

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, AUGUST 9, 2012
7:00 p.m.**

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

David H. Smith) – Mayor Presiding

Talmadge S. Baker)
Clark R. Bell)
Edward J. Burks)
Linda H. Carter) – Council Members Present
Michael W. Hunter)
Walker B. Moffitt)
Charles A. Swiers)

John N. Ogburn, III, City Manager
Dumont Bunker, P.E., City Engineer
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal
John L. Evans, Assistant Community Development Director
Casandra M. Fletcher, Marketing Specialist
Justin T. Luck, Zoning Administrator/Planner
Trevor L. Nuttall, Community Development Director
Deborah P. Reaves, Finance Director
Jonathan M. Sermon, Recreation Services Superintendent
Jeffrey C. Sugg, City Attorney
Sanford A. Vuncannon, Jr., Police Captain

1. Call to order.

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

2. Silent prayer and pledge of allegiance.

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

3. Recognition of Russell G. Walker, Jr. for his service as chair of the Asheboro ABC Board.

In recognition and as a token of appreciation for Judge Walker's service as Chair of the Asheboro ABC Board for the past four (4) years, Mayor Smith presented the Honorable Russell G. Walker, Jr. with a commemorative pottery plate picturing Asheboro City Hall.

Judge Walker thanked Mayor Smith, the council members, and the citizens of Asheboro for the opportunity to serve on the Asheboro ABC Board.

4. Randolph County 4-H Summer Camp members and their "Windows to Our Community" projects.

As a requirement for studying citizenship, members of the Randolph County 4-H Summer Camp presented their "Windows to Our Community" projects identifying positive aspects as well as challenges within the community.

5. Consent Agenda:

Upon motion by Mr. Hunter and seconded by Ms. Carter, Council voted unanimously to adopt/approve the following consent agenda items. Council Members Baker, Bell, Burks, Carter, Hunter, and Swiers voted in favor of this motion. Council Member Moffitt did not arrive until after the consent agenda was approved.

- (a) **The minutes of the City Council's regular meeting on July 12, 2012.**
- (b) **The findings of fact, conclusions of law, and order pertaining to the Special Use Permit issued under Community Development Division File Number SUP-12-01.**

Case No. SUP-12-01
City Council
City of Asheboro

IN THE MATTER OF THE APPLICATION OF SOLEIL ENERGY SOLUTIONS FOR A SPECIAL USE
PERMIT AUTHORIZING A SOLAR FARM

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 a properly advertised quasi-judicial hearing conducted during a regular meeting of the Council that was held on July 12, 2012. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby enter the following:

FINDINGS OF FACT

1. Soleil Energy Solutions (hereinafter referred to as the "Applicant") properly submitted to the City of Asheboro an application, which included a site plan, for a Special Use Permit that, if issued by the Council, would authorize a solar farm to be developed on a parcel of land located in the city's extraterritorial planning jurisdiction.

2. The Applicant proposes to develop a solar farm on a parcel of land that contains approximately 27.7 acres of land and is located on the south side of United States Highway 64 West, approximately 420' west of the centerline of Three B Road. This parcel of land (hereinafter referred to as the "Zoning Lot") is more specifically identified by Randolph County Parcel Identification Number 7740483651.

3. The Zoning Lot is owned by Donald W. Lanier and Cheryl K. Lanier. This application for approval of a solar farm has been received and heard during a publicly advertised quasi-judicial hearing without objection from the Laniers.

4. The Zoning Lot is currently undeveloped.

5. The proposed land use, a solar farm, is a land use recognized by the Asheboro Zoning Ordinance. The zoning ordinance defines a solar farm land use as follows:

A utility-scale commercial facility that uses solar energy, specifically for the conversion of sunlight into electricity by photovoltaics, concentrating solar thermal devices or various experimental technologies, for the primary purpose of wholesale or retail sales of generated electricity. The use of solar collectors for personal or business consumption that occurs on-site is not considered a solar farm.

6. The Applicant anticipates selling the power generated by the proposed solar farm to Randolph Electric Membership Corporation.

7. The Applicant, which was represented during the hearing of this matter by Mr. Ben Morgan, Esq. and the company's president and chief executive officer, Mr. McAlee Lemene, does not challenge the classification of the proposed land use as a solar farm under the Asheboro Zoning Ordinance. In fact, the Applicant contends that it will serve a public necessity by supplying power in an environmentally friendly and sustainable manner during peak demand periods for the electric utility planning to purchase electricity generated by the solar farm.

8. The Zoning Lot is located in an R40 zoning district. Pursuant to Table 200-2 of the Asheboro Zoning Ordinance, a solar farm land use is permitted in an R40 zoning district by Special Use Permit only.

9. The surrounding land uses are primarily single-family residential and undeveloped property along with industrial use to the north.

10. The Zoning Lot is located outside of designated watershed or flood zone areas.

11. The zoning ordinance requires a 50-foot wide perimeter buffer or screen around all sides of the Zoning Lot. The Applicant is proposing to utilize existing vegetation within the majority of this buffer and add evergreen screening in areas without existing vegetation.

12. The amount of parking required for the solar farm land use is based on the number of employees that are regularly on the premises. The submitted site plan indicates that employees will not regularly be on-site. This fact was confirmed by the testimony received during the hearing of this matter. Thus, the parking area indicated on the site plan is not required. This fact is important in that the zoning ordinance specifies that only required parking must be paved. Accordingly, the gravel parking shown on the site plan is not in violation of the zoning ordinance.

13. The existing frame buildings shown on the site plan are not part of the solar farm land use review.

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

A. Subject to the exception stated in this condition, significant existing vegetation (shown as the perimeter buffer on the site plan) shall be preserved. Notwithstanding the immediately preceding sentence, if grading or other land disturbance activities required for the installation of required infrastructure result in the removal of existing vegetation within this perimeter buffer, supplemental plantings (consistent with the applicant's proposed supplemental screening in front of the parking area on the northwest side of the property) must be installed and maintained to mitigate any such loss of vegetation. By way of illustration and not limitation, these supplemental plantings must be installed at locations where existing vegetation does not provide the degree of opacity, compatibility, and protection to adjoining properties that is equal to or greater than a Type D screen.

B. If acquisition of right-of-way by the North Carolina Department of Transportation (NDOT) results in an alteration of property lines, the applicant shall submit a revised site plan showing the new property boundaries, any changes in solar panel locations, and plantings consistent with a Type D screen prescribed by Section 304A.4 of the zoning ordinance along the northern property boundary adjacent to U.S. Highway 64 West. Such a site plan shall be reviewed by staff for conformity with the zoning ordinance and, if found to be compliant with the zoning ordinance, included in the file without further review by City Council.

C. Paving of the parking areas (including driveways, maneuvering areas, and parking spaces) shall not be considered a modification to the permit.

D. Two existing frame structures are noted on the approved site plan and have no functional relationship with the approved solar farm use. The issuance of this Special Use Permit is not to be construed as the entry of any finding, conclusion, or order as to the ownership or legal status of these existing structures. If these structures are subsequently found to be owned by and under the control of the owner of the Zoning Lot, such an owner can continue to utilize the existing frame buildings that are noted on the approved site plan and for which a Special Use Permit is not required so long as such buildings are utilized in strict compliance with the zoning ordinance.

E. The site plan raises a question as to whether there is an encroachment into the Zoning Lot of a structure identified as a deck. This potential encroachment does not impact the analysis of the requested solar farm use under the Asheboro Zoning Ordinance, and the issuance of this Special Use Permit is not to be construed as entering any finding, conclusion, or order as to the legal status of this potential encroachment. Any future questions of the potential encroachment will be subject to independent analysis under all of the applicable laws and ordinances.

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

15. During the hearing of this matter, the Applicant, by and through its attorney, accepted the above-listed conditions.

16. With the acceptance of these conditions, the uncontroverted evidence is that the submitted site plan is compliant with the rules and regulations of the Asheboro Zoning Ordinance.

17. The proposed solar farm is to use stationary panels, not panels with adjustable positions, and these panels are designed to withstand all normal weather exposures.

18. The proposed solar panels will not exceed the height of the surrounding trees.

19. The uncontroverted evidence is that the threat of electrical shock from the equipment proposed for the solar farm does not exceed the threat of shock posed by a residential cooling unit.

20. A real estate expert, Ms. Patsy Woodruff, offered uncontroverted testimony that a solar farm built in the Seagrove area has had no negative impact on the value of adjoining properties.

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

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

1. *That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.*
2. *That the use meets all required conditions and specifications.*
3. *That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and*
4. *That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.*

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

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

CONCLUSIONS OF LAW

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

2. In this case, the Applicant has properly submitted an application for a Special Use Permit authorizing on the Zoning Lot, which is located in an R40 zoning district, a solar farm.

3. The site plan submitted by the Applicant complies with the applicable requirements of the Asheboro Zoning Ordinance.

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

5. Given the conformance of the submitted site plan with the requirements of the Asheboro Zoning Ordinance, and the totality of the evidence submitted by the Applicant during the hearing of this matter, the Applicant, subject to certain conditions, is to be issued a Special Use Permit for a solar farm land use.

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

ORDER

The Applicant is hereby issued a Special Use Permit authorizing on the Zoning Lot the development of a solar farm. This Special Use Permit shall be valid so long as, and only so long as, the Applicant, and its successors, and assigns, develop and conduct the approved land use in compliance with this permit, the approved site plan, all applicable provisions of the Asheboro Zoning Ordinance, and the following supplementary conditions that are attached to this permit:

- A. Subject to the exception stated in this condition, significant existing vegetation (shown as the perimeter buffer on the site plan) shall be preserved. Notwithstanding the immediately preceding sentence, if grading or other land disturbance activities required for the installation of required infrastructure result in the removal of existing vegetation within this perimeter buffer, supplemental plantings (consistent with the applicant's proposed supplemental screening in front of the parking area on the northwest side of the property) must be installed and maintained to mitigate any such loss of vegetation. By way of illustration and not limitation, these supplemental

- (f) **Acknowledgement of the receipt from the Asheboro ABC Board of the board's second amended annual budget for fiscal year 2011-2012.**

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

- (g) **An ordinance amending Chapter 50 (Water and Sewers) of the Code of Asheboro in order to formalize the policy as to when utility billing information will be released.**

21 ORD 8-12

AN ORDINANCE AMENDING CHAPTER 50 OF THE CODE OF ASHEBORO

WHEREAS, Chapter 50 of the Code of Asheboro prescribes general water and sewer provisions for the City of Asheboro; and

WHEREAS, pursuant to Section 132-1.1(c) of the North Carolina General Statutes, billing information compiled and maintained by the city's water and sewer utility is not a public record; and

WHEREAS, the Asheboro City Council, in its capacity as the governing board for the water and sewer utility, has decided to establish in the Code of Asheboro the policies that will govern when water and sewer utility billing information will be released;

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

Section 1. Section 50.09 of the Code of Asheboro is hereby enacted to provide as follows:

§ 50.09 RELEASE OF BILLING INFORMATION

(A) Pursuant to G.S. § 132-1.1(c), billing information compiled and maintained by the city's water and sewer utility is not public record. Except as provided in division (B) of this Section, the release of billing information compiled and maintained by the water and sewer utility is prohibited.

(B) The release of billing information compiled and maintained by the water and sewer utility is authorized under the following circumstances:

1. Billing information will be released in accordance with written instructions issued by the city manager for the purpose of providing information that will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies, or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the water and sewer utility;

2. Billing information requested by city division/department heads, or their designees, for the purpose of providing municipal services or maintaining the integrity and quality of such services will be released to the city official who requested the billing information;

3. Billing information requested by law enforcement officers, public safety officers, fire protection officials (specifically including firefighters concerned with fire suppression, arson investigators, and fire prevention code inspectors), rescue and emergency management officials, and judicial officials in the performance of their official duties will be released to the requesting officer or official; and

4. Upon request, a utility customer, or his/her authorized representative, will be provided with billing information compiled and maintained in connection with the customer's own account. Individuals and entities, who are not otherwise authorized under the foregoing provisions in division (B) of this Section to receive billing information, are prohibited from receiving any billing information compiled and maintained as part of an account that does not list as a responsible party the person or entity making the request for information or on behalf of whom the request for information has been made.

(C) Nothing in this Section shall be construed as authorizing the release of a customer's social security number or any other personal identifying information in violation of the applicable laws, specifically including without limitation G.S. § 132-1.10

Section 2. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after August 9, 2012.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 9th day of August, 2012.

/s/David H. Smith
David H. Smith, Mayor
City of Asheboro, North Carolina

ATTEST:

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

- (h) **A resolution authorizing city staff members to record a deed transferring from Randolph County to the City of Asheboro water line infrastructure located along United States Highway 64 East and certain other streets between Asheboro and Clapp Drive.**

32 RES 8-12

RESOLUTION AUTHORIZING THE ACCEPTANCE AND RECORDATION OF A DEED CONVEYING CERTAIN WATER LINE INFRASTRUCTURE TO THE CITY OF ASHEBORO

WHEREAS, pursuant to an Interlocal Water Service Agreement (hereinafter referred to as the "Agreement"), which was entered into by the City of Asheboro and Randolph County on September 17, 2009, the county constructed and paid for a water line along United States Highway 64 East from Asheboro to Clapp Drive and along certain other streets; and

WHEREAS, upon completion of the water line and compliance by the county and city with other terms and conditions of the said Agreement, the water line infrastructure, including the associated lands and rights-of-way, is to be conveyed to the City of Asheboro; and

WHEREAS, the county and city have concluded that it is appropriate under the terms and conditions of the Agreement for legal title to the said water line infrastructure, along with the accompanying easements and rights-of-way, to be conveyed to the City of Asheboro at the present time; and

WHEREAS, the city has received from the county a properly executed instrument of conveyance (hereinafter referred to as the "Deed"), a copy of which is attached to this resolution as EXHIBIT 1 and is hereby incorporated into this resolution by reference as if copied fully herein; and

WHEREAS, the Deed has been drafted by the county in compliance with the above-referenced Interlocal Water Service Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that delivery of the Deed is hereby accepted; and

BE IT FURTHER RESOLVED that the city manager is hereby authorized and directed to cause the recordation of the said Deed in the Office of the Randolph County Register of Deeds.

This resolution was adopted in open session during a regular meeting of the Asheboro City Council that was held on August 9, 2012.

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

ATTEST:

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

[Exhibit 1 that is referred to in the above resolution is attached to the original resolution on file in the City Clerk's office.]

[Council Member Moffitt arrived at this point in the meeting and participated in the consideration of all of the remaining items on the agenda.]

6. Community Development Division Items:

(a) Conditional Use Permit authorizing a bank on property located at 1036 South Park Street (Community Development Division File No. CUP-12-07).

Mayor Smith opened the quasi-judicial hearing on the following request.

Mr. Nuttall was placed under oath and presented the Community Development Division staff's analysis of the Applicant's request that included a properly submitted site plan. The Applicant, State Employees' Credit Union, requested a Conditional Use Permit authorizing an additional 1,744 square feet to be added to the west side of the existing building of the State Employees' Credit Union along with an additional 21 parking spaces. The property is located at 1036 South Park Street and is more specifically identified by Randolph County Parcel Identification Number 7750671874.

On behalf of the Applicant, Mr. Barron Thompson, Esq. was sworn in and addressed the four standard tests. No witnesses came forward in opposition to the issuance of the requested Conditional Use Permit.

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

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to approve, with one condition, the requested Conditional Use Permit. This approval is based on the four standard tests being met.

The formal findings of fact, conclusions of law, and order approving this Conditional Use Permit will be entered by the Council in regular session on September 6, 2012. This order will reflect the condition imposed upon this permit as a consequence of the testimony presented during the public hearing.

(b) Subdivision Final Plat Review: Consideration of a final plat submitted for the Olde Towne Village Subdivision (Community Development Division File No. SUB-12-01).

Mr. Nuttall presented the final plat for a portion of the proposed Olde Towne Village Section II, Phase I Subdivision. This subdivision is located on the south side of Old Lexington Road, approximately 2,300 feet east of Chamberlin Drive and is shown as "New Lot 5 Section II" on a plat of survey recorded in the Office of the Randolph County Register of Deeds in Plat Book 109, Page 64.

The development includes detached single-family dwellings and attached single-family dwellings (with two dwellings in each structure). The final plat considered during the August Council meeting included Lot #5 (single-family dwelling) only. Plats for the other lots in the development, which includes 52 lots total, may be reviewed at a later date. A final plat for the infrastructure was approved by the Council in February 2012, and the infrastructure serving Lot #5 has been completed or guaranteed per the requirements of the Zoning Ordinance.

The Community Development Division and the Planning Board recommended approval of the final plat with the following comments:

"A portion of the existing alley adjacent to Lot #5 will need to remain as a temporary turnaround until construction of Middleton Circle is completed and the turnaround is no longer necessary.

Homeowners' documents restricting RV parking as required by the Ordinance have been submitted and reviewed. Minor corrections have been returned to the applicant for resubmittal."

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to approve the submitted final plat with the preceding comments by the Community Development Division staff and the Asheboro Planning Board adopted as conditions.

(c) Public hearing on the close out of the Allen Precision/PEMMCO Community Development Block Grant.

Mayor Smith opened the public hearing on the close out of the Allen Precision/PEMMCO Community Development Block Grant.

During the public hearing, which was advertised in *The Courier-Tribune* on July 29, 2012, Ms. Fletcher presented an overview of the community development block grant funding for the Allen

Precision Industries Economic Development Project that began in August 2010. The total project cost was \$337,179.49, with \$154,360 received from Community Development Block Grant funding. These funds accounted for approximately 46% of the project's expenses. Nineteen new jobs have been created as a result of this project, with 74% of those new jobs given to individuals who were from low to moderate income households.

There being no further comments from city staff and no comments offered by members of the public, Mayor Smith closed the public hearing.

A copy of the visual presentation utilized by Ms. Fletcher during the public hearing is on file in the City Clerk's office.

7. Annexation petitions:

(a) Consideration of a petition received from Celia M. Wright requesting contiguous annexation of 0.15 of an acre of land located at 617 Glovinia Street:

(i) Resolution directing the city clerk to investigate the annexation petition.

Mr. Bunker presented and recommended adoption, by reference, of a resolution directing the city clerk to investigate a petition requesting contiguous annexation of 0.15 of an acre of land located at 617 Glovinia Street.

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

33 RES 8-12

RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE AN ANNEXATION PETITION RECEIVED PURSUANT TO SECTION 160A-31 OF THE NORTH CAROLINA GENERAL STATUTES

(A Total of 0.15 of an Acre of Land Located at 617 Glovinia Street)

WHEREAS, Celia M. Wright has submitted a petition requesting the annexation by the City of Asheboro of the portion of her lot at 617 Glovinia Street that is currently located beyond the city limits; and

WHEREAS, the territory for which annexation is requested is contiguous with the existing primary corporate limits of the City of Asheboro; and

WHEREAS, Section 160A-31 of the North Carolina General Statutes provides that the sufficiency of the petition shall be investigated by the city clerk before further annexation proceedings may take place; and

WHEREAS, in response to this petition, the City Council has decided to proceed with the statutorily prescribed voluntary annexation proceedings;

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

This resolution was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 9th day of August, 2012.

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

ATTEST:

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

CERTIFICATE OF SUFFICIENCY

(A Total of 0.15 of an Acre of Land Located at 617 Glovinia Street)

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

I, Holly H. Doerr, CMC, City Clerk of the City of Asheboro, North Carolina, do hereby certify that, with the assistance of other city staff members in the engineering department, I have investigated the

petition signed by Celia M. Wright. On the basis of the evidence obtained during the course of that investigation, I have concluded that all owners of real property lying in the area for which annexation has been requested have signed the mandated petition, and the petition appears to be sufficient to satisfy the provisions of Section 160A-31 of the North Carolina General Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Asheboro, North Carolina in order to make this certification effective as of the 9th day of August, 2012.

(SEAL)

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

(ii) Resolution setting the date of public hearing on the question of annexation.

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

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

34 RES 8-12

RESOLUTION SETTING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO SECTION 160A-31 OF THE NORTH CAROLINA GENERAL STATUTES

(A Total of 0.15 of an Acre of Land Located at 617 Glovinia Street)

WHEREAS, Celia M. Wright has submitted a petition requesting the annexation into the City of Asheboro of the portion of her lot at 617 Glovinia Street that is located beyond, but contiguous with, the existing primary corporate limits of the City of Asheboro; and

WHEREAS, the City Council has, by resolution, directed the city clerk to investigate the sufficiency of the annexation petition; and

WHEREAS, on the basis of her review of information gathered by city staff members during an investigation of the submitted petition, the city clerk has certified to the City Council the sufficiency of this petition to proceed with setting a date for a public hearing on the question of annexation pursuant to Section 160A-31 of the North Carolina General Statutes;

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

Section 1. A public hearing on the question of annexing the area described herein will be held in the Council Chamber of Asheboro City Hall, which is located at 146 North Church Street, Asheboro, North Carolina 27203, during a regular meeting of the City Council that will begin at 7:00 o'clock p.m. on the 6th day of September, 2012.

Section 2. A metes and bounds description of the area proposed for annexation is attached to this resolution as EXHIBIT 1 and is hereby incorporated into this resolution by reference as if copied fully herein.

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

This resolution was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 9th day of August, 2012.

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

ATTEST:

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

EXHIBIT 1

Asheboro Township, Randolph County, North Carolina:

BEGINNING at a computed point that is located on both the existing primary corporate limits line for the City of Asheboro and on the southern boundary line for the Celia M. Wright property (for which annexation has been requested) that is described in Deed Book 813, Page 33, Randolph County Public Registry, this beginning point is located the following courses and distances from City of Asheboro Monument # 103 that is itself located by means of the North Carolina Coordinate System at the coordinates of North 715,918.921 feet and East 1,760,603.013 feet (NAD 27): South 80 degrees 20 minutes 05 seconds East 2,681.55 feet to a computed point; thence North 3 degrees 26 minutes 46 seconds East 257.00 feet to an axle that is up 12" and is at the southwest corner of the said Celia M. Wright property; thence South 86 degrees 37 minutes 54 seconds East 22.87 feet along the southern boundary line of the said Wright property to the beginning point that is on the existing primary corporate limits line that crosses the Wright property; thence from the said beginning point following the existing primary corporate limits line North 19 degrees 00 minutes 46 seconds West 52.42 feet across the Wright property to a computed point on the northern boundary line of the Celia M. Wright property; thence departing from the existing primary corporate limits line and proceeding along the said northern boundary line South 86 degrees 04 minutes 38 seconds East 145.95 feet to a ½-inch rebar that is down 1" at the northeast corner of the Wright property and on the western margin of the public right-of-way for Glovinia Street (North Carolina Secondary Road 2317); thence following the western margin of the public right-of-way for Glovinia Street the following course and distance: South 1 degree 45 minutes 45 seconds West 47.08 feet to a bent ¾-inch existing iron pipe that is down 2" at the southeast corner of the said Celia M. Wright property; thence departing from the margin of the right-of-way for Glovinia Street and proceeding along the southern boundary line of the said Wright property the following course and distance: North 86 degrees 37 minutes 54 seconds West 127.30 feet to the point and place of BEGINNING, and containing 0.15 of an acre (6,519 square feet) of land, more or less, to be annexed.

The above-listed description is in accordance with a plat of survey entitled "Annexation Plat for City of Asheboro(;) Property of Celia M. Wright(;) 617 GLOVINIA STREET." This plat was drawn under the supervision of Thomas Scaramastra, Professional Land Surveyor with License Number L-4421, from an actual survey made under his supervision. The job number listed on the plat is 12022. The said plat of survey is dated July 30, 2012.

(b) Consideration of a petition received from Walter L. Ward and Earlene V. Ward requesting contiguous annexation of 11.68 acres of land located at 1634 and 1636 East Dixie Drive (Mid-State Toyota):

(i) Resolution directing the city clerk to investigate the annexation petition.

Mr. Bunker presented and recommended adoption, by reference, of a resolution directing the city clerk to investigate a petition requesting contiguous annexation of 11.68 acres of land located at 1634 and 1636 East Dixie Drive.

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

35 RES 8-12

RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE AN ANNEXATION PETITION RECEIVED PURSUANT TO SECTION 160A-31 OF THE NORTH CAROLINA GENERAL STATUTES

(A Total of 11.68 Acres of Land Located at 1634 and 1636 East Dixie Drive)

WHEREAS, Walter L. Ward and Earlene Ward have submitted a petition requesting the annexation by the City of Asheboro of a portion of their real property located at 1634 and 1636 East Dixie Drive; and

WHEREAS, the territory for which annexation is requested is contiguous with the existing primary corporate limits of the City of Asheboro; and

WHEREAS, Section 160A-31 of the North Carolina General Statutes provides that the sufficiency of the petition shall be investigated by the city clerk before further annexation proceedings may take place; and

WHEREAS, in response to this petition, the City Council has decided to proceed with the statutorily prescribed voluntary annexation proceedings;

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

This resolution was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 9th day of August, 2012.

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

ATTEST:

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

CERTIFICATE OF SUFFICIENCY

(A Total of 11.68 Acres of Land Located at 1634 and 1636 East Dixie Drive)

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

I, Holly H. Doerr, CMC, City Clerk of the City of Asheboro, North Carolina, do hereby certify that, with the assistance of other city staff members in the engineering department, I have investigated the petition signed by Walter L. Ward and Earlene Ward. On the basis of the evidence obtained during the course of that investigation, I have concluded that all owners of real property lying in the area for which annexation has been requested have signed the mandated petition, and the petition appears to be sufficient to satisfy the provisions of Section 160A-31 of the North Carolina General Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Asheboro, North Carolina in order to make this certification effective as of the 9th day of August, 2012.

(SEAL)

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

(ii) Resolution setting the date of public hearing on the question of annexation.

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

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

36 RES 8-12

RESOLUTION SETTING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO SECTION 160A-31 OF THE NORTH CAROLINA GENERAL STATUTES

(A Total of 11.68 Acres of Land Located at 1634 and 1636 East Dixie Drive)

WHEREAS, Walter L. Ward and Earlene Ward have submitted a petition requesting the annexation into the City of Asheboro of a portion of their real property at 1634 and 1636 East Dixie Drive that is contiguous with the existing primary corporate limits of the City of Asheboro; and

WHEREAS, the City Council has, by resolution, directed the city clerk to investigate the sufficiency of the annexation petition; and

WHEREAS, on the basis of her review of information gathered by city staff members during an investigation of the submitted petition, the city clerk has certified to the City Council the sufficiency of this petition to proceed with setting a date for a public hearing on the question of annexation pursuant to Section 160A-31 of the North Carolina General Statutes;

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

Section 1. A public hearing on the question of annexing the area described herein will be held in the Council Chamber of Asheboro City Hall, which is located at 146 North Church Street, Asheboro, North Carolina 27203, during a regular meeting of the City Council that will begin at 7:00 o'clock p.m. on the 6th day of September, 2012.

After the public hearing was opened, Ms. Reaves, in her capacity as the city's finance director, utilized a visual presentation to assist her with making a verbal report to the Council on the following topics:

1. A description of the Sunset Theatre Renovation Project and the installment financing proposed for the project.
2. An explanation of why this project is a necessary and good project for the City of Asheboro.
3. A discussion of why the proposed installment financing contract is preferred over a general obligation or revenue bond issue.
4. A discussion of why the sums of money that will come due under the proposed contract are not excessive.
5. A discussion about the good standing of the city's debt management procedures and policies.
6. A discussion about the amount of the tax increase needed to cover the maximum principal and interest payments that would come due per year if the city did not have sufficient current appropriations in the General Fund to pay these principal and interest payments.

The specific information presented by Ms. Reaves with her electronic slide show presentation is contained below.

Description of Renovation Project:

- The Sunset Theatre Capital Project involves interior and exterior renovations to the buildings located at 226, 230, 232, 234 and 236 Sunset Avenue.
- The building where the new marquee is installed is 230 Sunset Avenue. The building where the library book store currently resides is 226 Sunset Avenue.
- The library book store will continue to remain in the front half. The main building theatre is 232 Sunset Avenue.
- The exterior renovations as required by State Historic Preservation Office and approved by Randolph County Historic Landmark Preservation Commission .
- Replacement of original canopy at 234 Sunset Ave.
- New entrance and lobby at new marquee at 230 Sunset Ave.
- New handicapped accessible restrooms.
- New rehearsal and theatre staging areas.
- Heating, ventilating, air conditioning, electrical, plumbing renovations and fire protection per state building code and ADA accessibility requirements.

Project Financing:

- Construction Bid \$1,635,875.
- Financing amount \$1,200,000 (max).
- 7 years.
- Quarterly payments not to exceed \$48,500 / qtr.
- Rate 1.86%.
- \$1,700 origination fee.
- Annual Principal and interest payments from the General Fund not to exceed \$194,000 per year.

Vision:

- The City of Asheboro was built and once thrived on its manufacturing businesses. With global diversity, the economy has changed and diversified.
- The City of Asheboro needs to continue its transition from its historic manufacturing base to a diverse economic base that can sustain the community thru various economic ups and downs. The City of Asheboro believes that a strong, vital downtown is critical to Asheboro's overall economic future.
- The City of Asheboro began focusing on redeveloping the downtown area in 2002. Following behind the Sunset Avenue streetscape, farmer's market construction and downtown parking improvements made by the City of Asheboro, the City of Asheboro purchased the Sunset Theatre building(s).
- The Sunset Theatre was built in late 1920's as Asheboro's first movie house. It became a historic landmark and cornerstone of the main downtown corridor during its prime.
- The City of Asheboro has already invested more than \$1 million in seed money to purchase the original Sunset Theatre building, make some structural enhancements to stabilize the building, replace the

roof, and acquire additional space for expansion and purchase a new marquee.

- In its un-renovated state, it currently serves as a local entertainment spot, for movies and small scale Arts & Cultural programs for City of Asheboro and Randolph County Residents. With the draw of audiences from the Theatre, restaurants and shops, the downtown area is beginning to “come alive.”
- The Sunset Theatre is uniquely positioned to positively impact the entire downtown area, serving as a catalyst for job creation and continued private investment in the downtown area.
- The City of Asheboro desires to renovate the theatre to provide the opportunity of broader uses in the Arts & Cultural arena and continue to enhance the quality of life of City of Asheboro and Randolph County citizens and visitors.
- With the renovation of the Theatre into a regional performing arts center, audiences are forecast to grow to almost triple. Additional jobs, desperately needed in this area and further private investment into the downtown area will ultimately expand the City’s Tax base.

City of Asheboro Strategic Goals:

- Tourism & Economic Development: Programs held at Sunset Theatre draw people, both local and from surrounding areas, downtown. Once downtown to see an event at the theatre, customers are able to shop in with the local merchants as well as dine at the local eateries.
- Improve Quality of Life: The Sunset theatre provides a location for entertainment for Randolph County residents thereby enhancing their quality life. Movies, concerts and small scale theatrical productions are already being held at the theatre. Both young and old can enjoy the events held at the theatre.
- The Sunset Theatre is open to the public for various Arts & Cultural events. Fees are already in place relating to the rental / use of the facility by private groups or organizations.

Project Essentiality- Community Support:

- The Community is in support of this project.
- A community fundraising group was established to raise capital to support this effort. Their fundraising goal was \$1.2 million dollars. We have pledges and contributions of about \$1.1 million dollars on record and more “in the works”. Of this \$1.1 million, we have about \$700,000 already on hand.

How do governments pay for services?

- General Operating revenue.
- Fund Balance.
- Bonds- General Obligation or Revenue.
- Installment Financing.

General Operating Revenue & Fund Balance:

- We have been using Fund Balance to support operations over the past few years since economic downturn and now that there are signs of recovery, we will be focusing on adopting practices to allow us to save and rebuild fund balance in anticipation of future core operational needs.

Financing Options:

- **Bonds: General Obligation / Revenue**
 - Cost- HigherBond Counsel, Bond Statements etc
 - Amount borrowed
 - Term – Long term
 - Vote
- **Installment Financing**
 - Flexibility over how debt is structured
 - Cost- Lower
 - Shorter Terms available
 - City of Asheboro Goal is to structure this financing with the 2020 Strategic Plan and the next 6 year property revaluation

Construction Bid:

- Original low bid- Rehab Builders: \$1,768,375
- Negotiated Bid Reductions: (\$132,500)
- Total Negotiated Bid Amount: \$1,635,875

- 47% of the \$1.6 million is to modernize and bring facility up to state building code and to meet ADA accessibility requirements.
- The bids received were based on the architectural designs. Staff has worked diligently with the low bidder to review all the costs associated to make sure they are essential to the project and thus not excessive for its stated purpose.

Debt Management Policy:

- Local Government Commission approval of debt is required by Statute
- Debt Service Process & Dates
 - Pre-application Conference with LGC - Done
 - Letter to Joint Legislative Committee – Done
 - RFP for financing received from banks - Done
 - Public Hearing advertised – Done
 - August 9, 2012 – Council Meeting-Debt Public Hearing
 - ✦ Resolutions authorizing financing terms and submission of application to LGC for approval of installment financing contract
 - August 14, 2012- Application due at LGC
 - September 11, 2012 – LGC Meeting
 - ✦ to review / approve debt
 - Closing

No Tax Rate Change:

- The principal and interest payments for the proposed installment financing will not exceed \$194,000 per year. Such a sum would be fully funded with a tax increase of \$0.01 cent per \$100 valuation, and such a tax increase would not be deemed to be excessive.
- At present, the city has sufficient appropriations in the General Fund to pay, without any tax increase, the maximum principal and interest payments that will come due under the proposed installment financing contract.
- However, a tax increase is anticipated when the current property revaluation is completed. The maximum portion of any potential tax increase that would be attributable to the proposed installment financing is \$0.01 cent per \$100 valuation.

At the conclusion of Ms. Reaves' presentation, Mayor Smith asked if any member of the audience would like to address the issue of the proposed financing of the Sunset Theatre renovation project. Former Mayor David H. Jarrell, Chair of the Steering Committee for the Sunset Theatre Capital Campaign, thanked the council members for their support of the fundraising campaign and the renovation project. Additionally, Mayor Jarrell recognized and thanked the steering committee members, Mr. Reynolds Lisk, Mr. Ross Holt, Mr. Duffy Johnson, and Mr. Duffy Johnson, who were in attendance.

When it became apparent that no other audience members wished to be heard, Mayor Smith called on Mr. Sugg, the City Attorney, to discuss the resolutions that had been prepared for the Council's consideration.

(b) Consideration of resolutions approving financing terms and authorizing the filing of an application with the North Carolina Local Government Commission for approval of a financing agreement.

Mr. Sugg had reviewed the resolutions prior to the meeting, and, when called upon by the Mayor, Mr. Sugg advised the Council that the resolutions reduced the uncontroverted information presented by Ms. Reaves to findings that would support filing an application with the Local Government Commission for approval of the financing terms offered by BB&T in response to the City's request for proposals.

Upon motion by Mr. Bell and seconded by Mr. Baker, Council voted unanimously to adopt the following resolutions, contingent on receiving the statutorily mandated approval of the proposed installment financing from the Local Government Commission.

37 RES 8-12

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY SECTION 160A-20 OF THE NORTH CAROLINA GENERAL STATUTES

WHEREAS, the City of Asheboro, North Carolina desires to undertake interior and exterior renovations of the historic Sunset Theatre facility located at 226, 230, 232, 234, and 236 Sunset Avenue in downtown Asheboro (this renovation project will be hereinafter referred to as the "Project") in order to better serve the citizens of Asheboro; and

WHEREAS, the City of Asheboro desires to finance the Project by the use of an installment contract authorized under Section 160A-20 of the North Carolina General Statutes; and

WHEREAS, findings of fact made by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in Section 159-151 of the North Carolina General Statutes prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina, during an open session of a regular meeting of the Asheboro City Council held on August 9, 2012, that, after conducting a public hearing on the question of the proposed installment financing, the following findings of fact are hereby entered:

1. The proposed contract is necessary or expedient for the following reasons:
 - A. The City of Asheboro is attempting to successfully navigate the economic, social, and cultural transition from its historic manufacturing base to a diversified economic base that can sustain the community during a period of transformation for the city, county, state, and nation. At the local level, the Asheboro City Council has concluded that a strong, vital downtown is critical to the city's future.
 - B. Beginning most noticeably in 2002, the City Council focused a significant amount of its time, energy, and resources on redeveloping downtown Asheboro. Following behind the improvement of the Sunset Avenue streetscape, the improvements in public parking in the downtown area, and the construction of the Downtown Farmers' Market facility, the City of Asheboro purchased the lots that are utilized collectively by the city's Cultural and Recreation Services Division to operate the Sunset Theatre premises.
 - C. The preservation and enhancement of the Sunset Theatre facility is a vital component of the City Council's efforts to successfully complete the city's economic transition and to continue to improve the quality of life of Asheboro's citizens. With its central location in downtown Asheboro, both geographically and culturally, the Sunset Theatre facility, with the proposed preservation and renovation to broaden and enhance the use of the facility in the arena of arts, culture, and entertainment, is uniquely positioned to serve as a catalyst for private investment and job creation in the downtown area.
 - D. An extensive renovation project must be undertaken in order to bring the facility into compliance with current code requirements and to enhance the accessibility of the facility for individuals with limited mobility. The Project has been carefully designed to bring the facility's heating, ventilation, air conditioning, electrical, plumbing, and fire protection systems into compliance with the current state building code and ADA accessibility requirements (47% of the proposed construction contract amount is attributable to work needed to bring the facility up to current state building code and ADA standards). The exterior renovations have been designed to preserve the historical aspects of the structure, and the design plans have been approved by the State Historic Preservation Office and the Randolph County Historic Landmark Preservation Commission.
 - E. In order to bring to reality the long-term and expanded use of the facility envisioned by the approved design plans, a competitive, public bid process has been utilized and, in accordance with the North Carolina General Statutes, negotiations were conducted with the apparent lowest responsive, responsible bidder in an effort to overcome the fact that the apparent low bid for the proposed renovation was in excess of the currently available funds. As a result of these negotiations, the City Council has now received a bid of \$1,635,875 to complete the above-described renovation work that is essential to implementing the City Council's plan for preserving and enhancing the vitality of Asheboro's downtown area.
 - F. Due to community support for the project, the city has received private pledges of financial support that enable the city to seek financing for a maximum amount of \$1,200,000. With the receipt of a proposal from BB&T to utilize installment financing

over a term of 7 years at a fixed rate of 1.86% with annual principal and interest payments from the General Fund not to exceed \$194,000 per year, the City Council has concluded that it would be most expedient for the city to avail itself of the proposed installment financing in order to complete the Project without impairing the city's overall operational and financial health.

2. The proposed contract is preferable to a bond issue because the cost of the proposed undertaking exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances, and non-voted bonds that could be issued by the city during fiscal year 2012-2013 pursuant to Article V, Section 4 of the North Carolina Constitution. Due to the impact of the Great Recession on the state and local economies, the city has been using fund balance to support operations over the past few years. With the early signs of economic recovery, the City Council wishes to complete the Project and meet core operational needs while rebuilding fund balance. The proposed installment financing offers greater flexibility for structuring the debt, lower cost, and is in better alignment with the City Council's preference for a shorter term debt that offers greater symmetry with the next 6-year property revaluation and matches more closely with the end date of the city's 2020 strategic plan, which is guiding force behind the Project.

3. The sums to fall due under the contract are adequate and not excessive for the proposed purpose because the proposed installment financing enables the city to proceed with a \$1,635,875 construction contract, which has already been negotiated down from \$1,768,375, while borrowing a maximum amount of \$1,200,000 that, with an origination fee of \$1,700, will be repaid over a 7-year term with principal and interest payments that are not to exceed \$194,000 per year.

4. The City of Asheboro's debt management procedures and policies are good because the city's procedures and policies are in strict compliance with all applicable laws and regulations. Without blemish, the city has historically submitted its debt management procedures and policies for on-going review, and this on-going review continues today. Consistent with this fact, the city has undertaken the process to consider and receive approval for the proposed installment financing in accordance with the applicable legal authorities. A pre-application conference with Local Government Commission staff has been successfully completed, and the appropriate letter has been sent to the Joint Legislative Committee. Likewise, notice of a public hearing on this matter was published in *The Courier-Tribune*, a newspaper with general circulation in Asheboro and Randolph County, on July 19, 2012. The advertised public hearing was held, prior to the adoption of this resolution, on August 9, 2012. Furthermore, the City Council hereby unequivocally states its commitment to the continued full compliance of the municipal corporation, and its officers and employees, with the debt management policies applicable to the City of Asheboro.

5. The principal and interest payments for the proposed installment financing will not exceed \$194,000 per year. Such a sum would be fully funded with a tax increase of \$0.01 cent per \$100 valuation, and such a tax increase would not be deemed to be excessive. At present, the city has sufficient appropriations in the General Fund to pay, without any tax increase, the maximum principal and interest payments that will come due under the proposed installment financing contract. However, a tax increase is anticipated when the current property revaluation is completed. The maximum portion of any potential tax increase that would be attributable to the proposed installment financing is \$0.01 cent per \$100 valuation.

6. The City of Asheboro is not in default on any of its debt service obligations.

7. The Asheboro City Attorney has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to act on behalf of the City of Asheboro in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and to act on behalf of the City of Asheboro in taking other actions not inconsistent with this resolution.

This resolution is effective upon its adoption on the 9th day of August, 2012.

The motion to adopt this resolution was made by Councilmember Clark R. Bell, seconded by Councilmember Talmadge S. Baker, and passed by a vote of 7 to 0.

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

ATTEST:

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

**RESOLUTION APPROVING INSTALLMENT FINANCING TERMS WITH
BRANCH BANKING & TRUST**

WHEREAS, on the basis of prior public input and actions of the Asheboro City Council, the City of Asheboro (hereinafter referred to as the "City") has decided to undertake a project to renovate the City's historic Sunset Theatre (this renovation project is hereinafter referred to as the "Project"); and

WHEREAS, on July 12, 2012, the Asheboro City Council adopted a resolution (Resolution No. 28 RES 7-12) pertaining to the Project that provided as follows:

The city manager, with the assistance of the city's finance director and any other necessary staff member(s), is hereby directed to take, as the city's authorized representative, the administrative actions necessary to explore installment financing, specifically including without limitation requesting installment financing proposals from banks; and

WHEREAS, the city manager, with the assistance of the finance director, has now presented a proposal for the financing of the Project;

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

1. The City hereby determines to finance, contingent on the receipt of approval from the Local Government Commission, the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated July 26, 2012. The amount financed shall not exceed \$1,200,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.86%, and the financing term shall not exceed seven (7) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as BB&T may request and that is consistent with the terms approved by this resolution.

3. The city manager is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The city manager is authorized to approve changes to any Financing Documents previously signed by the City's officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the city manager shall approve, with the city manager's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. The City intends that the adoption of this resolution will be a declaration of the City's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The City intends that funds that have been advanced, or that may be advanced, from the City's general fund, or any other City fund related to the project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of the City's officers in furtherance of the purposes of this resolution are hereby ratified, approved, and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed to the extent of the conflict. This resolution shall take effect immediately.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on August 9, 2012.

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

ATTEST:

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

(c) Consideration of the negotiated low bid received on June 29, 2012, from Rehab Builders, Inc. of Winston-Salem, North Carolina for the Sunset Theatre Renovation Project.

Mr. Bunker, the City Engineer, reported that five (5) bids were received on June 29, 2012 at 3:00 p.m. for construction of the Sunset Theatre Renovation Project, and he presented the bid summary as follows.

The following contractors submitted bids at the amounts listed below, which include sales tax:

<u>BIDDER</u>	<u>BASE BID</u>	<u>TOTAL W/ADD ALTERNATES # 1, 2 & 3</u>
1) Rehab Builders, Inc. 401 E. 4 th St., Suite 201 Winston-Salem, NC 27101	\$1,524,500.00	\$1,768,375.00
2) Bar Construction Co., Inc. 611-A Industrial Ave. Greensboro, NC 27406	\$1,947,000.00	\$2,284,000.00
3) Inland Construction Co. P.O. Box 26027 Raleigh, NC 27611	\$1,989,000.00	\$2,368,279.00
4) Hodgin Construction Co. P.O. Box 7877 Greensboro, NC 27417	\$2,010,000.00	\$2,332,160.00
5) Lomax Construction P.O. Box 35169 Greensboro, NC 27425	\$2,076,600.00	\$2,475,600.00

Mr. Bunker highlighted that the low bid for construction for the complete renovation project with Add Alternates # 1,2, & 3 was submitted by Rehab Builders, Inc. of Winston Salem, North Carolina in the amount of \$1,768,375.00. As this bid exceeded the amount of funds budgeted for availability for this project, the City, pursuant to Section 143-129(b) of the North Carolina General Statutes, negotiated with the lowest responsible bidder to make reasonable changes in the plans and specifications so as to bring the contract price within the funds available. Mr. Bunker noted that the following changes were negotiated as itemized below:

<u>Description of Change</u>	<u>Cost Reduction</u>
- Delete Lightning Protection System	\$6,600.00
- Modify Egress Stairs	\$8,200.00
- Change Steel Framing to Wood	
- Change Waste Piping in Building 2 & 3 from Cast Iron to Plastic	
-Change Water Heaters from 3 Phase to 1 Phase	
-Change Drinking Fountain Model	
- Change Heating, Ventilating and Air Conditioning Units to Roof Mounted Package Units	\$50,000.00
- Delete Theatre Ceiling Replacement	
- Reduce Complexity of Stage Lighting System	\$67,700.00
- Reduce the Quantity of Stage Lighting Fixtures	
- Use Alternate LED Stage Lighting Fixtures	
- Delete Lighting Trusses spanning the Theatre Seating and Front of Stage Areas	
- Use Alternate Wall and Ceiling Mounted Stage Lighting Fixtures	
- Delete Two (2) Movable Spot Lights (Existing Spot Light to Remain)	
- Delete Closed Circuit Television System	
- Reduce Complexity of Sound System	
- Delete Clear Com Communication System	
TOTAL OF BID REDUCTIONS	<u>\$132,500.00*</u>
TOTAL NEGOTIATED BID AMOUNT	<u>\$1,635,875.00</u>

[*Preliminary estimates indicate that the proposed changes in the plans and specifications may generate an additional \$14,650.00 in estimated architectural services fees. Even with these added design fees, the associated reductions in the bid amount are significant.]

Based on the bid summary noted above, Mr. Bunker recommended that, contingent on receiving the statutorily mandated approval from the Local Government Commission, the construction contract be awarded to Rehab Builders, Inc. at the negotiated contract amount of \$1,635,875.00 which includes sales tax.

Upon motion by Mr. Bell and seconded by Mr. Burks, Council voted unanimously to accept the bid summary as presented by Mr. Bunker and awarded the construction contract for the Sunset Renovation Project to Rehab Builders, Inc. at the negotiated contract amount of \$1,635,875.00 contingent on receiving the statutorily mandated approval from the Local Government Commission.

9. Public comment period.

Mayor Smith opened the floor for comments from the public, and none were offered.

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

10. Discussion of the potential construction project to extend New Century Drive to Veterans Loop Road for the possible creation of a new industrial/business park for economic development.

At the request of Mayor Smith, Mr. Ogburn led a discussion about the potential extension of New Century Drive to Veterans Loop Road in furtherance of the creation of an industrial/business park for economic development. This potential construction project would enable the city to have sites readily available for future economic development projects.

While no resolution or contract was ready for formal action, the Council Members expressed their general support and consent for city staff to proceed with preliminary steps needed to obtain plans and firm cost estimates for the contemplated extension of New Century Drive. A resolution initiating the design process will be brought to the Council for consideration during a future meeting.

11. Consideration of an ordinance amending Chapter 51 (Garbage) of the Code of Asheboro in order to clarify the regulations pertaining to the placement and collection of solid waste.

Mr. Sugg presented and recommended adoption, by reference, of the aforementioned ordinance.

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

22 ORD 8-12

AN ORDINANCE AMENDING CHAPTER 51 OF THE CODE OF ASHEBORO

WHEREAS, Chapter 51 of the Code of Asheboro prescribes general regulations pertaining to the collection of solid waste/recyclables by the City of Asheboro Environmental Services Department; and

WHEREAS, the Environmental Services Department has requested clarification of certain provisions within Chapter 51 in order to assist the department in its on-going efforts to improve the efficiency and cost effectiveness of the department's recycling and solid waste collection programs;

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

Section 1. Section 51.06 of the Code of Asheboro is hereby rewritten to provide as follows:

~~§ 51.06 TRANSPORTING GARBAGE INTO CITY FOR DEPOSITING PROHIBITED.~~

~~It shall be unlawful for any person to haul or carry any garbage or refuse into the city from outside the city and leave or deposit such garbage or refuse within the city.~~

§ 51.06 TRANSPORTATION OF SOLID WASTE INTO CITY FOR COLLECTION PROHIBITED.

(A) It shall be unlawful for any person to haul, carry, or in any other manner transport solid waste into the city from outside the city for the purpose of leaving or depositing such solid waste for collection by city forces.

(B) For the purpose of interpreting and applying this Section, the term **SOLID WASTE**, in addition to including any materials that are collected by the city's Environmental Services Department and regulated elsewhere in this Chapter, is defined as any hazardous or nonhazardous garbage, refuse, sludge, and any other material that has served its original intended use and has been discarded.

(C) If nonhazardous solid waste transported into the city in violation of this Section is left for collection by or with the acquiescence of an otherwise lawful customer of the city's Environmental Services Department, and such solid waste would be subject to collection but for the fact it was transported into the city in violation of this Section, the otherwise lawful customer who placed or acquiesced in the placement of such solid waste for collection shall be billed for the collection of the illegally placed solid waste in the same manner and to the same extent as customers billed for improperly placed waste material under the provisions of Section 51.22(A)(5) and Section 51.22(E) of this Chapter. If the illegally placed solid waste can be collected without the use of a knuckle boom truck, the charge for the collection services will be based on the amount of solid waste actually collected and how many scoops would have been required to remove such a quantity of solid waste if a knuckle boom truck had been used.

(D) Notwithstanding any other provision in this Section, recyclable materials transported to a recycling collection point/facility and solid waste transported to the city's transfer station are permitted so long as such materials are delivered and unloaded in accordance with all applicable laws and regulations, specifically including without limitation the regulations governing the operations of the recycling center(s) and/or the city's transfer station.

Section 2. Section 51.24 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 51.24 COMPLIANCE REQUIRED.

(A) The placing of garbage for collection by the city or by any other person or instrumentality whatsoever, on or adjacent to street or sidewalk of the city, except in accordance with this Chapter, shall be and is hereby prohibited.

(B) Notwithstanding any other provision in this Chapter, in cases where an otherwise lawful customer of the city's Environmental Services Department has improperly placed for collection normal, nonhazardous household waste that will not fit into the container made available for the collection and disposition of solid waste, such a customer shall be billed for the collection of the improperly placed waste material in lieu of pursuing the criminal process otherwise authorized by this Chapter. If the normal, nonhazardous household waste that will not fit into the provided container (such waste material includes by way of illustration mattresses, couches, and chairs) is placed in or on a street, sidewalk, ditch, or in front of or on another person's property, the otherwise lawful customer who improperly placed or acquiesced in the improper placement of such solid waste for collection shall be billed for the collection of the improperly placed solid waste in the same manner and to the same extent as customers billed for improperly placed waste material under the provisions of Section 51.22(A)(5) and Section 51.22(E) of this Chapter. If the improperly placed solid waste can be collected without the use of a knuckle boom truck, the charge for the collection services will be based on the amount of solid waste actually collected and how many scoops would have been required to remove such a quantity of solid waste if a knuckle boom truck had been used.

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

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

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 9th day of August, 2012.

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

ATTEST:

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

- 12. Discussion of calling a special joint meeting of the City Council and Planning Board in August to review changes to the North Carolina General Statutes enacted in the 2012 Legislative Session and to consider land use policy issues such as the purpose and reach of the City's extraterritorial planning jurisdiction.**

Mayor Smith, the Council Members, and Mr. Ogburn scheduled the aforementioned special joint meeting for August 27, 2012 at 5:30 p.m. at the City of Asheboro Public Works Facility.

- 13. Discussion of items not on the agenda.**

- **NCLM Annual Conference – October 21-23, 2012 – Charlotte, North Carolina**

There being no further business, the meeting was adjourned at 8:44 p.m.

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

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