

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, ASHEBORO CITY HALL
THURSDAY, JANUARY 5, 2023
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 city management team members present:

David H. Smith) – Mayor Presiding

Clark R. Bell)
Edward J. Burks)
Kelly L. Heath)
William N. McCaskill) – Council Members Present
Walker B. Moffitt)
Jane H. Redding)
Charles A. Swiers)

John N. Ogburn, III, City Manager
Timothy E. Cockman, Deputy Fire Chief
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal
Justin T. Luck, Planning and Zoning Administrator
Trevor L. Nuttall, Community Development Director
Spencer C. Patton, EI, Assistant City Engineer
Deborah P. Reaves, Finance Director
Michael D. Rhoney, Water Resources Director
Jeffrey C. Sugg, City Attorney
Charles D. Wagner, 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. Moment of Silent Prayer and Pledge of Allegiance

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

3. Old Business:

(a) Zoo City Social District Modifications

City Attorney Jeff Sugg presented, for council’s consideration, an ordinance containing amendments to the Zoo City Social District regulations. These amendments were first introduced during the council’s last regular meeting in December 2022. The ordinance, including a provision that modifies and extends the boundaries of the Zoo City Social District, will go into effect on February 1, 2023.

After discussion of the proposed ordinance, Council Member Bell moved, and Council Member Moffitt seconded the motion, to adopt the following ordinance that modified the regulations applicable to the Zoo City Social District. Council Members Bell, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. Council Member Burks voted no.

ORDINANCE NUMBER 1 ORD 1-23

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

ZOO CITY SOCIAL DISTRICT MODIFICATIONS

WHEREAS, effective May 15, 2022, the Zoo City Social District was created by the Asheboro City Council (sometimes referred to as the “Council”); and

WHEREAS, Governor Cooper signed into law, on July 7, 2022, Session Law 2022-49 (House Bill 211) that contained clarifications to the original social district legislation; and

WHEREAS, the Council has decided to act, consistent with Session Law 2022-49 and all other applicable statutes and regulations, to adjust the boundary line(s) of the Zoo City Social District and to clarify the city ordinance provisions applicable to the social district.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as stated in the next three sections of this Ordinance.

Section 1. Section 118.05 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 118.05 Zoo City Social District

- (A) The Zoo City Social District is hereby created and is designated as shown on a map dated ~~May 5, 2022~~ February 1, 2023, and titled “Boundaries of the Zoo City Social District.” The referenced map is available in the office of the city clerk. Signage and markings shall be posted in public rights-of-way in order to clearly delineate the boundaries of the social district established herein.
- (B) Within this section, the following words and terms shall be defined as stated in this subsection.

~~(1) *Social district* means and refers to a defined outdoor area in which a citizen may consume alcoholic beverages sold by a permittee. This term does not include the permittee's licensed premises or an extended area allowed under G.S. § 18B-904(h).~~

(1) *Social district* means and refers to a defined area in which a person may consume alcoholic beverages sold by a permittee. A social district may include both indoor and outdoor areas of businesses within or contiguous to the defined area of the social district during the days and hours set by this section of the Code of Asheboro. A social district may include privately owned property, including permittees and non-permittee businesses, and multi-tenant establishments, as defined in G.S. § 18B-1001.5, and public streets, crosswalks, or parking areas whether or not the streets or parking areas are closed to vehicle traffic.

(2) *Permittee* means and refers to a person holding any of the following ABC permits issued by the North Carolina Alcoholic Beverage Control Commission:

- (a) An on-premises malt beverage permit issued pursuant to G.S. § 18B-1001(1);
- (b) An on-premises unfortified wine permit issued pursuant to G.S. § 18B-1001(3);
- (c) An on-premises fortified wine permit issued pursuant to G.S. § 18B-1001(5);
- (d) A mixed beverages permit issued pursuant to G.S. § 18B-1001(10); ~~and~~

- (e) A distillery permit issued pursuant to G.S. § 18B-1100(5).
- (e) A wine shop permit issued pursuant to G.S. § 18B-1001(16); and
- (f) A distillery permit issued pursuant to G.S. § 18B-1100(5).
- (3) Non-permittee business means and refers to a business that is located in a social district and does not hold any ABC permit.
- ~~(3)~~ (4) *Person* means and refers to an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.
- ~~(4)~~ (5) *Premises* means and refers to a fixed permanent establishment, including all areas inside or outside the permitted establishment, where the permittee has control through a lease, deed, or other legal process.
- ~~(C)~~ The Zoo City Social District shall be managed in accordance with the requirements found in G.S. § 160A-205.4 and Chapter 18B of the North Carolina General Statutes.
- ~~(C)~~ Pursuant to G.S. § 160A-205.4, the city council has designated the Zoo City Social District for use in accordance with G.S. § 18B-300.1.
- (D) Any person who violates this section, and any person who aids, abets, encourages, assists in, or contributes to a violation of this section shall be guilty of a Class 3 misdemeanor punishable as provided in G.S. § 14-4, with a maximum fine of no more than \$500.00.
- (E) The days and hours during which alcoholic beverages may be consumed in the Zoo City Social District are Thursday, Friday, and Saturday between the hours of 11:00 a.m. and 11:00 p.m. on each of the listed days. At all other times, the provisions and terms contained in this section are not in effect, and all provisions of state and local laws concerning the possession and consumption of alcoholic beverages shall be in full force and effect.
- (F) Any alcoholic beverage purchased for consumption in the Zoo City Social District shall only be consumed in the Zoo City Social District, and, unless the person is reentering the licensed premises where the alcoholic beverage was purchased, the beverage shall be disposed of before the person in possession of the alcoholic beverage exits the Zoo City Social District.
- (G) A permittee located in or contiguous to the Zoo City Social District may sell open containers of alcoholic beverages and allow customers to exit the permittee's licensed premises to for consumption within the social district in accordance with the following requirements.
 - (1) The permittee shall only sell and serve alcoholic beverages on its licensed premises.
 - (2) The permittee shall only sell alcoholic beverages an open container of an alcoholic beverage for consumption in the social district and off the premises of the permittee in a container that meets all of the following requirements:
 - (a) The container clearly identifies the permittee from which the alcoholic beverage was purchased;
 - (b) The container clearly displays a logo or some other mark that is unique to the Zoo City Social District;
 - (c) The container is not comprised of glass;

- (d) The container displays, in no less than 12-point font, the statement, "Drink Responsibly – Be 21;" and
 - (e) The container shall not hold more than sixteen (16) fluid ounces.
- (3) The permittee shall not allow a person to enter or reenter its licensed premises with an alcoholic beverage not sold by the permittee.
- (H) The possession and consumption of an open container of an alcoholic beverage in the Zoo City Social District is subject to all of the following requirements.
 - (1) Only open containers of alcoholic beverages purchased from a permittee located in or contiguous to the Zoo City Social District may be possessed and consumed.
 - (2) Alcoholic beverages shall only be in containers meeting the requirements set forth in subsection (G)(2), except for open containers sold by a permittee for consumption on the permittee's premises.
 - (3) Alcoholic beverages shall only be possessed and consumed during the days and hours set forth in subsection (E).
 - (4) Nothing in this section shall be construed as authorizing the sale and delivery of alcoholic beverage drinks in excess of the limitation set forth in G.S. § 18B-1010.
 - ~~(5) A person shall dispose of any alcoholic beverage in the person's possession prior to exiting the Zoo City Social District unless the person is reentering the licensed premises where the alcoholic beverage was purchased.~~
 - (5) It shall be unlawful for a person to enter the premises of a non-permittee business in the social district with an open container of an alcoholic beverage unless the non-permittee business is displaying uniform signage indicating that the non-permittee business is included in the social district and allows alcoholic beverages on its premises when the social district is active. All non-permittee businesses that are part of a social district and that allow customers to bring alcoholic beverages onto their premises shall clearly post signage on any exits that do not open to the social district indicating that alcoholic beverages may not be taken past that point.
 - (6) No non-permittee business is required to either participate in the social district or to allow customers to bring alcoholic beverages onto the premises.
 - (7) A person shall dispose of any open container of an alcoholic beverage in the person's possession prior to exiting the Zoo City Social District unless the person is reentering the licensed premises where the alcoholic beverage was purchased.
- (I) The city manager, or the manager's designee, shall cause the posting of signage in conspicuous locations to indicate the area included in the Zoo City Social District, the days and hours during which authorized open containers of alcoholic beverages may be possessed and consumed in the social district, the telephone numbers for the city police department and the ALE Division with jurisdiction over the area comprising the social district, and a clear statement that an alcoholic beverage purchased from a permittee for consumption in the social district shall (i) only be consumed in the social district and (ii) be disposed of before the person in possession of the alcoholic beverage exits the social district.
- (J) The city manager, or the manager's designee, shall establish a management and maintenance plan for the Zoo City Social District. The social district shall be maintained in a manner that protects the health and safety of the general public. The management and maintenance plan shall be posted on the city's website along with a rendering of the boundaries of the Zoo City Social District and the days and hours

during which open containers of alcoholic beverages may be possessed. Without limitation, the management and maintenance plan for the Zoo City Social District shall include the development of uniform signage, along with devising an operational plan for distributing the approved signage, indicating that a non-permittee business is included in the social district and allows alcoholic beverages on its premises when the social district is active. In developing and implementing the management and maintenance plan, the city manager, or the city manager's designee, is authorized to utilize the services of Downtown Asheboro Inc, a North Carolina non-profit corporation, to evaluate potential modifications of the management and maintenance plan. Notwithstanding any other provision in this section, the final approval authority for the Zoo City Social District Management and Maintenance Plan shall be exercised by the city council.

(J) (K) Notwithstanding any other provision in this section, when a special event is held within the boundaries of the Zoo City Social District and the special event has been specifically authorized by the city council, the terms found within the council's legislative enactment authorizing the special event shall supersede the provisions of this section. In addition to events in the Bicentennial Park and Sunset Theatre facilities governed by the City of Asheboro Cultural and Recreation Services Policy Manual, the city council authorization for a special event may take the form of a public street, sidewalk, alley, and/or parking lot closure.

(J) (L) If any subsection, clause, phrase, sentence, or portion of this section of the Code of Asheboro is held void, invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, the portion of this Ordinance held to be invalid shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of the remaining portions of the Ordinance.

Section 2. The city manager, or the manager's designee, is hereby directed to submit, along with any state-mandated forms and the days and hours during which the social district will be in operation, a detailed map of the Zoo City Social District, as modified by this Ordinance, to the North Carolina Alcoholic Beverage Control Commission.

Section 3. All previously adopted ordinances and clauses of ordinances in conflict with this Ordinance are hereby repealed.

Section 4. This Ordinance shall be in full force and effect upon and after the 1st day of February, 2023.

This Ordinance, which was first introduced in accordance with Section 160A-75 of the North Carolina General Statutes on December 8, 2022, received final approval from the Asheboro City Council in open session during a regular meeting on January 5, 2023.

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

ATTEST:

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

In addition to the above-referenced ordinance, the council adopted a resolution approving the Zoo City Social District Management and Maintenance Plan. The council's consideration and action to grant final approval for the management and maintenance plan was undertaken in accordance with the North Carolina General Statutes and in compliance with the immediately preceding ordinance.

After discussion, Council Member Heath moved, and Council Member Moffitt seconded the motion, to adopt the following resolution by reference. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

RESOLUTION NUMBER 1 RES 1-23

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**RESOLUTION APPROVING THE ZOO CITY SOCIAL DISTRICT
MANAGEMENT AND MAINTENANCE PLAN**

WHEREAS, Section 118.05 of the Code of Asheboro established the Zoo City Social District; and

WHEREAS, Section 118.05(J) of the Code of Asheboro, effective February 1, 2023, provides that the final approval authority for the Zoo City Social District Management and Maintenance Plan is to be exercised by the Asheboro City Council; and

WHEREAS, with the exception of concerns about the requirement to write on beverage containers the date and time of purchase as well as the first name of the purchaser, the Zoo City Social District Maintenance and Operations Plan adopted May 16, 2022 (the “2022 Plan”) has functioned without incident.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, effective February 1, 2023, the 2022 Plan shall, with the modification that only a notation on the beverage container of the date of purchase is mandated and not the time of purchase or first name of the purchaser, is hereby approved as the initial Zoo City Social District Management and Maintenance Plan under Section 118.05(J) of the Code of Asheboro.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on January 5, 2023.

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

ATTEST:

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

(b) Permanent Closure of a Section of West Pritchard Street

(i) Public Hearing

Prior to the consideration of the permanent closure of a section of West Pritchard Street, Council Member Redding disclosed that, due to family ownership interests in real property immediately adjoining the section of West Pritchard Street under review, she had a conflict of interest. Consequently, Council Member Redding asked to be recused from participating in the deliberations, including without limitation discussions and voting, on the question of the proposed permanent street closure.

In response, Council Member Burks moved, and Council Member Bell seconded the motion, to recuse Council Member Redding from participating in the discussions and deliberations on the question of the proposed permanent closure of a section of West Pritchard Street. Council Members Bell, Burks, Heath, McCaskill, Moffitt, and Swiers voted aye. There were no dissenting votes.

Immediately after this vote, Council Member Redding moved to a seat in the council chamber that was not at the council table. She did not rejoin the other council members until the council’s deliberation and action on the proposed permanent street closure was concluded.

Mayor Smith then opened the public hearing on the question of the proposed permanent closure of a section of West Pritchard Street. Assistant City Engineer Spencer Patton, EI described the proposed street closure, including the steps taken by city staff to provide the statutorily prescribed notice of this hearing.

Mr. Patton’s presentation during the public hearing included a discussion about the street closure order/ordinance prepared for the council to use in the event the decision was made to implement the contemplated permanent street closure. When Mr. Patton concluded his remarks, and no one from the public asked to be heard, Mayor Smith moved to the deliberative phase of the hearing.

(ii) Order/Ordinance to Permanently Close a Portion of West Pritchard Street

After discussion, Council Member Moffitt moved, and Council Member Burks seconded the motion to adopt the following ordinance by reference. Council Members Bell, Burks, Heath, McCaskill, Moffitt, and Swiers voted aye. There were no dissenting votes.

CITY OF ASHEBORO STREET CLOSURE ORDINANCE NO. 2 ORD 1-23

**STATE OF NORTH CAROLINA
COUNTY OF RANDOLPH**

IN RE THE PERMANENT CLOSURE OF	)	
A PORTION OF THE PUBLIC RIGHT-OF-	)	
WAY FOR WEST PRITCHARD STREET	)	
AT THE WESTERN MARGIN OF NORTH	)	<u>STREET CLOSURE</u>
FAYETTEVILLE STREET (UNITED	)	<u>ORDER</u>
STATES HIGHWAY 220 BUSINESS)	)	
	)	

WHEREAS, pursuant to the provisions of Section 160A-299 of the North Carolina General Statutes, the City Council of the City of Asheboro adopted on the 10th day of November, 2022, during a regular meeting, a resolution of intent identified as Asheboro City Council Resolution No. 40 RES 11-22 (hereinafter the “Resolution”) declaring the intent of the city council to permanently close a total of approximately 9,791 square feet of public right-of-way for a section of W. Pritchard Street that is located at the western margin of the public right-of-way for N. Fayetteville Street (United States Highway 220 Business); and

WHEREAS, the Resolution properly called for a public hearing to be held on the question of whether or not the proposed permanent street closure would be detrimental to the public interest or the property rights of any individual, and the Resolution also scheduled the mandated public hearing for the city council’s regular meeting on January 5, 2023, with a scheduled beginning time of 7:00 p.m., in the council chamber on the second floor of Asheboro City Hall, 146 N. Church Street, Asheboro, North Carolina 27203; and

WHEREAS, pursuant to Section 160A-299 of the North Carolina General Statutes, legal notice of the Resolution was published in *The Courier-Tribune*, a newspaper with general circulation in the City of Asheboro, once a week for four successive weeks prior to the above-referenced public hearing (Dates of Publication: December 8, 2022; December 15, 2022; December 22, 2022; and December 29, 2022); and

WHEREAS, on December 7, 2022, copies of the Resolution were sent by certified mail to the individuals/entities listed below, who were determined by reviewing the county tax records to be all of the owners of property adjoining the W. Pritchard Street closure area:

1. Julie F. Redding Schotzinger, et al;
2. Folio Properties, LLC;
3. Theresa Riggs;
4. Fayetteville Street Baptist Church;
5. NE Campbell, Trustee;
6. Stuart Bowman Auto Centre, Inc.; and

WHEREAS, on December 7, 2022, copies of the notice of the city council's intention to permanently close the described portion of public right-of-way for W. Pritchard Street, including the call for a public hearing on the question of the proposed street closure, were prominently posted in two (2) places on the section of W. Pritchard Street proposed for permanent closure; and

WHEREAS, after holding the public hearing called by the Resolution, it appears to the satisfaction of the Asheboro City Council that the permanent closure of the below-described portion of the public right-of-way for W. Pritchard Street is not contrary to the public interest and that no individual or legal entity owning property in the vicinity of the portion of the public right-of-way proposed for permanent closure would be deprived of a reasonable means of ingress and egress to the owner's property;

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

Section 1. The 9,791 square feet, more or less, of public right-of-way for W. Pritchard Street described below are hereby permanently closed. The permanently closed portion of public right-of-way for W. Pritchard Street is located within the corporate limits of the City of Asheboro and is more particularly described by metes and bounds as follows:

City of Asheboro, Asheboro Township, Randolph County, North Carolina:

BEGINNING at a concrete monument, which is down 2-inches in the ground, on the western margin of the public right-of-way for N. Fayetteville Street (US 220 Business), the concrete monument beginning point is located by means of the North Carolina Coordinate System at the coordinates of North 716,975.773 feet and East 1,759,302.620 feet (NAD 83 (2011)); thence from the beginning point running the southern margin of the section of the public right-of-way for W. Pritchard Street proposed for permanent closure the next three bearings and distances along the Julie Frances Redding Schotzinger et al. property described in the Office of the Register of Deeds for Randolph County, North Carolina (the "Randolph County Registry") in Deed Book 2690, Page 12 (this property is currently identified by Randolph County Parcel Identification Number 7751960816): North 80 degrees 34 minutes 19 seconds West 61.86 feet to a concrete monument down 1-inch in the ground; thence North 04 degrees 28 minutes 46 seconds East 29.01 feet to a concrete monument down 1-inch in the ground; thence North 85 degrees 05 minutes 34 seconds West 80.86 feet to a 5/8-inch iron pipe set flush with the ground; thence departing from the southern margin of the section of public right-of-way for W. Pritchard Street proposed for permanent closure and crossing W. Pritchard Street the next two bearings and distances: North 04 degrees 45 minutes 02 seconds East 25.00 feet to a computed point; thence North 04 degrees 45 minutes 02 seconds East 25.00 feet to a 5/8-inch iron pipe set flush with the ground in the northern margin of the public right-of-way for W. Pritchard Street; thence departing from the line that forms the western margin of the section of the public right-of-way for W. Pritchard Street proposed for permanent closure (the stated line will serve as the easternmost margin of the public right-of-way for W. Pritchard Street that remains once the proposed permanent street closure is fully implemented) and then following the northern margin of the section of public right-of-way for W. Pritchard Street that is proposed for permanent closure by running along the Stuart-Bowman Auto Centre, Inc. property described in Deed Book 2658, Page 476, Randolph County Registry (this property is currently identified by Randolph County Parcel Identification Number 7751972154) South 85 degrees 18 minutes 43 seconds East 158.72 feet to a concrete monument in the curb line of the western margin of the public right-of-way for N. Fayetteville Street (US 220 Business); thence departing from the northern margin of the section of the public right-of-way for W. Pritchard Street proposed for permanent closure and proceeding the next two bearings and distances along the eastern boundary of the permanent street closure area for W. Pritchard Street that is shared with the western margin of the public right-of-way for N. Fayetteville Street (US 220 Business): South 15 degrees 31 minutes 12 seconds West 43.25 feet to a computed point; thence South 15 degrees

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31 minutes 12 seconds West 42.72 feet to the point and place of the BEGINNING, and being all of that certain 9,791 square feet of land, more or less, encompassed by the preceding metes and bounds description, specifically including the entirety of the public right-of-way for the above-described section of W. Pritchard Street. The right-of-way to be permanently closed is shown on the plat of survey referenced below.

The preceding description is in accordance with a plat of survey titled "Proposed Street Closure City of Asheboro WEST PRITCHARD STREET" that was drawn under the supervision of Thomas Scaramastra, a Professional Land Surveyor with registration number L-4421.

The plat of survey referenced in the immediately preceding paragraph is recorded in Plat Book _____, Page _____, Randolph County Registry.

Section 2. The City of Asheboro, pursuant to the provisions of Section 160A-299 of the North Carolina General Statutes, hereby reserves its perpetual right, title, and interest in and to the City of Asheboro water line infrastructure and sanitary sewer line infrastructure shown on the above-referenced plat of survey. This express reservation of a perpetual right, title, and interest in the said municipal water and sanitary sewer infrastructure includes, without limitation, an express reservation of a perpetual right, title, and interest in easements for the referenced municipal water and sanitary sewer infrastructure. The easements referenced in the immediately preceding sentence are shown on the plat of survey listed in Section 1 of this Ordinance/Order and shall be utilized for the operation and maintenance of the municipal water and sanitary sewer infrastructure. Furthermore, this reservation by the City of Asheboro of its right, title, and interest in the public infrastructure easements expressly includes, without limitation, the city's perpetual right and privilege of going in, upon, and over the easement areas shown on the plat of survey listed in Section 1 of this Ordinance/Order at any time or times, and from time to time, at the city's option, for the purpose of constructing, inspecting, operating, repairing, and maintaining municipal water and sanitary sewer lines, including such alterations, replacements, and expansions of capacity as may, in the city's sole judgment, be necessary or proper as a part of the Public Water Supply System and Sanitary Sewer System of the City of Asheboro, North Carolina.

Furthermore, this reservation of right, title, and interest in utility improvements and easements extends to existing utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city. This reservation of right, title, and interest in utility improvements and easements extends to all of the utilities shown on the plat of survey listed in Section 1 of this Ordinance/Order.

Section 3. This Ordinance/Order shall take effect and be in force from and after the date of its adoption.

Section 4. Any person aggrieved by the permanent closure of the above-described portion of the public right-of-way for W. Pritchard Street may appeal the adoption of this Ordinance to the General Court of Justice of Randolph County, North Carolina within 30 days after the adoption of the Ordinance.

Section 5. In the event there is no appeal within thirty (30) days after the adoption of this Ordinance, a certified copy of the Ordinance shall be filed in the Office of the Register of Deeds for Randolph County, North Carolina as provided by law.

This Ordinance was approved by the Asheboro City Council in open session during a regular meeting held on January 5, 2023.

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

CITY SEAL

ATTEST:

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

(c) Case Nos. SUB-22-06 and RZ-22-12: Subdivision/Zoning Ordinance Text Amendments and Technical Corrections in the Code of Asheboro

Mayor Smith opened the legislative hearing on the text amendment application filed by city planning staff in order to update a broad range of subdivision review/approval regulations and in order to make technical corrections in the Code of Asheboro. During his presentation, Mr. Nuttall provided the following information.

SUBDIVISION ORDINANCE TEXT AMENDMENTS

In October 2022, city staff was directed to investigate several topics related to the regulations of subdivisions within the City of Asheboro's land use jurisdiction. These topics emerged through discussions, questions, and suggestions from the city's planning board, city council, and the city management team.

The proposed amendments address various issues related to land development and land use regulation, including review, approval, appeal, and variance processes, technical standards, and approval expiration timeframes. More specifically, topics include:

- Modifying the subdivision variance and appeal process. City council solely would retain authority to consider and issue variances from the subdivision ordinance; the city's board of adjustment, the entity accustomed to hearing appeals of zoning decisions, would be responsible for considering appeals of decisions related to the subdivision ordinance.
- Changing subdivision approval authority from city council to community development staff (with monthly reporting being provided to the planning board and council), with authority for variances and discretionary determinations assigned to city council and appeals to the board of adjustment. This change would streamline the city's subdivision review and approval process and should eliminate an occasional source of board and public frustration regarding subdivision reviews that under state law are non-discretionary.
- Establishing expiration durations for subdivision sketch design plats and extending expiration durations for preliminary plats. The code's current silence on sketch design approval expirations has permitted projects to move forward utilizing out-of-date development standards, and the one-year timeframe for preliminary plat approvals frequently requires council to consider preliminary plat approval extension requests. The amendments would establish an expiration of sketch design plat approvals of 24 months following approval. Preliminary plat approvals would also be valid for 24 months, which is an increase of one year.
- Changing plat certification language and dimensional requirements. Proposed changes improve accuracy of certification language and reflect changes to the criteria established by state law and the Register of Deeds office for recording plats.
- Clarifying street lighting responsibilities within new major subdivisions. The proposed language would clarify that it is the subdivider's responsibility to obtain street light plan approval from the appropriate power company and changes the financial responsibility of such installation from the city to the subdivider.
- Establishing private street design standards for larger planned unit developments ("PUD"). The lack of private street design standards has emerged as an idea of concern for the governing board and the management team. The proposed amendment establishes a private street design standard that is similar to the city's public street design

standard. The proposed standard would be enforceable on any new PUD greater than five (5) acres in size or which proposes to create a buildable lot more than 400 feet from a public street that provides access to the development. The amendment also should help to address concerns recently raised related to the sufficiency of parking provided within planned unit developments. By establishing a private street design standard for most PUDs that sets a drivable width of 28 feet, the availability of on-street parking for most projects will be ensured. To further mitigate issues around parking, the amendment would also increase the amount of required visitor parking.

- Clarifying that Article XI applies only to residential townhouse developments located in the B3 district.
- Cross-referencing sections of the subdivision ordinance with other city codes and statutory provisions (such as state law regarding subdivisions and local planning and development regulation).
- Making miscellaneous clerical corrections.

The following articles are affected:

- Article I (Title and Purpose)
- Article II (Authority and Jurisdiction)
- Article IV (Legal Provisions)
- Article V (Definitions)
- Article VI (Compliance with Official Plans)
- Article VII (Procedure for Review and Approval of Subdivision Plats)
- Article VIII (Requirements for Approval of Subdivision Plats)
- Article IX (Required Improvements and Design Standards)
- Article X (Planned Unit Developments)
- Article XI (Residential Townhouse Developments)
- Article XII (Recreational Vehicle Resorts)

In reference to the proposed subdivision ordinance amendments, specific supporting Land Development Plan goals and policies that are supportive of the request include the following:

Policy 1.2.4	The city will promote its expedited permitting process and continue to make the land development process user-friendly for citizens and organizations.
Policy 2.3.4	The city will adapt the subdivision review process to only require staff approval of traditional, cluster, and TND subdivisions that meet requirements (related primarily to traditional subdivisions).
Goal 2.1	Development that enhances our city’s character and sense of community.
Policy 2.3.1	The city will amend the zoning and subdivision ordinances to increase interconnectivity and improve design standards in traditional subdivisions.
Goal 3.1	Enhancement, maintenance, and preservation of the built environment.
Goal 3.2	Quality design demanding appropriate scale and context.
Goal 5.1	Cost effective, efficient, and coordinated infrastructure in appropriate locations.

Policy 5.1.1 The city will encourage improvements that tie together segments of infrastructure (i.e. water/sewer, roads, sidewalks, greenways, etc.), in locations where the addition of such infrastructure benefits the entire community.

Policy 5.3.1 The city will amend (codes) to discourage development patterns (i.e. excessive use of cul-de-sacs, lack of connectivity within and between developments) that result in the city (and its taxpayers) incurring unnecessary infrastructure costs.

On January 3, 2023, the City of Asheboro Planning Board concurred with the planning staff's analysis and recommended approval of the subdivision ordinance text amendments put forward in the application filed by city staff. Considering this recommendation, and in view of the above-listed goals and policies supporting the proposed amendments, Council Member Bell moved with a 2-part motion, and Council Member Heath seconded the motion, to (1) find that the proposed subdivision ordinance amendments printed immediately below are consistent with the city's adopted comprehensive plans; and (2) to adopt/approve the subdivision ordinance amendments printed immediately below.

Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes. The effective date for the following approved City of Asheboro Subdivision Ordinance amendments is January 5, 2023.

ARTICLE I TITLE AND PURPOSE

I. TITLE

This Ordinance shall be known and may be cited as the Subdivision Ordinance of the City of Asheboro, North Carolina, and may be referred to as the Subdivision Ordinance.

II. PURPOSE

The purpose of this Ordinance is to establish procedures and standards for the development and subdivision of land within the territorial jurisdiction of the City of Asheboro, North Carolina. It is further designed to provide for the orderly growth and development of Asheboro; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and rights-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. This Ordinance is designed to further facilitate adequate provision for water, sewerage, parks, schools, and playgrounds, street lights and also to facilitate the further re-subdivision of larger tracts into small parcels of land.

ARTICLE II AUTHORITY AND JURISDICTION

I. AUTHORITY

This Ordinance is hereby adopted under the authority and provisions of the General Statutes of North Carolina, Chapter ~~160A, Article 19, Part 2~~ 160D.

II. JURISDICTION

The regulations of this Ordinance contained herein as provided in G. S. ~~160A, Article 19~~ 160D shall apply throughout the City of Asheboro and its extraterritorial planning jurisdiction, as it may from time to time exist.

ARTICLE IV LEGAL PROVISIONS

II. PROCEDURE FOR PLAT APPROVAL

After the effective date of this Ordinance, no subdivision plat of land within the territorial jurisdiction of the City of Asheboro shall be filed or recorded until it has been submitted to and approved by the City of Asheboro as set forth in Article III, Section 1 of this Ordinance, and until such approval is certified in writing on the face of the plat by the Community Development Director. Expedited review for certain classes of subdivisions shall be consistent with ~~NCGS 160A-376 (b) and (c)~~ NCGS 160D, Section 802 (b) and (c). (Amended 12-2018)

VII. VARIANCES AND APPEALS

A. VARIANCES

Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this Ordinance would cause an unnecessary hardship, the City Council ~~upon recommendation of the Planning Board,~~ may authorize a variance to the terms of this Ordinance consistent with NCGS 160D-406 and only to the extent that is absolutely necessary and not to an extent which would violate the intent of the Ordinance. All requests for variances shall be submitted in writing, by the subdivider or his agent, to the Planning Department. Such request shall be accompanied by materials providing sufficient evidence to support the claim of hardship.

B. APPEALS

Appeals shall be filed with the Clerk to the Board of Adjustment at least 30 days prior to the Board of Adjustment meeting at which the appeal will be considered. An appeal from an order, requirement, decision or determination made of an administrative decision by the Community Development Division, shall be decided by the Board of Adjustment based upon its findings of fact and, to achieve the intent of the Ordinance, and in accordance with the provisions of G.S. 160D-405. The effect of the decision shall not be to vary the terms of the Ordinance.

ARTICLE V DEFINITIONS

I. SUBDIVISION DEFINED*

A. Subdivision

For the purpose of this Ordinance, "subdivision" means all division of a tract or parcel of land into two or more lots, building sites, or other division for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Ordinance.

1. The combination or re-combination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the City, as shown in its subdivision regulations;
2. the division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;
3. the public acquisition by purchase of strips of land for widening or opening of streets; ~~and~~
4. the division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where resultant lots are equal to or exceed the standards of the City, as shown in this Ordinance-; and

5. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes. (Amended 12-2018)

Expedited review for specific classes of subdivisions shall be consistent with ~~NCGS 160A-376 (b) and (c)~~ NCGS 160D, Section 802 (b) and (c) (Amended ~~12-2018~~ TBD)

ARTICLE VI COMPLIANCE WITH OFFICIAL PLANS

III. ZONING

Proposed subdivisions shall comply in all respects with the requirements of the Asheboro Zoning Ordinance in effect in the area to be subdivided except as described in Article IX-G-1. ~~(amended 3-91).~~ Authorization of a conditional zoning district may modify requirements.

IV. RECREATION FACILITIES AND OPEN SPACES

Where a tract of land that is an approved site for a public Recreation facility or Public Open Space lies wholly or partially within an area proposed to be subdivided, and provided the Planning Board has notified the property owners of its approval of the site prior to or within 10 days after the presentation of the sketch design plat for Planning Board approval, the subdivider shall reserve the proposed recreation site as required by ~~G.S. 160A-372~~ NCGS 160D-804.

ARTICLE VII PROCEDURE FOR REVIEW AND APPROVAL OF SUBDIVISION PLATS

I. ~~MINOR~~ SUBDIVISIONS APPROVAL AUTHORITY ~~(Amended 12-2018~~ TBD)

The City Council of the City of Asheboro, North Carolina hereby designates the Community Development Division as the designated planning agency to approve minor and major subdivisions, pursuant to ~~NCGS 160A-361~~ NCGS 160D-803 and this Ordinance. Approval of subdivision variances (subject to Article IV, Section VII), development agreements pursuant to NCGS 160D, Article 10, extensions of time for major subdivisions (specified in Article VII, Subsections II(A) and II(B)), and acceptance of any public street or utility consistent with NCGS 160D, Section 806 requires authorization by City Council.

II. SUBMITTAL PROCESS FOR MAJOR SUBDIVISIONS

A. Sketch Design Plat (Amended 12-2018)

Whenever a subdivision of land is within the definition of a "Major Subdivision" as set forth in Article V of this Ordinance and which is located within the territorial jurisdiction established by Article II of this Ordinance, the subdivider shall submit copies of a sketch design plat which shall meet the requirements set forth in Article VIII of this Ordinance to the Community Development ~~Director~~ Division ~~at least twenty (20) days prior to a regularly scheduled meeting of the Planning Board for a subdivision of land.~~

~~At the regularly scheduled Planning Board meeting following submission of the sketch design plat, the subdivider or the subdivider's authorized agent shall discuss the proposed development with the Planning Board and become familiar with the regulations affecting the land to be subdivided.~~

The ~~Planning Board~~ Community Development Division shall review the sketch design plat for general compliance with the requirements of this Ordinance, and the Zoning Ordinance and any other applicable ordinance. ~~The Planning Board~~ The Community Development Division shall advise the subdivider or the subdivider's authorized agent of the regulations pertaining to the proposed subdivision and the procedures to be followed in the preparation and submission of

the preliminary and final plats. The ~~Planning Board~~ Community Development Division shall not review both a Sketch Design and a Preliminary Plat ~~at the same meeting concurrently~~. If a Sketch Design is presented, then a Preliminary Plat can only be reviewed following Sketch Design approval at the next regularly scheduled Planning Board meeting. The Community Development ~~Director~~ Division shall review the plat for compliance with the requirements of this Ordinance and refer copies ~~of the sketch design plat~~ and all accompanying materials to those public officials and agencies concerned with new development ~~or those whose advice will, in the opinion of the Community Development Director, be useful to the Planning Board~~ including, but not limited to the City Manager, the Randolph County Health Department, the Asheboro and/or Randolph County Boards of Education, whichever is appropriate, the District Engineer of the N. C. Department of Transportation, the City Engineer, the City Director of Public Works, and the City Building Inspector. If no response is received from these agencies within fifteen (15) days from the date the Community Development Director issues the plats for review, "no comment" will be recorded as the response. Following review, the Community Development Division shall approve or disapprove the plan and such action shall be documented within the Division's files and communicated to the subdivider. Sketch Design approvals shall be valid for a period of 24 months.

~~At its next regular meeting, the Planning Board shall review the sketch design plat for compliance with this Ordinance and consider any recommendations made by public officials or agencies concerned with new development.~~

~~Upon receipt of the sketch design with recommendations including any recommended conditions or recommended changes from the Planning Board, the City Council shall review it for compliance with the requirements of this Ordinance and shall consider the recommendations of the Planning Board and any public official or agency concerned with new development.~~

~~The City Council shall approve, approve conditionally, or disapprove the sketch design plat. If the City Council approves the sketch design plat, approval shall be noted on at least two (2) copies of the plat by the City Clerk. One copy shall be returned to the subdivider and one shall be retained as a part of the records of the City Council.~~

~~If the City Council approves the sketch design plat with conditions, the conditions and the reasons for the conditional approval shall be recorded in the minutes of the meeting. A copy of any conditions shall be attached to the plat that is returned to the subdivider.~~

If, after ~~City Council~~ approval of a sketch design plat, the subdivider wishes to modify the plat, the ~~Planning Director~~ Community Development Director shall determine if the modification is substantial (i.e., increase in the number of lots, relocation of streets, etc.) If found to be substantial, the subdivider shall re-submit the sketch design plat for approval in accordance with the requirements of this article.

The review shall in no way be construed as constituting an official action of approval for the recording of the subdivision ~~by the Planning Board or the City Council~~ as required by this Ordinance. ~~One copy of the sketch design plat shall be retained as a part of the records of the Planning Board. The other copy shall be returned to the subdivider or the subdivider's authorized agent.~~

The Community Development Division shall provide a monthly report to the Planning Board and City Council detailing all Sketch Design Plat approvals granted during the preceding month.

B. Preliminary Plat (Amended 12-2018)

Upon completion of the sketch design plat review procedure, the subdivider, or the subdivider's authorized agent shall submit copies of the preliminary plat, engineering data, and any supplementary material which shall meet the

requirements set forth in Article VIII of this Ordinance, to the Community Development ~~Director~~ Division at least twenty (20) days prior to a regularly scheduled meeting of the Planning Board for a subdivision of land which is located within the territorial jurisdiction established by Article II of this Ordinance. Such submission shall not be more than 24 months after the date on which the Sketch Design Plat was approved, otherwise such Sketch Design Plat approval shall be null and void unless a written extension of this time limit is granted by the City Council.

~~At its next regular meeting, the Planning Board shall review the preliminary plat for compliance with this Ordinance and consider any recommendations made by public officials or agencies concerned with new development.~~

~~Upon receipt of the preliminary plat with recommendations including any recommended conditions or recommended changes from the Planning Board, the City Council shall review it for compliance with the requirements of this Ordinance and shall consider the recommendations of the Planning Board and any public official or agency concerned with new development.~~

~~The City Council shall approve, approve conditionally, or disapprove the preliminary plat. If the City Council approves the preliminary plat, approval shall be noted on at least two (2) copies of the plat by the City Clerk. One copy shall be returned to the subdivider and one shall be retained as a part of the records of the City Council.~~

~~If the City Council approves the preliminary plat with conditions, the conditions and the reasons for the conditional approval shall be recorded in the minutes of the meeting. A copy of any conditions shall be attached to the plat that is returned to the subdivider.~~

The Community Development Division shall review the plat for compliance with the requirements of this Ordinance and consider all comments that were received during review of the Sketch Design Plat. Following review, the Community Development Division shall approve or disapprove the plan and such action shall be documented within the Division's files and communicated to the subdivider. Preliminary plat approvals shall be valid for a period of 24 months.

If, after ~~City Council~~ approval of a preliminary plat, the subdivider wishes to modify the plat, the ~~Planning Director~~ Community Development Director shall determine if the modification is substantial (i.e., increase in the number of lots, relocation of streets, etc.) If found to be substantial, the subdivider shall re-submit the preliminary plat for approval in accordance with the requirements of this article.

The Community Development Division shall provide a monthly report to the Planning Board and City Council detailing all Preliminary Plat approvals granted during the preceding month.

C. Engineering Data (Amended 12-2018)

The subdivider shall submit the Engineering data concerning street grade, design data for street corners and curves and the plan and profile for streets, storm drains and water and sewer lines with the submission of the preliminary plat for approval. Engineering data shall be approved by the City Engineer prior to ~~review by City Council of the Preliminary Plat. (amended 7/99)~~ approval of the preliminary plat by the Community Development Division.

D. Improvements (Amended 12-2018)

Upon approval ~~(with or without conditions)~~ of the preliminary plat ~~by the City Council and approval of the engineering data by the City Engineer,~~ the subdivider may proceed with the installation or arrangements for the required improvements

and the preparation of the final plat in accordance with the approved preliminary plat and the requirements of this Ordinance provided all other required permits and approvals, including but not limited to those required from the North Carolina Department of Environmental Quality and Department of Transportation, have been obtained.

E. Final Plat Certification (Amended 12-2018)

Upon installation or arrangement for the required improvements, the subdivider shall submit a final plat which shall meet the requirements set forth in Article VIII of this Ordinance, to the Community Development ~~Director~~ Division at least fifteen (15) days prior to a regularly scheduled meeting of the Planning Board. Such submission shall not be more than ~~twelve (12)~~ 24 months after the date on which the preliminary plat was approved ~~nor less than 30 days~~, otherwise such preliminary plat approval shall be null and void unless a written extension of this time limit is granted by the City Council.

The final plat shall contain only that portion of the preliminary plat which the subdivider proposes to develop and record at that time.

No final plat shall be certified unless and until the subdivider has installed that area, represented on the final plat, all improvements required by this Ordinance or shall have guaranteed their installation as required by Article VIII, II, C of this Ordinance.

~~At its next regular meeting, the Planning Board shall review the final plat for conformance with the approved preliminary plat and for compliance with all requirements of this Ordinance and consider any recommendations made by public officials or agencies concerned with new development.~~

~~Upon receipt of the final plat with recommendations including any conditions or modifications from the Planning Board, the City Council shall review it for conformance with the approved preliminary plat and for compliance with the requirements of this Ordinance, and shall consider the recommendations of the Planning Board and any public official or agency concerned with new development.~~

~~If the City Council certifies the final plat with modifications, the subdivider shall prepare and submit to the City Council a new final plat or additional materials which incorporate the modifications. The City Council may refer the modified final plat and accompanying material to the Planning Board or to public officials or agencies concerned with new development for their recommendations.~~

~~If the City Council denies certification of the final plat, the reasons for such denial shall be recorded in the minutes of the meeting.~~

The Community Development Division shall review the plat for compliance with the requirements of this Ordinance and consider all comments that were received during review of the Sketch Design and Preliminary Plat. Following review, the Community Development Division shall approve or disapprove the plan and such action shall be documented within the Division's files and communicated to the subdivider. If the Community Development Director certifies the final plat for recording, the Community Development Division shall notify appropriate public officials and agencies of such certification.

~~Upon City Council approval of a final plat the Planning Director shall transmit copies of the approved final plat to appropriate public officials and agencies.~~

The Community Development Division shall provide a monthly report to the Planning Board and City Council detailing all Final Plat certifications granted during the preceding month.

**ARTICLE VIII
REQUIREMENTS FOR APPROVAL OF SUBDIVISION PLATS**

I. MINOR SUBDIVISIONS

A. Plat Prepared

A minor subdivision plat shall be prepared by a surveyor, licensed and registered to practice in the State of North Carolina.

B. Number of Copies and Graphic Media (Amended 12-2018)

~~Two copies of the minor subdivision plat~~ An electronic file of the plat shall be submitted ~~on black or blue line paper prints. If requested by city staff, up to three (3) physical copies of the plat shall be submitted.~~

C. Plat Size and Scale

Minor subdivision plats shall ~~be dimensioned to comply with NCGS 47-30, and as acceptable for recordation by Randolph County Register of Deeds. have an outside marginal size of eighteen (18) inches by twenty four (24) inches including one and one half (1 1/2) inch for binding on the left margin and one half (1/2) inch border on each of the other sides.~~ Where size of land areas, or suitable scale to assure legibility require, maps may be placed on two or more sheets with appropriate match lines. Minor subdivision plats shall be drawn at any scale that assures legibility.

E. Certification Required

1. Certification of Ownership ~~and Dedication~~ (Amended 12-2018)

The following certificate shall be placed on the minor subdivision plat and signed by the owner(s) of the subdivision.

~~I (We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision and dedicate any right of way or easements as shown on the plat with my (our) free consent.~~

~~_____ (Date) _____ (Owner)
_____ (Owner)~~

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent.

_____ Date _____ Owner
_____ Owner

2. Certificate of Survey (Amended 12-2018)

The ~~following~~ certificate required by N.C.G.S. 47-30 shall be placed on the minor subdivision plat and shall be signed by the surveyor preparing the plat or under whose supervision it was prepared; ~~the signature shall be accompanied by the seal and registration number of the above mentioned surveyor.~~

~~I, _____, certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book _____ page _____, Book _____, page _____, etc.) (Other); that the error of closure as calculated by latitudes and departures is 1: _____; that the boundaries not surveyed are shown are broken lines plotted from information found in Book _____, page _____; that this map was prepared in accordance with G.S. 47-30 as amended.~~

Witness my hand and seal this _____ day of _____ A.D., 2_____.

II. MAJOR SUBDIVISION PLATS

A. Sketch Design Plat

1. Number of Copies and Graphic Media

~~An electronic file of the sketch design plat minimum of eight (8) copies of a sketch design plat~~ shall be submitted. ~~If requested by city staff, up to five (5) physical copies of the plat shall be submitted.~~ No specific graphic media must be employed.

B. Preliminary Plat

1. Number of Copies and Graphic Media

~~An electronic file of the preliminary plat minimum of eight (8) copies of the preliminary plat~~ shall be submitted. ~~If requested by city staff, up to five (5) physical copies of the plat shall be submitted.~~ No specific graphic media must be employed unless the preliminary plat will also serve as the final plat. ~~In such a case, the graphic media employed shall be of the same type as required for final plat.~~

2. Plat Scale

Major subdivision Preliminary plats shall be drawn at a scale that assures legibility.

3. Contents Required

c. Information Concerning Proposed Subdivision:

1. Names of proposed streets and the locations and widths of proposed street rights-of-way and street pavement;
2. Proposed riding trails, natural buffers, pedestrian, bicycle, or other rights-of-way or other easement, their location, width and purpose;
3. Layout of lot arrangement including lot lines, lot dimensions and lot and block numbers;
4. Proposed minimum building setback lines; in conformance with the Asheboro Zoning Ordinance;
5. Location of proposed utilities (sewer, water, and drainage) showing connections to existing systems or location plans to existing systems or a note that utilities will be provided by individual water supply, or sewage disposal. (Amended 12-2018)
6. Proposed location and size of parks, school sites, and other recreational or open spaces accompanied by provisions concerning their future ownership;
7. Site data:
 - a. Acreage in total tract;
 - b. Acreage in parks and other non-residential use;
 - c. Total number of lots;
 - d. Average lot size;
 - e. Linear feet of streets;
8. Grading plan indicating proposed modifications to the topography, other than street construction, at a contour of not more than five (5) feet; **(amended 12/89)**
9. Engineering Data shall be submitted at time Preliminary Plat is submitted:
 - a. Design data for streets and curves;
 - b. Plan and profiles for streets, water, sewer and storm sewer lines;
 - c. Proposed design and layout of street lights consistent with power company and city standards;
10. Base flood elevation data if proposed subdivision is within a flood hazard area.

C. Final Plat

1. Improvements, Installation or Guarantees

Prior to certification of a Final Plat the subdivider shall have installed improvements specified in Article IX of this Ordinance or guaranteed their installation in one of the following ways:

- a. File with the City Clerk a performance or surety bond made by a surety company licensed to do business in North Carolina. Such guarantee shall be in an amount of not less than 100% of the construction of required uncompleted improvements as estimated by professional contractors competent in their respective fields in the form of proposals or bids for the installation being guaranteed. (amended 12/01) Performance guarantees shall run for a period of one year and may be renewed once for a period of one year upon written approval from the City Manager.
- b. Deposit or place in escrow with the City Clerk a certified check or cash in an amount not less than 100% of the estimated cost of the construction of the required improvements. Said funds shall not be returned by the City until improvements have been satisfactorily installed. Portions of the deposit may be released as work progresses provided that such refunds shall be made no often than once per calendar month.
- c. File with the City Clerk a letter of credit from a financial institution licensed to do business in the State of North Carolina for the cost. Such letter of credit shall be in an amount of not less than 100% of the construction of required uncompleted improvements as estimated by the by professional contractors competent in their respective fields in the form of proposals for bids or the installation being guaranteed. (amended 12/01) The letter of credit shall run for a period of one year and may be renewed once for a period of one year upon written approval from the City Manager.

The guarantee shall not apply to the installation of the water and sewer systems, or stone base for the street. These items shall be installed and "as built" drawings shall be submitted prior to approval of any final plat. If street lights are not installed prior to final plat certification, the subdivider shall provide evidence that any assessed charge or fee from the applicable power company has been paid and documentation that the design and layout has been approved. Cost for installation shall be the responsibility of the developer.

5. Plat Size and Scale

Major subdivision plats shall be dimensioned to comply with NCGS 47-30, and as acceptable for recordation by Randolph County Register of Deeds. ~~have an outside marginal size of not more than eighteen (18) inches by twenty four (24) inches nor less than eight and one half (8 1/2) inches by eleven (11) inches, including one and one half (1 1/2) inch for binding on the left margin and one half (1/2) inch border on each of the other sides.~~ Where size of land areas, or suitable scale to assure legibility require, maps may be placed on two or more sheets with appropriate match lines. Major subdivision Final plats shall be drawn at a scale that assures legibility.

6. Contents Required

b. Plat Information:

1. Names of proposed streets and the locations and widths of proposed street rights-of-way and street pavements;
2. Layout of lot arrangement including lot lines, lot dimensions, and lot and block numbers;
3. Proposed minimum building setback lines; in conformance with the Asheboro Zoning Ordinance;
4. Site data:
 - a. Acreage in total tract;

- b. Acreage in parks and other non-residential use;
- c. Total number of lots;
- d. Average lot size;
- e. Linear feet of streets;

5. As Built Engineering Data (Amended 12-2018): The following information shall be contained in a plan and profile accompanying the final plat.

- a. The utility layout, including sanitary sewers, storm sewers, water distribution lines, illustrating connections to existing systems or plans for individual water supply systems and/or sewerage disposal systems. Plans must show lines sizes, the location of fire hydrants, blowoffs, manholes, pumps, and forcemains.
- b. Location and dimensions of all rights-of-way, utility or other easements, riding trails, natural buffers, pedestrian or bicycle paths and areas to be dedicated to public use with the purpose of each stated;
- c. Location, purpose, and dimensions of areas to be used for purposes other than residential;
- d. Right-of-way lines, sight distance lines, pavement widths, and names of all streets and the location, name, and width of all adjacent streets and easements;
- e. Property lines, building or other structures, water courses, railroads, bridges, culverts, storm drains, street lights, corporate limits on land to be subdivided and on a portion of the land immediately adjoining;
- f. Sufficient engineering data to determine readily and reproduce on the ground every straight or curved boundary line, street line, lot line, right-of-way line, easement line, setback line, sight distance line including dimensions, bearings, or deflection angles, radii, central angles and tangent distances for the center line of curved streets and curved property lines that are not the boundary of curved streets. All dimensions shall be measured to the nearest one-hundredth of a foot and all angles to the nearest minute;
- g. Accurate location and description of all monuments, markers, and control points;

6. Base flood elevation data if proposed subdivision is within a flood hazard area.

7. Certification Required

a. Certification of Ownership and Dedication (Amended 12-2018)

The following certificate shall be placed on the final plat and signed by the owner(s) of the subdivision.

~~*I (We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent.*~~

~~_____Date_____Owner
_____Owner~~

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision and dedicate any right-of-way or easements as shown on the plat with my (our) free consent.

_____ (Date) _____ Owner

b. Certificate of Survey (Amended 12-2018)

The ~~following~~ certificate required by N.C.G.S. 47-30 shall be placed on the final plat and shall be signed by the surveyor preparing the plat or under whose supervision it was prepared; ~~the signature shall be accompanied by the seal and registration number of the above mentioned surveyor.~~

~~I, _____, certify that this map was (drawn by me)(drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book _____ page _____, Book _____, page _____, etc.) (Other); that the error of closure as calculated by latitudes and departures is 1:____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book _____, page _____; that this map was prepared in accordance with G.S. 47-30 as amended.
Witness my hand and seal this ____ day of _____ A.D., 2____.~~

**ARTICLE IX
REQUIRED IMPROVEMENTS AND DESIGN STANDARDS**

I. REQUIRED IMPROVEMENTS

Each subdivision as defined in Article V, Section I of this Ordinance shall contain the following improvements as applicable:

- A. Survey
- B. Streets
- C. Sidewalks
- D. Stormwater Drainage System
- E. Water and Sewerage Systems
- F. Blocks
- G. Lots
- H. Street Lights

B. STREETS, PUBLICLY MAINTAINED

7. Private Streets and Reserve Strips

Private streets or reserve strips shall be prohibited within any platted subdivision, unless authorized by way of a conditional zoning district or Special Use Permit or required to obtain access to existing inaccessible property. Ownership and maintenance of a private street shall be designated on the plat; private streets shall be constructed consistent with this Subdivision Ordinance. (Amended 6/90 TBD)

H. STREET LIGHTS

Adequate street lighting shall be installed in conformance with city policies and standards of this Ordinance, or provisions for such installation shall have been made by the developer.

**ARTICLE X
PLANNED UNIT DEVELOPMENTS**

I. GENERAL

The intent of this article is to permit greater flexibility in the design of residential and other developments by allowing certain variations in lot size and design requirements and the establishment of townhouses and condominiums so that open space in commonly owned areas, tree covered and recreation areas can be provided.

II. COORDINATION WITH THE ASHEBORO ZONING ORDINANCE

A. Site Plans

Site plans for planned unit developments shall meet the requirements of the Asheboro Zoning Ordinance for ~~set forth in Article 600 “Special Uses” and Section 630 “Planned Unit Developments” of the Asheboro Zoning Ordinance, as applied to either a Special Use Permit or Conditional Zoning approval.~~

B. Design Requirements

Individual lot size may be varied but the overall density of a planned unit development shall not exceed the applicable zoning requirements of that district.

C. Review Process

Planned unit development plans shall be reviewed ~~simultaneously~~ for compliance with this ordinance and the Asheboro Zoning Ordinance in particular, Section 5.05(16) ~~630. (amend 10/2001 TBD)~~

If the PUD requires review as a “major” or “minor” subdivision the Sketch Design Plat shall be properly submitted for review to the Community Development Division. ~~by the City Council at the same meeting as the PUD SUP. The Sketch Design Plat and the site plan required for the SUP may be combined on one plat so long as the requirements for each are met. If the PUD requires a “minor subdivision the required subdivision plat shall be properly submitted for approval.~~ Approval shall be subject to any conditions of the PUD Special Use Permit (SUP) or Conditional Zoning approval and granted only after such approval ~~of the SUP~~ by the City Council.

III. PLAT REQUIREMENTS

The sketch, preliminary and final plats for a planned unit development shall meet the requirements of this ordinance and in addition the following requirements in Section IV shall be met. **(amended 2/03)**

IV. OTHER REQUIREMENTS **(amended 2/03)**

A. Common Areas

1. Common areas or areas not shown as lots shall be held in non-profit corporate ownership by the owners of the lots within the development. The title to such common areas of property shall be preserved to the perpetual benefit of the private properties in the development and shall be restricted against private ownership for any other purpose.
2. Improvements may be made within the common areas provided that maximum coverage of the area shall not exceed 25 percent of the entire common property.
3. The developer shall submit and after approval by the City Council, record a declaration of the covenants and restrictions that govern the ownership, management and maintenance of the common area and the ownership and maintenance of private streets and alleys, if any.

B. Reserved (amended 9/5/02)

C. Improvements

1. All improvements required in this ordinance shall apply to planned unit developments, unless expressly modified by this Article, regardless of private ownership of streets and utilities.
2. ~~Private streets and alleys shall be designed as required for Emergency Services and garbage collection if public collection is desired.~~

a. Streets, Publicly Maintained

Public streets shall be designed and built in accordance with the design standards for publicly maintained streets specified by this Ordinance, including the Public Street Typical Street Section for the City of Asheboro (See Attachment IX-A). Public street design shall be prepared by a registered professional engineer. Engineering plans and data shall be submitted to and approved by the City Engineer. All design standards for publicly maintained streets specified by this Ordinance shall be satisfied.

b. Streets, Privately Maintained

Private streets shall be designed and built in accordance with the design standards for publicly maintained streets specified by this Ordinance except where modified by the Private Street Typical Street Section for the City of Asheboro (See Attachment X-A). Private street design shall be prepared by a registered professional engineer. Following construction, certification that the street was built in accordance with these standards shall be provided by a registered professional engineer. Notwithstanding the preceding, Planned Unit Developments of less than five (5) acres in size and with no portion of a proposed subdivided lot greater than 400 feet from a public street that provides access to the development shall not be required to comply with the design standards for publicly maintained streets specified by this Ordinance or the Private Street Typical Street Section for the City of Asheboro (Attachment X-A). Such private streets shall be designed as required for Emergency Services and garbage collection if public collection is desired.

c. Alleys

Alleys are permitted as secondary means of access within Planned Unit Developments and shall be designed as required for Emergency Services and garbage collection if public collection is desired. In no instance shall an alley serve as the only means of access to a proposed lot.

3. All private streets and parking areas within residential and commercial developments shall have a paved surface. (*amend 10/2001*)
4. The street layout of the development shall be in conformity with the Asheboro Thoroughfare Comprehensive Transportation Plan and:
 - a. Where a proposed development will extend an existing public street such extension shall be a public street unless it is an existing dead end street not necessary for access to adjacent property.
 - b. Where a through street is required to provide access to adjacent properties or for general public usefulness such street shall be a public street.
5. Sidewalks that meet ADA standards shall be provided along streets to connect all units, parking areas, recreation vehicle storage, recreation facilities, central trash facilities, postal centers etc. and shall extend to intersections with existing streets.
6. Street lights shall be installed which meet the design standards of the City of Asheboro street lighting policy.
7. In residential PUD's designated parking spaces for visitor and or overflow parking shall be installed which equals 10% of the total number of units required parking spaces in the project. This parking shall comply with NC Building Code requirements for handicapped parking. (Amended 12-2018).
8. In residential PUD's recreation vehicle parking / storage areas shall be installed, unless these vehicles are prohibited by covenants and restrictions. Spaces provided shall be 12 feet by 30 feet and shall equal to 10% of the total number of units in the project.

9. In residential PUD's open space and recreation space shall be provide as specified in Table 4-1~~Table 200-1 under RA6~~ and Section 3.01(S)321A of the Asheboro Zoning Ordinance. (*amended 2/03*)

D. Public Access, Easements, Private Party Walls

1. Building lots may abut or be provided with frontage on ~~common areas or~~ private streets ~~or alleys~~, properly restricted through a property owners association to assure access.
2. Easements over the common areas for access, ingress, and egress from and to public streets and walkways and easements for enjoyment of the common areas, as well as for parking, shall be granted to each owner of a building lot.
3. All common walls between individual lots shall be party walls and provisions for the maintenance thereof and restoration in the event of destruction or damage shall be established.
4. Ownership and maintenance responsibility of a private street shall be designated on the plat.
5. In developments containing private streets or alleys, a release of liability shall be included in the recorded covenants and restrictions which releases the City of Asheboro from any liability resulting from utility maintenance, garbage collection , and responsibility for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the developer, homeowner's association, or occupants. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowner's association and occupants. ~~in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.~~

ARTICLE XI
RESIDENTIAL TOWNHOUSE DEVELOPMENTS IN THE B3 DISTRICT

I. **GENERAL**

The intent of this article is to permit greater flexibility in the design of residential neighborhoods by providing for the establishment of townhouse developments in the B3 district.

II. **COORDINATION WITH THE ASHEBORO ZONING ORDINANCE**

A. Site Plans

Site plans for Residential Townhouse Developments shall meet the requirements set forth in ~~Article 600 "Special Uses" and~~ Section 5.05(31)648 "Residential Townhouse Developments in the B3 District" of the Asheboro Zoning Ordinance.

B. Design Requirements

Individual lot size may be varied but the overall density and permitted dwelling type ~~within a Residential Townhouse Developments~~ shall not exceed the applicable zoning requirements of the district in which the development is located.

C. Review Process

~~Residential Townhouse Development~~ Plans shall be reviewed simultaneously for compliance with this ordinance and the Asheboro Zoning Ordinance. ~~in particular, Section 648.~~ If the ~~Residential Townhouse Development~~ project requires review as a "major" subdivision the Sketch Design Plat shall be properly submitted for review ~~by the City Council~~ at the same meeting as the ~~Residential Townhouse Development~~ SUP. The Sketch Design Plat and the site plan required for the SUP may be combined on one plat so long as the requirements for each are met. If the ~~Residential Townhouse~~

~~Development project~~ requires a “minor subdivision” the required subdivision plat shall be properly submitted for approval. Approval shall be subject to any conditions of the ~~Residential Townhouse Development’s~~ SUP or Conditional Zoning approval and granted only after such approval ~~of the SUP~~ by the City Council.

III. PLAT REQUIREMENTS

The sketch, preliminary and final plats for a Residential Townhouse Developments shall meet the requirements of this ordinance.

IV. OTHER REQUIREMENTS

A. Common Areas

1. Common areas or areas not shown as lots shall be held in non-profit corporate ownership by the owners of the lots within the development. The title to such common areas of property shall be preserved to the perpetual benefit of the private properties in the development and shall be restricted against private ownership for any other purpose.
2. Improvements may be made within the common areas provided that open space requirements as set forth in the Asheboro Zoning Ordinance are met.
3. The developer shall submit and after approval by the City Council, record a declaration of the covenants and restrictions that govern the ownership, management and maintenance of the common area and the ownership and maintenance of private streets and alleys, if any.

B. Improvements

1. All improvements required in this ordinance shall apply to Residential Townhouse Developments, unless expressly modified by this Article, regardless of private ownership of streets and utilities.
2. Private streets and alleys shall be designed as required for Emergency Services and garbage collection if public collection is desired.
3. All private streets and parking areas within Residential Townhouse Developments shall have a paved surface.
4. The street layout of the development shall be in conformity with the Asheboro Thoroughfare Comprehensive Transportation Plan and:
 - a. Where a proposed development will extend an existing public street such extension shall be a public street unless it is an existing dead end street not necessary for access to adjacent property.
 - b. Where a through street is required to provide access to adjacent properties or for general public usefulness such street shall be a public street.
5. Sidewalks that meet ADA standards shall be provided along streets and driveways to connect all units, parking areas, recreation facilities, central trash facilities, postal centers, etc. and shall extend to intersections with existing streets.
6. Street lights shall be installed which meet the design standards of the City of Asheboro street lighting policy.
7. ~~In Residential Townhouse Developments parking spaces for visitor and or overflow parking shall be installed which equals 20% of the total number of units in the project, except no additional parking is required for Town Home Development’s located within a B3 zoning district. This parking shall comply with NC Building Code requirements for handicapped parking. (Amended 12-2018) No visitor or overflow parking shall be required.~~
8. ~~In Residential Townhouse Developments recreation vehicle parking / storage areas shall be installed, unless these vehicles are prohibited by covenants and restrictions. Spaces provided shall be 12 feet by 30 feet and shall equal to 20% of the total number of units in the project. No recreation vehicle parking / storage areas are required for Residential Townhouse Developments located within a B3 zoning district, such projects shall prohibit recreation vehicle parking / storage by covenants and restrictions or restrict such parking / storage to completely enclosed structures. Outside recreation vehicle parking / storage shall be prohibited by covenants.~~

9. ~~In all residential zoning districts Residential Townhouse Developments shall provide open space and recreation space as specified in Table 200-1, under the RA6 district, and Section 321A of the Asheboro Zoning Ordinance. Recreation space equivalent to 1.72% of the project's land area shall be provided.~~
10. In B3 districts Residential Townhouse Developments shall meet the requirements of ~~Article 200A~~ Section 4.07 of the Asheboro Zoning Ordinance.

C. Public Access, Easements, Private Party Walls

1. Building lots may abut or be provided with frontage on common areas or private streets or alleys, properly restricted through a property owners association to assure access.
2. Easements over the common areas for access, ingress, and egress from and to public streets and walkways and easements for enjoyment of the common areas, as well as for parking, shall be granted to each owner of a building lot.
3. All common walls between individual lots shall be party walls and provisions for the maintenance thereof and restoration in the event of destruction or damage shall be established.
4. Ownership and maintenance responsibility of a private street shall be designated on the plat.
5. In developments containing private streets or alleys, a release of liability shall be included in the recorded covenants and restrictions which releases the City of Asheboro from any liability resulting from utility maintenance, garbage collection, and responsibility for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the developer, homeowner's association, or occupants. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowner's association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

D. Landscape Plan

A landscape plan for all Residential Townhouse Developments be submitted as required by ~~Article 600 of~~ the Asheboro Zoning Ordinance.

ARTICLE XII
Recreational Vehicle Resorts

I. GENERAL

The intent of this article is to permit greater flexibility in the design of the subdivided portions of Recreational Vehicle Resorts (as defined in ~~Section 649 Chapter 1~~ of the Asheboro Zoning ordinance) by allowing certain variations in lot size and design requirements and the establishment of open space.

II. COORDINATION WITH THE ASHEBORO ZONING ORDINANCE

A. Site Plans

Site plans for Recreational Vehicle Resorts shall meet the requirements set forth in Chapter 5 Article 600 "Special Uses" Section 5.05(32) ~~649~~ "Recreational Vehicle Resorts" of the Asheboro Zoning Ordinance.

B. Design Requirements

Individual lot size and the overall density of Recreational Vehicle Resorts shall meet the requirements established in ~~Article 600~~ Section 5.05(32) ~~649~~ of the Asheboro Zoning Ordinance.

C. Review Process

Recreational Vehicle Resort plans shall be reviewed simultaneously for compliance with this Ordinance and the Asheboro Zoning Ordinance, ~~in particular Section 649~~. If the Recreational Vehicle Resort requires review as a “major” subdivision, the Sketch Design Plat shall be properly submitted for review by the City Council at the same meeting as the Recreational Vehicle Resorts SUP. The Sketch Design Plat and the site plan required for the SUP may be combined on one plat so long as the requirements for each are met. If the Recreational Vehicle Resort requires a “minor” subdivision, the required subdivision plat shall be properly submitted for approval. Approval shall be subject to any conditions of the Recreational Vehicle Resorts SUP and granted only after approval of the SUP by the City Council.

III. PLAT REQUIREMENTS

The Sketch, Preliminary and Final plats for Recreational Vehicle Resorts shall meet the requirements of this ordinance and, in addition, the requirements in Section IV below shall be met.

IV. OTHER REQUIREMENTS

A. Open space and recreation space shall be as per ~~Article 600~~ Section ~~5.05(32)~~649 of the Asheboro Zoning Ordinance.

B. Improvements

1. All improvements required in this ordinance shall apply to Recreational Vehicle Resorts regardless of private ownership of streets and utilities, except:

Private streets shall be designed and built according to the latest revision of the NC DOT Subdivision Roads Minimum Construction Standards manual. Curb and gutter is not a requirement for private streets within RV Resorts. Public streets shall be designed and built according to the Standards in Article IX of this Ordinance.

2. The street layout of the development shall be in conformity with the Asheboro ~~Thoroughfare~~ Comprehensive Transportation Plan and:
 - a. Where a proposed development will extend an existing public street, such extension shall be a public street unless it is an existing dead end street/ not necessary for access to adjacent property.
 - b. Where a through street is required to provide access to adjacent properties or for general public usefulness, such street shall be a public street.
3. Sidewalks or greenway paths that meet ADA standards shall connect the resort office, resort store, recreation areas, overflow parking, storage areas, and all other resort amenities.
4. Street lights shall be installed which meet the design standards of the City of Asheboro street lighting policy.

C. Access to and Maintenance of Improvements and Common Areas

1. As provided by law, when a plat is recorded that creates individual lots within a Recreation Vehicle Resort, and lots are sold in reference to such plat, then each purchaser of such lots (and their successors) has a property interest in the nature of an easement in and to all streets, alleys, and other common property shown on such plat.
2. Prior to final plat approval, the developer of the subdivided portion of a Recreational Vehicle Resort shall (i) establish an incorporated property owners

association to which all owners of lots with the Resort must belong by virtue of their ownership within the subdivision, and (ii) record a set of restrictive covenants that provides that all owners of lots within the subdivision shall have access to the streets, alleys, and other common areas within the subdivision and that obligates each lot owner to pay dues or assessments to the property owners association sufficient to cover the cost of maintaining all such common areas and facilities not dedicated to the public.

3. If the lots within the subdivided portion of a Recreational Vehicle Resort are to be served by private streets, the final plat shall so indicate and shall specify that maintenance of such streets will be the responsibility of the property owners association. The plat shall reference the book and page where the covenants described above in subsection C.2 are recorded.
4. In developments containing private streets or alleys, a release of liability shall be included in the recorded covenants and restrictions which releases the City of Asheboro from any liability resulting from utility maintenance, garbage collection, and responsibility for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the developer, homeowners' association, or occupants. In no case shall the City or the State be responsible for maintaining any private street. As provided above, such responsibility shall rest with the property owners association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public.

ZONING ORDINANCE TEXT AMENDMENTS

As noted by Mr. Nuttall during his presentation of the planning staff's analysis of this text amendment application, the adoption of the above-listed subdivision ordinance amendments necessitates the adoption of certain corresponding zoning ordinance amendments.

There must be an assignment of authority to the Board of Adjustment to hear appeals of subdivision ordinance administrative interpretations, decisions, and determinations made by city staff. Note: The city council retains the sole authority to consider and issue variances from the subdivision ordinance.

Also, due to the change of subdivision approval authority from city council to community development division staff (with monthly reporting being provided to the planning board and council), several references directing subdivision reviews by the planning board and city council for various types of projects need to be modified.

The Land Development Plan goals/policies that support the proposed zoning ordinance text amendments are as follows:

- | | |
|---------------------|--|
| Policy 1.2.4 | The city will promote its expedited permitting process and continue to make the land development process user-friendly for citizens and organizations. |
| Policy 2.3.4 | The city will adapt the subdivision review process to only require staff approval of traditional, cluster, and TND subdivisions that meet requirements (related primarily to traditional subdivisions) |
| Policy 5.3.1 | The city will amend (codes) to discourage development patterns (i.e. excessive use of cul-de-sacs, lack of connectivity within and between developments) that result in the city (and its taxpayers) incurring unnecessary infrastructure costs. |

On January 3, 2023, the City of Asheboro Planning Board concurred with the planning staff's analysis and recommended approval of the zoning ordinance text amendments put forward in the application filed by city staff. Considering this recommendation, and in view of the above-listed goals and policies supporting the proposed amendments, Council Member Bell moved with a 2-part motion, and Council Member Burks seconded the motion, to (1) find that the proposed zoning ordinance text amendments printed immediately below are consistent with the city's adopted comprehensive plans; and (2) to adopt/approve the zoning ordinance amendments printed immediately below.

Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes. The effective date for the following approved City of Asheboro Zoning Ordinance amendments is January 5, 2023.

Section 2.03 (B) (5) Appeal of Administrative Decision

- (a) Appeals shall be filed with the Clerk to the Board of Adjustment at least 30 days prior to the Board of Adjustment meeting at which the appeal will be considered.
- (b) An appeal from an order, requirement, decision or determination of the Zoning Administrator, or his authorized designee, or an appeal of a decision or determination of the Community Development Director regarding the Asheboro Subdivision Ordinance, shall be decided by the Board of Adjustment based upon its findings of fact and, to achieve the intent of the Ordinance, and in accordance with the provisions of G.S. 160D-405. The effect of the decision shall not be to vary the terms of the Ordinance nor add to the list of permitted or permissible uses in the districts.
- (c) An appeal to the Board of Adjustment from a decision or determination of the Zoning Administrator, or his authorized designee, or an appeal of a decision or determination of the Community Development Director regarding the Asheboro Subdivision Ordinance, stays all enforcement proceedings in furtherance of the decision or determination appealed from, except as provided by G.S. 160D-405.

Section 5.05 (16) Planned Unit Development

Planned Unit Developments may be permitted in all districts subject to the following requirements:

(1) Residential Planned Unit Developments

- (a) Residential Planned Unit Developments may be permitted in any R40, R15, R10 R7.5, RA6 or OA6 zoning district as long as the proposed development contains a minimum of 2 acres. Those uses ordinarily permitted by right, by SUP, or as an accessory within the district the development is to be located may be included in the development.
- (b) Review of an application for a PUD SUP shall occur simultaneously with a review of plats submitted in compliance with the Asheboro Subdivision Ordinance. If the PUD requires review as a "major" or "minor" subdivision the Sketch Design Plat shall be properly submitted to Community Development Division staff in accordance with the Asheboro Subdivision Ordinance. ~~reviewed and recommended by the Planning Board for the City Council's consideration at the same meeting as the PUD SUP.~~ The Sketch Design Plat and the site plan required for the SUP may be combined on one plat so long as the requirements for each are met. ~~If the PUD requires a "minor subdivision the required subdivision plat shall be properly submitted for approval.~~ Approval shall be subject to any conditions of the PUD SUP and granted only after approval of the SUP by the City Council.

- (c) Residential PUDs may have direct access to City streets or State roads which are not major or minor thoroughfares, provided such access will not create safety hazards due to design or congestion.
- (d) Streets within a PUD may be public or private according to the regulations of the Asheboro Subdivision Ordinance.
- (e) The yard and height regulations set forth in Table 4-1 may be modified for a PUD, provided that, for such development as a whole, excluding public street right-of-ways or the area dedicated to private streets but including individual lots, common area, parks and other permanent open spaces, there shall not be less than the required area per dwelling unit for the district in which such development is located.
- (f) Utilities shall be planned and installed according to the Asheboro Subdivision Ordinance.
- (g) Provisions and plans for garbage and waste collection shall be included with the application.
- (h) Buffers and/or screening shall be installed and maintained based on the types of individual uses contained within the development as per Chapter 6.
- (i) Signs will be regulated as per Chapter 7.
- (j) Off street parking shall be provided as per Chapter 6.
- (k) General landscaping shall be installed and maintained. Plans indicating all required and non-required landscaping shall be submitted as part of the application.

(2) Commercial and Industrial Planned Unit Developments

- (a) Commercial Planned Unit Developments may be permitted in any OA6, O&I, B1, M, B2, TH and B3 district. Industrial Planned Unit Developments may be permitted in any I1, I2 and I3 zoning district. No minimum acreage requirement applies to commercial and industrial Planned Unit Developments (4/6/00). Only those uses ordinarily permitted by right, by SUP, or as an accessory within the district the development is to be located may be included in the development.

In instances in which a Commercial Planned Unit Development is proposed, the site plan that is submitted with the PUD Special Use Permit application must show the required and/or proposed common area, lot arrangements, streets, landscaping, lighting, and site improvements that are not encompassed within the individual lots of the Planned Unit Development.

When a proposed Commercial PUD is not located in a Conditional Zoning District and/or does not require a Special Use Permit, the applicant is not required to provide a site plan and/or building elevations detailing each individual use at the time the City Council considers the issuance of a Special Use Permit for a Planned Unit Development. The applicant shall submit to staff all required application materials for a Zoning Compliance Permit as required by Chapter 2 of this Ordinance as each lot develops.

- (b) Review of an application for a PUD SUP shall occur simultaneously with a review of plats submitted in compliance with the Asheboro Subdivision Ordinance. If the PUD requires review as a “major” or “minor” subdivision the Sketch Design Plat shall be properly submitted to Community Development Division staff in accordance with the

~~Asheboro Subdivision Ordinance. reviewed and recommended by the Planning Board for the City Council's consideration at the same meeting as the PUD SUP.~~ The Sketch Design Plat and the site plan required for the SUP may be combined on one plat so long as the requirements for each are met. ~~If the PUD requires a "minor subdivision the required subdivision plat shall be properly submitted for approval.~~ Approval shall be subject to any conditions of the PUD SUP and granted only after approval of the SUP by the City Council.

- (c) Commercial and Industrial PUDs shall be located so that they have direct access to minor thoroughfares or higher classification streets as shown on the Asheboro Comprehensive Transportation Plan. Residential PUDs may have direct access to City streets or State roads which are not major or minor thoroughfares, provided such access will not create safety hazards due to design or congestion.
- (d) Streets within a PUD may be public or private according to the regulations of the Asheboro Subdivision Ordinance.
- (e) The yard and height regulations set forth in Table 4-1 may be modified for a PUD, provided that, for such development as a whole, excluding public streets right-of-ways or the area dedicated to private streets but including individual lots and common area there shall not be less than the required area per unit for the district in which such development is located.
- (f) Utilities shall be planned and installed according to the Asheboro Subdivision Ordinance.
- (g) Provisions and plans for garbage and waste collection shall be included with the application. All solid waste facility screening as specified by Chapter 6 shall be screened not only from public right-of-ways and adjacent property but also from view of all private streets and public areas.
- (h) Buffers and screening shall be installed and maintained based on the types of individual uses contained within the development as per Chapter 6.
- (i) Signs will be regulated as per Chapter 7.
- (j) Off street parking shall be provided as per Chapter 6.
- (k) General landscaping shall be installed and maintained. Plans indicating all required and non-required landscaping shall be submitted as part of the application for either the Special Use Permit or the Zoning Compliance Permit (whichever is applicable).
- (l) Within a Commercial and/or Industrial Planned Unit Development, there shall be a 5' street tree planting strip incorporated into common area contiguous to a public street right-of-way or edge of private street pavement unless the development proposes street trees in accordance with Article X, Section F of the Subdivision Ordinance.

Within this 5' street tree-planting strip, the following requirements shall apply:

- (i) At least one tree of 3 – 3 1/2-inches caliper minimum, measured 6 inches above ground, shall be planted for each 25 feet for small maturing trees and for each 35 feet for large maturing trees of the entire lot which abuts any public street right-of-way or private street with a minimum of one tree required for any

distance up to 35 feet. Trees shall not be planted closer than 2 feet from the back of the curb.

- (ii) Plant materials should be selected which are appropriate to soil and site conditions. It is recommended that species be selected which are resistant to heat, drought, insects, and diseases and which require little maintenance. Selected plant materials shall meet the requirements and be installed according to ANLA (American Nursery and Landscape Association) standards. The common names of approved small, medium and large maturing trees are found in Appendix A of Section 4.07.
- (iii) The requirements of Section 6.10(G) (location of parking restricted between the street and the building) are not applicable to private or public streets that are proposed within the PUD but are required along existing public right-of-ways.
- (iv) Maintenance of the street tree planting strip shall be the responsibility of the property owners' association.
- (m) Front yard landscaping on existing public streets and sidewalks located on existing public streets shall be installed or guaranteed prior to a Certificate of Occupancy being issued for any building within the PUD.
- (n) The rear or service façade of any structure shall not front any existing public street.
- (o) All design standards shall apply to all structures within a PUD.

(31) Residential Townhouse Developments in the B3 District

Townhouses may be permitted in the B3 district subject to the following requirements:

- (1) Review of an application for a Townhouse development SUP shall occur simultaneously with a review of plats submitted in compliance with the Asheboro Subdivision Ordinance. If the Townhouse development requires review as a "major" or "minor" subdivision the Sketch Design Plat shall be properly submitted to Community Development Division staff in accordance with the Asheboro Subdivision Ordinance, reviewed and recommended by the Planning Board for the City Council's consideration at the same meeting as the SUP. The Sketch Design Plat and the site plan required for the SUP may be combined on one plat so long as the requirements for each are met. ~~If the Townhouse development requires a "minor subdivision the required subdivision plat shall be properly submitted for approval.~~ Approval shall be subject to any conditions of the SUP and granted only after approval of the SUP by the City Council.
- (2) Within a residential townhouse development, all uses permitted in the B3 district shall be permitted as follows:
 - (a) Nonresidential activities may be located only on the ground floor townhouse units;
 - (b) Only 25% of the development's overall number of units shall be permitted for nonresidential uses;
 - (c) Such use shall be permitted only within structures with frontage on a public street. There shall be a public entrance to nonresidential uses from a public street;
 - (d) All requirements of the North Carolina Building Code shall be satisfied for mixed use residential townhouses; and

- (e) Additional parking for nonresidential uses shall not be required.
- (3) Streets within a Townhouse development may be public or private according to the regulations of the Asheboro Subdivision Ordinance.
- (4) The yard and height regulations set forth in Table 4-1 and Section 4.07 shall be met for Townhouse developments permitted by this Section.
- (5) Utilities shall be planned and installed according to the Asheboro Subdivision Ordinance.
- (6) Provisions and plans for garbage and waste collection shall be included with the application.
- (7) Street landscaping shall be installed and maintained as per Section 4.07. Buffers and screening shall be installed and maintained as required for multi-family developments per Chapter 6.
- (8) Signs will be regulated as per Section 4.07 and Chapter 7.
- (9) Off street parking shall be provided as per Chapter 6.
- (10) General landscaping shall be installed and maintained. Plans indicating all required and nonrequired landscaping shall be submitted as part of the application.

(32) Recreational Vehicle Resort

Recreational Vehicle Resorts shall be permitted in the R-40 and TH Districts, subject to the issuance of a special use permit and subject to the following regulations:

- (1) Review of an application for a Recreational Vehicle Resort shall occur simultaneously with a review of plats submitted in compliance with the Asheboro Subdivision Ordinance. If the Recreational Vehicle Resort requires review as a “major” or “minor” subdivision, the Sketch Design Plat shall be properly submitted to Community Development staff in accordance with the Asheboro Subdivision Ordinance., reviewed, and recommended by the Planning Board for the City Council’s consideration at the same meeting as the Recreational Vehicle Resort SUP. The Sketch Design Plat and the site plan required for the Recreational Vehicle Resort may be combined on one plat so long as the requirements for each are met. If the Recreational Vehicle Resort requires a “minor” subdivision, the required Subdivision Plat shall be properly submitted for approval. Approval shall be subject to any conditions of the Recreational Vehicle Resort SUP and granted only after approval of the SUP by the City Council.
- (2) Recreational Vehicle Resorts shall only be permissible on a lot or lots comprising at least one hundred (100) acres under single ownership or control at the time the special use permit is approved. The Resort may consist of subdivided and unsubdivided portions, but the entire Resort must be subject to a single special use permit.
- (3) The yard and height regulations set forth in Table 4-1 may be modified for a Recreational Vehicle Resort, provided that, for such development as a whole, excluding roadways and driveways, the density within the Recreational Vehicle Resort may not exceed five (5) units per acre with a .52 open space ratio. If the Resort contains individual lots created by the recording of a subdivision plat, the total number of such lots within the Resort may not exceed one lot per acre for the number of acres within the entire tract comprising the Resort. Such lots shall count as units for calculating the total density.

- (4) The Recreational Vehicle Resort may be developed in phases. Phase One (1) shall include the required amenities. No Certificate of Occupancy for any phase of the park shall be issued until all required or proposed improvements are installed for that phase, and no RV may be located in any phase until that phase has received a Certificate of Occupancy.
- (5) Recreational Vehicle Resorts shall be located so that it has direct access to minor thoroughfare or higher classification street as shown on the Asheboro Comprehensive Transportation Plan.
- (6) Streets within a Recreational Vehicle Resort may be public or private according to the regulations of the Asheboro Subdivision Ordinance.
- (7) Utilities shall be planned and installed according to the Asheboro Subdivision Ordinance.
- (8) An engineering study of storm water runoff shall be made. If such study indicates that post development runoff will exceed predevelopment conditions, plans for runoff control shall be designed and certified by a professional engineer. Such controls shall be designed to reduce the runoff during the occurrence of a 10-year storm to predevelopment flow rate. Prior to a Certificate of Occupancy, a Professional Engineer shall provide certification that the storm water controls were built according to the plans. The continued maintenance of all runoff control measures shall be the responsibility of the property owner.
- (9) An unsubdivided RV site shall be at least thirty (30) feet in width, and shall contain at least 1,800 square feet of area. Each such RV site shall be clearly established on the ground by permanent monuments or markers. A subdivided RV site shall be at least forty (40) feet in width, and shall contain at least 3,200 square feet of area. Each such RV site shall be clearly established on the ground by permanent monuments or markers.
- (10) There shall be a front yard of at least twenty (20) feet between any RV and internal roadways. Where exterior property lines of the Recreational Vehicle Resort are coincident with public street rights-of-way, all Recreational Vehicles and structures within the park along such rights-of-way shall observe the front yard setback from such right-of-way as required by this Ordinance. Individual RV sites may not have direct access to any existing public street.
- (11) There shall be a side yard along each side of every RV site. Each side yard shall be at least five (5) feet wide. There shall be a rear yard of at least five (5) feet between any RV and the rear of the site on which it is located. The distance between RV units, including RV site accessory structures, shall not be less than twenty (20) feet. No RV or structure shall be located closer than thirty (30) feet to any other structure on the premises.
- (12) No RV or structure shall be located closer than one hundred (100) feet to any exterior property line of the Recreational Vehicle Resort, and this area shall remain in an undisturbed condition similar to what was present on the premises at the time the special use permit for the RV resort was issued. Passive recreational uses, such as walking paths, are permitted in this area. The City Council may, as a condition of the special use permit, impose additional reasonable vegetated screening requirements in those parts of the one hundred-foot area that are open and not wooded, such as fields. Recreational Vehicle Resorts shall not, however, be required to comply with the requirements of Section 6.06 of this Ordinance.
- (13) All RV sites shall abut a paved roadway which shall meet the requirements of the Asheboro Subdivision Ordinance and which shall provide unobstructed access to a public street or highway. Such roadways shall be illuminated as per city street lighting policy to ensure the safe movement of pedestrians and vehicles at night.

- (14) At least one parking space, a minimum of nine (9) feet by eighteen (18) feet, shall be provided within each RV site. No on street parking shall be permitted.
- (15) All RV sites shall have a concrete or asphalt pad. Such pad shall be a minimum of sixteen (16) feet by forty (40) feet in size.
- (16) No more than one RV may be parked on any RV site.
- (17) RV site accessory structures such as porches, decks, storage buildings, and walkways may be permitted within each RV site, provided no such structure may be attached to the RV and setbacks and parking spaces remain open and free of structures and the distance between the accessory structures and adjoining RVs, or adjoining accessory structures, shall not be less than twenty (20) feet.
- (18) Not more than thirty percent (30%) of the RV sites within the Resort may be occupied by ANSI Park Models.
- (19) Each Recreational Vehicle Resort shall have a minimum of seven percent of the gross area set aside and developed for recreational purposes. The required recreation space shall include, but not be limited to, amenities such as swimming facilities, picnic areas with tables, basketball goals with paved play areas, and playground(s) with play equipment. The specific mix of recreation facilities shall be determined during the special use permitting process. Exterior areas for common passive or active recreation use include play areas for children, outdoor seating areas, and the like, where the facilities are available for common use by tenants and visitors. Active recreation space shall be at least 30 feet from any RV site. If a swimming pool is provided, it shall be separated from other uses by a fence having a gate that is capable of remaining closed.
- (20) The collection of trash and garbage and their disposal shall be provided for in such a manner as to maintain a clean and orderly appearance at all times. Plans to meet this requirement shall be submitted as part of the application for a SUP. All collection facilities shall be located outside of all required setbacks and buffer/screen yards and they shall be screened from the view of public rights-of-way and adjacent property.
- (21) Accessory structures (not an RV or other mobile structure) may be permitted for such accessory uses as stores, laundries, park office, recreation facilities, storage, and RV Park related services. The total gross square footage of all building areas shall not exceed two (2) percent of the total approved Recreational Vehicle Resort area or forty thousand (40,000) square feet, whichever is less. Such uses, structures and their associated signage shall be located in such a manner so that they are not visible from any public street or road. Parking requirements for accessory uses shall be determined by Chapter 6. Required parking for accessory uses shall have a paved surface as per Chapter 6.
- (22) Areas shall be designated and reserved for overflow parking. Such parking areas shall have paved spaces equal to ten percent (10%) of the number of sites within the park and be reasonably dispersed throughout the park. An additional area shall be designated for the parking and storage of nonhuman occupancy RV vehicles such as boats, wave runners, etc. or such storage shall be prohibited within the park. Such storage area shall have spaces equal to five percent (5%) of the number of sites within the park and shall be located in such a manner so that it is not visible from any public street or road.
- (23) A fulltime onsite manager shall be provided. An on-site, permanent (not an RV or other mobile structure) office shall be provided for the manager.

- (24) General landscaping shall be installed and maintained. Plans indicating all required and nonrequired landscaping shall be submitted as part of the application.
- (25) Except for the ANSI Park Models and units located on subdivided RV sites, no recreational vehicle or other camping structure shall be permitted to remain on any RV site for a period of more than ninety (90) days within a six-month period.
- (26) Signs shall be regulated by Chapter 7.
- (27) Recreational Vehicle Resorts shall be subject to the regulations within Chapter 9 - Flood Damage Prevention Ordinance and Chapter 10 -Watershed Regulations.
- (28) Recreational Vehicle Resorts shall have at least one staff person who is responsible for security on the premises at all times.
- (29) Recreational fires shall be regulated per the North Carolina Fire Code.
- (30) Site plans submitted shall meet all the requirements of Chapter 2 and show the location and dimensions of individual RV sites and all other accessory features customarily incident to the operation of a Recreational Vehicle Resort.

CODE OF ASHEBORO TECHNICAL CORRECTIONS

As part of the advertised public hearing on the question of amending a variety of land use regulations, the city council considered and acted upon amendments to the Code of Asheboro to (1) reflect an increase in the monthly stipends for planning board members from \$100.00 to \$150.00 and (2) to correct an erroneous statutory citation in the section of the code pertaining to unsafe buildings.

After considering the staff report on the proposed amendments, Council Member Bell moved with a 2-part motion, and Council Member Swiers seconded the motion, to approve/adopt the following amendments to Chapter 34 and Chapter 150 in the Code of Asheboro. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

ORDINANCE NUMBER 3 ORD 1-23

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

AN ORDINANCE AMENDING SECTION 34.52 OF THE CODE OF ASHEBORO TO ADJUST THE COMPENSATION PROVIDED TO MEMBERS OF THE CITY OF ASHEBORO PLANNING BOARD

WHEREAS, in March 2009, the Asheboro City Council (the “Council”) enacted Section 34.52(E) of the Code of Asheboro in order to establish a stipend of \$100.00 for each month of active service by members of the City of Asheboro Planning Board (the “Planning Board”); and

WHEREAS, the amount of the stipend has not been altered since 2009; and

WHEREAS, the Council has concluded that it is advisable to increase the amount of the stipend authorized by Section 34.52(E) of the Code of Asheboro.

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

Section 1. Section 34.52 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 34.52 APPOINTMENT AND TERM; VACANCIES; ATTENDANCE; COMPENSATION

- (A) Members of the Planning Board shall be appointed for a term of five years and until their successors are appointed and qualify. The appointment of Planning Board members shall be conducted as follows:
- (1) One city resident shall be appointed by the City Council in January of each year to a five-year term of office. This five-year term of office shall be deemed to commence on the first day of February during the year in which the appointment to the full term of office is made.
 - (2) One Planning Board member appointed by the Randolph County Board of Commissioners to provide representation for the city's extraterritorial planning jurisdiction area shall serve a five-year term of office that expires in 2018. This seat on the Planning Board shall initially be held by the Planning Board member appointed by the Randolph County Board of Commissioners to a five-year term of office in February 2013. Thereafter, the Randolph County Board of Commissioners shall continue to make appointments to this office on a schedule that will require the next appointment to a full term of office to occur in January 2018, and every five years thereafter. The commencement date for these five-year terms of office shall be deemed to be the first day of February during the year in which the appointment to the full term of office is made.
 - (3) The other member of the Planning Board to be appointed by the Randolph County Board of Commissioners to provide representation for the city's extraterritorial planning jurisdiction area shall serve a five-year term of office that will commence on February 1, 2014. The initial appointment to this office is to occur in January 2014, and successive appointments shall occur every five years thereafter.
- (B) Members of the Planning Board who are residents of the city shall be appointed by the City Council. Members of the Planning Board who are residents of the extraterritorial area shown on the map entitled "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area" and recorded in the Office of the Randolph County Register of Deeds in Plat Book 135, Pages 28-34 shall be appointed by the Randolph County Board of Commissioners; provided, that in the event such Board of County Commissioners fails to make any appointment provided for in this section within 90 days after the receipt of a resolution from the City Council requesting that such appointment be made, the City Council may thereupon make such appointment.
- (C) Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.
- (D) Faithful attendance at the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Board. A Planning Board member who is absent from three of any four consecutive regular meetings is subject to removal from office by the governing board that appointed the individual. When the removal of a Planning Board member for noncompliance with attendance requirements is under consideration, notice of the proposed action and an opportunity to be heard by the appointing authority on the question of the proposed removal from office shall be provided to the Board member facing the possibility of removal from office. Delivery of such notice of the opportunity to be heard shall be deemed to be sufficient if written notice of the opportunity is sent, at least 15 calendar days in advance of the meeting during which removal is to be considered, via first class United States mail to the most recent address provided to the city by the member subject to removal.

- (E) On and after ~~April 1, 2009~~ February 1, 2023, each member of the Planning Board shall receive a stipend of ~~\$100~~ \$150 for each month that the member actively serves on the Planning Board. In order to be deemed to be actively serving on the Planning Board during any specific month, a member of the Board must attend, at a minimum, the regular Planning Board meeting scheduled for the month for which the monthly stipend is to be paid. The actual disbursement of the monthly stipends for Planning Board members shall be made according to a schedule to be developed by the City of Asheboro Finance Department in accordance with the Department's normal business practices. Irrespective of the number of special meetings that may be held during any specific month, the amount of the monthly stipend for Planning Board members shall not exceed ~~\$100~~ \$150.

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

Section 3. This Ordinance shall be in full force and effect on and after February 1, 2023.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on January 5, 2023.

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

ATTEST:

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

ORDINANCE NUMBER 4 ORD 1-23

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**AN ORDINANCE CORRECTING ERRONEOUS TEXT IN
SECTION 150.47 OF THE CODE OF ASHEBORO**

WHEREAS, on December 9, 2021, the Asheboro City Council (sometimes referred to as the "Council") gave final approval to an amended Section 150.47 of the Code of Asheboro; and

WHEREAS, effective December 9, 2021, the amended Section 150.47 of the Code of Asheboro provided as follows:

§ 150.47 REMOVING NOTICE FROM CONDEMNED BUILDINGS

Pursuant to G.S. § 160D-1118, if any person shall remove any notice that has been affixed to any building or structure by the Building Inspector and that states the dangerous character of the building or structure, he shall be guilty of a misdemeanor; and

WHEREAS, the statutory reference in the immediately preceding paragraph was incorrect (the reference should have been to Section 160D-1120 of the North Carolina General Statutes); and

WHEREAS, the Council has concluded that it is advisable to amend Section 150.47 of the Code of Asheboro in order to correct the erroneous text.

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

Section 1. Section 150.47 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 150.47 REMOVING NOTICE FROM CONDEMNED BUILDINGS

Pursuant to G.S. § ~~160D-1118~~ 160D-1120, if any person shall remove any notice that has been affixed to any building or structure by the Building Inspector and that states the dangerous character of the building or structure, he shall be guilty of a misdemeanor.

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

Section 3. This Ordinance shall be in full force and effect on and after January 5, 2023.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on January 5, 2023.

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

ATTEST:

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

4. Public Comment Period

Mayor Smith opened the floor for comments from the public.

Mr. James Armstrong commented on speeding in the vicinity of Silver Avenue. Additionally, Mr. Armstrong commented on issues of poverty, substance abuse, and the state of repair of public streets in the city.

Reverend Boyd Byerly offered his appreciation to the elected officials for their public service and asked that the needs and best interests of the whole community, including future generations, be kept in mind when conducting public business.

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

5. Resolution Proclaiming 2023 Year of the Trail

Ms. Mary Joan Pugh spoke in support of the adoption of a resolution in support for walking trails in 2023 (Year of the Trail). Mr. Ogburn presented and recommended adoption, by reference, of the resolution of support for trails and 2023 Year of the Trail that is printed below.

Council Member Heath moved, and Council Member Burks seconded the motion, to adopt the following resolution by reference. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

RESOLUTION NUMBER 2 RES 1-23

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

RESOLUTION OF SUPPORT FOR TRAILS AND 2023 YEAR OF THE TRAIL

WHEREAS, the General Assembly has proclaimed 2023 as the Year of the Trail; and

WHEREAS, the coronavirus pandemic demonstrated the value of trails for safe places for people to get outdoors for their physical and mental health and sense of wellbeing; and

WHEREAS, trails, greenways, and blueways provide key amenities to neighborhoods and are often the centerpiece of a community, bringing people together to exercise, play and connect with nature; and

WHEREAS, the parks, greenways, trails and natural areas in our community are welcoming to all and provide a common ground for people of all ages, abilities and backgrounds to access our rich and diverse natural, cultural, and historic resources; and

WHEREAS, trails offer quality-of-life benefits to all as expressions of local community character and pride, as outdoor workshops for science education, as tools for economic revitalization, as free resources for healthy recreation, as accessible alternative transportation, and as sites for social and cultural events; and

WHEREAS, trails have significant impact on the economic viability of the community through increased levels of tourism, enhanced property values, as well as the ability to attract and retain businesses such as restaurants, outfitters, lodging and entertainment; and

WHEREAS, the City of Asheboro has existing and potential trails under design, including the new paths being constructed at the Zoo City Sportsplex; and

WHEREAS, the City of Asheboro has invested significant resources into trail development.

NOW, THEREFORE, BE IT RESOLVED that the City of Asheboro supports expansion of trail opportunities and is committed to supporting trail events during 2023 to celebrate the Year of the Trail.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 5th day of January, 2023.

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

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

6. Introduction of Ms. Addie Corder

Mr. Al LaPrade, Chairman of Downtown Asheboro Inc. introduced Ms. Addie Corder, who is the organization's new Executive Director. The city's elected officials welcomed Ms. Corder to Asheboro and expressed their well wishes.

No formal action was taken by the council during this portion of the meeting.

7. Recognition of Ms. Deborah Reaves

Mayor Smith recognized Ms. Deborah Reaves, who is the city's finance director, for her vital role in the city's receipt from the Government Finance Officers Association of a Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting.

No formal action was taken by the council during this portion of the meeting.

8. Consent Agenda

Council Member Burks moved, and Council Member Bell seconded the motion, to approve/adopt the following consent agenda items. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

(a) City Council Meeting Minutes for December 8, 2022

The meeting minutes for the city council’s regular meeting on December 8, 2022, were approved and have been filed in the city clerk’s office. An electronic copy of the approved document has been posted on the city’s website.

(b) Asheboro ABC Board Minutes for November 7, 2022

The council acknowledged the receipt of the Asheboro ABC Board’s approved meeting minutes for November 7, 2022. This document has been filed in the city clerk’s office and distributed to the city’s elected officials.

(c) McCrary Ballpark Contract Amendment No. 001

The McCrary Baseball Park Renovations and Expansion Contract Amendment 001 submitted by CPL Architects and Engineers, PC for additional items/services was approved by the city council. The approved new design fee subtotal was \$53,484.25, with a new design fee total of \$552,859.25.

(d) Ordinances Amending the General Fund and the McCrary Ballpark Improvements Fund

In order to account for the immediately preceding contract amendment for the McCrary Ballpark project, the council approved the following two ordinances that implemented budget amendments.

**ORDINANCE TO AMEND
THE GENERAL FUND
FY 2022-2023**

5 ORD 1-23

WHEREAS, the City of Asheboro appropriated funding for a contract with CPL Architects and Engineers, PC (CPL) for their work at McCrary Ballpark in the amount of \$500,000, and;

WHEREAS, the scope of work for CPL has changed and the City needs to appropriate and additional \$54,000 for Amendment 001, and;

WHEREAS, the City of Asheboro would like to appropriate fund balance in the amount of \$54,000 dollars to be transferred to the McCrary Ballpark Improvements fund.

WHEREAS, the City of Asheboro desires amend the 2022-2023 budget to as required by law to adjust for changes in revenues and expenditures in comparison to the current adopted budget.

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

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

Section 1: The following revenue line item be increased:

<u>Line Item</u>	<u>Description</u>	<u>Increase</u>
10-000-399.0000	Fund Balance Appropriated	54,000

Section 2: The following expense line item be increased:

<u>Line Item</u>	<u>Description</u>	<u>Increase</u>
10-620-574.6500	Contribution to McCrary Ballpark Improvements Fund	54,000

Adopted this the 12th day of January 2023.

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

ATTEST:

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

6 ORD 1-23

ORDINANCE TO AMEND
THE MCCRARY BALLPARK IMPROVEMENTS FUND
FY 2022-2023

WHEREAS, the City of Asheboro appropriated funding for a contract with CPL Architects and Engineers, PC (CPL) for their work at McCrary Ballpark in the amount of \$500,000, and;

WHEREAS, the scope of work for CPL has changed and the City needs to appropriate and additional \$54,000 for Amendment 001, and;

WHEREAS, the City of Asheboro would like to recognize a contribution from the General Fund for these engineering cost in the amount of \$54,000 dollars in the McCrary Ballpark Improvements fund.

WHEREAS, the City of Asheboro desires amend the 2022-2023 budget to as required by law to adjust for changes in revenues and expenditures in comparison to the current adopted budget.

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

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

Section 1: The following revenue line Items be increased:

<u>Line Item</u>	<u>Description</u>	<u>Increase</u>
65-000-300.0001	Contribution from General Fund	54,000

Section 2: The following expense line item be increased:

<u>Line Item</u>	<u>Description</u>	<u>Increase</u>
65-000-401.9000-	Architect and Engineering Fees	54,000

Adopted this the 12th day of January 2023.

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

ATTEST:

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

(e) A Resolution Adjusting the Compensation for Members of the Asheboro ABC Board

In order to increase the compensation for members of the Asheboro ABC Board, the city council adopted the following resolution.

RESOLUTION NUMBER 3 RES 1-23

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**RESOLUTION INCREASING THE COMPENSATION FOR
MEMBERS OF THE ASHEBORO ABC BOARD**

WHEREAS, by means of adopting a resolution on September 23, 2010, the Asheboro City Council (sometimes referred to as the "Council") previously determined that members of the Asheboro ABC Board (sometimes referred to as the "Board"), inclusive of the chairperson, were to receive compensation in the amount of one hundred and no hundredths dollars (\$100.00) for each Board meeting he or she attended; and

WHEREAS, Section 18B-700(g) of the North Carolina General Statutes addresses the issue of the compensation of Board members by providing as follows:

A local board member shall receive compensation in an amount not to exceed one hundred fifty dollars (\$150.00) per board meeting unless a different level of monetary compensation is approved by the appointing authority. If a different level is approved by the appointing authority, the appointing authority shall notify the Commission of the approved level of compensation in writing. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section; and

WHEREAS, the Council, as the appointing authority for the Asheboro ABC Board, has determined that the amount of compensation to be received by the members of the Board should be increased to one hundred fifty and no hundredths dollars (\$150.00) per Board meeting.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, effective February 1, 2023, each member of the Asheboro ABC Board, inclusive of the chairperson, is to receive compensation in the amount of one hundred fifty and no hundredths dollars (\$150.00) per Board meeting.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on January 5, 2023.

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

ATTEST:

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

9. Results of the Recent Public Survey Conducted in Association with the Ongoing Update of the City's Land Development Plan

Planning and Zoning Administrator Justin Luck presented the results of a recent public survey that was conducted in association with the ongoing update of the city's Land Development Plan.

In late November 2022, the planning and zoning staff hosted three (3) in-person public information sessions for the new Asheboro Land Development Plan. These sessions allowed the public to view draft plan documents, including a vision statement, goals, and maps. The public was also asked to complete a survey and have one-on-one discussions with members of the city's planning staff. Additionally, the survey was available online for several days following the workshops.

The goal of the in-person sessions was to reach a broader demographic, including those with no or limited internet access and others who may not have been aware of the 2021 survey.

The sessions were successful in generating a total of 150 survey responses. The survey asked a total of 14 multiple-response questions with space to share additional comments. Many of the questions and response options closely followed those of the 2021 survey.

Throughout the 2022 survey, the following themes were seen:

- Desire for better parks/investment in existing spaces
- Respondents like small town atmosphere
- Desire for the improvement of streets
- Many respondents wish to remain in their current home
- Many respondents were retired or wish to be retired.

The planning and zoning staff will update the council in regards to the Land Development Update as more information becomes available. No formal action was taken by the council during this portion of the meeting.

10. Land Use Cases

- (a) Legislative Hearing (Case No. RZ-22-13): An application to rezone property at 564 Cox Avenue (Randolph County Parcel Identification Number 7760064470) from B2 (CZ) to R10 zoning.**

Mayor Smith opened the legislative hearing on this zoning map amendment application and first recognized Community Development Director Trevor Nuttall in order to receive the planning staff's analysis of the application. The application pertains to approximately 0.33 of an acre of land that is owned by Carlos Alberto Ramos, who is the applicant. The applicant's lot is located at 564 Cox Avenue and is identified by Randolph County Parcel Identification Number 7760064470. This lot will be hereinafter referred to as the "Zoning Lot."

The Zoning Lot is currently in a zoning district identified as B2 (CZ) General Commercial Conditional Zoning. The Applicant is seeking to place the Zoning Lot into an R10 Medium-Density zoning district.

Mr. Nuttall utilized a slide show to provide the following information.

1. The Zoning Lot is located within the city limits.
2. Both Cox Avenue and Cliff Road are city-maintained streets. There is a signalized intersection at Cliff Road and East Dixie Drive, one block north of the Zoning Lot.
3. Tax records indicate the structure was built in 1965. Currently, the property is being used residentially which constitutes a non-conforming use.
4. The Zoning Lot has a conditional zoning designation from 2007 allowing professional services, business services, and personal services (excluding dry cleaning and laundry/laundromat facilities).
5. The zoning ordinance describes the R10 zoning district as “intended to provide regulations which will produce a moderate intensity of residential uses, usually single-family or two-family in character and served by central water supply and sewage disposal systems, plus the necessary governmental and other support facilities to service such urban intensity living.”
6. The R10 district allows for a single-family or two-family dwelling. A two-family dwelling requires a minimum of 15,000 square feet.
7. Under the current B2 (CZ) General Commercial Conditional Zoning designation, additions and improvements to the single-family dwelling and related structures are restricted.
8. In 2021, council approved a rezoning from R15 Low-Density Single-Family Residential to R10 Medium-Density Residential on an adjoining parcel across Cliff Road. A single-family dwelling is currently under construction on this parcel.

Mr. Nuttall noted that, when evaluating a rezoning application, careful consideration must be given to each goal and policy as outlined in the Land Development Plan.

Proposed Land Use Map Designation: Neighborhood Residential

Small Area Plan: Central

Growth Strategy Map Designation: Primary Growth

LDP Goals/Policies Supporting the Request:

Checklist Item 1: Rezoning is compliant with the Proposed Land Use Map.

Checklist Item 3: The property on which the rezoning district is proposed fits the description of the Zoning Ordinance (*Article 200, Section 210, Schedule of Statements of Intent*)

Checklist Item 6: Existing infrastructure is adequate to support the desired zone (*water, sewer, roads, schools, etc.*).

Checklist Item 7: The proposed rezoning is compatible with the applicable Small Area Plan.

Checklist Items 12, 13, and 14:

- 12.) Property is located outside of watershed. 13.) The property is located outside of Special Hazard Flood Area. 14.) Rezoning is not located on steep slopes of greater than 20%.

There were no LDP Goals/Policies that were unsupportive of the requested rezoning.

The City of Asheboro Planning Board recommended approval of the rezoning application because the board concurred with the city planning staff's positive analysis of the applicant's request. The analysis adopted by the planning board and the planning staff found the application to be consistent with the adopted comprehensive plans and reasonable. The city planning staff's report provided as follows:

The Land Development Plan Proposed Land Use Map designates this land and other properties on the south side of Cox Avenue property for Neighborhood Residential development. The requested R10 district generally is consistent with the Neighborhood Residential designation.

The structure on the property was originally constructed as a single-family dwelling in 1965. The property was first zoned for commercial use in 1979. The last commercial zoning amendment occurred in 2007 which authorized a variety of commercial service uses from the property. Currently, the structure is being used for a single-family dwelling.

The current property owner has indicated a desire to continue to use the property exclusively for residential use, and the current zoning precludes most modifications to the property that would be associated with residential activity. Furthermore, the Central Small Area Plan includes "preservation and revitalization of existing neighborhoods" as a key issue within this planning area. The property is located on the edge of the boundary between commercial and residential zoning and uses. Applying the property's former R10 residential designation will allow continued investment into the residential use of the property that is currently restricted by current zoning.

In response to Mayor Smith inviting comments from the public, Mr. Carlos Ramos presented comments in support of the rezoning application. No other comments were offered from the public, and Mayor Smith then transitioned to the deliberative phase of the process.

After engaging in deliberations about the zoning map amendment application, Council Member Bell moved, and Council Member Heath seconded the motion, to adopt the plan consistency statement printed below and to approve the requested rezoning with the following multi-part motion.

1. The Land Development Plan Proposed Land Use Map designates this land and other properties on the south side of Cox Avenue property for Neighborhood Residential development. The requested R10 district general is consistent with the Neighborhood Residential designation.

The structure on the property was originally constructed as a single-family dwelling in 1965. The property was first zoned for commercial use in 1979, and the last commercial zoning amendment occurred in 2007. Currently, the structure is being used for a single-family dwelling.

The current property owner has indicated a desire to continue to use the property exclusively for residential use, and the current zoning precludes most modifications to the property that would be associated with residential activity. Furthermore, the Central Small Area Plan includes "preservation and revitalization of existing neighborhoods" as a key issue within this

planning area. The property is located on the edge of the boundary between commercial and residential zoning and uses. Applying the property's former R10 residential designation will allow continued investment into the residential use of the property that is currently restricted by current zoning.

In light of the above-stated analysis, the applicant's request is consistent with the city's adopted comprehensive plans and is reasonable.

2. The zoning ordinance map amendment application seeking to place the Zoning Lot in an R10 zoning district is approved.

Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

(b) Legislative Hearing (Case No. RZ-22-14): An application to rezone property on Golda Avenue, east of 210 Golda Avenue, approximately 850 feet east of the intersection with North Fayetteville Street, from R10 to RA6 (CZ) zoning.

Mayor Smith opened the legislative hearing on the above-described zoning map amendment application that pertains to approximately 8.593 acres of land identified by Randolph County Parcel Identification Number 7763129076 (this parcel of land will be hereinafter referred to as the "Zoning Lot"). The Zoning Lot is owned by Darren Lucas, and he is the applicant requesting the placement of the Zoning Lot into an RA6 (CZ) High-Density Residential conditional zoning district.

The applicant is requesting the council's adoption of a conditional zoning ordinance that will allow the development of the Zoning Lot with multiple family dwellings having a floor area ratio of up to 17%. Community Development Director Trevor Nuttall utilized a slide show to present the planning staff's analysis of the application submitted by Mr. Lucas. The following information was provided by the staff report:

1. The Zoning Lot is inside the city limits.
2. Golda Avenue is a local, city-maintained street that has an apparent pavement width of less than 20 feet in various locations between the Zoning Lot and North Fayetteville Street. The city's public works division has indicated that improvements to Golda Avenue, including resurfacing that may result in additional roadway width between the subject property and North Fayetteville Street, are expected to occur in the next few years.
3. The application is for a multi-family development with a floor area ratio (a ratio of total conditioned building square footage to property square footage) of up to 17 percent. 46 units are proposed for one parcel of land, equaling approximately 5.4 dwellings per acre. The proposed floor area ratio is approximately 10.14 percent. No new lots are proposed to be created by the project.
4. The area includes primarily single-family dwellings, with some two-family dwellings. Two multi-family developments, which access North Fayetteville Street, are in the vicinity of the Zoning Lot. Matthew Grande Apartments are located approximately 500 feet to the north, and Summers Run Apartments are approximately 1200 feet to the west and across North Fayetteville Street.
5. One entrance is proposed to the development on Golda Avenue. Access will be via a privately maintained driveway. The proposed project layout, including private driveway, limits an opportunity for a future street connection between Golda Avenue and Eckerd Street. It is likely that the city would seek to preserve this opportunity for a project proposing to subdivide the property.

6. The proposed units are single-story duplex (two-family) style units with approximately 825 square feet in each unit. Parking is shown in front of each unit within a surface parking lot.
7. The Applicant is proposing a 35-foot setback around the perimeter of the property. Within the first 10 feet of the setback, except for in the area of the city's existing sewer easement, the plan notes that "1 Evergreen tree every 20 feet and 1 shrub every 5 feet (Burford Holly & Leyland Cypress) or existing hardwood trees" will be provided. 29 additional trees are shown dispersed throughout the parking lot.
8. The existing R10 zoning permits one single-family dwelling on a lot with at least 10,000 square feet or one two-family dwelling on a lot with 15,000 square feet. If a subdivision using public streets were proposed, a maximum of 18 lots with 36 dwellings could likely be accommodated.
9. The RA6 Residential District is "intended to produce a high intensity of residential uses in close proximity to major nodes of non-residential development, characterized primarily by group housing, plus the necessary governmental and other support facilities to service that level of development. Land designated RA6 shall normally be located with access to a minor thoroughfare or higher classification street with access to local residential streets discouraged."
10. The neighborhood residential designation of the property is described by the Land Development Plan's Land Category Description as intended "to accommodate existing medium-density, single-family residential neighborhoods, while encouraging new neighborhoods of similar density to provide a greater sense of community."
11. The conditional zoning process allows an Applicant to propose a project-specific zoning district that establishes permitted uses, development conditions and site development requirements. The project-specific zoning district is allowed to diverge from the zoning ordinance's predetermined land use requirements. The only deviation from the city's standard requirements for a multi-family development is the applicant's request to not provide a screened parking area for recreational vehicles. Typically, a project of this size would require approximately 3300 square feet of screened recreational vehicle parking area; none is proposed. However, the plan does provide a total of 23 visitor spaces for the project; only 10 visitor spaces are required.
12. The plan has been routed to NCDOT, Asheboro City Schools, and the US Post Office. Asheboro City Schools indicated that it didn't have concern with the plan. The US Post Office requested the ability to review a community mail box location. NCDOT commented that future development beyond the number of units shown may require road improvements on North Fayetteville Street, but didn't raise an objection to the development as proposed.

Mr. Nuttall noted that, when evaluating a rezoning application, careful consideration must be given to each goal and policy as outlined in the Land Development Plan.

Proposed Land Use Map Designation: Neighborhood Residential

Small Area Plan: Northeast

Growth Strategy Map: Primary Growth

LDP Goals/Policies Supporting the Request:

Checklist Item 5: Complies with Growth Strategy Map

Checklist Items 12, 13:

- 12.) The property is located outside of watershed
13.) The property is located outside of Special
Hazard Flood Area.

LDP Goals/Policies Which Do Not Support the Request:

Checklist Item 1:

Rezoning is not compliant with the Proposed Land Use Map

Checklist Item 3:

The property on which the rezoning district is proposed does not fit the description of the Zoning Ordinance. (*Article 200, Section 210, Schedule of Statements of Intent*).

As part of its analysis, the city planning staff also offered suggested conditions believed to be necessary to ensure Land Development Plan consistency and general conformity with city codes.

Suggested Conditions from Planning Staff

- (A) The use approved shall be a development consisting of 46 Multiple Family Dwellings with a Floor Area Ratio of up to 17 percent.
- (B) All parties involved in this request, including the owner, and the owner's heirs, successors, and assigns, agree to the conditions and approved site plan.
- (C) Enclosure of concrete pads or other additions to the rear of dwellings shall not be considered a modification unless the cumulative additional square footage leads to a project Floor Area Ratio of more than 17%.
- (D) Maintenance of all recreation areas, any utilities not publicly maintained in accordance with city policies, roads, and drainage facilities that are not specifically labeled on the approved site plan as publicly maintained shall be the responsibility of the property owner and any successors in interest.
- (E) Installation of traffic and street signs within the development shall be the responsibility of the developer. Approval of any proposed name of the private road shall be obtained from Randolph County for E-911 purposes.
- (F) If solid waste disposal facilities as shown on the site plan are deemed to be inadequate, the property owner shall be responsible for ensuring that additional facilities or measures are installed. Any such facilities shall be consistent with city policies and codes.
- (G) No recreational vehicle storage or similar outdoor storage shall be permitted on the property.
- (H) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the applicant shall submit documentation detailing permitting from NC Department of Environmental Quality.
- (I) Prior to the issuance of a zoning compliance permit, construction plans concerning water, including provisions for fire hydrants determined to be required by Asheboro Fire and Rescue, and sanitary sewage that complies with city policies, shall be submitted. Surveying of any required city easements shall be the responsibility of the property owner.
- (J) Prior to the issuance of a Zoning Compliance Permit, the Applicant shall submit a site plan reflecting any revisions necessary to comply with city codes and conditions of approval.

- (K) 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 Conditional Zoning in the chain of title for the Zoning Lot.

The City of Asheboro Planning Board considered the rezoning application and recommended placement of the Zoning Lot into the requested RA6 (CZ) zoning district. In making this recommendation, the planning board concurred with the planning staff's analysis of the consistency of the proposed development with the adopted comprehensive plans as well as the reasonableness of the proposal. The planning staff's analysis provided as follows.

The Land Development Plan designates the subject property for Neighborhood Residential development. This designation advocates for new residential projects to be of similar density to surrounding areas. Such designation traditionally has not supported new multi-family development; the Land Development Plan designates areas for multi-family development through the Urban Residential designation.

Yet, the Land Development Plan does envision property on the north side of Golda Avenue, across from the subject property, developing at Urban Residential densities similar to the Matthew Grande and Summers Run apartments. The primary distinction between those developments and the adjacent property identified for Urban Residential Development, are those properties have direct access to North Fayetteville Street, a major thoroughfare.

The application seeks to develop a relatively low-density multi-family project when compared to density typically permitted by the RA6 district (46-825 square feet units proposed versus 77-825 square feet units that a 17% FAR could otherwise accommodate on this property). The proposal to construct single-story duplex-style units, rather than multi-story units, is more consistent with the surrounding pattern of residential development.

The total number of units is the primary inconsistency related to the Land Development Plan that staff has identified. It is conceivable that the current zoning could accommodate a subdivision proposing two-family dwellings (duplexes) with approximately 40 units after accounting for expected land area necessary for street right-of-way. R10 does not permit multi-family development and the application requests approval for 46 multi-family units.

Other goals and policies of the Land Development Plan, however, are advanced by the application. The community will possess sidewalks connecting all of the units, significant open space is proposed to be preserved, and a limited amount of recreational amenities will be provided.

In response to Mayor Smith inviting comments from the public, Darren Lucas presented comments in support of the rezoning application. Sherri Olinger, Darrick Olinger, Tony Whitaker, Korey Bennett, Mike Thomas, Doug Isley, and Ruta Spivey presented comments in opposition of the rezoning application. No other comments were offered from the public, and Mayor Smith then transitioned to the deliberative phase of the process.

After some discussion, Council Member Moffitt commented on the benefits of the proposed buffers and clustering of the contemplated development as opposed to the alternative of potentially subdividing the property. Council Member Moffitt then moved to approve the rezoning application. When no other council member seconded the motion, the motion died.

After further discussion about the need for additional information about potential street improvements that were referenced in the planning staff's analysis, Council Member Bell moved, and Council Member Moffitt seconded the motion, to continue the hearing to the council's next regular meeting on February 9, 2023. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

(c) Subdivision Preliminary Plat Review – Case No. SUB-18-02: Cane Creek Townhomes

Mayor Smith recognized Community Development Director Trevor Nuttall in order to receive the city planning staff's analysis of this subdivision preliminary plat review case. The applicant is Davidson Land Development, LLC (the "Applicant").

The Applicant's property is approximately 3.67 acres in size and is identified by Randolph County Parcel Identification Number 7762740259. The property is located on the north side of East Allred Street.

The Applicant's property is currently zoned RA6 (CZ) and is undeveloped. The request is for 10 lots plus common area with an average lot size of approximately 2,592 square feet of land.

With the aid of a slide show presentation, Mr. Nuttall provided the following supplemental information about the proposed subdivision.

1. The request is for a residential planned unit development with 10 townhome units.
2. A portion of the property is within a Special Hazard Flood Area. However, no units are proposed to be within this area. It appears that at least one lot will have regulated floodplain present.
3. The subdivision ordinance limits the use and length of dead end streets exceeding 500 feet unless topography or property configuration necessitates their use. The length of the proposed street is 463 linear feet.
4. One recreational area is shown along Pennwood Branch, on the west side of the property.
5. On June 6, 2022, in response to an appeal, the Planning Board affirmed the Zoning Administrator's decision that the approval of the project, granted by a Conditional Zoning district in 2018 remained valid.
6. The Tax Department states that the acreage of the property is 4.02 acres. The site plan shows the property is 3.67 acres.

The plat has been reviewed by city departments and comments have been received. Subject to the incorporation of conditions that reflect the comments received from various city departments, the city planning staff and planning board recommended approval of the preliminary subdivision plat submitted by the Applicant.

At the conclusion of the community development director's presentation, Mayor Smith opened the floor for citizen comments about the requested preliminary plat approval. No one in the audience asked to be heard.

After considering the available information, Council Member Bell moved, and Council Member Burks seconded the motion, to approve, subject to the below-listed conditions, the preliminary plat submitted for Cane Creek Townhomes. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

This preliminary plat approval is subject to the following conditions:

- (A) Sign-offs from the Asheboro Fire and Rescue Department as well as the Asheboro Public Works Division must be obtained;
- (B) Driveway permit approval must be obtained from the North Carolina Department of Transportation prior to construction;
- (C) All required permitting must be obtained from the North Carolina Department of Environmental Quality, including without limitation erosion control permitting;
- (D) Flood development permitting, as may be required, for development activity located within the Special Flood Hazard Area. The flood damage prevention ordinance is contained within Chapter 9 of the City of Asheboro Zoning Ordinance;
- (E) The off-site sewer easement must be properly shown and labeled. The City of Asheboro will not accept the easement area until after the line has been built, inspected, and the 1-year warranty period completed. No city construction easement is requested or should be shown;
- (F) United States Postal Service approval of the community mailbox unit(s) must be granted; and
- (G) If the materials for the sanitary sewer are proposed to be changed, revised plans must be submitted for review and approval showing such changes prior to installation.

11. Authorization to Engage Outside Legal Counsel in Connection with a Draft National Pollutant Discharge Elimination System (NPDES) Permit

Water Resources Director Michael Rhoney, PE discussed the draft National Pollutant Discharge Elimination System (NPDES) permit for the wastewater treatment plant. City staff does not believe certain 1,4 dioxane limits should have been incorporated into the draft permit. In order to follow the proper legal procedures to challenge the inclusion of the 1,4 dioxane limits in the draft permit, the water resources director, with the concurrence of the city attorney and the city manager, recommended engaging attorneys with recognized expertise in environmental law with the firm of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP (“Brooks Pierce”) to represent the city with regard to the 1,4 dioxane limits.

After discussion, Council Member Moffitt moved, and Council Member Swiers seconded the motion, for the city council to resolve that the city manager is authorized to execute an engagement letter with Brooks Pierce so as to engage attorneys with Brooks Pierce to represent the City of Asheboro throughout the course of any administrative appeals and any subsequent litigation in the Courts of General Justice concerning the 1,4 dioxane limits listed in the draft permit issued to the City of Asheboro. Council Member Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

12. Community Development Items:

(a) The Expiring Terms of Office on the Asheboro Planning Board

Community Development Director Trevor Nuttall reported that the terms of office for City of Asheboro Planning Board Members Mike O’Kelley and David Henderson were expiring. Both members have rendered honorable service on the planning board.

Mr. O’Kelley is a city resident and is appointed by the city council. Mr. Henderson does not reside within the city limits and provides representation on the planning board for the city’s extraterritorial planning jurisdiction. Appointments of planning

board members representing the extraterritorial planning jurisdiction are in the discretion of the Randolph County Board of Commissioners.

After discussion, Council Member Heath moved, and Council Member Bell seconded the motion, to reappoint Mike O'Kelley to another full term on the City of Asheboro Planning Board. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

With regard to Mr. Henderson, a general consensus of the council emerged to authorize city staff to request from the Randolph County Board of Commissioners that David Henderson be reappointed to the planning board.

(b) NC Housing Finance Agency Urgent Repair Program

Mr. Nuttall reported that city staff intends to apply to the NC Housing Finance Agency for inclusion in the Urgent Repair Program. The city administered this program in 2015-2016 and 2018-2019. Assistance is provided in the form of loans. The loan must be used towards authorized home repairs determined necessary to keep a homeowner safe and to prevent displacement due to dangerous living conditions.

Eligible applicants must live in the city and reside at the property in need of the urgent repairs. Income rules apply, and participants must have one or more resident who is elderly, disabled, a military veteran, female head of household, or other qualifying characteristic. Repairs of up to \$11,000 would be available. \$3,000 is forgiven every year until the principal is reduced to \$0.

As in past years, the Redevelopment Commission likely will be asked to help screen and select recipients based on an adopted program policy that will be presented at a later date. Staff hopes that at least 11 eligible homeowners will be identified for inclusion. If the city receives an award, there would be several communications sent out about funding availability. Awards will most likely be made during spring or summer.

No formal action was requested of the council during this portion of the meeting, and none was taken.

13. Proposed Lease Agreement with T-Mobile South, LLC

Mr. Sugg presented and recommended adoption, by reference, of a proposed lease agreement with T-Mobile South, LLC. This lease pertains to space for the continued placement of wireless communications facilities on the premises of the city's elevated water tank at 252 South Church Street.

No one in the audience asked to be heard on this issue. After discussion, Council Member Bell moved, and Council Member Swiers seconded the motion, to authorize the city's entry into the following lease agreement. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

STATE OF NORTH CAROLINA

**LEASE AGREEMENT FOR
PLACEMENT OF ELECTRONIC
COMMUNICATIONS EQUIPMENT**

COUNTY OF RANDOLPH

THIS AGREEMENT (the "**Agreement**") is made as of the last date of signature of the parties hereto, by and between the **CITY OF ASHEBORO**, a North Carolina municipal corporation, (the "**Lessor**") and **T-MOBILE SOUTH, LLC**, a Delaware limited liability

company authorized to do business in North Carolina, (the “**Lessee**”). Lessor and Lessee are collectively referred to herein as the “**Parties**.”

WITNESSETH

In consideration of the monthly rental fees set forth below and the other mutual promises contained herein, the Parties agree as stated in the following 25 sections of this Agreement.

Section 1. Lease of Property

Lessor hereby leases to Lessee, and Lessee accepts a lease area of 150 square feet, more or less, within two parcels of land that are identified by Randolph County Parcel Identification Numbers 7751619869 and 7751710819 and are described, respectively, in the following books of record maintained by the Office of the Register of Deeds for Randolph County, North Carolina (“Randolph County Registry”): Deed Book 208, Page 376, Randolph County Registry and Deed Book 210, Page 133, Randolph County Registry. The two parcels of land described in the immediately preceding sentence, and the improvements located upon the described parcels of land, (the “**Water Tank Premises**”) are commonly referred to, collectively, as the City of Asheboro elevated water tank located at 252 South Church Street, Asheboro, North Carolina 27203.

The approximately 150-square foot lease area (the “**Demised Premises**”) consists of such space on the Lessor’s elevated water tank and such ground space adjacent thereto as is minimally needed to allow the Lessee to install, remove, replace, modify, maintain, refurbish, upgrade, and operate, at the sole expense of the Lessee, a wireless communications facility (“**WCF**”), including, without limitation, the antenna tower or pole, utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, antennas, coax, microwave dishes, a power generator and generator pad, and related fixtures. The Demised Premises are depicted with more specificity on the plat of survey that is attached to this 19-page Agreement as Exhibit A, which is hereby incorporated into this Agreement by reference as if copied fully herein.

Subject to the restriction that Lessee and any and all of its employees, agents, contractors, and any other representatives shall notify the on-duty personnel at the City of Asheboro Water Treatment Plant at (336) 626-1215 prior to entering upon the Water Tank Premises and shall be escorted or accompanied by an authorized representative of the Lessor when entering upon the Water Tank Premises, this lease agreement shall also be deemed to include the grant of a nonexclusive easement during the term of this Agreement for ingress and egress onto the Water Tank Premises by the Lessee and its employees, agents, contractors, and any other representatives twenty-four hours a day, seven days a week.

Prior to the modification of the existing WCF in any form or to any degree, Lessee shall submit drawings of the proposed modification(s) to the Lessor for review by the Lessor’s water resources division and/or the Lessor’s consultant(s) to determine the compatibility of the proposed modification(s) with the operation and maintenance of the Water Tank Premises as part of the Lessor’s municipal water supply infrastructure. Such drawings shall include, at a minimum and without limitation, (i) a certified engineering report that clearly identifies the distance from the Lessee’s antennas in which the maximum radio frequency exposure limits will be exceeded for workers engaged in painting, repairing, or servicing the water tank; and (ii) plans for noise abatement, with supporting data, to ensure any future modifications that generate noise, specifically including without limitation the installation and operation of a power generator, do not create levels of noise that exceed the limits prescribed by the applicable laws and regulations, specifically including by way of illustration and not limitation the City of Asheboro Zoning Ordinance.

The Lessee must receive prior express written approval from the Lessor’s City Manager, City Engineer, or Water Resources Director prior to beginning or continuing any construction; site preparation, alteration, or improvement; equipment installation; or maintenance, replacement, and/or repair work on the Demised Premises. The Lessor shall not withhold approval for any such work unless the Lessor has a good faith basis for believing that the proposed modification(s) to the existing WCF will interfere with or be detrimental to the use and enjoyment of residential dwellings contiguous with the Water Tank Premises

and/or will interfere with or be detrimental to the use of the Water Tank Premises by the Lessor and/or third- party lessees.

Any damage to the Water Tank Premises caused by the Lessee's installation, construction, maintenance, operation, repair, replacement, and upgrade activities on the Demised Premises shall be immediately repaired by the Lessee. The cost or expense associated with the repairs contemplated by the immediately preceding sentence shall be borne by the Lessee, not the Lessor.

Lessee shall comply with all applicable governmental laws, statutes, ordinances, rules, and regulations relating to the use of the Demised Premises in particular and the Water Tank Premises in general. In order to be eligible to receive the required approval from the Lessor of modifications requested by the Lessee, all future modifications of the Demised Premises by the Lessee shall be made at the sole expense of the Lessee and shall include, but not be limited to, the designing, painting, and/or staining of all cables, antennas, wiring, fixtures, and any and all other types of equipment so that such future modifications are reasonably compatible, both functionally and aesthetically, with the improvements located on the Water Tank Premises as of the Commencement Date of this Agreement.

Lessee shall maintain its WCF in a good and safe operating condition. At the expiration or earlier termination of this Agreement in accordance with the terms and conditions found herein, Lessee will return the Water Tank Premises to their original condition as of the date of the Lessee's installation of the WCF, less normal wear and tear and any casualty not caused by the Lessee, within 90 calendar days of the date of expiration or earlier termination.

Section 2. Term of Lease

- (a) The lease term shall be a term of 120 calendar months, beginning on the commencement date of the lease (the "**Commencement Date**"). The Commencement Date is hereby defined as February 1, 2023. The lease term shall expire at the end of the calendar day on January 31, 2033.
- (b) At the expiration or earlier termination of the lease term, the Lessee shall surrender the Demised Premises to the Lessor in as good of a condition as when received, ordinary wear and tear excepted, and consistent with any applicable provisions found elsewhere in this Agreement. If Lessee fails to surrender the Demised Premises upon the expiration or earlier termination of the lease term, there shall be no renewal of this Agreement or exercise of an option by operation of law.

Section 3. Rental Rate

The rental payments that shall be paid by Lessee to Lessor pursuant to this Agreement, beginning on the Commencement Date and throughout the lease term, shall be monthly rental payments in the amount of \$2,990.00 per month. Throughout the lease term, the rental payments specified in the immediately preceding sentence shall be delivered in good funds, on or before the fifth day of each calendar month in advance, to the Lessor at the following address: City of Asheboro, Attn: Finance Department, PO Box 1106, Asheboro, NC 27204-1106. Rent will be prorated for any partial month.

Section 4. Approvals

To the degree permitted by law, Lessor shall cooperate with Lessee in its efforts to obtain and maintain in effect all certificates, permits, licenses, and other approvals required by governmental authorities for Lessee's use of the Demised Premises in accordance with Section 1 of this Agreement. If any previously issued certificate, permit, license, or approval is cancelled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, then Lessee shall have the right to terminate this Agreement upon notice to the Lessor and without penalty.

Section 5. Utilities

Lessee shall make arrangements for the provision of all utilities necessary for the operation of its equipment and facilities. Any and all costs and expenses associated with such provision of utilities shall be at the Lessee's sole cost and expense. Such utilities shall be metered separately from those of the Lessor and shall not unreasonably interfere with Lessor's use of the Water Tank Premises.

Section 6. Termination

- (a) If Lessee fails to pay any rental or other amounts payable under this Agreement when due, or if Lessee fails to perform any of the other covenants, terms, or conditions of this Agreement, prior to exercising any rights or remedies against Lessee on account thereof, Lessor shall first provide Lessee with written notice of the failure and provide Lessee with a 30-calendar day period to cure such failure. Lessee agrees and covenants that, upon such notification of a violation or breach of the terms and conditions of this Agreement, it shall immediately and diligently undertake to correct any such condition. Lessee must, without delay or excuse, absolutely correct the defect or violation on or before the date specified by Lessor. When the Lessee's failure to perform pertains to the failure to make a scheduled payment to the Lessor, the Lessee shall, in addition to any other remedy available to Lessor, pay a late fee equal to five percent of any installment of rent that is not received within 10 calendar days of its due date. In the event the failure to perform or comply with any term and condition of this Agreement is not cured by Lessee within the above-referenced 30-calendar day period to cure or within any other time period specified by Lessor in its written notice of the breach or failure to perform, whichever is later, the Lessor may, at its option, terminate this Agreement immediately. Upon such termination, this Agreement shall become null and void, and Lessor and Lessee shall have no further obligations to each other, other than Lessee's obligation to remove its property as hereinafter provided.
- (b) Lessor may order the Demised Premises closed immediately when any condition exists on the Water Tank Premises that an agency of the city, county, state, or federal government, which is charged with public health and safety responsibilities, deems to constitute a threat to health or safety. In such event, Lessor shall provide notice to Lessee of such closure, which shall be only for the period of time that is strictly necessary to successfully address the public health or safety issue(s) that triggered the closure of the Water Tank Premises. If such an emergency closure order is issued, Lessee shall have the right to terminate this Agreement.
- (c) Any continuing violation or breach by Lessor of any of the terms and conditions of this Agreement shall be grounds for termination of this Agreement by Lessee upon the failure of the Lessor to cure within 30 calendar days a default identified in a written notice transmitted by the Lessee to the Lessor.
- (d) Upon written notice to the Lessor, the Lessee may terminate this Agreement if Lessee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court, or other governmental authority necessary for the construction or operation of the Lessee's communications facility as now and hereafter intended by Lessee, or if the Lessee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable.
- (e) Upon 60 calendar days prior written notice, the Lessee may terminate this Agreement without cause so long as Lessee pays Lessor a termination fee in an amount equal to the total of three months of rent payments at the monthly rental rate stated herein.

Section 7. Insurance

- (a) At a minimum, Lessee shall carry throughout the term of this Agreement, at the sole cost and expense of the Lessee, the following insurance:
 - (1) Commercial general liability insurance with a minimum limit of liability of \$2,000,000.00 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and
 - (2) Workers' compensation insurance as required by law.
- (b) Lessee shall annually cause to be furnished to the Lessor a certificate of insurance verifying that the above-stated minimum amount of insurance coverage is in effect. The commercial general liability shall provide that Lessor is a separate, additional insured under the general liability policy or policies. The required policy or policies shall not be cancelled except upon 30 calendar days advance written notice to Lessor. This Agreement shall automatically terminate without notice upon the occurrence of an event of termination or lapse of the insurance coverage required by this Agreement. Termination pursuant to this section shall take precedence and supersede any other section establishing the lease term of this Agreement or requiring notice and/or an opportunity to cure a breach. The insurance limits in this section shall in no way act or be deemed to define or limit the right of the Lessor to recover damages, expenses, or losses for injuries or property damage sustained by Lessor as a consequence of Lessee's violation or breach of any provision of this Agreement.

Section 8. Interference

Subsequent to the Commencement Date of this Agreement, and subject to the modification provisions found in Section 1 of this Agreement, the Lessee shall not make any modifications of any type or to any degree on the Demised Premises that disturb the communications configurations, equipment, and frequencies in existence on the Water Tank Premises as of the Commencement Date of this Agreement. Lessee's activities, operations, and equipment shall not interfere with the Lessor's operation, maintenance, and repair of the Water Tank Premises, including, without limitation, the water tank itself and its lighting system. Effective as of the Commencement Date of this Agreement, Lessee agrees to install equipment only of types and generating frequencies that will not cause interference to transmissions or signals from Lessor and third parties present on the Water Tank Premises as of the Commencement Date of this Agreement. Furthermore, Lessee's equipment shall comply with all noninterference rules of the Federal Communications Commission.

In the event Lessee fails to achieve compliance with above-stated non-interference provisions, Lessee shall take all steps necessary to correct and eliminate the interference. If such interference cannot be eliminated within 48 hours of Lessee's receipt of written notice from the Lessor of the existence of such interference, Lessee shall temporarily disconnect the electric power and shut down the equipment (except for intermittent operation for the purpose of testing after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference). If such interference is not corrected within 30 days after receipt by Lessee of the written notice of the existence of the interference, Lessee agrees to either remove its noncompliant equipment from the Demised Premises, or this Agreement shall terminate as if by expiration and all of the Lessee's WCF shall be removed as provided herein.

During the term of this Agreement, Lessor shall place in subsequent lease agreements pertaining to the Water Tank Premises similar restrictions upon interference with Lessee's frequencies. If Lessor fails to cure the cause of any such interference within 45 days of Lessor's receipt from Lessee of written notice of such interference, Lessee may terminate this Agreement without penalty and remove its equipment.

Lessee shall be responsible for the testing needed to confirm that any and all future modifications to the Demised Premises proposed by the Lessee are compatible with the communications facilities in existence on Lessor's Water Tank Premises as of the

Commencement Date of this Agreement and that no interference will exist between the various communications equipment and frequencies located on said premises. Lessee hereby expressly acknowledges and accepts that Lessor has multiple third-party lessees using communications equipment and frequencies located on the water tank and the adjoining premises. Furthermore, Lessee hereby expressly acknowledges and accepts that Lessor reserves the right to enter into new antenna and communications facilities leases in the future. Lessor will use reasonable efforts to require any new lessee to abide by provisions similar to this section but will not be liable for monetary damages or equitable relief for interference caused by existing or future communications equipment or frequencies used on Lessor's premises.

Section 9. Indemnification

- (a) Lessee agrees to indemnify, defend, and hold harmless Lessor and its elected and appointed officials, employees, contractors, agents, and representatives from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs, or expenses (including reasonable attorneys' fees and court costs) caused by Lessee, its officers, employees, contractors, agents, and representatives. However, Lessee shall not indemnify or save harmless the Lessor from such claims or damages as may be attributed to the acts or omissions of the Lessor and its officers, employees, contractors, agents, and representatives.
- (b) To the extent permitted by law, Lessor agrees to indemnify, defend, and hold harmless Lessee and its officials, employees, contractors, agents, and representatives from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs, or expenses (including reasonable attorneys' fees and court costs) caused by Lessor and its officers, employees, contractors, agents, and representatives. However, Lessor shall not indemnify or save harmless the Lessee from such claims or damages as may be attributed to the acts or omissions of the Lessee and its officers, employees, contractors, agents, and representatives.
- (c) Each party shall give the other party hereto prompt and timely notice of any claim or suit instituted, which in any way, directly or indirectly, contingently or otherwise, affects or might affect the other party; provided, however, such notice shall not be a precondition to indemnification hereunder. The rights granted by this section of the Agreement shall not limit, restrict, impair, or inhibit the rights of the Lessor under any other section of this Agreement.

Section 10. Warranties

Lessor and Lessee each acknowledge and represent that it is duly organized, validly existing, and in good standing and has the right, power, and authority to enter into this Agreement and bind itself hereto through the official set forth as signatory for the party below. Lessor's execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on the Lessor.

Section 11. Removal of Improvements

Title to all improvements constructed or installed by Lessee on the Demised Premises shall remain in Lessee and all improvements constructed or installed by Lessee shall at all times be and remain the property of Lessee, regardless of whether such improvements are attached or affixed to the Lessor's water tank and adjoining premises. Upon the expiration or earlier termination of this Agreement, the Lessee shall, within a reasonable period not to exceed 90 calendar days, remove all improvements, fixtures, and personal property constructed or installed on the Lessor's premises by or on behalf of Lessee and shall restore the Lessor's premises to its original condition, reasonable wear and tear and casualty not caused by the Lessee excepted. If such removal causes Lessee to remain on the premises after the expiration or earlier termination of this Agreement, Lessee shall pay rent at the then existing monthly rate until such time as the removal is completed. Such payment shall not be construed as an agreement to continue the leasing relationship and shall in no way

limit any other remedy available to the Lessor for recovery of the property or damages related thereto.

Section 12. Quiet Enjoyment

Lessor covenants that Lessee, on paying the rental and performing the covenants, terms, and conditions required of Lessee and contained herein, shall peaceably and quietly have, hold, and enjoy the leasehold estate granted to Lessee by virtue of this Agreement, subject to Lessor's continuous, primary, and overriding right to use the Water Tank Premises as a vital component in the public water supply system owned and operated by the Lessor.

Section 13. Assignment/Sublease

Lessee does have the right to assign this Agreement or sublease the area leased to the Lessee, inclusive of the rights granted to the Lessee herein, in whole or in part, without the Lessor's consent.

Section 14. Condemnation

In the event the Lessor receives notification of any condemnation proceedings affecting the Demised Premises, Lessor will provide notice of the condemnation proceedings to Lessee within 48 hours. If a condemning authority takes all of the Water Tank Premises, or a portion sufficient in Lessee's reasonable determination to render the Demised Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. The Parties will each be entitled to pursue their own separate awards in the condemnation proceedings, which for Lessee will include, where applicable, the value of the communications facilities, moving expenses, prepaid rent, and business dislocation expenses; provided, however, any award to Lessee will not diminish Lessor's recovery. Lessee will be entitled to reimbursement for any prepaid rent on a pro rata basis.

Section 15. Casualty

Lessor will provide notice to Lessee of any known casualty affecting the Demised Premises within 48 hours of the Lessor's discovery of the casualty. If any part of the Water Tank Premises is damaged by fire or other casualty so as to render, in Lessor's or Lessee's determination, the Demised Premises unsuitable for continued use, then either party may terminate this Agreement by providing written notice to the other party, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee will be reimbursed for any prepaid rent on a pro rata basis, but Lessor shall not be obligated to provide any other form of monetary relief, compensation, and/or damages to Lessee as a result of such casualty that rendered the Demised Premises unsuitable for use.

Section 16. Waiver of Lessor's Liens

Lessor waives any and all lien rights it may have, statutory or otherwise, concerning the Lessee's communications facilities or any portion thereof. Lessee's communication facilities shall be deemed to be personal property for purposes of this Agreement regardless of whether any portion is deemed real or personal property under applicable law. Lessor consents to Lessee's right to remove all or any portion of the Lessee's communications facilities from time to time in Lessee's sole discretion.

Section 17. Waiver of Liability

With the exception of any loss or damage caused by the negligence or willful misconduct of one of the Parties, neither Lessor nor Lessee shall be responsible or liable to the other party to this Agreement for any loss or damage arising from any claim to the extent such loss or damage is attributable to any acts or omissions of other users of the Water Tank Premises, acts of vandalism, structural failures, power failures, or other destruction or damage to the Water Tank Premises.

Section 18. Subordination

If the Water Tank Premises becomes encumbered by a deed to secure a debt, mortgage, or other security interest, Lessor will make a good faith effort to provide promptly to Lessee a mutually agreeable Subordination, Non-Disturbance, and Attornment Agreement.

Section 19. Maintenance

- (a) Lessee will be responsible for repairing and maintaining Lessee's communication facilities and any other improvements installed by Lessee on the Demised Premises in a proper operating and reasonably safe condition; provided, however, if any such repair or maintenance is required due directly to negligent or malicious acts of the Lessor or its elected and appointed officials, employees, contractors, and representatives, the Lessor shall reimburse Lessee for the reasonable costs incurred by Lessee to restore the damaged areas to the condition which existed immediately prior thereto. With the exception of (i) Lessee's communications fixtures and related equipment, cables, accessories, and improvements and (ii) any additional costs, maintenance or otherwise, that are directly or indirectly attributable to the acts or omissions of the Lessee, the Lessor shall bear the costs of maintaining the Water Tank Premises.
- (b) Lessor represents and warrants that its operation of the Water Tank Premises, exclusive of Lessee's facilities, meets and will be maintained in accordance with all applicable laws, rules, and regulations, including, without limitation, rules and regulations of the Federal Communications Commission, Federal Aviation Administration, and all applicable local codes and regulations.
- (c) The Water Tank Premises are a critical component in the Lessor's public water supply infrastructure. The protection, preservation, and operational readiness of this public water supply infrastructure is of critical and overriding importance to the Lessor and its citizens.
 - (1) No provision in this Agreement shall be interpreted or construed in a manner that significantly or materially impairs the ability of the Lessor, in its capacity as a municipal corporation operating a public water supply and distribution system enterprise, to take emergency actions to protect the public water supply and to distribute treated water in a safe and efficient manner.
 - (2) In order to provide the Lessor with an effective means of responding to an emergency situation that requires rapid corrective action to alleviate or remedy a condition threatening the safe operation of the public water supply and distribution system, a point of contact must be provided to the Lessor for use in emergencies. Lessee shall provide the Lessor with a telephone number, or some other mutually agreed upon means of contact such as an email address, to serve as an emergency point of contact that can be reliably and effectively utilized 24 hours a day, seven days a week. This emergency point of contact shall provide around the clock access to a representative of the Lessee that can and will take prompt action to properly eliminate any impediment created by the Lessee's equipment to the Lessor's ability to effectively access public water supply and distribution system infrastructure that must be accessed in order to test water quality and, when necessary, restore water service.
 - (3) By way of illustration and not limitation, and in addition to the possibility of relocating the Lessee's equipment by using a Cell On Wheels ("COW") at the Lessee's expense upon receipt of a 90-day notice from Lessor, the type of emergency response required under this Agreement for the removal of obstacles created by the Lessee's equipment to the Lessor's emergency testing, repair, and/or restoration

work includes Lessee turning off the Lessee's transmitter(s) when and only for so long as is strictly necessary, as judged by the appropriate industry, trade, or professional standards, for employees, contractors, or agents of the Lessor to approach for emergency repair, water quality, or safety purposes the zone specified in the certified engineering report referenced in Section 1 of this Agreement as a restricted area due to the excessive levels of radio frequency exposure. Notwithstanding any other clause, provision, or text in this Agreement, the requirement of a 90-day notice for any event, including without limitation the use of a COW, is inapplicable to any type of emergency situation triggered by a threat of harm to the public water supply or more generally to the public health and safety. When the Lessor is attempting to address such an emergency situation, the only amount of notice required under this Agreement is as much notice as is practicable under the circumstances.

- (4) Upon receipt of notice by way of the above-referenced emergency point of contact, the Lessee's authorized personnel shall respond no later than 48 hours after the time of the initial emergency notification in order to work in good faith with the Lessor to turn off or relocate the Lessee's equipment as necessary to enable the Lessor to resolve the emergency situation impacting the public water supply and distribution system. As soon as the emergency situation is resolved, the Lessor's personnel and contractors shall work with the Lessee in a good faith effort to restore the Lessee's equipment to its original operational status.
- (5) In the event of routine maintenance (e.g., painting) that is not associated with an emergency situation, the Lessor will provide written notice 180 days in advance of the date upon which the Lessee will be required to relocate its equipment for the purpose of allowing the Lessor to perform maintenance on the water tank. Once this written 180-day notice is sent to the address listed in the notice section (Section 22) of this Agreement, the Lessee is required, on or before the date specified in the notice, to relocate its equipment to a COW until the Lessor has completed the maintenance work on the water tank. This relocation of equipment to a COW shall be conducted at the sole and exclusive expense of the Lessee at a frequency not to exceed once per five-year period. Maintenance work on the Lessor's water tank shall be scheduled in the sole and exclusive discretion of the Lessor.
- (6) When either an emergency situation or routine maintenance subject to the 180-day notice requirement necessitates the relocation of Lessee's equipment to a COW, the Lessor and Lessee shall make good faith efforts to coordinate the relocation of equipment so as to minimize, to the degree possible, the negative impacts on both Parties. These good faith coordination efforts shall include, where possible, coordination of the use of the COW with third-party carriers present on the Water Tank Premises. Any expenses associated with or connected in any way to a required relocation of the Lessee's equipment, or a required turning off of the power to the Lessee's transmitter(s), shall be the sole responsibility of the Lessee; provided, however, any expenses associated with or connected in any way to a required relocation of the Lessee's equipment, or a required turning off of the power to the Lessee's transmitter(s), due to non-emergency maintenance shall be the sole responsibility of the Lessee at a frequency not to exceed once per five-year period. No set-off in the monthly rental amount or any other form of reimbursement from the Lessor for costs associated with either the relocation of Lessee's equipment to a COW or the turning off of power to the Lessee's equipment is permitted.
- (7) In the event that the relocation of the Lessee's equipment to a COW is necessary, the exact temporary location of any such COW must be approved in advance by the Lessor. Furthermore, the temporary location and operation of a COW must be in compliance with all

applicable laws, ordinances, rules, and regulations including, without limitation, all zoning ordinances of the City of Asheboro and all rules and regulations of the Federal Communications Commission.

- (8) Subject to the requirement that the Water Tank Premises must be restored to a condition at least equal to the condition of the premises as of the date hereof and that all utility lines, etc. associated with the COW must be removed within 48 hours of the return of the Lessee's equipment to the Demised Premises, the above-stated authorization for the location and operation of a COW, as limited by the provisions found within this section and elsewhere in this Agreement, expressly includes authorization for Lessee to access the COW with personnel, equipment, and utility lines over the Water Tank Premises so long as and on the express condition that such access shall be limited to include only that amount of access strictly necessary for the operation of a COW in accordance with the provisions of this section.
- (d) Aside from relocations of Lessee's equipment that are required by the Lessor in accordance with the above-stated provisions of this Agreement, in the event Lessee's equipment is damaged in a manner that results in the loss of service for a minimum of seven consecutive days, and only so long as Lessee undertakes good faith efforts to restore service to the equipment located on the Demised Premises, Lessor hereby authorizes Lessee to temporarily locate and operate a COW on the Water Tank Premises.
 - (1) The exact temporary location of any such COW must be approved in advance and in writing by the Lessor.
 - (2) The temporary location and operation of a COW must be in compliance with all applicable laws, ordinances, rules, and regulations including, without limitation, all zoning ordinances of the City of Asheboro and all rules and regulations of the Federal Communications Commission.
 - (3) Subject to the requirement that the Water Tank Premises must be restored to a condition at least equal to the condition of said premises as of the date hereof and that all utility lines, etc. associated with the COW must be removed within 48 hours of the restoration of service to the Lessee's equipment located on the Demised Premises, the above-stated authorization for the location and operation of a COW, as limited by the provisions found within this subsection and elsewhere in this Agreement, expressly includes authorization for Lessee to access the COW with personnel, equipment, and utility lines over the Water Tank Premises so long as and on the express condition that such access shall be limited to include only that amount of access strictly necessary for the operation of a COW in accordance with the provisions of this subsection.
- (e) The rights granted by this section of the Agreement shall not limit, restrict, impair, or inhibit the rights of the Lessor under any other section or provision of this Agreement.

Section 20. Hazardous Substances

Lessor represents that it has no knowledge of any substance, chemical, or waste on the Water Tank Premises that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Lessee will not introduce or use any such substance on the premises in violation of any applicable law.

Section 21. Governing Law

This Agreement shall be governed and interpreted by, and construed in accordance with, the laws of the State of North Carolina. Venue for any state trial court litigation shall

be in Randolph County, North Carolina, and the venue for any federal trial court litigation shall be in the Middle District of North Carolina.

Section 22. Notices

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

LESSOR: City of Asheboro
 Attn: City Manager
 Post Office Box 1106
 Asheboro, NC 27204-1106

LESSEE: T-Mobile USA, Inc.
 12920 SE 38th Street
 Bellevue, WA 98006
 Attn: Lease Compliance/Site No. 5GB0416A

Section 23. Bind and Benefit

The terms and conditions contained in this Agreement shall constitute covenants running with the land and shall bind and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns.

Section 24. Waivers and Disclaimers; Memorandum of Lease

At the request of Lessee or Lessee's lenders, Lessor shall execute such documents as are reasonably requested by Lessee from time to time for the purpose of releasing, waiving, or disclaiming any interest of Lessor in and to the equipment of Lessee. In addition to the foregoing, at Lessee's request and expense (including reimbursement of reasonable out-of-pocket expenses incurred by Lessor hereunder), Lessor agrees to execute a memorandum of lease in a form suitable for recording and acceptable to Lessor and Lessee. Lessee agrees to provide Lessor with a certified copy of any such memorandum following any recordation of the same.

Section 25. Miscellaneous Provisions

- (a) *Written Modification.* This Agreement cannot be modified except by a written modification executed by Lessor and Lessee in the same manner as this Agreement is executed.
- (b) *Gender/Plurals.* Whenever appropriate in this Agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable.
- (c) *Integrated Agreement.* This Agreement, including any exhibits attached hereto, embodies the entire Agreement between the Parties in connection with this transaction, and there are no oral or parol agreements, representations, or inducements existing between the Parties relating to this transaction which are not expressly set forth herein and covered hereby.
- (d) *Parties Not Joint Venturers.* Nothing contained herein shall be construed to place the Parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.
- (e) *Waiver of Breach Not Deemed Waiver of Subsequent Breach.* No written waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision herein or a consent to any subsequent breach of the same or any other provisions. If any action by any party shall require the consent or approval of another party, such consent

or approval of such action on any occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.

- (f) *Enumerated Rights Shall Not Be Deemed To Be Exclusive Remedies.* The various rights, powers, and remedies herein contained and reserved to either Lessor or Lessee shall not be considered as exclusive of any other right, power, or remedy, but the same shall be construed as cumulative and shall be in addition to every other right, power, or remedy now or hereafter existing at law, in equity, or by statute. No delay or omission of a party to exercise any right, power, or remedy arising from any omission, neglect, or default of the other party shall impair any such right, power, or remedy nor shall any such delay or omission be construed as a waiver of any such default or be construed as acquiescence therein.
- (g) *Captions Are Merely Informative.* The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope of such paragraphs or sections of this Agreement or in any way affect this Agreement.
- (h) *Time Is of the Essence.* Time shall be of the essence of this Agreement and each and every term and condition thereof.
- (i) *Multiple Counterparts.* This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.
- (j) *Product of Mutual Negotiation.* Both Lessor and Lessee acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that counsel has drafted it for both Lessor and Lessee. As such, the doctrine of construction against the drafter shall have no application to this Agreement.
- (k) *Agreement Is Not Executory.* Each of the Parties agrees that this Agreement is not an executory contract subject to assumption as defined by the Bankruptcy Code. The Parties further specifically acknowledge that this provision is critical to the Agreement and was bargained for and part of the consideration for the Agreement.
- (l) *Severability.* If any term or condition of this Agreement is found to be unenforceable by a court of competent jurisdiction, the remaining terms and conditions shall remain binding upon the Parties as though the unenforceable provision was not contained herein. However, if the invalid, illegal, or unenforceable provision materially affects this Agreement, then the Agreement may be terminated by either party by means of a 10-business day prior written notice to the other party hereto.
- (m) *Interpretation.* Unless otherwise specified, the use of the term “including” will be interpreted to mean “including but not limited to.”
- (n) *No Option.* The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of, or option for the Water Tank Premises based on the terms set forth herein. This Agreement will become effective as an Agreement only upon the legal execution, acknowledgment, and delivery hereof by Lessor and Lessee. Scanned and electronic copies of the executed Agreement shall legally bind the Parties to the same extent as original documents.
- (o) *Third Party Approvals Not Necessary.* Lessor warrants and represents that the consent or approval of a third party, including without limitation a lender, is not required with respect to Lessor’s execution of this Agreement.

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

LESSOR:

THE CITY OF ASHEBORO,
a North Carolina municipal corporation

By: _____
David H. Smith, Mayor

Date: _____

ATTEST:

Holly H. Doerr, CMC, NCCMC, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF RANDOLPH

I, the undersigned Notary Public of the County of _____,
State of North Carolina, do hereby certify that Holly H. Doerr, who is personally known by
me, appeared before me in person this day and acknowledged that she is the City Clerk for
the City of Asheboro, a North Carolina municipal corporation, and that, by authority duly
given and as the act of the municipal corporation, the foregoing instrument was voluntarily
signed by Mayor David H. Smith for the purpose stated therein with Ms. Doerr affixing the
municipal corporation’s seal and attesting the instrument in her capacity as City Clerk for
the City of Asheboro.

WITNESS my hand and notarial seal or stamp, this the _____ day of
January, 2023.

Notary Public’s Signature

NOTARIAL SEAL OR STAMP

Notary Public’s Printed or Typed Name

My commission expires:

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

LESSEE:

T-MOBILE SOUTH, LLC,
a Delaware limited liability company

By: _____
Signature of Authorized Official

Name of Authorized Official

Title of Authorized Official

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of January, 2023, by _____ on behalf of T-Mobile South, LLC, a Delaware limited liability company.

In witness whereof I hereunto set my hand and official seal.

Notary Public’s Signature

NOTARIAL SEAL OR STAMP

Notary Public’s Printed or Typed Name

My commission expires:

14. Upcoming Events and Items not on the Agenda

Mayor Smith and Mr. Ogburn led a discussion of upcoming events within the city government and the community in general. No action was taken by the city council during this discussion.

There being no further business, the meeting was adjourned at 10:53 p.m.

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

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