

**REGULAR MEETING
ASHEBORO CITY COUNCIL
COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, MARCH 10, 2011
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:

Talmadge S. Baker) – Mayor Pro Tempore Presiding
(Mayor David H. Smith was absent.)

Clark R. Bell)
Edward J. Burks)
Stuart B. Fountain)
Michael W. Hunter)
Walker B. Moffitt)

Linda H. Carter) – Council Member Absent

John N. Ogburn, III, City Manager
Edsel L. Brown, Code Enforcement Officer
Dumont Bunker, P.E., City Engineer
Richard L. Cox, Jr., Community Development Department Intern
Holly H. Doerr, CMC, City Clerk/Senior Legal Assistant
John L. Evans, Senior Planner
W. Andrew Fioranelli, GIS/IT Specialist
Casandra M. Fletcher, Marketing Specialist
R. Wendell Holland, Jr., Zoning Administrator
Justin T. Luck, Planner
Deborah P. Reaves, Finance Director
James O. Smith, Police Captain
James W. Smith, II, Fire Chief
Jeffrey C. Sugg, City Attorney
Larry R. Trotter, Chief Building Inspector
Sanford A. Vuncannon, Jr., Police Captain
Felix L. Ward, Cultural and Recreation Services Director
Rickey D. Wilson, Chief of Police

1. Call to order.

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

2. Silent Prayer and pledge of allegiance.

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

3. Appearance and recognition of guests and citizens.

Mr. Baker welcomed everyone in attendance.

Without objection, Mr. Baker addressed agenda item numbers 4, 5, and 6 in a different order than was listed on the printed agenda.

4. Proclamation for Boys and Girls Club. [Agenda item number 5]

Mr. Baker read the following proclamation for the Boys and Girls Club.

PROCLAMATION

Asheboro, North Carolina

WHEREAS, the young people of Asheboro, NC are tomorrow's leaders; and

WHEREAS, many such young people need professional youth services to help them cope with a wide range of social and financial hardships; and

WHEREAS, the Central Club in Asheboro provides services to over 100 young people annually; and

WHEREAS, the Boys & Girls Clubs are forefront of efforts in Education & Career Development; Health & Life Skills; The Arts; Sports, Fitness & Recreation; and Character & Leadership Development; and

WHEREAS, the Central Asheboro Club helps to ensure that our young people are kept off the streets, offering them a safe and supportive place to go and providing them with quality programs; and

WHEREAS, the Boys & Girls Clubs of Central Asheboro will celebrate National Boys & Girls Club Week, 2011, along with some 4,300 Clubs and more than 4 million young people nationwide;

NOW, THEREFORE, I, Talmadge Baker, Mayor Pro-Tem of the City of Asheboro do hereby proclaim March 20 through March 26, 2011, as Boys & Girls Club Week in Asheboro, North Carolina.

And call on all citizens to join with me in recognizing and commending the Boys & Girls Club organizations in our state for providing comprehensive, effective services to the young people in our communities.

This the 10th day of March, 2011.

s/ Talmadge Baker
Talmadge Baker
Mayor Pro Tem

5. Announcement of a special meeting to be held by the Asheboro City Council on Tuesday, March 22, 2011 at 5:30 p.m. in the Council Chamber. [Agenda item number 6]

Mr. Baker announced that a special meeting of the Asheboro City Council will be held on Tuesday, March 22, 2011 at 5:30 p.m. in the Council Chamber.

6. Recognition of Herbert Stout Award for Visionary Use of GIS. [Agenda item number 4]

Mr. Tim Johnson informed the council members that the City of Asheboro has been chosen as the recipient of the Herbert Stout Award for Visionary Use of GIS. Mr. Andrew Fioranelli, GIS Specialist, accepted the award on behalf of the city and explained the manner in which the city is using GIS technology.

7. Consent agenda:

Upon motion by Dr. Fountain and seconded by Mr. Burks, Council voted unanimously to approve the following consent agenda items. Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt voted in favor of the motion.

(a) The minutes of the City Council's regular meeting on February 10, 2011.

(b) The minutes of the City Council's special meeting on February 17, 2011.

(c) Budget ordinances:

(i) Two ordinances amending the General Fund.

06 ORD 3-11

ORDINANCE TO AMEND THE GENERAL FUND FY 2010-2011

WHEREAS, on February 10, 2011, the City of Asheboro City Council approved extending the contract with Marlow & Company for consulting and lobbying services in Washington at a cost of \$48,000, and;

WHEREAS, this representation period extends 12 months from January 1, 2011 to December 31, 2011, and:

WHEREAS, revenues and expenditures in the General Fund need to be adjusted to appropriate funding for these services, and;

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

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

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Total Appropriation</u>
10-399-0000	Fund Balance Appropriation	48,000	1,157,796

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

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>	<u>Amended Budget</u>
10-410-0400	Professional Services	48,000	72,000

Adopted this the 10th day of March, 2011.

s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore

ATTEST:

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

07 ORD 3-11

ORDINANCE TO AMEND THE GENERAL FUND FY 2010-2011

WHEREAS, the City Council has consistently planned and invested in community revitalization using founded urban design and strategic planning methods, and;

WHEREAS, the City Council adopted a Central City / Downtown Community Revitalization Plan on December 9, 2010, which proposes two historical Mill Buildings at 230 W. Academy Street (B&H Panel) as properties well suited for adaptive reuse, and;

WHEREAS, the City Council has an opportunity to support the adaptive reuse of this property into 70 affordable housing units, to be known as "Asheboro Mill Lofts", by appropriating funds equating to \$8,000 per unit which can be loaned to the project at a term of at least 20 years and an interest rate less than or equal to 2.0%, and make the project eligible for use of LIHTC tax credits through the North Carolina Housing Finance Agency, and;

WHEREAS, the City of Asheboro already has \$150,000 set aside for this purpose in the special revenue fund, amended to be the Asheboro Housing Development Fund, and needs to appropriate an additional \$410,000, and;

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

WHEREAS, revenues and expenditures in the General Fund need to be adjusted to appropriate funding for these services, and;

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

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

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Total Appropriation</u>
10-399-0000	Fund Balance Appropriation	410,000	1,567,796

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

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>	<u>Amended Budget</u>
10-610-6200	Transfer to Special Revenue Fund	410,000	410,000

Adopted this the 10th day of March, 2011.

s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore

ATTEST:

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

(ii) Ordinance to amend the NCDOT Water and Sewer Improvement Fund (#65)

08 ORD 3-11

**ORDINANCE TO AMEND
THE NCDOT / WATER & SEWER SYSTEM IMPROVEMENT FUND (#65)
FY 2010-2011**

WHEREAS, the costs associated with the improvements to Mackie Avenue funded in the NC DOT Water & Sewer Improvements Fund (#65) are less than originally estimated, and;

WHEREAS, City Council of the City of Asheboro wish to reallocate the unneeded funds from the above referenced water line replacement projects to cover budgetary shortage for the Booker T Washington and Highridge Rd waterline replacement projects also contained in this project and remit the remaining amount back to the General Fund where the funds originally were allocated, and;

WHEREAS, the budget as adopted requires amendment to reflect adjustments in expenditures from the amount shown in the NCDOT Water and Sewer System Improvements Fund, and;

WHEREAS, The City Council of the City of Asheboro desires to amend the budget as required by law, and:

WHEREAS, the City Council of 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 that the following revenue and expense line items are changed:

Section 1: Revenues

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase/ (Decrease)</u>	<u>Amended Budget</u>
65-367-0000	Sales Tax Refund	9,369	9,369
65-367-0018	Salisbury W&S Contribution	9,730	9,730
	Total	19,099	

Section 2: Expenses

<u>Account #</u>	<u>Expense Description</u>	<u>Increase/ (Decrease)</u>	<u>Amended Budget</u>
65-870-4500	Contractor Pmt. Booker T. Washington	1,710	86,710
65-870-4501	Contractor Pmt- Highridge / Rushwood	1,994	33,994
65-880-4500	Pine Hill Rd. Sewer Line	(65)	18,935
65-890-4500	Contractor Pmt- Mackie Ave	(16,540)	503,131
65-900-0001	Contribution to General Fund	32,000	32,000
	Total	19,099	

Adopted this the 10th day of March 2010.

s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore

ATTEST:

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

(iii) Ordinance to close the NCDOT Water and Sewer Improvement Fund (#65)

09 ORD 3-11

**ORDINANCE TO CLOSE
THE NCDOT / WATER & SEWER SYSTEM IMPROVEMENT FUND (#65)
FY 2010-2011**

WHEREAS, the NCDOT / Water and Sewer System Improvement Project fund was originally established June 20, 2006, and;

WHEREAS, all the construction and improvement projects accounted for in this fund are now complete, and

WHEREAS, the officers of the City of Asheboro submit the below as the final budget for the project and request that the project be closed;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA: that the below budget is accepted as the final budget and NCDOT / Water & Sewer System Improvement Fund (#65) is hereby closed.

Section 1: Revenues

<u>Account #</u>	<u>Revenue Description</u>	<u>Budget</u>
65-367-0000	Sales Tax Refund	9,369
65-367-0001	Sunset Ave W&S Fund Contrib. 05-06	70,000
65-367-0002	Sunset Ave W&S Fund Contrib. 06-07	101,000
65-367-0003	Sunset Ave W&S Fund Contrib. 07-08	98,750
65-367-0004	Sunset Ave W&S Fund Contrib. 08-09	98,751
65-367-0011	Salisbury Ave W&S Fund Contrib. 06-07	99,000
65-367-0012	Salisbury Ave W&S Fund Contrib. 07-08	174,903
65-367-0013	Salisbury Ave W&S Fund Contrib. 08-09	184,625
65-367-0014	Booker T Washington W&S Fund Contrib	273,000
65-367-0015	Pine Hill Bridge W&S Fund Contrib.	14,000
65-367-0016	Mackie Ave / Timberlane W&S Fund Contrib	35,780
65-367-0017	Mackie Ave / Timberlane GF Fund Contrib	483,891
65-367-0018	Salisbury W&S Contribution	9,730
	Total	1,652,799

Section 2: Expenses

<u>Account #</u>	<u>Expense Description</u>	<u>Budget</u>
65-850-0000	Sunset Ave Water Construction	173,654
65-850-0010	Sunset Ave Sewer Construction	194,847
65-860-0000	Salisbury St Water Construction	299,461
65-860-0010	Salisbury St. Sewer Construction	159,067
65-870-4500	Contractor Pmt. Booker T. Washington	86,710
65-870-4501	Contractor Pmt- Highridge / Rushwood	33,994
65-880-4500	Pine Hill Rd. Sewer Line	18,935
65-890-4500	Contractor Pmt- Mackie Ave	503,131
65-900-0000	Contribution to Water & Sewer Fund	151,000
65-900-0001	Contribution to General Fund	32,000
	Total	1,652,799

Adopted this the 10th day of March 2010.

s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore

ATTEST:

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

(iv) Ordinance to amend the Home Program Fund (#62)

10 ORD 3-11

ORDINANCE TO AMEND THE HOME PROGRAM FUND (#62) FY 2010-2011

WHEREAS, the Home Program Special Revenue Fund was originally established in 1994 to account for revenues received from the North Carolina Division of Community Assistance and expenses associated with owner occupied and investor owned rehabilitation of property within Asheboro, and;

WHEREAS, revenues and expenses in the Home Program Fund have changed over time in relation to the current budget, and;

WHEREAS, the City Council has consistently planned and invested in community revitalization using founded urban design and strategic planning methods, and;

WHEREAS, the City Council adopted a Central City / Downtown Community Revitalization Plan on December 9, 2010, which proposes two historical Mill Buildings at 230 W. Academy Street (B&H Panel) as properties well suited for adaptive reuse, and;

WHEREAS, the City Council has an opportunity to support the adaptive reuse of this property into 70 affordable housing units, to be known as "Asheboro Mill Lofts", by appropriating funds equating to \$8,000 per unit which can be loaned to the project at a term of at least 20 years and an interest rate less than or equal to 2.0%, and make the project competitive for LIHTC housing tax credits through the North Carolina Housing Finance Agency, and;

WHEREAS, the City Council of the City of Asheboro desires to rename the Home Program fund to be Asheboro Housing Development Fund and appropriate additional funds for housing development, and;

WHEREAS, the City Council of 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 that the special revenue project fund be renamed to Asheboro Housing Development Fund and the following revenue and expense line items are changed as follows:

Section 1: Revenues

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase/ (Decrease)</u>	<u>Amended Budget</u>
62-300-0000	Contribution from City of Asheboro GF	410,000	410,000
62-360-0000	Repayment- Down Pmt Assistance	23,310	48,310
62-360-0100	Repayment-Owner Occupied Rehab	31,805	121,804
62-360-0200	Repayment- Investor Owned Rehab	94,492	159,492
62-370-0000	Down payment / closing costs	(54,560)	5,440
62-370-0100	Administration Cost	(6,000)	0
62-375-0000	Repayments- Down Pmt Closing	5,500	5,500
62-376-0000	Late Charges	220	220
	Total	504,767	

Section 2: Expenses

<u>Account #</u>	<u>Expense Description</u>	<u>Increase/ (Decrease)</u>	<u>Amended Budget</u>
62-500-0000	Mill Lofts Rehabilitation	560,000	560,000

62-880-1000	Home Program Administration	848	27,248
62-890-0100	Repayment- Down Pmt Assistance	(848)	11,152
62-890-0200	Repayment- owner occupied rehab	(23)	76,127
62-890-0300	Repayment –investor owned rehab	(23,363)	26,337
62-890-8300	Fiscal Agent Fees	(4,076)	10,924
62-900-0000	Admin- Down Pmt closing costs	(3,379)	2,621
62-995-0000	Down Payment Closing costs	(24,392)	7,608
	Total	504,767	

Adopted this the 10th day of March 2010.

s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore

ATTEST:

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

- (d) **Request by the Asheboro/Randolph Chamber of Commerce for the temporary closure on Saturday, April 9, 2011 of the following streets between 6:00 a.m. and 8:00 p.m. for the Asheboro Bicycle Criterium: Fayetteville Street between Academy Street and Worth Street; Worth Street between Fayetteville Street and Cox Street; Cox street between Worth Street and Academy Street; and Academy Street between Cox Street and Fayetteville Street.**
- (e) **A resolution authorizing the execution of an economic development incentives contract with Malt-O-Meal Company and the County of Randolph.**

07 RES 3-11

RESOLUTION AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT INCENTIVES CONTRACT WITH MALT-O-MEAL COMPANY AND THE COUNTY OF RANDOLPH

WHEREAS, Section 158-7.1 of the North Carolina General Statutes authorizes North Carolina municipal corporations to undertake economic development projects that involve extending assistance to a company in order to cause the company to locate or expand its operations within the city; and

WHEREAS, in conjunction with the Randolph County Board of Commissioners, the Asheboro City Council held a public hearing on November 16, 2010, to consider whether to participate in an economic development project that would result in the County of Randolph (the "County"), the City of Asheboro (the "City"), and Malt-O-Meal Company (the "Company") entering into an economic development incentives contract whereby the County and the City each contribute up to one million five hundred eighty thousand dollars (\$1,580,000) for a total payment to the Company of up to three million one hundred sixty thousand dollars (\$3,160,000) to assist in offsetting the costs of expanding the food manufacturing plant located at 2525 Bank Street in the City of Asheboro, Randolph County, North Carolina; and

WHEREAS, with the assistance of these economic development incentives, and upon the completion by the Company of this expansion project, the Company will have generated new value/investment in real and personal property associated with the project in an amount equal to or in excess of one hundred thirty-six million dollars (\$136,000,000) and created a minimum of eighty (80) new full-time jobs in the County and City; and

WHEREAS, subsequent to the above-referenced public hearing, the Asheboro City Council adopted a resolution (Resolution Number 54 RES 11-10) on November 16, 2010, that established the essential terms and conditions of the economic development incentives contract that was to be drafted in furtherance of the approved economic development project; and

WHEREAS, Resolution Number 54 RES 11-10 further provided that, once drafted by legal counsel, the proposed economic development incentives contract was to be brought back to the governing board for final approval; and

WHEREAS, a copy of the proposed Economic Development Incentives Contract drafted by legal counsel for the respective parties is attached to this resolution as "EXHIBIT 1" and is incorporated into this resolution by reference as if copied fully herein; and

WHEREAS, the Asheboro City Council has concluded that the terms and conditions found in EXHIBIT 1 reflect the terms and conditions established by Resolution Number 54 RES 11-10, the City has sufficient revenues available to its General Fund to support this economic development project, and

the City's entry into the proposed contract is consistent with the best interests of the municipal corporation and its citizens;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the Economic Development Incentives Contract attached to this resolution as EXHIBIT 1 is hereby approved; and

BE IT FURTHER RESOLVED that the mayor and all other necessary city officials are hereby authorized to execute the Economic Development Incentives Contract attached to this resolution as EXHIBIT 1.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 10th day of March, 2011.

s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore
City of Asheboro, North Carolina

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, CMC, City Clerk
City of Asheboro, North Carolina

EXHIBIT 1

NORTH CAROLINA

RANDOLPH COUNTY

MALT-O-MEAL COMPANY

AND

**ECONOMIC DEVELOPMENT
INCENTIVES CONTRACT**

COUNTY OF RANDOLPH

AND

CITY OF ASHEBORO

THIS CONTRACT is made and entered into this ____ day of _____, 2011, by and between Malt-O-Meal Company, a Minnesota corporation authorized to do business in the State of North Carolina (hereinafter referred to as the "Company"), the County of Randolph, a political subdivision of the State of North Carolina (hereinafter referred to as the "County"), and the City of Asheboro, a North Carolina municipal corporation (hereinafter referred to as the "City").

WITNESSETH

WHEREAS, the County and City initially entered into a contract, dated March 12, 2007, with the Company in order to aid and encourage the location of a food manufacturing facility at 2525 Bank Street, Asheboro, Randolph County, North Carolina (hereinafter referred to as the "Asheboro Mill"); and

WHEREAS, under the terms of the contract dated March 12, 2007 (hereinafter referred to as the "Initial Contract"), the County and the City agreed to provide the Company with a total of three million seven hundred fifty thousand dollars (\$3,750,000) in annual economic development incentive payments that were contingent on the Company satisfying certain performance requirements designed to ensure that the Company invested a minimum of one hundred four million dollars (\$104,000,000) in real and personal property at its Asheboro Mill and created a minimum of one hundred sixty-four (164) new full-time jobs in the County and City; and

WHEREAS, under the Initial Contract, the County agreed to provide fifty percent (50%) of the total amount of the agreed upon economic development incentive payments, or one million eight hundred seventy-five thousand dollars (\$1,875,000), and the City agreed to provide the other half of the total amount of the agreed upon economic development incentive payments; and

WHEREAS, through the end of calendar year 2010, the County and the City have paid a combined total of one million eight hundred seventy-five thousand dollars (\$1,875,000) in economic development incentive payments to the Company in compliance with the terms and conditions of the Initial Contract; and

WHEREAS, if the Company continues to satisfy the performance requirements established in the Initial Contract over the course of Fiscal Year 2011-2012 and Fiscal Year 2012-2013 (the fiscal year referenced in this contract begins on the 1st day of July and ends on the 30th day of June), the County and the City will pay to the Company a combined total of nine hundred thirty-seven thousand five hundred dollars (\$937,500) in Fiscal Year 2011-2012 and a combined total of nine hundred thirty-seven thousand five hundred dollars (\$937,500) in Fiscal Year 2012-2013; and

WHEREAS, subsequent to the formation of the Initial Contract, the County and the City held a joint public hearing on November 16, 2010, to consider whether to participate in a separate economic development project with the Company for the purpose of facilitating the expansion of the Asheboro Mill; and

WHEREAS, upon the completion by the Company of the proposed expansion, the Company will have generated new value/investment in real and personal property at the Asheboro Mill in an amount equal to or in excess of one hundred thirty-six million dollars (\$136,000,000) and will have created a minimum of eighty (80) new full-time jobs in the County and City; and

WHEREAS, under the terms of this proposed economic development project, the County and the City would each contribute up to one million five hundred eighty thousand dollars (\$1,580,000) for a total payment of up to three million one hundred sixty thousand dollars (\$3,160,000) in economic development incentive payments; and

WHEREAS, the Randolph County Board of Commissioners and the Asheboro City Council find that the consideration the County and the City respectively receive, based on prospective tax revenues from the improvements to be constructed on the property and from personal property and equipment to be used in connection therewith, will be equal to or greater than the economic development incentives offered herein; and

WHEREAS, the Randolph County Board of Commissioners and the Asheboro City Council find that offering the above-described economic development incentives will increase the taxable property base, increase business prospects in the County and the City, and result in the creation of a number of high quality jobs in the County and the City; and

WHEREAS, pursuant to N.C.G.S. §§ 153A-449, 160A-20.1, 158-7.1, the County and the City have the legal authority to enter into an economic development incentives agreement with the Company.

NOW, THEREFORE, for valuable consideration and the mutual covenants exchanged between the parties hereto, it is agreed as follows:

Section I Continuing Obligations Derived from the Initial Contract

- (1) Due to commitments made by the County and the City in the Initial Contract, the County and the City agree to provide to the Company the sum of not more than one million eight hundred seventy-five thousand dollars (\$1,875,000) in payments over time as part of the original commitment to aid and encourage the location of the Company's manufacturing facility in the County and City. The County will provide fifty percent (50%) of the total amount or nine hundred thirty-seven thousand five hundred dollars (\$937,500), and the City will provide fifty percent (50%) of the total amount or nine hundred thirty-seven thousand five hundred dollars (\$937,500).
- (2) This expenditure of County and City funds is expressly contingent upon the Company achieving certain performance requirements. These requirements and the corresponding County and City incentive payments are set out below:
 - (a) The Company must deliver to the County and the City a written certification that the Company has not reduced its level of operations at the Asheboro Mill since the date of the Company's receipt of a total economic development incentive payment from the County and the City in the amount of seven hundred fifty thousand dollars (\$750,000) for Fiscal Year 2010-2011. This written certification must specifically include, by way of illustration and not limitation, certification of the retention of the one hundred twelve (112) full-time jobs that the Company was required to create in order to satisfy earlier performance standards established by the Initial Contract. Upon receipt of the prescribed certification, the County and the City shall remit to the Company a total payment of nine hundred thirty-seven thousand five hundred dollars (\$937,500), fifty percent (50%) to be paid by the County and fifty percent (50%) to be paid by the City.
 - (b) The Company must provide to the County and the City Employment Security Reports evidencing the creation of an additional fifty-two (52) new full-time jobs over and above the one hundred twelve (112) full-time jobs for which Employment Security Reports were previously submitted to the County and the City in accordance with the terms and conditions of the Initial Contract. Furthermore, the Company must deliver written certification to the County and the City that the Company has not reduced its level of operations in the County and the City since the date of payment by the

County and the City of the immediately preceding installment payment. Upon receipt of the required certifications, the County and the City shall remit a total payment of nine hundred thirty-seven thousand five hundred dollars (\$937,500), fifty percent (50%) to be paid by the County and fifty percent (50%) to be paid by the City.

- (3) Notwithstanding the time of completion of the above-listed performance requirements, the contract amount specified in Section I of this comprehensive economic development incentives contract (hereinafter referred to as the "Comprehensive Contract") will be paid in two (2) installments in amounts as detailed above at a frequency not to exceed one installment per fiscal year (July 1-June 30). The initial installment payment shall be made no sooner than July 1, 2011, and the final installment payment shall not be made later than June 30, 2013. Any installment payment for which proper certification is not received prior to June 30, 2013 shall be forfeited.
- (4) The Company warrants that, for a period of not less than five (5) years, it will maintain its full level of operations in the County and the City at the same level that existed on the date of the last payment made by the County and the City in compliance with Section I of this Comprehensive Contract. The said five-year period shall begin on the date of the Company's receipt of the last payment authorized by Section I of the Comprehensive Contract. If the Company ceases or reduces operations in Asheboro, Randolph County prior to the termination of the five-year period described in this subsection, the Company shall return to the County and the City the economic development incentives that were paid to the Company pursuant to the Initial Contract and Section I of the Comprehensive Contract. The total amount to be paid by the Company as liquidated damages shall be equal to 100% of the economic development incentive payments made by the County and the City in compliance with the Initial Contract and Section I of the Comprehensive Contract, less one hundred eighty-seven thousand five hundred dollars (\$187,500) for each quarter, or portion thereof, that the Company remains in full operation during the said five-year period in Asheboro, Randolph County. By way of illustration and without limitation, the Company shall be deemed to have reduced its level of operations in the County and City if, at any point during the said five-year period, the Company fails to maintain the entirety of the newly created jobs described above.

Section II Incentives for the Expansion of Operations at the Asheboro Mill

- (1) In order to aid and encourage the expansion of the Company's manufacturing facility at 2525 Bank Street, Asheboro, Randolph County, North Carolina, the County and the City agree to provide to the Company certain economic development incentives that will not become due and payable until the performance requirements specified by this section of the Comprehensive Contract are achieved by the Company. The economic development incentive payments made pursuant to Section II of the Comprehensive Contract shall not exceed the sum of three million one hundred sixty thousand dollars (\$3,160,000). The County will provide fifty percent (50%) of the total amount or one million five hundred eighty thousand dollars (\$1,580,000), and the City will provide fifty percent (50%) of the total amount or one million five hundred eighty thousand dollars (\$1,580,000).
- (2) If the Company satisfies the entirety of the performance requirements as established herein, the total contract amount specified in Section II(1) of the Comprehensive Contract will be paid in eight (8) installments. The initial installment can be due and payable no earlier than July 1, 2013. Irrespective of the date(s) upon which the Company is able to certify its attainment of the prescribed performance requirement, only one (1) installment payment can become due and payable during each fiscal year (July 1-June 30). Any installment payment for which proper certification is not received prior to December 31, 2021 shall be forfeited.
- (3) The economic development incentive payments prescribed by this section of the Comprehensive Contract are not exclusive in nature and can be paid in addition to any economic development incentive payment(s) to which the Company may be entitled under the terms and conditions of Section I of the Comprehensive Contract. The economic development incentive payments authorized by Section II of the Comprehensive Contract are expressly contingent on the Company achieving the performance requirements specified in Section II(3) of the Comprehensive Contract. The amount of the economic development incentive payment to be transmitted during a fiscal year to the Company pursuant to this section of the contract is determined by the following schedule of performance requirements and corresponding County and City incentive payments:
 - (a) The Company must deliver to the County and the City written certification that the actual new value/investment in the Asheboro Mill, subsequent to the date of the execution of this instrument by all of the parties, equals or exceeds the sum of sixty-one million dollars (\$61,000,000) in real property and equals or exceeds the sum of sixty-five million dollars (\$65,000,000) in machinery and equipment. Furthermore, the Company must provide to the County and the City Employment Security Reports evidencing the creation of sixty-eight (68) new full-time jobs over and above the two hundred (200) full-time jobs in existence at the time of the execution of the Comprehensive Contract. These sixty-eight (68) new full-time jobs must have an average weekly wage that meets or exceeds six hundred sixty-three dollars (\$663)

per week. Upon receipt of the required certifications, the County and the City shall remit a total payment of three hundred ninety-five thousand dollars (\$395,000), fifty-percent to be paid by the County and fifty-percent to be paid by the City; and

- (b) The Company must deliver to the County and the City written certification that the cumulative new value/investment in the Asheboro Mill, subsequent to the date of the execution of this instrument by all of the parties, equals or exceeds the sum of sixty-one million dollars (\$61,000,000) in real property and equals or exceeds the sum of seventy-five million dollars (\$75,000,000) in machinery and equipment. Furthermore, the Company must provide to the County and the City Employment Security Reports evidencing the creation of a cumulative total of eighty (80) new full-time jobs over and above the two hundred (200) full-time jobs in existence at the time of the execution of the Comprehensive Contract. These eighty (80) new full-time jobs must have an average weekly wage that meets or exceeds six hundred sixty-three dollars (\$663) per week. Upon receipt of the required certifications, the County and the City shall remit a total payment of three hundred ninety-five thousand dollars (\$395,000), fifty-percent to be paid by the County and fifty-percent to be paid by the City; and
 - (c) The Company must deliver to the County and the City a written certification for the then current fiscal year that the Company has not reduced its level of operations in the County and City since the date of payment by the County and City of the immediately preceding installment payment. Upon receipt of the required certifications, the County and the City shall remit a total payment of three hundred ninety-five thousand dollars (\$395,000), fifty-percent to be paid by the County and fifty-percent to be paid by the City; and
 - (d) The Company must deliver to the County and the City a written certification for the then current fiscal year that the Company has not reduced its level of operations in the County and City since the date of payment by the County and City of the immediately preceding installment payment. Upon receipt of the required certification, the County and the City shall remit a total payment of three hundred ninety-five thousand dollars (\$395,000), fifty-percent to be paid by the County and fifty-percent to be paid by the City; and
 - (e) The Company must deliver to the County and the City a written certification for the then current fiscal year that the Company has not reduced its level of operations in the County and City since the date of payment by the County and City of the immediately preceding installment payment. Upon receipt of the required certification, the County and the City shall remit a total payment of three hundred ninety-five thousand dollars (\$395,000), fifty-percent to be paid by the County and fifty-percent to be paid by the City; and
 - (f) The Company must deliver to the County and the City a written certification for the then current fiscal year that the Company has not reduced its level of operations in the County and City since the date of payment by the County and City of the immediately preceding installment payment. Upon receipt of the required certification, the County and the City shall remit a total payment of three hundred ninety-five thousand dollars (\$395,000), fifty-percent to be paid by the County and fifty-percent to be paid by the City; and
 - (g) The Company must deliver to the County and the City a written certification for the then current fiscal year that the Company has not reduced its level of operations in the County and City since the date of payment by the County and City of the immediately preceding installment payment. Upon receipt of the required certification, the County and the City shall remit a total payment of three hundred ninety-five thousand dollars (\$395,000), fifty-percent to be paid by the County and fifty-percent to be paid by the City; and
 - (h) The Company must deliver to the County and the City a written certification for the then current fiscal year that the Company has not reduced its level of operations in the County and City since the date of payment by the County and City of the immediately preceding installment payment. Upon receipt of the required certification, the County and the City shall remit a total payment of three hundred ninety-five thousand dollars (\$395,000), fifty-percent to be paid by the County and fifty-percent to be paid by the City.
- (4) In the event the Company is unable to meet its investment and/or employment commitments, a mechanism (hereinafter referred to as "clawback provisions") must be in place for recovering previously paid economic development incentives. The clawback provisions applicable to Section I of this contract are specified in Section I(4). The following clawback provisions are applicable to the economic development incentives paid by the County and the City in accordance with Section II of the Comprehensive Contract:

- (a) The Company warrants that it will not reduce its level of operations at the Asheboro Mill for a period of five (5) years from the date of the final disbursement of County and City funds authorized by the provisions of Section II of the Comprehensive Contract. The Company will be deemed to be in breach of this warranty if the level of operations at the Asheboro Mill are found, at any time during the above-referenced five-year period, to have been reduced from the level of operations that existed at the time the County and the City paid the installment of the economic development incentives that triggered the running of this warranty period.
- (b) If the Company ceases or reduces operations in Asheboro, Randolph County prior to the termination of the five-year warranty period, the Company shall pay to the County and the City as liquidated damages an amount equal to 100% of the incentive money paid to the Company under Section II of the Comprehensive Agreement; provided, however, this sum shall be reduced by five percent (5%) for each quarter of the calendar year, or portion thereof, that the Asheboro Mill remains in full operation during the said five-year warranty period.
- (c) Notwithstanding any other provision in this contract, if the Company ceases operations at the Asheboro Mill prior to December 31, 2021, liquidated damages in an amount equal to 100% of the incentive money paid to the Company under Section II of the Comprehensive Agreement shall be immediately due and payable to the County and the City.

**Section III Enforcement of Clawback Provisions in Section I and Section II
of the Comprehensive Contract**

- (1) If the Company breaches the warranties set out in Section I(4) and Section II(4) of the Comprehensive Contract, there shall be an equitable lien on the real property owned by the Company in Randolph County until such time as the liquidated damages specified in Section I(4) and Section II(4) of this contract are paid in full to the County and the City.
- (2) In the event liquidated damages have to be paid by the Company to the County and the City, the County shall be entitled to fifty percent (50%) of the total amount repaid by the Company, and the City shall be entitled to fifty percent (50%) of the total amount repaid by the Company.
- (3) If the County and the City have to enforce the provisions of this contract through legal action, the Company agrees to pay to the County and the City, in addition to any sum due and payable pursuant to the provisions of Section I(4) and Section II(4) of this contract, the legal fees incurred by the County and the City in furtherance of such an enforcement action, including but not limited to reasonable attorney fees, filing fees, and other costs associated with litigation if the County and the City prevail in such legal action.

Section IV Miscellaneous Provisions

- (1) The parties hereto agree that this contract shall not be modified, amended, or terminated without the prior written consent of all of the parties.
- (2) The parties hereto agree that this contract may not be assigned without the prior written consent of both the County and the City. The parties hereto represent and warrant that the terms and conditions herein are binding upon, enforceable against, and shall inure to the benefit of the parties hereto and their successors in interest or assigns.
- (3) In the event any section, paragraph, or portion of this contract is held to be void or unenforceable under any law or regulation, all other sections, paragraphs, and portions hereof shall be deemed severable and remain in full force and effect.
- (4) Any controversy or claim arising out of this contract shall be settled by an action initiated in the appropriate division of the General Court of Justice in Randolph County, North Carolina.

IN WITNESS WHEREOF, the parties hereto have made and executed this Comprehensive Contract under seal as of the day and year first above written.

(SEAL)

MALT-O-MEAL COMPANY

Attest:

By: _____
**Christopher J. Neugent,
President and Chief Executive
Officer**

**John Fort
Corporate Secretary**

I, _____, a Notary Public of the County of Dakota, State of Minnesota, certify that John Fort personally came before me this day and acknowledged that he is the Corporate Secretary of Malt-O-Meal Company, a Minnesota corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Christopher J. Neugent, its President and Chief Executive Officer, sealed with its corporate seal, and attested by himself as its Corporate Secretary.

Witness my hand and official stamp or seal, this ____ day of _____, 2011.

Notary Public

My Commission expires: _____

COUNTY OF RANDOLPH

(SEAL)

Attest:

By: _____

**J. Harold Holmes, Chairman
Randolph County Board of
Commissioners**

Cheryl A. Ivey, Clerk to the Board

I, _____, a Notary Public of the County of Randolph, State of North Carolina, do hereby certify that Cheryl A. Ivey, who is personally known to me, appeared before me this day and acknowledged that she is the Clerk to the Board for the County of Randolph and that, by authority duly given and as the act of the County of Randolph, the foregoing instrument was voluntarily executed on behalf of the County by J. Harold Holmes, the Chairman of its Board of Commissioners, sealed with the County's corporate seal, and attested by her as Clerk to the Board for the purposes stated therein.

Witness my hand and official stamp or seal, this ____ day of _____, 2011.

Notary Public

My Commission expires: _____

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

**William Massie, Finance Officer
County of Randolph**

CITY OF ASHEBORO

(SEAL)

Attest:

By: _____

**David H. Smith, Mayor of the
City of Asheboro**

Holly H. Doerr, CMC, City Clerk

I, _____, a Notary Public of the County of Randolph and State of North Carolina, do hereby certify that Holly H. Doerr, who is personally known to me, appeared before me this day and acknowledged that she is the City Clerk for the City of Asheboro and that, by authority duly given and as the act of the municipal corporation, the foregoing instrument was voluntarily executed on behalf of the municipal corporation by its Mayor, sealed with the municipal corporation's seal, and attested by her as the City Clerk for the purposes stated therein.

Witness my hand and official stamp or seal, this ____ day of _____, 2011.

Notary Public

My Commission expires: _____

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

Deborah P. Reaves, Finance Officer
City of Asheboro

OLD BUSINESS:

8. **RZ-11-01: Text amendments to the Asheboro Zoning Ordinance.** An application filed by the City of Asheboro to amend Articles 200, 300, 300A, and 1100 of the Asheboro Zoning Ordinance.

Mr. Baker reopened the public hearing that was originally opened during the Council's regular meeting on February 10, 2011.

Mr. Evans reported that the Planning Department Staff has requested a continuance in order to allow for a public information session for citizens to review the proposed text amendments. This public information session is tentatively scheduled for 7:00 p.m. on March 29, 2011, at the City of Asheboro's public works facility.

Upon motion by Dr. Fountain and seconded by Mr. Moffitt, Council voted unanimously to continue the public hearing to the Council's regular April meeting. Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt voted in favor of the motion.

NEW BUSINESS:

9. **Community Development Items:**

- (a) **RZ-11-02: Rezone from I2 (General Industrial) to RA6 (High-Density Residential).**
The requested rezoning impacts two (2) parcels of land located along the north side of West Academy Street and the east side of South Church Street. One parcel of land (Randolph County Parcel Identification Number 7751724084) is located at 230 West Academy Street and the other parcel of land (Randolph County Parcel Identification Number 7751724258) is located to the north of the parcel with street frontage on West Academy Street. The owners of these parcels of land are listed as Breck and Sandra Richardson, Herbert and Deborah Mitchell, and B&H Panel. The combined acreage of this property is approximately 2.67 acres.

Mr. Baker opened the public hearing on the following request.

Mr. Evans presented the staff's analysis of the request by Mr. Rex Todd of the Landmark Group to rezone the above-referenced property from I2 (General Industrial) to RA6 (High-Density Residential). The requested action is a straight rezoning. Consequently, no specific development proposal is considered with the requested zoning map amendment.

The Land Development Plan emphasizes a mix of compatible non-residential (commercial, office, and entertainment) uses and residential uses (composed of a mix of housing types) within the Center City Planning Area. The requested RA6 designation, which provides for a mix of housing types, is consistent with the fact that property for which the rezoning is requested is located within the Center City Planning Area.

The Planning Board recommended approval of the requested rezoning because the Board concurred with the analysis provided by the planning department staff. The staff's analysis is as follows:

“The proposed rezoning complies with the Land Development map, goals and policies, and text. Therefore, staff believes the proposed amendments are within the public interest in supporting a reasonable use of property.”

Mr. Evans read a letter that was received from a representative of Norfolk Southern Railroad Company regarding the requested rezoning. The company indicated its strong opposition to rezoning the above-referenced property from I2 (General Industrial) to RA6 (High-Density Residential) in that it is incompatible with the surrounding land uses of the area. Specifically, the railroad company was concerned that the noise from the railroad operation would pose a problem for a residential community. A copy of the letter is on file in the City Clerk's office and in the Community Development Department.

Mr. Rex Todd, Mr. Breck Richardson, and Ms. Tonya Haddock presented comments in support of the requested rezoning.

A citizen, whose name was not clearly recorded, expressed a general concern for the safety of children playing in close proximity to the railroad if the property were rezoned residential.

There being no further comments, Mr. Baker closed the public hearing.

Upon motion by Mr. Moffitt and seconded by Mr. Bell, Council followed the recommendation of the Planning Board and voted unanimously to approve the requested rezoning. Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt voted in favor of the motion.

(b) RZ-11-03: Request for text amendments to the Asheboro Zoning Ordinance. An application filed by the City of Asheboro to amend Articles 200, 300, 300A, 600, and 1100 of the Asheboro Zoning Ordinance.

Mr. Evans presented an overview of the Community Development Division staff's proposed amendments to the Asheboro Zoning Ordinance. In essence, these text amendments are proposed to update site design and performance standards in the OA6 (Office-Apartment), O&I (Office and Institutional), M (Mercantile), and B1 (Neighborhood Commercial) zoning districts.

The Planning Department Staff has requested a continuance in order to allow for a public information session for citizens to review the proposed text amendments. This public information session is tentatively scheduled for 7:00 p.m. on March 29, 2011, at the City of Asheboro's public works facility.

Upon motion by Mr. Bell and seconded by Mr. Hunter, Council voted unanimously to continue the public hearing to the Council's regular April meeting. Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt voted in favor of the motion.

(c) Building Inspections Annual Report.

Mr. Larry Trotter, Chief Building Inspector, presented an overview of the Building Inspection Department's activities during 2010. The department's report reflected an overall decrease in the issuance of commercial and residential building permits in 2010 as compared to 2009. A copy of the written report submitted to the Council Members is on file in the City Clerk's office.

10. Public comment period.

Mr. Ogburn read the Randolph TEA Party Transparency and Open Government Report Card for the City of Asheboro that was previously submitted by Mr. Lynn Lancaster. A copy of the report card is on file in the City Clerk's office.

There being no comments from the public, Mr. Baker closed the public comment period.

11. Formation of the Piedmont Triad Regional Council:

(a) Resolution authorizing the dissolution of the Piedmont Triad Council of Governments.

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

Upon motion by Mr. Burks and seconded by Mr. Bell, Council voted unanimously to adopt the following resolution by reference. Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt voted in favor of the motion.

08 RES 3-11

RESOLUTION DISSOLVING THE PIEDMONT TRIAD COUNCIL OF GOVERNMENTS AND PROVIDING FOR DISTRIBUTION OF ASSETS AND OBLIGATIONS

WHEREAS, the Piedmont Triad Council of Governments was organized in June 1968; and

WHEREAS, the Piedmont Triad Council of Governments is a regional council of governments authorized by NCGS 160A, Article 20, Part 2 Regional Councils of Governments; and

WHEREAS, the Piedmont Triad Council of Governments is designated by the Secretary of the Department of Administration as the Lead Regional Organization for North Carolina multi-county planning Region G; and

WHEREAS, as of today's date, the Piedmont Triad Council of Governments consists of forty-six member governments including the counties of Alamance, Caswell, Davidson, Guilford, Montgomery, Randolph, and Rockingham and thirty-nine municipalities within those counties; and

WHEREAS, this association has proven the usefulness of regionalism as an efficient and effective platform for cooperative problem solving and program delivery; and

WHEREAS, changes in the scope of political, economic, environmental, and transportation issues have led the membership of the Piedmont Triad Council of Governments to consider the opportunities offered by a broader coalition of like-minded local government partners across the twelve-county Piedmont Triad region of North Carolina.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Asheboro hereby agrees to dissolve, at the end of fiscal year 2010-2011, the voluntary association heretofore known as the Piedmont Triad Council of Governments; and

BE IT FURTHER RESOLVED that such dissolution shall occur upon satisfaction of two conditions: (1) adoption of this Resolution by thirty-one member governmental units which is two-thirds of all member governmental units of the Council as required by Article IV, Section 2 of the Charter and (2) formation of the successor council of governments pursuant to NCGS 160A, Article 20, Part 2 as provided for in the Formation and Membership Resolution for the Piedmont Triad Regional Council; and

BE IT FURTHER RESOLVED that upon satisfaction of conditions one (1) and two (2) above, dissolution of the Piedmont Triad Council of Governments shall become effective June 30, 2011; and

BE IT FURTHER RESOLVED that all assets and obligations of the Piedmont Triad Council of Governments, Multi-County Planning Region G, shall transfer to the successor regional council, the newly formed Piedmont Triad Regional Council.

IN WITNESS WHEREOF this resolution is adopted in open session by the Asheboro City Council during a regular meeting held on the 10th day of March, 2011.

CITY OF ASHEBORO

By: s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore

ATTEST:

By: s/ Holly H. Doerr
Holly H. Doerr, CMC, City Clerk

(b) Resolution authorizing the formation of the Piedmont Triad Regional Council.

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

Upon motion by Mr. Burks and seconded by Dr. Fountain, Council voted unanimously to adopt the following resolution by reference. Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt voted in favor of the motion.

Section 1. Name

The name of the regional council shall be the "Piedmont Triad Regional Council". It is hereinafter referred to in this Charter as the "Council".

Section 2. Purpose

The **Piedmont Triad Regional Council (PTRC)** is a voluntary association of municipal and county governments, enabled by state law, to provide leadership on regional issues; promote cooperation among members; develop regional cohesiveness based on strengths and opportunities of members; and bridge responsibilities of federal, state and local governments as the Lead Regional Organization for the Piedmont Triad region.

Section 3. Membership

- A. The initial membership of this Council shall consist of the general purpose local governmental units within the twelve-county Piedmont Triad region which adopt this identical resolution on or before (____ date ____) as provided in G. S. 160A-470.
- B. The units of local government eligible for membership are the following counties and all incorporated municipalities within the counties:

Alamance	Montgomery
Caswell	Randolph
Davidson	Rockingham
Davie	Stokes
Forsyth	Surry
Guilford	Yadkin

- C. Any county or municipality within the region which is not an initial member may join the Council by ratifying this Charter and by being admitted by a majority vote of the existing members.
- D. All rights and privileges of membership in the Council shall be exercised on behalf of the member governments by their delegates to the Council; and "delegates" as used in this Charter shall, unless otherwise provided, include alternate delegates duly designated by a member.

Section 4. Representation

- A. Each member governmental unit shall be represented in the Council by one delegate or in his/her absence by a designated alternate. All delegates and alternates shall be elected officials of the governing bodies of the member governmental units they represent. The delegates and alternates, as well as their successors, shall be selected by the member governing bodies in any manner consistent with law and the regulations governing such body.
- B. Each primary delegate shall have the responsibility of representing his/her member governmental unit at all Council meetings and actions. In the event of the inability of the primary delegate to attend or otherwise participate in a Council meeting or action, an alternate delegate shall exercise the responsibility of representing that member governmental unit at the appropriate meeting or action. Only one delegate may represent a member governmental unit at any meeting or any action; provided, however, that both primary and alternate delegates may attend any regular or called meeting and may participate in any discussion or debate.
- C. The terms of office of each delegate and each alternate shall commence upon the date of his or her appointment to the Council by the governing body of the member governmental unit s/he represents. The term shall continue at the pleasure of said governing body unless the delegate shall sooner resign or cease to be an elected member of the governing board, in which case his/her term shall expire on the effective date of such event.
- D. Delegates shall serve without compensation or remuneration for their services. This section shall not, however, prohibit reimbursement for expenses incurred while on Council business.

Section 5. Finance

- A. The financial affairs of the Council shall be conducted in accordance with the provisions of the Local Budget and Fiscal Control Act (G. S. 159) as it relates to Regional Councils of Government in the interpretation of the N. C. Local Government Commission.
- B. On or before the 15th of April each year, the Council shall prepare and submit to each participating governmental unit a proposed budget for the next fiscal year commencing July 1.
- C. The general budget shall set out dues to be paid by each participating governmental unit based on the latest certified population estimates from the office of the N.C. State Demographer.

- D. Each participating governmental unit shall, upon adoption of its budget, appropriate and forward to the Council Finance Officer its share of the Council's budget.
- E. All expenditures of the Council for special projects of the Council shall be paid from revenues paid in advance by the governmental units and agencies directly involved in such projects and paid especially for such special projects, from any other funds made available for such projects from any other source. All such revenues shall be credited to a special revenue account and all expenditures charged to a special expenditure account so that exact cost accounting may be made at the completion of the project.
- F. All revenues paid to the Council by member governmental units and all other sources shall be deposited in the general fund of the Council and separate revenue and expenditure accounts shall be maintained for each phase of operation of the Council to the extent required by sound accounting practices, to include, but not limited to, such accounts for the general operating expenses of the Council and each special project undertaken by the Council or any committee thereof.
- G. The Council shall designate a Council employee as the Council Finance Officer to perform the function of the city or county finance officer under the Local Government Budget and Fiscal Control Act insofar as post-budget approval of expenditures is concerned.
- H. It shall be the duty of the Council to require its accounts to be audited annually by a certified public accountant. A copy of the annual audit shall be provided to each member unit of government.

Section 6. Powers and Duties

The Council shall have the following powers:

- 1. to apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the Council), and any private or civic agency;
- 2. to employ personnel;
- 3. to contract with consultants;
- 4. to contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services;
- 5. to study regional governmental problems, including matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning, and regional development;
- 6. to promote cooperative arrangements and coordinated action among its member governments;
- 7. to make recommendations for review and action to its member governments and other public agencies which perform functions within the region in which its member governments are located
- 8. For the purpose of meeting the regional council's office space and program needs, to acquire real property by purchase, gift, or otherwise, and to improve that property. The regional council may pledge real property as security for indebtedness used to finance acquisition of that property or for improvements to that real property, subject to approval by the Local Government Commission as required under G.S. 159-153. A regional council may not exercise the power of eminent domain.
- 9. Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent such powers are specifically delegated to it from time to time by resolution of the governing board of each of its member governments which are affected thereby, provided, that no regional council of governments shall have the authority to construct or purchase buildings, or acquire title to real property, except for the purposes permitted under subdivision (7a) of G.S.160A-475 or in order to exercise the authority granted by Chapter 260 of the Session Laws of 1979.
- 10. Any other powers granted by G.S.160A-475, Specific Powers of Council, as hereafter amended.

Section 7. Voting

- A. One half (1/2) of the delegates of the Council shall constitute a quorum at any regular or special meeting of the Council.
- B. At any Council meeting the affirmative vote of two-thirds (2/3) of the delegates of the Council present shall be necessary to decide any question brought before the meeting.
- C. In case less than a quorum shall be assembled at any meeting, action may nevertheless be taken upon any questions which can be decided by an affirmative vote of two-thirds of the delegates as above referenced, if such action shall be supported by the same absolute number of delegate votes as would be required for action at a meeting at which a quorum is assembled.

- D. Any delegate shall be entitled to one vote, and it shall be counted to determine if the necessary number of votes has been attained on the question before the Council.
- E. Proxy voting shall not be allowed. The vote of a member governmental unit can only be cast by the delegate of the governing body or the governmental unit's alternate who must be an elected member of that governing body.

Section 8. Amendment of Charter

The Council may formally recommend to the member governments a resolution to amend the Charter by affirmative vote of at least two-thirds of the representatives present at any meeting at which a quorum was present, provided notice of such vote has been given in accordance with the Bylaws. Said amendment shall become effective when the resolution has been duly adopted by two-thirds of the member governmental units.

Section 9. Severability

If any article, paragraph, sentence or phrase of this Charter shall be declared by any court of competent jurisdiction to be in violation of the laws of the Federal government, of the laws of this State, or where applicable, of the laws of any other state, such provision of this Charter shall be considered to be severable, as to the member or members affected, and the validity of the remaining portion of the Charter shall not be affected.

Section 10. Withdrawal

Any member government may withdraw from the Council at the end of any fiscal year by giving at least 60 days written notice to each of the other members and to the Board of Delegates of the Council. Withdrawal of a member government shall not dissolve the Council if at least two members remain.

Section 11. Dissolution

The Council may be dissolved at the end of any fiscal year only (1) upon the adoption of a dissolution resolution by the governing bodies of at least two-thirds of member governmental units, or (2) the withdrawal from the Council of all but one of the member governmental units. If such dissolution is effected by resolution of the requisite number of member governments, such resolutions shall specify the method of liquidating the Council's assets and liabilities. If such dissolution is occasioned by withdrawal of all but one member, the remaining governmental unit shall have the power to liquidate all assets and liabilities; and it shall then distribute the net proceeds, if any, to those members who paid the latest annual assessment and in the same proportion. Any deficit shall be the responsibility of those member governments who would have received the net proceeds, and in the same proportions.

Section 12. Effective Date

The effective date of this Charter shall be _____ as to initial membership. As to all subsequent members, this Charter shall be effective on the date of its adoption by the governing body of such governmental unit or the date such member's application was approved, whichever shall be later.

12. Resolution authorizing the sublease of McCrary Ballpark to Copperheads Baseball, LLC.

Mr. Felix Ward, Cultural and Recreation Services Director, presented and recommended adoption, by reference, of the aforementioned resolution.

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

10 RES 3-11

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBLEASE AGREEMENT WITH COPPERHEADS BASEBALL, LLC

WHEREAS, Copperheads Baseball, LLC currently subleases McCrary Ballpark from the City of Asheboro for the operation of a collegiate summer baseball program; and

WHEREAS, the city and Copperheads Baseball, LLC wish to continue to provide the citizens of Asheboro and the surrounding areas with the opportunity to attend and view collegiate summer baseball; and

WHEREAS, the city's professional staff and the management for Copperheads Baseball, LLC have jointly prepared a proposed Sublease Agreement designed to advance the goals of the municipal corporation and the limited liability company in a mutually satisfactory manner; and

WHEREAS, the proposed Sublease Agreement is attached to this resolution as ATTACHMENT A and is hereby incorporated into this resolution by reference as if copied fully herein; and

WHEREAS, the Asheboro City Council has concluded that the proposed Sublease Agreement is consistent with the best interests of the municipal corporation and its citizens;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the Sublease Agreement attached to this resolution as ATTACHMENT A is hereby approved; and

BE IT FURTHER RESOLVED that the city manager is hereby authorized and directed to execute the Sublease Agreement attached to this resolution as ATTACHMENT A.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 10th day of March, 2011.

s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore

ATTEST:

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

ATTACHMENT A

STATE OF NORTH CAROLINA

SUBLEASE AGREEMENT

COUNTY OF RANDOLPH

THIS SUBLEASE AGREEMENT is made and entered into this the ____ day of _____, 2011, by and between the CITY OF ASHEBORO (hereinafter referred to as the "City"), a North Carolina municipal corporation with its principal office at 146 North Church Street, Asheboro, Randolph County, North Carolina 27203, and Copperheads Baseball, LLC (hereinafter referred to as "CB"), a North Carolina limited liability company with its principal office at 701 McDowell Road, Asheboro, Randolph County, North Carolina 27205.

WITNESSETH:

WHEREAS, CB, as part of its operation of a collegiate summer baseball program, desires to sublease from the City that certain property known as McCrary Ballpark; and

WHEREAS, the City and CB desire to provide the citizens of Asheboro and the surrounding areas with the opportunity to attend and view collegiate summer baseball; and

WHEREAS, the City is willing to sublease McCrary Ballpark on a non-exclusive basis to CB pursuant to the provisions set forth in this sublease agreement;

NOW, THEREFORE, subject to the terms and conditions hereinafter set forth, the City, as sublessor, does hereby sublease to CB, and CB does hereby accept, as sublessee, the following described property that is located in the City of Asheboro, Randolph County, North Carolina and is more particularly described as follows:

The real property and improvements known as the McCrary Ballpark that are described in a warranty deed, dated July 29, 2004, from Acme-McCrary Corporation to Acme-McCrary Corporation/Sapona Manufacturing Company, Incorporated Employees' Fitness Center. This warranty deed was recorded on August 16, 2004, in the office of the Randolph County Register of Deeds in book 1882, page 607.

THE TERMS AND CONDITIONS of this sublease agreement are as follows:

1. **Permitted Use.** This sublease agreement grants to CB, as sublessee, the non-exclusive use of McCrary Ballpark (hereinafter referred to the "Ballpark") for a summer collegiate baseball program, specifically including playing baseball, baseball practices, promoting baseball, and any other ancillary events or activities that have been approved by the City. The City's Cultural and Recreation Services Division shall work in a good faith effort to avoid scheduling conflicts at the Ballpark by coordinating CB events and other non-CB related events that are to take place at the Ballpark. If a scheduling conflict arises between a CB event and any other event proposed for the Ballpark, the City's Cultural and Recreation Services Director is authorized and directed to resolve the scheduling conflict by reviewing the

available information and making a final decision that is in the best interests of the City as to the schedule of events that will be followed at the Ballpark.

2. Term. The sublease agreement shall become effective upon execution of this instrument by the City and CB. The term of the sublease agreement shall be deemed to begin on January 1, 2011 (the "Commencement Date"), and shall terminate at midnight on December 31, 2020.

3. Rent. During the term of this sublease agreement, CB shall pay to the City, without previous demand, setoff, or deduction, an annual rent of one thousand and no/100 dollars (\$1,000.00) 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 upon execution of this instrument and, thereafter, within thirty-one (31) calendar days of each anniversary of the Commencement Date stated above. All rental payments shall be paid to the City at the address set out in the Notice paragraph below or at such other place as may be designated by the City 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 City set out in the Notice paragraph below.

4. Staffing. Subject to the provisions of Section 6 of this agreement, CB shall, at its sole expense, be responsible for all of the staffing of the Ballpark, specifically including without limitation the parking lot, field, and related facility positions that have to be staffed for CB events.

5. Alterations or Improvements. No alterations, improvements, or structural changes of any kind may be made to the Ballpark without the express written consent of the City. If consent is sought by CB for alterations, improvements, or structural changes of any kind to the premises, the decision as to whether or not to grant such consent shall be within the sole discretion of the City. Furthermore, such consent may be conditioned on the acceptance and compliance of CB with any conditions deemed necessary and proper by the City.

6. Concessions and Concession Facilities. Except as specifically provided to the contrary in subsequent sections of this agreement, the Asheboro Kiwanis Club shall have the right of first refusal to operate concessions at CB events. In the event of either (a) the decision by the Asheboro Kiwanis Club to decline to operate some or all of the concessions at CB events, or (b) a failure by the Asheboro Kiwanis Club to comply with the requirements contained within the next paragraph, CB shall have the exclusive right to operate concessions at CB events. The right of CB to operate concessions at CB events under the circumstances prescribed by the preceding sentence does not impact in any manner the exclusive right held by the Asheboro Kiwanis Club to operate concessions and to retain revenue derived from American Legion baseball events.

Any operational agreements or memorandums of understanding between the Asheboro Kiwanis Club and CB are to be developed and agreed upon as a matter of private negotiation between the two organizations. However, any such private agreements or arrangements entered into by and between the Asheboro Kiwanis Club and CB shall not be inconsistent with the terms and conditions of this sublease agreement.

Regardless of which entity operates the concessions, the concessions operator shall be responsible, without any assistance from the City, for performing all of the operational tasks and bearing all of the costs associated with the concessions operations. In addition to staffing the concession operations, the tasks and costs that are the responsibility of a concessions operator other than the City include but are not limited to purchasing and maintaining equipment, products, and/or inventory. Furthermore, the concessions operator shall be responsible for operating the concession facilities in a sanitary manner and for obtaining and maintaining all necessary and appropriate permits.

7. Novelty Sales. CB shall have the exclusive rights to operate the novelty sales for CB events and to retain the revenue derived from these sales.

8. Promotion and Advertising. CB shall have the exclusive right to sublet advertising media at the Ballpark during CB events and to retain the revenue derived therefrom. All such advertising media shall consist of either existing advertising media or shall be approved by the City prior to installation; such approval shall not be unreasonably withheld. Furthermore, CB shall have exclusive radio and television broadcast rights and privileges for all CB events and to all revenues derived therefrom.

9. Scoreboard and PA system. The Asheboro Kiwanis club owns the scoreboard and PA system. However, the City is authorized to grant and does hereby grant the privilege to use the electronic scoreboard and PA system to CB. CB shall notify the City if either system is not working properly.

10. Insurance. At all times during the term of this sublease agreement, CB shall, at its own expense, maintain and keep in full force and effect liquor liability coverage as well as general liability insurance against claims for bodily injury, death, or property damage occurring on or about the demised premises with a per occurrence limit of not less than one million dollars (\$1,000,000.00). Throughout the term of this sublease agreement, the City shall be named as an additional insured in any policies obtained by CB as a consequence of the requirements imposed by the preceding sentence. Furthermore, the City will be furnished annually with a Certificate of Insurance in a form satisfactory to the City, and all policies shall provide for thirty (30) days advance written notice to the City of material change, cancellation, or non-renewal of said policies.

11. Utilities. All utilities (electricity, water, and sewer) shall remain in the name of the City, and the City shall pay these utility charges.

12. Maintenance and Clean-Up Responsibilities.

- (a) The City shall be responsible for infield maintenance required for CB games and practices prior to the commencement of a game or a practice session. Said maintenance includes dragging and lining the field. However, CB shall be responsible for any infield maintenance required during a game or during a double header.
- (b) The City shall be responsible for regular mowing of the playing field and the surrounding areas during the season.
- (c) The City shall be responsible for cleaning up the Ballpark's facilities, including without limitation the fields, grandstands, restrooms, press box, and parking areas, after each CB event. Solid waste collected by CB staff during games shall be deposited in plastic bags in accordance with the rules and regulations governing the bagging and placement of solid waste for removal by the City's Sanitation Department.
- (d) The City will be responsible for removal of the properly bagged solid waste from the premises.

13. Indemnification. CB hereby promises and agrees to hold harmless and indemnify the City against any and all liabilities, costs, losses, damages, injuries, claims, judgments, or awards, including without limitation attorney fees, court costs, and costs incidental to any litigation, arising out of or resulting from (a) the use or occupancy of the premises by CB; (b) any injury or damage happening on or about the premises that is caused by the negligent act(s) or omission(s) of CB or one of its officers, employees, agents, or representatives (whether paid or unpaid); (c) any breach of the terms of this sublease agreement; or (d) failure on the part of the CB to comply with any law or governmental regulation.

14. Subleasing/Assignment. With exception of the revenue generating activities authorized in section 8, CB shall not sublet or assign this agreement without the prior written consent of the City. The City reserves the right to refuse with or without cause to grant any such consent.

15. Termination in Event of Default. If either the City or CB shall fail to perform, keep, and observe any of the terms, covenants, and conditions herein contained, and shall remain in default thereof for a period of thirty (30) days after written notice from the party not in default calling attention to such default, the party not in default may declare this sublease agreement terminated and canceled and:

- (a) In the case of the City, the City may take possession of the Ballpark without additional notice and without prejudice to any other legal remedy that it might have available to it on account of default by CB.
- (b) In the case of CB, CB may vacate the Ballpark without prejudice to the liquidated damages that are prescribed in section 16.

16. Liquidated Damages. Due to the up-front capital investments made by CB for improvements to the Ballpark's facilities, specifically including the installation of synthetic turf, and due to the difficulty in calculating the damages that would result from the unexpected loss of a summer collegiate baseball program's home venue/revenue stream, if the City terminates this sublease agreement without cause or prohibits the sale/distribution of alcoholic beverages by CB for any reason other than as a remedial measure designed to bring about complete compliance with North Carolina's alcoholic beverage control laws, the City shall pay to CB liquidated damages in an amount equal to ninety thousand and no/100 dollars (\$90,000.00); provided, however, the amount of liquidated damages to be paid pursuant to this section of the sublease agreement shall be reduced by nine thousand and no/100 dollars (\$9,000.00) for each season of summer collegiate baseball that is completed by CB during the term of this sublease agreement.

17. Waiver of Liability. CB shall maintain its own property insurance with coverage against theft or damage to any and all personal property that it stores in or about the Ballpark. CB assumes all risk and responsibility in connection with the safekeeping of all of its equipment and personal property. Furthermore, CB agrees to hold the City harmless for any damage of whatever nature occurring to said property while it is located on the premises of the Ballpark.

18. Binding on Successors and Assigns. All covenants and agreements of this sublease agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City and CB.

19. Notices. All notices required to be given or authorized to be given by any party pursuant to this sublease agreement shall be in writing and shall be served personally or by certified mail, return receipt requested, with postage prepaid and addressed as follows:

To the City: City of Asheboro
146 North Church Street
Post Office Box 1106
Asheboro, North Carolina 27204-1106
Attention: City Manager

To CB: Copperhead Baseball
Post Office Box 4006
Asheboro, North Carolina 27204
Attention: Ronnie Pugh, Manager

20. Amendment of Agreement. This sublease agreement may be amended only by written agreement duly authorized and executed by the parties hereto.

21. Severability of Agreement. If any provision of this sublease agreement shall be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of the agreement, and this sublease agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein.

22. Counterparts of Agreement. This sublease agreement may be executed in several counterparts, and any such counterparts shall be regarded for all purposes as an original.

23. Survivability of Provisions of Agreement. The representations, warranties, and indemnification provisions contained herein shall survive the termination of this sublease agreement.

24. No Waiver of Agreement Provisions. No waiver by either party of any term or condition of this sublease agreement will be deemed to constitute a waiver of any subsequent breach whether of the same or of a different section, subsection, paragraph, clause, phrase, or other provision of the agreement. Making payments pursuant to this provision during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the party making such payment. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted the waiver.

25. Applicable Law. This agreement shall be governed and construed under and pursuant to the laws of the State of North Carolina.

26. Entirety of Agreement. This instrument sets forth the entire agreement and understanding of the parties with respect to the subject matter of the agreement and supersedes all prior arrangements and communications between the parties.

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

28. Joint Negotiation and Drafting of Agreement. The parties agree and acknowledge that they have jointly participated in the negotiation and drafting of this sublease agreement. In the event of an ambiguity or a question of intent or interpretation arises, this instrument 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 instrument. Any reference to a 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.

29. Headings. The headings are for convenience and reference only and in no way define and limit the scope and content of this agreement or in any way affect its provisions.

30. Warranty of Authorization to Execute Agreement. By signature below, the parties represent and warrant that the undersigned are authorized to enter into this sublease agreement.

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

CITY OF ASHEBORO:

By: _____

Name: _____

Title: _____

COPPERHEADS BASEBALL, LLC:

By: _____

Name: _____

Title: _____

13. Police Department Items:

(a) Annual report.

Mr. Rickey D. Wilson, Chief of Police, presented an overview of the Police Department's activities for 2010. A copy of the report presented by Chief Wilson is on file in the City Clerk's office.

(b) Urban hunting information.

Chief Wilson presented information regarding the City of Sanford's regulations for urban archery deer hunting within its city limits.

The possibility of an urban archery deer hunting season within the city limits of the City of Asheboro will be considered by the Council during the special meeting that is planned for March 22, 2011.

14. Discussion of timber management strategies for the city owned lands commonly referred to as the Little Lakes property.

Mr. Andrew Fioranelli, GIS Specialist, presented to the Council possible timber management and utilization strategies for the city's Little Lakes property, including potential plans for a nature trail within the area. Copies of the maps depicting the plans as presented by Mr. Fioranelli are on file in the City Clerk's office.

The Council Members expressed great interest in the protection of the water supply and the potential utilization of the Little Lakes property for passive recreational programming. During this discussion, reference was made to an earlier formal study that had been prepared for the potential use of this property as part of a recreational master plan.

After substantive discussion about the issues of further long term planning and the possible deterioration of timber assets if harvesting is not undertaken in the near term, Mr. Moffitt moved to commence the harvesting of timber on the site in accordance with the recommendations previously provided by Mr. E. Gerald (Jerry) Tugwell of Henderson and Tugwell Consulting Foresters, PA. Mr. Burks seconded the motion.

During the debate about the motion and the need to protect the lakes and streams located on the Little Lakes property, Mr. Moffitt, with Mr. Burks' concurrence, clarified that his motion included adoption of previous recommendations to maintain a 200-foot buffer around the lakes and a 50-foot buffer on each side of the creeks. Dr. Fountain then moved to amend the motion on the floor by increasing the buffer around the streams to a distance of one hundred feet (100') on each side of the creeks. Mr. Burks seconded this motion to amend. The motion to amend was adopted unanimously by Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt.

With the adoption of the motion to amend, the Council next voted on the main motion to proceed with harvesting the timber on the Little Lakes property in accordance with the maps and reports prepared by Mr. Tugwell and modified by the Council's action to impose a 200-foot buffer around

the lakes and a 100-foot buffer on each side of the creeks. The main motion was adopted by the Council with a vote of five (5) in favor and one (1) opposed. Council Members Baker, Bell, Burks, Hunter, and Moffitt voted in favor of the main motion. Council Member Fountain voted no.

15. Discussion of items not on the agenda.

(a) The findings of fact, conclusions of law, and order in the matter of land use case file number SUP-11-01 (Recreational Vehicle Resort).

Upon motion by Mr. Hunter and seconded by Dr. Fountain, Council voted unanimously to approve the following findings of fact, conclusions of law, and order in the matter of land use case file number SUP-11-01. Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt voted in favor of the motion.

Case No. SUP-11-01
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION BY BRIAN THOMAS FOR A SPECIAL USE PERMIT
AUTHORIZING A RECREATIONAL VEHICLE RESORT

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

THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during regular meetings of the Council that were held on January 6, 2011, and February 10, 2011. After the public hearing was closed on February 10, 2011, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. Mr. Brian Thomas (hereinafter referred to as the "Applicant") has submitted an application for a Special Use Permit that would authorize the development of a Recreational Vehicle Resort on 106.13 acres, more or less, of land currently owned by Ms. Phyllis E. Thomas.
2. The site of the proposed Recreational Vehicle Resort is located at 2513 Old Cedar Falls Road and consists of a single parcel of land that is more specifically identified by Randolph County Parcel Identification Number 7772117810. This parcel of land will be hereinafter referred to as the "Zoning Lot."
3. The existing land uses on the Zoning Lot are classified as a combination of a residential, undeveloped, and agricultural land uses.
4. The Zoning Lot is located in an R40 zoning district.
5. The Asheboro Zoning Ordinance authorizes the location of a Recreational Vehicle Resort in an R40 zoning district so long as the special use permitting process is utilized to seek approval for such a land use.
6. The existing land uses located within the immediate vicinity of the Zoning Lot are agricultural and low density residential uses.
7. The Growth Strategy Map identifies the area in which the Zoning Lot is located as an "Economic Development" area, and the Proposed Land Development Plan Map designates this location as a "Neighborhood Residential" area.
8. The Zoning Lot is located within the corporate limits of the City of Asheboro.
9. Municipal sanitary sewer service is not yet available to the lot, but a pump station is proposed for sewer service to the Zoning Lot. Wastewater collection lines within the proposed resort will be privately maintained.
10. The municipal water supply system will be available to the Zoning Lot, but the water lines and fire hydrants within the Zoning Lot will be privately maintained.
11. Old Cedar Falls Road (North Carolina Secondary Road 2216) is a state-maintained major thoroughfare, and the site plan submitted by the Applicant indicates three (3) entrances will be utilized to access the Zoning Lot from Old Cedar Falls Road.

12. The City of Asheboro Land Development Plan 2020 proposes the development of a recreational greenway on the Zoning Lot.

13. A portion of the Zoning Lot is located within a flood zone, but no development is proposed within the flood zone.

14. This Council has previously authorized the development of a Recreational Vehicle Resort on this parcel of land. Under Community Development Division file number SUP-06-12, the Zoning Lot plus an additional contiguous parcel of land were approved for the development of a Recreational Vehicle Resort. The most recent permit for a Recreational Vehicle Resort was issued under Community Development Division file number SUP-07-06, and this permit encompassed the same Zoning Lot.

15. There are two (2) major differences between the Recreational Vehicle Resort that is currently under review and the land use approved under file number SUP-07-06. First, the Special Use Permit issued under file number SUP-07-06 authorized four hundred forty-one (441) total sites within the resort, and the current proposal indicates one hundred ninety-eight (198) total sites are at issue. Second, the current proposal includes an Agricultural Tourism Facility as an optional amenity, while the earlier proposals did not include an Agricultural Tourism Facility.

16. The proposed Agricultural Tourism Facility includes a 500-seat banquet center and wine tasting area. Vineyards are also proposed for the Zoning Lot.

17. Standing alone, the existing single-family residential use and the proposed accessory residential uses do not trigger the need for a Special Use Permit. However, these land uses are located within the Zoning Lot that would be subject to the requested Special Use Permit.

18. During the hearing of this matter, the City of Asheboro Community Development Director testified that the site plan submitted by the Applicant is in compliance with the Asheboro Zoning Ordinance.

19. The Community Development Director also offered for attachment to any permit issued by the Council the following conditions that are designed to ensure that the proposed land use satisfies the standards established for the issuance of a Special Use Permit:

(A) The approved site plan depicts an agricultural tourism facility within the exterior common area of the Recreational Vehicle Resort. Due to the fact that the total acreage of the Zoning Lot was utilized by the Applicant to comply with, and in fact exceed, the acreage requirements established in Section 649 of the zoning ordinance as a baseline for any Recreational Vehicle Resort land use, the proposed agricultural tourism facility was not reviewed or approved by the Council as a stand-alone land use. Instead, the agricultural tourism facility depicted on the site plan is hereby expressly approved under this special use permitting process as an optional amenity located within the exterior common area of the approved Recreational Vehicle Resort land use. As an optional amenity in the exterior common area, the continuing ownership and maintenance responsibilities/obligations associated with the proposed agricultural tourism facility must be addressed by the Applicant in an integrated and comprehensive manner with the ownership and maintenance responsibilities/obligations established for the entirety of the common area located throughout the Recreational Vehicle Resort. The transfer or conveyance of the proposed agricultural tourism facility as a stand-alone land use will be deemed to be a modification of this permit that requires a new Special Use Permit.

(B) While optional amenities located in the exterior common area such as the proposed agricultural tourism facility do not have to be constructed as a condition precedent to the recordation of a final plat for Phase One of the resort, the entirety of the acreage utilized for exterior common area must be included as part of Phase One on the final plat.

(C) The Applicant can continue to engage in the land use activities that are noted on the approved site plan and for which a Special Use Permit is not required so long as such uses are conducted in strict compliance with the zoning ordinance. Any alteration or expansion of these uses that complies with the zoning ordinance will not be deemed to be a modification that requires a new Special Use Permit.

(D) The construction/use of the residential accessory structures noted on the site plan is subject to continuing strict scrutiny. Failure to comply with the requirements of the zoning ordinance shall result in enforcement action, including without limitation the pursuit of equitable relief to authorize the demolition of said structures.

(E) Prior to the issuance of a Certificate of Zoning Compliance for the Recreational Vehicle Resort, all required amenities in Phase One, as shown on the approved site

plan, shall be built. This requirement pertains to, but is not limited to, kids' play areas, recreation courts, pools, and the clubhouse shown on the site plan. Such areas shall be properly graded, stabilized, and seeded for the purpose so indicated.

(F) Prior to the issuance of a Certificate of Zoning Compliance for Phase One, homeowners' association documents, which contain provisions consistent with this order, shall be recorded in the office of the Randolph County Register of Deeds. Such homeowners' documents shall include, but not be limited to, maintenance responsibilities of the association (including specifying maintenance responsibilities for all residential structures and the agricultural tourism facility use within the common area) and a prohibition of on-street parking within the development.

(G) The proposed gravity sewer line along and across Old Cedar Falls Road, which is proposed for maintenance by the City of Asheboro, must be constructed to City of Asheboro standards and specifications and receive approval from the NCDOT and NCDENR Division of Water Quality. A manhole or cleanout shall be provided on the property line of the Zoning Lot at the street right-of-way to separate the maintenance responsibilities of the City of Asheboro from the perpetual maintenance obligations of the property owner and any successors in interest. The sanitary sewer infrastructure within the Zoning Lot, which includes all of the low-pressure sewer facilities, is not publicly owned and/or maintained and shall be maintained by the property owner and successors in interest.

(H) Due to the fact that the water line to be constructed along Old Cedar Falls Road, as well as the 6" water meters for the RV resort area and the banquet facility area, are proposed for eventual ownership and maintenance by the City of Asheboro, this infrastructure must be constructed to City of Asheboro standards and specifications, and receive approval from the NCDOT and NCDENR Public Water Supply Section. Maintenance easements for the water meters must be granted to the City of Asheboro if the NCDOT does not allow the 6" water meters to be constructed within the NCDOT right-of-way.

(I) Significant existing vegetation shall be preserved. Clearing and grading shall be permitted where strictly necessary for construction of the parking areas, installation of water and sewer lines, and/or other infrastructure required for improvements authorized by the Special Use Permit, including the approved site plan.

(J) The proposed buffer plantings as shown on the landscaping plan and located along the Donald Henley property shall be installed as part of Phase One.

(K) As required by Section 649 of the Asheboro Zoning Ordinance, an engineering study of storm water runoff shall be made of the Zoning Lot. If this 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 and any successors in interest.

(L) The 12' wide emergency service access road, as shown on the approved site plan, shall provide access to the principal and accessory residential dwellings and all bodies of water shown on the site plan, and shall, at a minimum, provide all-weather driving capabilities.

(M) Maintenance of all water lines and fire hydrants shown on the approved site plan shall be the responsibility of the property owner and any successors in interest. Fire hydrants must be maintained as required by the manufacturer's recommendations for the brand of hydrant installed.

(N) Maintenance of all recreation areas, parking lots, roads, and drainage facilities that are not specifically labeled on the approved site plan as publicly owned and maintained shall be the responsibility of the property owner and any successors in interest.

(O) The Land Development Plan 2020 (LDP) identifies a future greenway on these properties. A 20-foot wide greenway/recreation easement shall be provided in the location recommended by the LDP prior to the final approval of Phase One. These required greenway/recreation easements shall be conveyed to the City by means of

instrument(s) approved by the City Attorney. Upon receipt of approval from the City Attorney, the said easements shall be filed with the Zoning Administrator for recordation in the office of the Register of Deeds for Randolph County prior to the recordation of any Final Plat.

(P) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute for recordation in the office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to this Special Use Permit in the chain of title for the Zoning Lot.

20. Mr. Jonathan Megerian, Esq. represented the Applicant during the hearing of this matter, and he informed the Council of his client's decision to accept and comply with the conditions recommended by the Community Development Division staff.

21. After reviewing the current proposal and confronting the challenge of finding comparables for the proposed Recreational Vehicle Resort, Mr. Jim Wright, who is a certified real estate appraiser, offered his professional opinion that the proposed land use would not substantially injure or impair the value of adjoining or abutting properties.

22. No evidence was offered during the hearing of this matter to show that any abnormally hazardous activity would be occurring on the Zoning Lot as a consequence of the proposed land use.

23. Prior to deciding the question of whether to issue the requested Special Use Permit, the Council conducted the required sketch design plat review and followed the Planning Board's recommendation to approve the sketch design plat.

24. No expert opinion testimony was offered in opposition to the Applicant's request.

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

CONCLUSIONS OF LAW

1. Pursuant to Section 602 of Article 600 of the Asheboro Zoning Ordinance, the Council must find that the Applicant has met four (4) general standards before an application for a Special Use Permit may be approved. The four standards are as follows:

(A) 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.

(B) That the use meets all required conditions and specifications.

(C) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.

(D) 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.

2. When an applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions that the ordinance requires for the issuance of a Special Use Permit, prima facie the applicant is entitled to the permit. A denial of the permit has to be based upon findings contra, which are supported by competent, substantial, and material evidence appearing in the record.

3. In this case, the Applicant has properly submitted an application for a Special Use Permit authorizing the development of a Recreational Vehicle Resort on the Zoning Lot that is located in an R40 zoning district.

4. In light of the available evidence and the express agreement of the Applicant to accept and comply with the conditions recommended by the Community Development Division staff, the Applicant's site plan for the proposed land use is compliant with the applicable requirements of the Asheboro Zoning Ordinance.

5. On the basis of the evidence presented during the hearing of this matter, the Council has concluded that the proposed use meets the four (4) general standards for the granting of a Special Use Permit. More specifically, the proposed use will not materially endanger the public health or safety, meets all required conditions and specifications of the zoning ordinance, will not substantially injure the value of adjoining or abutting property, and will be in harmony with the area in which it is to be located and is in general conformity with Asheboro's plan of development.

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

ORDER

The Applicant, Mr. Brian Thomas, is hereby issued a Special Use Permit authorizing the development of a Recreational Vehicle Resort, as defined by the Asheboro Zoning Ordinance, on the Zoning Lot. This Special Use Permit shall be valid so long as, and only so long as, Brian Thomas, and his heirs, successors, and assigns, develop and conduct the approved land use in compliance with the approved site plan, the provisions of the Asheboro Zoning Ordinance, and remain in strict compliance with the following conditions:

(A) The approved site plan depicts an agricultural tourism facility within the exterior common area of the Recreational Vehicle Resort. Due to the fact that the total acreage of the Zoning Lot was utilized by the Applicant to comply with, and in fact exceed, the acreage requirements established in Section 649 of the zoning ordinance as a baseline for any Recreational Vehicle Resort land use, the proposed agricultural tourism facility was not reviewed or approved by the Council as a stand-alone land use. Instead, the agricultural tourism facility depicted on the site plan is hereby expressly approved under this special use permitting process as an optional amenity located within the exterior common area of the approved Recreational Vehicle Resort land use. As an optional amenity in the exterior common area, the continuing ownership and maintenance responsibilities/obligations associated with the proposed agricultural tourism facility must be addressed by the Applicant in an integrated and comprehensive manner with the ownership and maintenance responsibilities/obligations established for the entirety of the common area located throughout the Recreational Vehicle Resort. The transfer or conveyance of the proposed agricultural tourism facility as a stand-alone land use will be deemed to be a modification of this permit that requires a new Special Use Permit.

(B) While optional amenities located in the exterior common area such as the proposed agricultural tourism facility do not have to be constructed as a condition precedent to the recordation of a final plat for Phase One of the resort, the entirety of the acreage utilized for exterior common area must be included as part of Phase One on the final plat.

(C) The Applicant can continue to engage in the land use activities that are noted on the approved site plan and for which a Special Use Permit is not required so long as such uses are conducted in strict compliance with the zoning ordinance. Any alteration or expansion of these uses that complies with the zoning ordinance will not be deemed to be a modification that requires a new Special Use Permit.

(D) The construction/use of the residential accessory structures noted on the site plan is subject to continuing strict scrutiny. Failure to comply with the requirements of the zoning ordinance shall result in enforcement action, including without limitation the pursuit of equitable relief to authorize the demolition of said structures.

(E) Prior to the issuance of a Certificate of Zoning Compliance for the Recreational Vehicle Resort, all required amenities in Phase One, as shown on the approved site plan, shall be built. This requirement pertains to, but is not limited to, kids' play areas, recreation courts, pools, and the clubhouse shown on the site plan. Such areas shall be properly graded, stabilized, and seeded for the purpose so indicated.

(F) Prior to the issuance of a Certificate of Zoning Compliance for Phase One, homeowners' association documents, which contain provisions consistent with this order, shall be recorded in the office of the Randolph County Register of Deeds. Such homeowners' documents shall include, but not be limited to, maintenance responsibilities of the association (including specifying maintenance responsibilities for all residential structures and the agricultural tourism facility use within the common area) and a prohibition of on-street parking within the development.

(G) The proposed gravity sewer line along and across Old Cedar Falls Road, which is proposed for maintenance by the City of Asheboro, must be constructed to City of Asheboro standards and specifications and receive approval from the NCDOT and NCDENR Division of Water Quality. A manhole or cleanout shall be provided on the property line of the Zoning Lot at the street right-of-way to separate the maintenance responsibilities of the City of Asheboro from the perpetual maintenance obligations of the property owner and any successors in interest. The sanitary sewer infrastructure within the Zoning Lot, which includes all of the low-pressure sewer facilities, is not publicly owned and/or maintained and shall be maintained by the property owner and successors in interest.

(H) Due to the fact that the water line to be constructed along Old Cedar Falls Road, as well as the 6" water meters for the RV resort area and the banquet facility area, are proposed for eventual ownership and maintenance by the City of Asheboro, this infrastructure must be constructed to City of Asheboro standards and specifications, and receive approval from the NCDOT and NCDENR Public Water Supply Section. Maintenance easements for the water meters must be granted to the City of Asheboro if the NCDOT does not allow the 6" water meters to be constructed within the NCDOT right-of-way.

(I) Significant existing vegetation shall be preserved. Clearing and grading shall be permitted where strictly necessary for construction of the parking areas, installation of water and sewer lines, and/or other infrastructure required for improvements authorized by the Special Use Permit, including the approved site plan.

(J) The proposed buffer plantings as shown on the landscaping plan and located along the Donald Henley property shall be installed as part of Phase One.

(K) As required by Section 649 of the Asheboro Zoning Ordinance, an engineering study of storm water runoff shall be made of the Zoning Lot. If this 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 and any successors in interest.

(L) The 12' wide emergency service access road, as shown on the approved site plan, shall provide access to the principal and accessory residential dwellings and all bodies of water shown on the site plan, and shall, at a minimum, provide all-weather driving capabilities.

(M) Maintenance of all water lines and fire hydrants shown on the approved site plan shall be the responsibility of the property owner and any successors in interest. Fire hydrants must be maintained as required by the manufacturer's recommendations for the brand of hydrant installed.

(N) Maintenance of all recreation areas, parking lots, roads, and drainage facilities that are not specifically labeled on the approved site plan as publicly owned and maintained shall be the responsibility of the property owner and any successors in interest.

(O) The Land Development Plan 2020 (LDP) identifies a future greenway on these properties. A 20-foot wide greenway/recreation easement shall be provided in the location recommended by the LDP prior to the final approval of Phase One. These required greenway/recreation easements shall be conveyed to the City by means of instrument(s) approved by the City Attorney. Upon receipt of approval from the City Attorney, the said easements shall be filed with the Zoning Administrator for recordation in the office of the Register of Deeds for Randolph County prior to the recordation of any Final Plat.

(P) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute for recordation in the office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to this Special Use Permit in the chain of title for the Zoning Lot.

The foregoing findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting held on the 10th day of March, 2011.

s/ Talmadge S. Baker
Talmadge S. Baker, Mayor Pro Tempore

ATTEST:

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

- (b) Acknowledge receipt of minutes of the Asheboro ABC Board's meeting on January 3, 2011 (corrected minutes), February 7, 2011, and February 14, 2011.**

Mr. Baker acknowledged the Council's receipt of the minutes of the Asheboro ABC Board's meetings on January 3, 2011 (corrected minutes), February 7, 2011, and February 14, 2011. Copies of these minutes are on file in the City Clerk's office.

There being no further business, the meeting was adjourned at 9:10 p.m.

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

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