, a division of Morris Communications Company, LLC (hereinafter referred to as "Fairway"); and

WHEREAS, Fairway wishes to continue leasing from the City the portion of the above-described premises needed to maintain the existing outdoor advertising structure; and

WHEREAS, Section 160A-272 of the North Carolina General Statutes provides that property owned by the City may be leased to a tenant if the desired property will not be needed by the City for the term of the lease; and

WHEREAS, notice of the city council's intent to consider a resolution authorizing a new lease agreement with Fairway with an annual rental rate of one thousand five hundred and no/100 dollars (\$1,500.00) and a lease term that expires on January 31, 2011 was published in *The Courier-Tribune* on December 26, 2008; and

WHEREAS, the specific premises encumbered by the proposed lease agreement with Fairway will not be needed by the City during the term of the lease.

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

Section 1. The proposed lease agreement attached to this resolution as "EXHIBIT 1" and incorporated herein by reference is hereby approved.

Section 2. The Mayor and City Clerk of the City of Asheboro are hereby authorized and directed to execute any and all documents and instruments necessary to carry into full force and effect the said lease agreement.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January 2009.

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

ATTEST:

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

EXHIBIT 1

STATE OF NORTH CAROLINA

**LEASE AGREEMENT
(Lease No. G53A)**

COUNTY OF RANDOLPH

THIS AGREEMENT is made this the ___ day of _____, 2009, by and between **THE CITY OF ASHEBORO**, a North Carolina municipal corporation with its principal office located in Randolph County, North Carolina, (hereinafter referred to as the "Lessor") and **FAIRWAY OUTDOOR ADVERTISING**, a Division of MCC OUTDOOR, LLC, (hereinafter referred to as the "Lessee").

WITNESSETH:

1. **Lease of Property.** Lessor hereby leases to Lessee, subject to the terms and conditions hereinafter expressed, and Lessee hereby accepts as tenant of the Lessor that minimal portion

of the Lessor's real property located along United States Highway 220 Business South at McCranford Road necessary to maintain one (1) existing outdoor advertising structure with sufficient access to allow Lessee to service and maintain the said structure.

2. Term of Lease. The term of this lease shall be deemed to commence on February 1, 2009 (hereinafter referred to as the "Commencement Date"), and shall terminate at midnight on January 31, 2011. Subject to the provisions found below pertaining to the removal of improvements, Lessee may not remain within the premises after the day of lease expiration without the Lessor's written approval.

3. Rent. During the term of this lease, the Lessee shall pay to the Lessor, without previous demand, setoff, or deduction, an annual rent of One Thousand Five Hundred and no/100 dollars (\$1,500.00) in lawful money of the United States. The entirety of the annual rental amount specified in the immediately preceding sentence shall be due and payable in advance of the Commencement Date and the anniversary date thereof. All rental payments shall be paid to the Lessor or its authorized agent at the address set out in the Notice paragraph below or at such other place as may be designated by the Lessor from time to time. Delivery and payment of rent shall be deemed made only upon receipt of the applicable rent payment at the address of the Lessor set out in the Notice paragraph below; placing a rent payment in the mail shall not constitute delivery or payment of the rent.

4. Termination.

- (a) If Lessee should fail to pay any rental or other amounts payable under this agreement when due, or if Lessee should fail to perform any other of the covenants, terms, or conditions of this agreement, prior to exercising any rights or remedies against Lessee on account thereof, Lessor shall first provide Lessee with written notice of the failure and provide Lessee with a thirty (30) calendar day period to cure such failure. Lessee agrees and covenants that, upon such notification of a violation or breach of the terms and conditions of this agreement, it shall immediately and diligently undertake to correct any such condition. Lessee must, without delay or excuse, absolutely correct the defect or violation on or before the exact date specified by Lessor. When the Lessee's failure to perform pertains to the failure to make a scheduled payment to the Lessor, the Lessee shall, in addition to any other remedy available to Lessor, pay a late fee equal to five percent (5%) of any installment of rent that is not received within ten (10) calendar days of its due date. In the event the failure to perform or comply with any term and condition of this agreement is not cured by Lessee within the above-referenced thirty (30) calendar day period to cure or within any other time period specified by Lessor in its written notice of the breach or failure to perform, whichever is later, the Lessor may, at its option, terminate this agreement immediately. Upon such termination, this agreement shall become null and void, and Lessor and Lessee shall have no further obligations to each other, other than Lessee's obligation to remove its property as hereinafter provided.
- (b) Any continuing violation or breach by Lessor of any of the terms and conditions of this agreement shall be grounds for termination of this agreement by Lessee upon thirty (30) calendar days written notice to Lessor.

5. Indemnification. Lessee agrees to indemnify, defend, and hold harmless Lessor and its elected officials, employees, agents, and servants, in both their official and individual capacities, from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs, or expenses (including reasonable attorneys' fees and court costs) directly or indirectly caused by Lessee, its officers, representatives, agents, contractors, and employees. However, Lessee shall not indemnify or save harmless the Lessor from such claims or damages as may be attributed to the acts or omissions of the Lessor and its officers, representatives, agents, contractors, and employees.

6. Warranties. Lessor and Lessee each acknowledge and represent that it is duly organized, validly existing, and in good standing and has the right, power, and authority to enter into this Agreement and bind itself hereto through the official set forth below as signatory for the party. Furthermore, Lessor covenants that it will not permit any adjoining premises that are owned or controlled by Lessor to be used for advertising purposes, and Lessor will not permit any officer, employee, agent, or contractor of the Lessor to materially and intentionally obstruct the sign(s) on Lessee's outdoor advertising structure. In the event of any transfer of Lessor's interest in the above-described premises, Lessor agrees to promptly give Lessee notice of such transfer and to deliver to Lessor's transferee written notice of the existence of this lease and a copy thereof.

7. Removal of Improvements. Title to all improvements constructed or installed by Lessee on the demised premises shall remain in Lessee and all improvements constructed or installed by Lessee shall at all times be and remain the property of Lessee. Upon the expiration or termination of this agreement, the Lessee shall, within a reasonable period not to exceed ninety (90) calendar days, remove all improvements, fixtures, and personal property constructed or installed on the Lessor's premises by Lessee and shall restore the Lessor's premises to its original condition, reasonable wear and tear and casualty not caused by the Lessee excepted. Nothing contained herein shall be interpreted to grant permission to Lessee to holdover or to deprive the Lessor of any rights and remedies with respect thereto.

8. Condemnation. In the event of condemnation or direct purchase sale to a governmental agency while this lease is operative, Lessee agrees to make no claim to any proceeds due to Lessor as a result of the condemnation, but retains a right to pursue compensation due it as a result of the taking, and Lessor agrees to take no action inconsistent with Lessee's rights herein stated.

9. Cancellation of Lease. If the view of the premises or outdoor advertising structure erected thereon is partially or wholly obstructed, or its advertising value impaired or diminished by reduced vehicular circulation, or other construction or use of such signs is prevented or restricted by law, or any permits to build are denied, the Lessee may immediately, at its option, cancel this lease and receive all rent paid for the unexpired term hereof by giving the Lessor notice in writing of such obstruction, impairment, prevention, or restriction of use.

10. Maintenance. Lessee will be responsible for maintaining its outdoor advertising structure in a reasonable and safe state of repair.

11. Hazardous Substances. Lessee shall not introduce or use on the premises any substance, chemical, or waste that is identified as hazardous, toxic, dangerous, or unlawful in any applicable federal, state, or local law or regulation.

12. Prohibited Advertising. There shall be no political, alcohol, adult, or family morals advertising on this billboard.

13. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue for any litigation shall be in Randolph County, North Carolina.

14. Notices. Except as specifically provided elsewhere in this lease agreement, all notices, requests, demands, and communications hereunder must be given in writing and shall be deemed validly given on the date when deposited in the United States mail as certified or registered mail, return receipt requested, and addressed as follows:

LESSOR: City Manager
City of Asheboro
Post Office Box 1106
Asheboro, North Carolina 27204-1106

LESSEE: Fairway Outdoor Advertising
1920 West Lee Street
Greensboro, North Carolina 27403

15. Miscellaneous Provisions.

- (a) *Written Modification.* This lease agreement cannot be modified except by a written modification executed by Lessor and Lessee in the same manner as this agreement is executed.
- (b) *Gender/Plurals.* Whenever appropriate in this agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable.
- (c) *Integrated Agreement.* This lease agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parol agreements, representations, or inducements existing between the parties relating to this transaction that are not expressly set forth herein and covered hereby.
- (d) *Parties Not Joint Venturers.* Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.
- (e) *Waiver of Breach Not Deemed Waiver of Subsequent Breach.* No written waiver by any party at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provisions. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.
- (f) *Enumerated Rights Shall Not Be Deemed To Be Exclusive Remedies.* The various rights, powers, and remedies herein contained and reserved to either Lessor or Lessee shall not be considered as exclusive of any other right, power, or remedy, but the same shall be construed as cumulative and shall be in addition to every other right, power, or remedy now or hereafter existing at law, in equity, or by statute. No delay or omission of a party to exercise any right,

power, or remedy arising from any omission, neglect, or default of the other party shall impair any such right, power, or remedy nor shall any such delay or omission be construed as a waiver of any such default or be construed as acquiescence therein.

- (g) *Captions Are Merely Informative.* The captions and section numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope of such paragraphs or sections of this agreement or in any way affect this agreement.
- (h) *Time Is of the Essence.* Time shall be of the essence under this lease agreement and each and every term and condition thereof.
- (i) *Multiple Counterparts.* This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully-executed counterpart.
- (j) *Product of Mutual Negotiation.* Both Lessor and Lessee acknowledge and stipulate that this lease agreement is the product of mutual negotiation and bargaining. As such, the doctrine of construction against the drafter shall have no application to this agreement.
- (k) *Agreement Is Not Executory.* Each of the parties agrees that this agreement is not an executory contract subject to assumption as defined by the Bankruptcy Code. The parties further specifically acknowledge that this provision was critical to the agreement and was bargained for and part of the consideration for the agreement.
- (l) *Severability.* If any term or condition of this agreement is found to be unenforceable by a court of competent jurisdiction, the remaining terms and conditions shall remain binding upon the parties as though said unenforceable provision was not contained herein. However, if the invalid, illegal, or unenforceable provision materially affects this agreement, then the agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.
- (m) *Interpretation.* Unless otherwise specified, the use of the term "including" will be interpreted to mean "including but not limited to."
- (n) *Estoppel.* Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge, and deliver to the other a statement in writing (i) certifying that this agreement is unmodified and in full force and effect, or if modified, stating the nature of such modification and certifying that this agreement, as modified, is in full force and effect; (ii) certifying the date to which the rent and other charges are paid in advance, if any; and (iii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed.
- (o) *No Electronic Signature/No Option.* The submission of this lease agreement to any party for examination or consideration does not constitute an offer, reservation of, or option for the premises based on the terms set forth herein. This agreement will become effective as an agreement only upon the handwritten legal execution, acknowledgment, and delivery hereof by Lessor and Lessee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:

**THE CITY OF ASHEBORO,
a North Carolina Municipal Corporation**

By: _____
David H. Jarrell, Mayor

ATTEST:

Holly H. Doerr, City Clerk

LESSEE:

**FAIRWAY OUTDOOR ADVERTISING,
a Division of MCC OUTDOOR, LLC**

By: _____
Its General Manager

By: _____
Its Leasing Agent

- (b) **RZ-08-36: Request for Technical Amendments to the Zoning Ordinance.** An application filed by the City of Asheboro to amend Articles 200, and 300A of the Asheboro Zoning Ordinance.

The above-referenced item was previously withdrawn by the city staff.

7. **Land Use Items:**

- (a) **SUP-08-08: Request for a Special Use Permit for a Private Elementary School in a Residential Zoning District.** The property of Agape Christian Academy of Asheboro is located at 1627 Browers Chapel Road. Randolph County Parcel Identification Number 7762536354 more specifically identifies the property.

Mr. Neely presented a written request from the Applicant withdrawing the above-referenced requested rezoning.

- (b) **RZ/CUP-08-38: Request to rezone from R10 (Medium Density Residential) to CURA-6 (Conditional Use High Density Residential) and issue a Conditional Use Permit for a Multi-family Residential Development.** The property of Darren Lucas is located along the east side of Eastview Drive approximately 720 feet north of East Pritchard Street and along the west side of Meadowbrook Road approximately 800 feet of East Pritchard Street. The property consists of approximately 6.513 acres of land. Randolph County Parcel Identification Numbers 7761171599, 7761174800, 7761170956, and 7761180011 more specifically identify the property.

Mr. Neely was sworn in and presented the staff's analysis of the Applicant's request, including the submitted site plan. The Applicant, Mr. Darren Lucas requested the rezoning of the above-described property from R-10 Medium Density Residential to CU-RA6 Conditional Use High Density Residential. In addition to having the property rezoned, the Applicant requested a Conditional Use Permit for multi-family housing.

The Planning Department Staff and the Planning Board recommended denial of the requested rezoning based on the following analysis:

"The property is designated by the Land Development Plan for neighborhood residential use. The neighborhood residential designation emphasizes the accommodation of existing residential neighborhoods of similar density while limiting multi-family residential use. Conditional use zoning districts (compared to a straight rezoning request) can offer Council the ability to impose reasonable site-specific conditions for proposed development in order to increase the compatibility of the development with surrounding land uses.

However, the lack of high-density multi-family residential zoning in the immediate area along with the Land Development Plan's neighborhood residential designation, which emphasizes limiting higher density multi-family development. These factors make the request incompatible with the map and several of the goals and policies of the Land Development Plan. Considering all factors, staff concludes that the current zoning district is appropriate for the subject properties and allows a reasonable use of the properties by permitting either single or two-family residential development."

Mr. Darren Lucas was placed under oath and, in addition to speaking about the requested rezoning, he addressed the four standard tests.

Mr. Ray Vuncannon, a neighboring property owner, was sworn in and presented comments and concerns in opposition to the request. Mr. Vuncannon was concerned that the size of the property was too small for the proposed development.

Ms. Pamela Vuncannon was sworn in and presented comments and concerns in opposition to the request. Ms. Vuncannon was concerned that the proposed multi-family housing would decrease the property value of the surrounding residential properties. She felt that single-family residential zoning was more appropriate for the area. Additionally,

Ms. Vuncannon cited concerns for storm water drainage as well as an increase in the volume of traffic along Meadowbrook Road.

Mr. Thomas DeBerry, a neighboring property owner, was affirmed and presented comments and concerns in opposition to the request. Mr. DeBerry was concerned that the size of the property was too small for the proposed development.

Mr. Jimmy Vuncannon was sworn in and presented comments and concerns in opposition to the request. Mr. Vuncannon was concerned that rental property would negatively impact the neighborhood.

Mr. Rick Asbill, a neighboring property owner, was sworn in and presented comments and concerns in regards to the storm water runoff for the area in which the proposed development would be constructed.

There being no further comments or evidence to present, Mayor Jarrell closed the public hearing. An audiotape of the testimony presented during this hearing is on file in the City Clerk's office.

Upon motion by Mr. Baker and seconded by Mr. Crisco, Council, by a vote of six (6) to one (1), adopted the Planning Board's analysis and denied the request rezoning. Council Members Baker, Burks, Carter, Crisco, Priest, and Smith voted in favor of the motion. Council Member Moffitt opposed.

Upon motion by Mr. Crisco and seconded by Ms. Carter, Council voted unanimously to deny the requested Conditional Use Permit. With the denial of the requested rezoning, the application for a Conditional Use Permit did not comply with the conditions and specifications of the Asheboro Zoning Ordinance. The formal findings of fact, conclusions of law, and order denying the requested Conditional Use Permit will be entered by Council during regular session on February 5, 2009.

[A copy of the audio tape of this hearing is on file in the City Clerk's office.]

(c) Subdivisions

SUB-07-04: New Century Center. Preliminary Plat Approval.

Mr. Neely presented the preliminary plat for the proposed New Century Centre Subdivision. Mr. Larry McKenzie requested the approval of a preliminary plat for the subdivision to be located along New Century Drive. The proposed subdivision contains approximately 18.83 + 31.151 acres of land owned by Randolph County. Exclusive of the land owned by Randolph County and shown as part of this plat due to road construction on 0.794 of an acre of new right-of-way over county property, there are 16 lots with an average lot size of 1.063 acres.

The Planning Department Staff and the Planning Board recommended approval of the preliminary plat with the following conditions recommended by the Engineering Department in order to satisfy safety concerns and comply with applicable regulations enforced by state agencies:

1. Sight distance triangles shall be provided at the intersection of McDowell Road and New Century Drive.
2. Applications and applicable approvals from state agencies shall be provided.

Upon motion by Ms. Carter and seconded by Mr. Crisco, Council unanimously granted conditional approval for the preliminary plat submitted for New Century Center. This approval is conditioned on compliance with the two (2) above-stated conditions recommended by the city's engineering department.

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

8. Public Comment Period.

Mr. Lynn Lancaster asked that the Asheboro City Council and the Asheboro City School Board consider discussing the possibility of holding their meetings on separate nights so that a citizen may attend both meetings. Additionally, Mr. Lancaster asked that the city update the city's website in a timely manner and requested that a copy of the city's budget be available on the city's website.

Subsequently, Mr. Richard Cox provided, at the request of the Mayor and Council, an update on his efforts to improve the website.

9. **Consideration of the initiation of the annexation process for North Shore Subdivision, Snowdon Court and a portion of Brookwood Drive and Twain Drive.**

(a) **Resolution of Intent**

Mr. Neely presented and recommended adoption, by reference, of a resolution stating the intent of the City of Asheboro to consider annexation of approximately 76.856 acres of land that can be generally described as consisting of the North Shore Subdivision, Snowdon Court, and a portion of Brookwood Drive and Twain Drive. This resolution also provided certain information about the proposed annexation process such as the date of a public informational meeting and a public hearing on the question of annexation.

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

04 RES 1-09

A RESOLUTION STATING THE INTENT OF THE CITY OF ASHEBORO TO CONSIDER ANNEXATION OF THE AREA DESCRIBED HEREIN AND FIXING THE DATE OF A PUBLIC INFORMATIONAL MEETING AND A PUBLIC HEARING ON THE QUESTION OF ANNEXATION

BE IT RESOLVED by the City Council of the City of Asheboro that:

Section 1. It is the intent of the City Council of the City of Asheboro to consider annexation of the following described territory pursuant to Chapter 160A, Article 4A, Part 3 of the General Statutes of North Carolina:

Asheboro Township, Randolph County, North Carolina:

BEGINNING on the existing primary corporate limits line for the City of Asheboro at an existing concrete monument located by means of the North Carolina Coordinate System at the coordinates of North 718,903.30 feet and East 1,763,667. 91 (NAD 83) and set at the northeast corner of the City of Asheboro property described in Deed Book 270, Page 226, Randolph County Public Registry; thence from the said Beginning point North 87 degrees 12 minutes 48 seconds West 779.30 feet along the existing primary corporate limits line for the City of Asheboro to a point not set; thence North 03 degrees 29 minutes 33 seconds East 743.44 feet along the eastern margin of the right-of-way for Keystone Drive (North Carolina Secondary Road 2247) to an existing iron pipe/pin; thence South 87 degrees 31 minutes 20 seconds East 175.00 feet along the northern boundary line of the Cecil N. Piansay property described in Deed Book 1836, Page 1599, Randolph County Public Registry to a point not set; thence North 03 degrees 21 minutes 32 seconds East 100.00 feet along the western boundary line of the Jimmie Faye Knowles Odom property described in Deed Book 1861, Page 997, Randolph County Public Registry to an existing iron pipe/pin; thence along the northern boundary line of Lots 24 through 29 of Legend Park No. 2 as shown on a plat recorded in Plat Book 9, Page 79, Randolph County Public Registry the following courses and distances: South 88 degrees 50 minutes 39 seconds East 181.52 feet to a point not set; thence South 71 degrees 09 minutes 19 seconds East 19.10 feet to an existing iron pipe/pin; thence North 88 degrees 56 minutes 38 seconds East 402.57 feet to an existing axle and existing iron pipe/pin; thence South 03 degrees 19 minutes 12 seconds West 157.00 feet along the eastern boundary line of the Charles K. and Patsy L. Perrington property described in Deed Book 1683, Page 1623, Randolph County Public Registry to an existing iron pipe/pin; thence along the northern boundary line of the Rodney T. Brown and Vickie Potts property described in Estate File 06E/420 in the office of the Randolph County Clerk of Superior Court the following courses and distances: South 88 degrees 26 minutes 00 seconds East 209.71 feet to an existing iron pipe/pin; thence South 88 degrees 30 minutes 02 seconds East 283.69 feet to an existing iron pipe/pin; thence South 88 degrees 28 minutes 04 seconds East 281.41 feet to an existing iron pipe/pin; thence along the Sewell Family Trust and others property described in Deed Book 1314, Page 958, Randolph County Public Registry and along the western boundary line of the North Shore Section No. 1 Lots 41 through 26 as shown on a plat recorded in Plat Book 17, Page 87, Randolph County Public Registry the following courses and distances: North 01 degree 27 minutes 33 seconds East 962.40 feet to a point not set; thence North 09

degrees 07 minutes 34 seconds East 867.88 feet to an existing concrete monument; thence continuing along the Ward B. and Cynthia McPherson property described in Deed Book 1807, Page 2905, Randolph County Public Registry the following course and distance: North 60 degrees 20 minutes 33 seconds West 88.63 feet to an existing iron pipe/pin set in the eastern margin of the right-of-way for East Allred Street (North Carolina Secondary Road 2182); thence along the eastern margin of the right-of-way for East Allred Street the following courses and distances: North 29 degrees 39 minutes 57 seconds East 30.00 feet to a point not set; thence North 15 degrees 31 minutes 57 seconds East 95.86 feet to a point not set; thence North 06 degrees 36 minutes 57 seconds East 71.01 feet to a point not set; thence North 02 degrees 39 minutes 03 seconds West 110.18 feet to a point not set; thence North 09 degrees 46 minutes 03 seconds West 73.00 feet to an existing iron pipe/pin; thence along the northern margin of the right-of-way for North Shore Drive (North Carolina Secondary Road 2291) the following courses and distances: South 32 degrees 45 minutes 03 seconds East 76.66 feet to a point not set; thence South 53 degrees 05 minutes 29 seconds East 89.95 feet to an existing iron pipe/pin; thence North 26 degrees 18 minutes 31 seconds East 176.95 feet along the Leigh Ann Barbee Powers and Dee Bryant Barbee property described in Deed Book 1750, Page 2315, Randolph County Public Registry to a point not set; thence along the Hamlet Lakes property described in Deed Book 683, Page 138, Randolph County Public Registry the following courses and distances: North 85 degrees 32 minutes 02 seconds West 45.86 feet to a point not set; thence North 08 degrees 29 minutes 30 seconds East 237.31 feet to an existing iron pipe/pin; thence along the western boundary line of Hamlet Lakes Map Two Lots 15 through 10 as shown on a plat recorded in Plat Book 12, Page 60, Randolph County Public Registry the following courses and distances: North 41 degrees 41 minutes 22 seconds East 564.92 feet to a point not set; thence North 23 degrees 37 minutes 52 seconds East 169.86 feet to a point not set in the southern margin of the right-of-way for Windsor Trail (North Carolina Secondary Road 2308); thence North 64 degrees 02 minutes 05 seconds East 108.41 feet to an existing iron pipe/pin set in the northern margin of the right-of-way for Windsor Trail; thence North 25 degrees 48 minutes 19 seconds East 170.79 feet along the John Tyler D. and Trecia M. Davis property described in Deed Book 1169, Page 527, Randolph County Public Registry to an existing iron pipe/pin; thence North 59 degrees 09 minutes 21 seconds West 133.57 feet along the Duane H. and Nancy D. McCartney property described in Deed Book 1246, Page 1176, Randolph County Public Registry to an existing iron pipe/pin set in the eastern margin of East Allred Street; thence along the eastern margin of the right-of-way for East Allred Street the following courses and distances: North 22 degrees 47 minutes 05 seconds East 105.46 feet to an existing iron pipe/pin; thence North 15 degrees 22 minutes 59 seconds East 100.30 feet to an existing iron pipe/pin; thence along the existing primary corporate limits line for the City of Asheboro the following courses and distances: South 77 degrees 05 minutes 12 seconds East 264.06 feet to an existing iron pipe/pin; thence South 16 degrees 58 minutes 53 seconds West 129.23 feet to an existing iron pipe/pin; thence South 69 degrees 36 minutes 07 seconds East 176.80 feet to a point not set; thence South 27 degrees 07 minutes 53 seconds West 266.96 feet along the Harvey Lee Jarrett and Peggy K. Jarrett property described in Deed Book 1103, Page 167, Randolph County Public Registry to a point not set on the northern margin of the right-of-way for Windsor Trail; thence South 05 degrees 35 minutes 29 seconds East 83.97 feet to a point not set on the southern margin of the right-of-way for Windsor Trail; thence along the Jared V. and Beverly S. Moore parcels of land described in Deed Book 1440, Page 1029, Randolph County Public Registry the following courses and distances: South 12 degrees 42 minutes 15 seconds West 150.00 feet to an existing iron pipe/pin; thence South 34 degrees 22 minutes 45 seconds East 104.55 feet to an existing concrete monument; thence continuing along Lots 23 through 21 as well as Lots 20 through 18 that are shown on Hamlet Lakes Map 2 the following course and distance: South 31 degrees 56 minutes 44 seconds West 599.61 feet to an existing iron pipe/pin; thence along Lots 18 and 17 that are shown on Hamlet Lakes Map 2 the following courses and distances: North 88 degrees 38 minutes 15 seconds West 199.42 feet to a pine; thence North 86 degrees 05 minutes 57 seconds West 90.55 feet to a point not set; thence along a portion of the Sewell Family Trust and others property described in Deed Book 1314, Page 958, Randolph County Public Registry and along the eastern boundary of the lots identified as Lots 3 through 11 on the North Shore Section No. 1 subdivision plat recorded in Plat Book 17, Page 87, Randolph County Public Registry the following courses and distances: South 06 degrees 00 minutes 57 seconds East 441.11 feet to a

point not set; thence South 17 degrees 00 minutes 03 seconds West 108.00 feet to a point not set; thence South 06 degrees 13 minutes 57 seconds East 193.00 feet to a point not set; thence South 29 degrees 48 minutes 57 seconds East 148.00 feet to a point not set; thence South 03 degrees 51 minutes 03 seconds West 214.00 feet to a point not set; thence continuing along Lots 11, 14, and 15 of North Shore Section No. 1 as well as along the above-referenced Sewell Family Trust property the following course and distance: South 62 degrees 53 minutes 57 seconds East 185.00 feet to a point not set; thence continuing along the Sewell Family Trust property and the eastern boundary of Lots 15, 16, 22, and 23 of North Shore Section No. 1 the following courses and distances: South 16 degrees 36 minutes 03 seconds West 337.00 feet to a point not set; thence South 42 degrees 26 minutes 03 seconds West 238.00 feet to a point not set; thence South 19 degrees 46 minutes 03 seconds West 240.00 feet to a point not set; thence continuing along the said Sewell Family Trust property the following courses and distances: South 39 degrees 36 minutes 03 seconds West 168.00 feet to a point not set; thence South 10 degrees 51 minutes 03 seconds West 110.00 feet to a point not set; thence South 63 degrees 26 minutes 03 seconds West 204.00 feet to a point not set; thence South 07 degrees 51 minutes 03 seconds West 49.06 feet to a point not set; thence along the northern boundary line of the above-referenced Rodney T. Brown and Vickie Potts property the following courses and distances: South 88 degrees 26 minutes 56 seconds East 53.99 feet to an existing iron pipe/pin; thence South 88 degrees 26 minutes 56 seconds East 22.00 feet to a point not set in Penwood Branch; thence following Penwood Branch the following courses and distances: South 23 degrees 32 minutes 53 seconds East 26.86 feet to a point not set; thence South 52 degrees 22 minutes 33 seconds East 54.00 feet to a point not set; thence South 14 degrees 00 minutes 36 seconds East 45.09 feet to a point not set; thence South 10 degrees 58 minutes 24 seconds West 80.91 feet to a point not set; thence South 42 degrees 32 minutes 04 seconds West 86.23 feet to a point not set; thence South 30 degrees 32 minutes 24 seconds West 73.52 feet to a point not set; South 21 degrees 29 minutes 30 seconds West 109.90 feet to a point not set; thence South 11 degrees 28 minutes 29 seconds West 82.69 feet to a point not set; thence South 51 degrees 14 minutes 58 seconds West 65.00 feet to a point not set; thence South 06 degrees 55 minutes 58 seconds West 71.72 feet to a point not set; thence South 23 degrees 08 minutes 39 seconds West 64.71 feet to a point not set at the existing primary corporate limits line for the City of Asheboro; thence continuing to follow Penwood Branch and along the existing primary corporate limits line for the City of Asheboro the following courses and distances: South 26 degrees 56 minutes 45 seconds West 114.15 feet to a point not set; thence South 79 degrees 40 minutes 48 seconds West 60.00 feet to a point not set; thence South 43 degrees 55 minutes 05 seconds West 78.99 feet to a point not set; thence departing from Penwood Branch and continuing to follow the existing primary corporate limits line for the City of Asheboro South 22 degrees 48 minutes 10 seconds West 148.37 feet to an existing iron pipe/pin; thence following the existing primary corporate limits line North 84 degrees 12 minutes 35 seconds West 84.75 feet across Penwood Branch to an existing iron pipe/pin; thence along the existing primary corporate limits line for the City of Asheboro the following courses and distances: North 84 degrees 08 minutes 57 seconds West 402.47 feet to a point not set; thence North 25 degrees 17 minutes 10 seconds East 43.92 feet to a point not set; thence North 70 degrees 41 minutes 35 seconds West 89.52 feet to an existing concrete monument; thence South 33 degrees 12 minutes 25 seconds West 165.29 feet to an existing concrete monument; thence North 03 degrees 10 minutes 26 seconds East 218.17 feet to an existing concrete monument; thence North 03 degrees 12 minutes 49 seconds East 147.74 feet to the point and place of the BEGINNING, containing 76.856 acres of land, more or less, to be annexed.

This description is in accordance with an annexation map drawn under the supervision of Michael R. Stout, who is a professional land surveyor with license number L-3492, from an actual survey made under the said surveyor's supervision. This annexation map is identified as Job # 06024-16 and is entitled "Annexation Plat North Shore Subdivision, Snowdon Court, And A Portion Of Brookwood Drive And Twain Drive." The said map was originally dated November 10, 2007 and revised on January 5, 2009.

Section 2. A public informational meeting on the question of annexing the above-described territory will be held in the Conference Room of the City of Asheboro Public Works Facility, which is located at 1312 North Fayetteville Street in Asheboro, North Carolina, at 7:00 o'clock p.m. on the 26th day of February 2009. At this public informational meeting, plans for extending services to the said

territory will be explained, and all residents and property owners in the said territory along with all residents of the City of Asheboro will be given an opportunity to ask questions and receive answers regarding the proposed annexation.

Section 3. A public hearing on the question of annexing the above-described territory will be held in the Conference Room of the City of Asheboro Public Works Facility, which is located at 1312 North Fayetteville Street in Asheboro, North Carolina, at 7:00 o'clock p.m. on the 19th day of March 2009. At this public hearing, plans for extending services to the said territory will be explained, and all residents and property owners in the said territory along with all residents of the City of Asheboro will be given an opportunity to be heard.

Section 4. A report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the city clerk at least thirty (30) days prior to the date of the public informational meeting. The statement of financial impact contained in the report shall be delivered to the Randolph County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting.

Section 5. A legible map of the area to be annexed and a list of persons who have been identified as holding freehold interests in property in the area to be annexed shall be posted in the office of the city clerk at least thirty (30) days prior to the date of the public informational meeting.

Section 6. Notice of the public informational meeting and public hearing shall be given by publication and by first class mail as required by Section 160A-49 of the North Carolina General Statutes.

Section 7. The effective date of the annexation shall be not less than one (1) year following the date of adoption of the annexation ordinance.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January 2009.

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

ATTEST:

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

(b) Annexation Report

Mr. Neely presented and recommended approval of the "Annexation Report and Services Plan for the North Shore Subdivision, Snowdon Court, and Portions of Brookwood Drive and Twain Drive."

After examination and discussion of the report of plans for extending services to the area to be considered for annexation under Resolution Number 04 RES 1-09, Mr. Crisco moved approval of the report, seconded by Mr. Burks, and the motion passed unanimously.

[A copy of the approved annexation report is on file in the City Clerk's office and available for public inspection.]

10. Consideration of a petition received from Moffitts, Inc. requesting non-contiguous annexation of 124.377 acres of land located along the north side of Old Humble Mill Road (Richland Village Mobile Home Park).

Prior to considering the above-referenced petition, Mr. Moffitt asked to be excused from considering and voting upon this agenda item. Due to the existence of a financial conflict of interest, upon motion by Mr. Baker, and seconded by Mr. Crisco, the Council voted unanimously to excuse Mr. Moffitt from participating in the Council's consideration of agenda item number 10. Council Members Baker, Burks, Carter, Crisco, Priest, and Smith voted in favor of the motion.

(a) Mr. Bunker presented and recommended adoption, by reference, of a resolution directing the city clerk to investigate a petition requesting non-contiguous annexation of 124.377 acres of land located along the north side of Old Humble Mill Road.

Upon motion by Mr. Crisco and seconded by Mr. Smith, Council voted unanimously to adopt the following resolution by reference. Council Members Baker, Burks, Carter, Crisco, Priest, and Smith voted in favor of the motion.

05 RES 1-09

RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE AN ANNEXATION PETITION

(124.377 Acres of Land along the North Side of Old Humble Mill Road)

WHEREAS, a petition requesting the annexation of an area described in the said petition as approximately 124.377 acres of land located along the north side of Old Humble Mill Road has been received by the City Council of the City of Asheboro from Moffitts, Inc.; and

WHEREAS, Section 160A-58.2 of the North Carolina General Statutes provides that the sufficiency of the petition shall be investigated by the city clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Asheboro deems it advisable to proceed in response to this request for annexation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that the city clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify as soon as possible to the council the results of her investigation.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January 2009.

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

ATTEST:

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

CERTIFICATE OF SUFFICIENCY

(124.377 Acres of Land along the North Side of Old Humble Mill Road)

TO: The City Council of the City of Asheboro, North Carolina:

I, Holly H. Doerr, City Clerk for the City of Asheboro, North Carolina, do hereby certify that I have investigated the petition attached hereto. As a consequence of that investigation, I have found as a fact that said petition is signed by all of the owners of the real property lying in the area described therein, and the petition appears to be sufficient to satisfy the provisions of Section 160A-58.1 of the North Carolina General Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Asheboro, North Carolina on this the 8th day of January 2009.

(SEAL)

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

- (b)** As a consequence of the receipt of written certification from the City Clerk as to the sufficiency of said annexation petition, Mr. Bunker presented and recommended adoption, by reference, of a resolution fixing the date for a public hearing on the question of annexation.

Upon motion by Mr. Baker and seconded by Ms. Carter, Council voted unanimously to adopt the following resolution by reference. Council Members Baker, Burks, Carter, Crisco, Priest, and Smith voted in favor of the motion.

06 RES 1-09

**RESOLUTION SETTING DATE OF PUBLIC HEARING ON THE QUESTION OF ANNEXATION
PURSUANT TO SECTION 160A-58.2 OF THE NORTH CAROLINA GENERAL STATUTES**

(124.377 Acres of Land along the North Side of Old Humble Mill Road)

WHEREAS, a petition requesting annexation of the non-contiguous area described therein has been received; and

WHEREAS, the City Council of the City of Asheboro, North Carolina has, by resolution, directed the city clerk to investigate the sufficiency thereof; and

WHEREAS, certification by the city clerk as to the sufficiency of the said petition has been made.

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

Section 1. A public hearing on the question of the annexation of the non-contiguous area described herein will be held in the Council Chamber of the City of Asheboro Municipal Building, which is located at 146 North Church Street in the City of Asheboro, North Carolina, during the city council's regular meeting that is to be held at 7:00 o'clock p.m. on the 5th day of February 2009.

Section 2. The area proposed for annexation is described on the attached sheet, which is identified as Exhibit 1, and is hereby incorporated into this resolution by reference as if copied fully herein.

Section 3. Notice of the said public hearing shall be published in *The Courier-Tribune*, a newspaper having general circulation in the City of Asheboro, at least ten (10) days prior to the date of said public hearing.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January 2009.

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

ATTEST:

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

Exhibit 1

Grant Township, Randolph County, North Carolina:

BEGINNING at a point in the northern margin of the right-of-way for Old Humble Mill Road (North Carolina Secondary Road 2830), the said point is located North 45 degrees 34 minutes 29 seconds East 4,295.26 feet from the intersection of the centerline of Old Humble Mill Road with the centerline of Old Cox Road (North Carolina Secondary Road 2834); thence from the said Beginning point along the northern margin of the right-of-way for Old Humble Mill Road in a southwesterly direction along an arc having a radius of 4,724.64 feet a chord bearing and distance of South 76 degrees 40 minutes 43 seconds West 217.97 feet to a right-of-way monument; thence continuing along the northern margin of the right-of-way for Old Humble Mill Road by following in a southwesterly direction three additional curves that are described as follows: an arc with a radius of 2,307.61 feet a chord bearing and distance of South 73 degrees 34 minutes 43 seconds West 156.46 feet to a point; thence along an arc with a radius of 1,465.72 feet a chord bearing and distance of South 69 degrees 11 minutes 57 seconds West 135.75 feet to a point; thence along an arc with a radius of 830.23 feet a chord bearing and distance of South 62 degrees 31 minutes 20 seconds West 134.42 feet to a point; thence departing from the northern margin of the right-of-way and running along the James H. Humble property described in Estate File 84E, Page 246 in the office of the Randolph County Clerk of Superior Court and in Deed Book 701, Page 292, Randolph County Public Registry the following course and distance: South 70 degrees 28 minutes 08 seconds West 918.64 feet to an existing axle; thence North 59 degrees 20 minutes 28 seconds West 540.33 feet along the north bank of Richland Creek to a point in the eastern property line of the City of Asheboro Pump Station property described in Deed Book 1409, Page 1215, Randolph County Public Registry; thence along the City of Asheboro Pump Station property the following courses and distances: North 24 degrees 42 minutes 59 seconds East 173.95 feet to a new iron pin; thence North 55 degrees 33 minutes 27 seconds West 229.57 feet to an existing iron pin; thence South 26 degrees 22 minutes 21 seconds West 291.54 feet to a point on the north bank of Richland Creek; thence along the north bank of Richland Creek the following courses and distances: North 76 degrees 53 minutes 00 seconds West 160.05 feet to a point; thence South 82 degrees 49 minutes 29 seconds West 224.02 feet to a point; thence along the north bank of Vestal Creek the following courses and distances: North 61 degrees 23 minutes 46 seconds West 213.79 feet to a point; thence North 39 degrees 20 minutes 00 seconds West 55.36 feet to a point; thence North 31 degrees 31 minutes 00 seconds West 148.10 feet to an existing iron pin; thence along the James Sides property described in Deed Book 1253, Page 1027, Randolph County Public Registry the following courses and distances: North 28 degrees 49 minutes 10 seconds East 95.71 feet to an existing iron pin and stones; thence North 28 degrees 49 minutes 10 seconds East 1,195.05 feet to an existing iron pin and stones; thence North 04 degrees 51 minutes 15 seconds East 806.44 feet along the James Sides property described in Deed Book 1129, Page 702, Randolph County Public Registry to an existing iron pin and stones; thence South 85 degrees 11 minutes 39 seconds East 703.73 feet along the James Sides property described in Deed Book 1141, Page 115, Randolph County Public Registry to a point not set; thence South 85 degrees 11 minutes 39 seconds East 1,428.70 feet along the Canter Family LLC property described in Deed Book 1840, Page 1824, Randolph County Public Registry to a stone; thence South 84 degrees 47 minutes 40 seconds East 176.30 feet along the Leonard J. Cox property described in Deed Book 1401, Page 679, Randolph County Public Registry to an existing iron pin and stone; thence along the Roy Wright property described in Deed Book 1931, Page 658, Randolph County Public Registry the following courses and distances: South 03 degrees 59 minutes 20 seconds West 1,640.83 feet to an existing iron pin located on the north side of a small branch; thence South 04

degrees 26 minutes 45 seconds West 167.77 feet to an existing iron pin; thence South 04 degrees 26 minutes 45 seconds West 5.83 feet to the point and place of BEGINNING, and containing 124.377 acres of land, more or less, to be annexed.

The above-listed description is in accordance with a plat of survey entitled "Annexation Plat Prepared For The City Of Asheboro 'Richland Village Mobile Home Park.'" This plat of survey was drawn under the supervision of Steven D. Brown, Professional Land Surveyor with Registration Number L-1435, from an actual survey made under his supervision. The said plat of survey is dated May 11, 1998 with revision dates of November 13, 2007 and May 22, 2008. The job number for the plat of survey is 98010Annex.

11. Notification of a special meeting of the Asheboro City Council to be held on Thursday, January 15, 2009, at 7:00 p.m.

Mayor Jarrell announced that there will be a special City Council meeting on Thursday, January 15, 2009 at 7:00 p.m. in the Council Chamber.

12. Discussion of items not on the agenda.

- (a) Chief Smith announced that the fire department had received a grant through the Department of Homeland Security for computer and communications equipment.
- (b) Mr. Lynn Priest presented and recommended adoption, by reference, of a resolution authorizing the submission of an application on behalf of the City of Asheboro to the North Carolina Department of Commerce for Approval of an Urban Development Zone.

Upon motion by Ms. Carter and seconded by Mr. Burks, Council voted unanimously to adopt the following ordinance by reference. Council Members Baker, Burks, Carter, Crisco, Moffitt, Priest, and Smith voted in favor of the motion.

07 RES 1-09

RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION ON BEHALF OF THE CITY OF ASHEBORO TO THE NORTH CAROLINA DEPARTMENT OF COMMERCE FOR APPROVAL OF AN URBAN DEVELOPMENT ZONE

WHEREAS, the City Council of the City of Asheboro has determined that certain areas within the City of Asheboro may require economic incentives to assist in economic development efforts; and

WHEREAS, the City Council of the City of Asheboro has determined that incentives provided by the State of North Carolina are desirable; and

WHEREAS, the City Council of the City of Asheboro wishes the City of Asheboro to pursue redesignation of such areas as a North Carolina Urban Progress Zone.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the City of Asheboro is authorized to submit, by and through its elected and appointed officials and employees, a formal application to the North Carolina Department of Commerce for redesignation of a North Carolina Urban Progress Zone.

Adopted by the Asheboro City Council in regular session on the 8th day of January, 2009 in Asheboro, North Carolina.

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

ATTEST:

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

- (c) Mayor Jarrell from Mr. Crisco accepted a written letter of resignation that was effective immediately. Mayor Jarrell then presented a resolution of esteem honoring Council Member J. Keith Crisco. Upon motion by Mr. Smith, and seconded by Ms. Carter, Council voted unanimously to adopt the following resolution. Council Members Baker, Burks, Carter, Moffitt, Priest, and Smith voted in favor of the motion.

08 RES 1-09

RESOLUTION

WHEREAS, the City Council of Asheboro, North Carolina hereby desires to express commendation and appreciation for the untiring and valuable service rendered to the City by

Mr. J. Keith Crisco

as a member of the City Council and that the City Clerk is hereby authorized and instructed to spread a copy of this resolution upon the city records and to transmit a copy thereof to Mr. Crisco, and

WHEREAS, Mr. Crisco has served as a member of the City Council for five years, giving generously of his time and efforts, unselfishly in all deliberations in a dignified, faithful, and businesslike manner, now,

THEREFORE BE IT RESOLVED, by the City Council, City Staff, and the Citizens of Asheboro extend to Mr. Crisco its humble expression of esteem for him in serving the City faithfully and well, and its best wishes in your appointment as the North Carolina Secretary of Commerce.

Adopted this the eighth day of January, 2009.

ATTEST:

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

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

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

s/ Talmadge Baker
Talmadge Baker

s/ Eddie Burks
Eddie Burks

s/ Linda Carter
Linda Carter

s/ Walker Moffitt
Walker Moffitt

s/ Mack Priest
Mack Priest

s/ David Smith
David Smith

[A copy of the aforementioned resolution is on file in the City Clerk's office.]

Additionally, Mayor Jarrell thanked Mr. Crisco for his service to the City of Asheboro and presented him with a piece of pottery as a token of appreciation.

There being no further business, the meeting was adjourned at 9:25 p.m.

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

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