

**AMENDED AGENDA
REGULAR MEETING
CITY COUNCIL, CITY OF ASHEBORO
THURSDAY, JANUARY 8, 2015, 7:00 PM**

1. Call to order.
2. Silent prayer and pledge of allegiance.
3. Trevor Nuttall will update the council and audience on the following zoning cases for which notices of withdrawal have been received from the applicants:
 - (a) Zoning Case RZ-14-08: An application to rezone property located at 217 NC Hwy. 49 South from B2 (General Commercial) to I1 (Light Industrial).
 - (b) Zoning Case RZ-14-14: An application to rezone property located at 520 Greensboro Street from R7.5 (Medium-Density Residential and RA-6 (High-Density Residential) to CU-O&I (Conditional Use Office and Institutional).
4. Mr. Steve Hackett, CPA of Maxton McDowell, CPA will present the city's fiscal year-end audit report.
5. Chief Norton will recognize Master Police Officer Arthur Milligan as the Asheboro Police Department's Officer of the Year for 2014.
6. Presentation by Eastside Improvement Association.
7. Consent agenda:
 - (a) Approval of the minutes of the city council's regular meeting that was held on December 4, 2014.
 - (b) Acknowledgement of the receipt from the Asheboro ABC Board of the board's meeting minutes for December 1, 2014.
 - (c) Approval of a resolution awarding a service side arm to a retiring officer of the Asheboro Police Department.
 - (d) Appointment of Finance Director Deborah Reaves to another 2-year term (January 2015 to January 2017) on the Asheboro Board of the North Carolina Firefighters Relief Fund.

8. Trevor Nuttall will present the following Community Development Division items:
 - (a) Zoning Case RZ-14-11: A legislative zoning hearing on an application to rezone property located at 379 Patton Avenue from R10 (Medium-Density Residential) to OA6 (Office-Apartment).
 - (b) Zoning Case SUP-15-01: A quasi-judicial hearing concerning a requested Special Use Permit authorizing a Small Child Day Care Center located at 1016 South Cox Street.
 - (c) Report on staff's intent to apply for \$50,000 from the North Carolina Housing Finance Agency through its 2015 Urgent Repair Program to assist low-income homeowners with critical home repairs that will ensure the safety of the dwelling.
 - (d) Announcement of a public workshop related to the update of the Asheboro 2020 Land Development Plan's map components at Randolph County-Asheboro Public Library Meeting Room on Tuesday, January 27, 2015, from 4:30 P. M. to 6:30 p.m.
9. City Engineer Michael Leonard, P.E. will present the following engineering department items:
 - (a) Consideration of permanently closing a portion of the public right-of-way formerly know as "Old Hammer Road" located on the western side of Shamrock Road, approximately 130 feet south of the intersection of Shamrock Road and Stowe Avenue:
 - (i) Public hearing
 - (ii) Order of closing
 - (b) Consideration of authorizing the City Manager to enter into a Terminal Building Concept/Preliminary Design Phase Services Agreement between the City of Asheboro and W. K. Dickson & Co., totaling \$49,665.00, and to use Federal Non-Primary Entitlement Funds at a ratio of 90% federal and 10% local match. Work will be in accordance with the contract for professional services dated July 14, 2011.
10. Public comment period.

11. Finance Director Deborah Reaves will present vehicle bids.
12. Water Resources Director Michael Rhoney, P.E. will present the following items pertaining to the wastewater treatment plant's operations:
 - (a) Consideration of a change order (Change Order No. 2) for the Wastewater Treatment Plant Digester Gas-Holder Cover and Mixing System Project.
 - (b) Consideration of a resolution authorizing the city to enter into a biosolids management agreement with EMA Resources, Inc.
13. Chief Norton will present for council consideration and possible action the next steps to expand the police department's role in providing animal control services:
 - (a) Discussion of planning and administrative actions taken by the police department.
 - (b) Request for council approval of an amended animal control ordinance.
14. Upcoming events:
 - Chamber of Commerce Annual Meeting, Friday, January 16, 6:30 PM Pinewood Country Club.
15. Discussion of items not on the agenda.
16. Adjournment.

CITY OF ASHEBORO

Statement of Revenues, Expenditures, and Changes in Net Position/Net Assets - Water & Sewer Fund
For the Years Ended June 30, 2014 and 2013

	<u>2014</u>	<u>2013</u>	
<u>Revenues</u>			
Water Sales	6,494,470	6,568,338	-1.12%
Sewer Charges	4,835,452	5,025,537	-3.78%
Water and Sewer Taps	45,315	49,450	-8.36%
Sampling and Monitoring Fees	28,947	29,240	-1.00%
Surcharges	198,263	206,111	-3.81%
Septic Tank Discharge	195	21,970	-99.11%
Other Operating Revenues	452,562	452,363	0.04%
Total revenues	<u>12,055,204</u>	<u>12,353,009</u>	<u>-2.41%</u>
<u>Expenditures</u>			
Billing and Collections	422,485	424,960	-0.58%
Water Meter Operations	660,864	726,545	-9.04%
Water Supply Treatment	2,106,348	2,050,431	2.73%
Wastewater Treatment	2,397,521	2,317,310	3.46%
Water Maintenance	970,230	925,525	4.83%
Wastewater Maintenance	1,309,976	1,135,398	15.38%
Technical Services	185,422	176,237	5.21%
Systems Maintenance	1,115,218	1,081,079	3.16%
Water Quality	574,806	515,153	11.58%
Depreciation	1,856,115	1,766,824	5.05%
	<u>11,598,985</u>	<u>11,119,462</u>	<u>4.31%</u>
Operating Income	<u>456,219</u>	<u>1,233,547</u>	<u>-63.02%</u>
Nonoperating Revenues (Expenses):			
Investment Earnings	8,958	10,090	
Interest and Other Charges	(211,398)	(259,331)	
Other Nonoperating Revenues	207,123	142,282	
Amortization of Bond Issue Costs	-	-	
Gain (Loss) on Disposal of Assets	-	(393,968)	
Transfers From Other Funds	-	-	
Transfers to Other Funds	(768,000)	(800,000)	
Capital Contributions	75,873	2,364,158	
Change in Net Position/ Assets	<u>(231,225)</u>	<u>2,296,778</u>	<u>-110.07%</u>
Net Assets Beg. Of Year	52,006,534	49,730,001	
Restatement	-	(20,245)	
Total Net Assets - End of Year	<u>51,775,309</u>	<u>52,006,534</u>	

CITY OF ASHEBORO
Comparative Balance Sheets - Governmental Funds
June 30, 2014 and 2013

	<u>2014</u>	<u>2013</u>	
<u>Assets</u>			
Cash & Investments	5,554,329	5,900,925	-5.87%
Restricted Cash	1,089,906	2,502,143	-56.44%
Taxes Receivable - Net	193,480	239,661	-19.27%
Accounts Receivable	92,186	84,754	8.77%
Due From Other Governments	2,610,741	2,089,948	24.92%
Due From Component Unit	-	-	
Due From Other Funds	350,000	350,000	0.00%
Other	1,175,916	1,187,600	-0.98%
Inventories	512,114	509,119	0.59%
Total Assets	<u>11,578,672</u>	<u>12,864,150</u>	<u>-9.99%</u>
<u>Liabilities & Fund Equity</u>			
Accounts Payable & Accrued Liabilities	250,093	539,932	-53.68%
Due to Other Funds	350,000	350,000	0.00%
Other	16,000	16,000	0.00%
Payable From Restricted Assets	13,826	209,238	-93.39%
Unearned Revenues	340,502	723,348	-52.93%
Deferred Revenues	-	-	
Total Liabilities	<u>970,421</u>	<u>1,838,518</u>	<u>-47.22%</u>
<u>Deferred Inflows of Resources</u>	<u>912,744</u>	<u>990,262</u>	<u>-7.83%</u>
Fund Balance:			
Nonspendable:			
Long-term Receivables	350,000	350,000	
Inventories	512,114	509,119	
Restricted:			
Streets	654,582	861,955	
Stabilization by State Statute	3,161,086	2,650,073	
Capital Projects	204,057	1,064,949	
Committed:			
Capital Projects	-	-	
Economic & Physical Development	892,177	454,650	
Assigned:			
Subsequent Year's Expenditures	225,000	-	
Unassigned	3,696,491	4,144,624	
Total Fund Balance	<u>9,695,507</u>	<u>10,035,370</u>	
Total Liabilities and Fund Equity	<u>11,578,672</u>	<u>12,864,150</u>	

CITY OF ASHEBORO
Statement of Revenues, Expenditures, and Changes in Fund Balance - Governmental Funds
For the Years Ended June 30, 2014 and 2013

	<u>2014</u>	<u>2013</u>	
<u>Revenues</u>			
Ad Valorem Taxes	13,014,586	12,276,415	6.01%
Other Taxes and Licenses	346,197	340,369	1.71%
Intergovernmental Revenues:	8,720,755	8,014,704	8.81%
Permits and Fees	121,736	162,991	-25.31%
Sales and Services	1,325,556	1,311,794	1.05%
Investment Earnings	33,436	15,031	122.45%
Miscellaneous	575,080	709,474	-18.94%
Total revenues	<u>24,137,346</u>	<u>22,830,778</u>	<u>5.72%</u>
<u>Expenditures</u>			
General Government	3,017,602	3,755,674	-19.65%
Public Safety	11,382,276	11,327,871	0.48%
Transportation	3,262,437	3,243,380	0.59%
Environmental Protection	2,574,066	2,383,417	8.00%
Cultural and Recreational	3,138,685	3,319,294	-5.44%
Economic and Physical Development	365,011	992,352	-63.22%
Debt Service	828,502	579,096	43.07%
Capital Outlay	702,180	1,642,806	-57.26%
	<u>25,270,759</u>	<u>27,243,890</u>	<u>-7.24%</u>
Revenues Over (Under) Expenditures	<u>(1,133,413)</u>	<u>(4,413,112)</u>	<u>-74.32%</u>
<u>Other Financing Sources (Uses)</u>			
Transfers From Other Funds	975,700	969,713	
Transfers to Other Funds	(207,700)	(169,713)	
Sale of Assets	-	336,533	
Installment Purchase Obligations	25,550	2,344,245	
Net Change in Fund Balances	<u>(339,863)</u>	<u>(932,334)</u>	
Fund Balance Beg. Of Year	<u>10,035,370</u>	<u>10,967,704</u>	
Fund Balance End of Year	<u>9,695,507</u>	<u>10,035,370</u>	

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, DECEMBER 4, 2014
7:00 p.m.**

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

David H. Smith) – Mayor Presiding

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

John N. Ogburn, III, City Manager
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal
Michael L. Leonard, P.E., City Engineer
Trevor L. Nuttall, Community Development Director
Deborah P. Reaves, Finance Director
Michael D. Rhoney, P.E., Water Resources Director
Judy H. Smith, Assistant Water Quality Manager
Jeffrey C. Sugg, City Attorney
Dina W. Tutterow, Chemist
Bernadine Wardlaw, Water Quality Manager
Jody P. Williams, Assistant Chief of Police
Michael R. Wiseman, Wastewater Treatment Plant Manager

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 or meditation, Mayor Smith asked everyone to stand and repeat the pledge of allegiance.

3. Presentation of Key to the City of Asheboro to Harold Holmes upon his retirement from the Randolph County Board of Commissioners.

Mayor Smith recognized Mr. Harold Holmes for his service to Randolph County and the communities within the county. This service includes 20 years of service on the Randolph County Board of Commissioners and service as chair of the Board since 2003. In honor of his retirement and service, Mayor Smith, on behalf of the City of Asheboro, presented Mr. Holmes with a key to the city.

4. Presentation of the 2014 William D. Hatfield Award to Michael R. Wiseman for outstanding performance and professionalism in wastewater treatment plant operations.

Mr. Rhoney recognized Mr. Michael R. Wiseman, who is the city's Wastewater Treatment Plant Manager, as he has received the 2014 William D. Hatfield Award for his outstanding performance and professionalism in wastewater treatment plant operations. Mr. Wiseman was recognized for his efforts in improving the plant's operations during his short tenure as plant manager.

5. Report from Tammy O'Kelley, Director, Heart of North Carolina Visitors Bureau on Asheboro tourism activities for calendar year 2014.

Ms. Tammy O'Kelley, Director, Heart of North Carolina Visitors Bureau, presented an overview of the tourism activities and the economic impact of those activities on Asheboro and Randolph County. Ms. O'Kelley emphasized the importance of the partnership between the City of Asheboro and the Visitors Bureau in order to bring tourism and development to Asheboro and Randolph County. Overall, this partnership produced a successful year for the tourism industry in Asheboro and Randolph County.

The written report provided by Ms. O'Kelley is on file in the City Clerk's office.

6. Consent agenda:

Prior to the Council's consideration of the consent agenda, Mr. Ogburn explained that item (g) of the consent agenda was presented last month by Mr. Michael Leonard, and that due to a clerical error, NCDOT requested that a revised sidewalk agreement be authorized by Council.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to approve/adopt the following consent agenda items.

- (a) **The minutes of the City Council's regular meeting on November 6, 2014.**
- (b) **Acknowledgement of the receipt of the Asheboro ABC Board's minutes of the meetings on October 6, 2014 and November 3, 2014.**

[Copies of the above-referenced minutes received from the Asheboro ABC Board are on file in the City Clerk's office.]

- (c) **An ordinance setting the dates of the City Council's regular meetings during the 2015 calendar year.**

ORDINANCE NUMBER 21 ORD 12-14

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

AN ORDINANCE SETTING THE DATES FOR REGULAR MEETINGS OF THE ASHEBORO CITY COUNCIL DURING THE 2015 CALENDAR YEAR

WHEREAS, Section 31.04(A) of the Code of Asheboro provides that the "City Council shall hold a regular meeting on Thursday after the first Monday of each month;" and

WHEREAS, in an effort to avoid reasonably foreseeable scheduling conflicts with the Independence Day and Labor Day holidays, the members of the Asheboro City Council have decided to reschedule the Council's regular meetings in July 2015 and September 2015;

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

Section 1. The regular meeting of the Asheboro City Council in July 2015 shall be held in the Council Chamber at Asheboro City Hall, with a beginning time of 7:00 p.m., on the 16th day of July, 2015.

Section 2. The regular meeting of the Asheboro City Council in September 2015 shall be held in the Council Chamber at Asheboro City Hall, with a beginning time of 7:00 p.m., on the 17th day of September, 2015.

Section 3. For purposes of clarity, the schedule for regular meetings of the Asheboro City Council during the 2015 calendar year is as follows:

<u>Month</u>	<u>Meeting Date</u>
January	8 th
February	5 th
March	5 th
April	9 th
May	7 th
June	4 th
July	16 th
August	6 th
September	17 th
October	8 th

November 5th
December 10th

Section 4. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed to the extent that such ordinances conflict with the intent of the Asheboro City Council to hold its regular meetings in accordance with the schedule found in Section 3 of this Ordinance. With the exception of rescheduling the Asheboro City Council's regular meeting in July and September 2015, the provisions of Section 31.04 of the Code of Asheboro remain in full force and effect.

Section 5. This Ordinance shall become effective upon adoption and shall sunset on December 31, 2015.

This ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 4th day of December, 2014.

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

ATTEST:

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

(d) Agreement A resolution authorizing the entry of the city into a Wire Transfer Service with CommunityOne Bank, N.A.

RESOLUTION NUMBER 41 RES 12-14

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

WIRE TRANSFER SERVICE AGREEMENT WITH COMMUNITYONE BANK, N.A.

WHEREAS, the City of Asheboro has received a proposed Wire Transfer Service Agreement from CommunityOne Bank, N.A.; and

WHEREAS, the said Wire Transfer Service Agreement (hereinafter referred to as the "Agreement") prepared by the bank for the purpose of enabling the city to obtain the desired wire transfer services is attached hereto as EXHIBIT 1 and is hereby incorporated into this resolution by reference as if copied fully herein; and

WHEREAS, the Agreement includes a "Customer Administrators Resolution and List" that must be completed and executed as part of the city's entry into the proposed Agreement; and

WHEREAS, the city manager and finance director have recommended entering into the proposed Agreement with CommunityOne Bank, N.A.; and

WHEREAS, the City Council has concluded that the entry of the city into the proposed Agreement is consistent with good administrative and financial practices for the city;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that the attached Agreement is hereby approved; and

BE IT FURTHER RESOLVED that the Mayor, City Clerk, and all other necessary city officials are hereby authorized to execute the attached Agreement, including without limitation the authorization for the city manager and the finance director to administer the authority to initiate the wire transfer of funds on behalf of the city.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 4th day of December, 2014.

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

ATTEST:

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

City of Asheboro, North Carolina
[A copy of Exhibit 1 referenced above is on file in the City Clerk's office.]

- (e) **A resolution authorizing the acceptance and recording of a gift deed conveying to the city an undeveloped lot containing city-maintained sanitary sewer lines.**

RESOLUTION NUMBER 42 RES 12-14

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**AUTHORIZATION TO ACCEPT DELIVERY OF A GIFT DEED
CONVEYING A PARCEL OF LAND TO THE CITY OF ASHEBORO**

WHEREAS, an authorized representative of the owners of an undeveloped parcel of land identified by Randolph County Parcel Identification Number 7750986003 have contacted the City of Asheboro about the possibility of donating this parcel of land (hereinafter referred to as the "Gift Parcel") to the city; and

WHEREAS, the Gift Parcel, which is approximately twenty-eight thousand six hundred sixteen (28,616) square feet in size, is located between Glenwood Road and Straight Street within the City of Asheboro; and

WHEREAS, in addition to the existence of a 100-year flood hazard area on the Gift Parcel, this parcel is crossed by two (2) sanitary sewer lines that are owned and maintained by the City of Asheboro; and

WHEREAS, by and through their authorized representative, the land owners have expressed their willingness to donate to the City of Asheboro, as an unconditional gift and without any consideration from the city, their fee simple absolute ownership of the Gift Parcel; and

WHEREAS, the Asheboro City Council has concluded that the acceptance of this proposed donation is consistent with the city's on-going efforts to enhance the accessibility for city maintenance crews to city-maintained infrastructure and to protect infrastructure such as sanitary sewer lines from unnecessary exposure to damage;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that, effective upon the date of adoption of this Resolution, the proposed unconditional donation of the land identified by Randolph County Parcel Identification Number 7750986003 is hereby accepted; and

BE IT FURTHER RESOLVED that the Mayor, City Clerk, and all other necessary city officials are hereby authorized to accept delivery and properly record in the office of the Randolph County Register of Deeds an instrument in the form of a Gift Deed conveying the said parcel of land to the City of Asheboro; and

BE IT FURTHER RESOLVED that Mayor, City Clerk, and all other necessary city officials are hereby authorized to execute any acknowledgements and/or tax forms that are legally consistent with the Internal Revenue Code and all other applicable laws, ordinances, and regulations that come into play when a unit of local government receives a donation from taxpayers.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 4th day of December, 2014.

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

ATTEST:

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

- (f) **A resolution to award a service side arm to a retiring officer of the Asheboro Police Department.**

RESOLUTION NUMBER 43 RES 12-14

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**AWARD OF A SERVICE SIDE ARM TO A RETIRING OFFICER OF
THE ASHEBORO POLICE DEPARTMENT**

WHEREAS, after rendering honorable and invaluable service to the City of Asheboro and its citizens since the date of her initial employment with the Asheboro Police Department on September 5, 1986, effective February 1, 2015, Master Police Lieutenant Carmel Maxine Wright will begin her retirement from employment with the City of Asheboro; and

WHEREAS, pursuant to and in accordance with Section 20-187.2 of the North Carolina General Statutes, the Asheboro City Council wishes to recognize and honor Lieutenant Wright for her valuable service to the city by awarding to her, at a minimal monetary cost, the service side arm issued to the officer at the time of her retirement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that, effective February 1, 2015, in consideration of the combination of her dedicated service to the City of Asheboro and the payment to the City of Asheboro of one dollar (\$1.00), Carmel Maxine Wright is to be awarded, upon a determination by the Chief of Police that Ms. Wright is not ineligible to own, possess, or receive a firearm under the provisions of federal or North Carolina law, ownership of her city-issued service side arm (a Glock 23 Generation 4 with serial no. SFS922 and three magazines).

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 4th day of December, 2014.

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

ATTEST:

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

- with (g) **A resolution authorizing the entry of the city into a revised sidewalk agreement the North Carolina Department of Transportation.**

RESOLUTION NUMBER 44 RES 12-14

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**REVISED SIDEWALK AGREEMENT WITH
THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

WHEREAS, the City of Asheboro has requested enhancement funding administered by the North Carolina Department of Transportation (hereinafter referred to as the "NCDOT") for the construction of a section of sidewalk along the north side of East Dixie Drive (United States Highway 64 East) between Dublin Road and Executive Way; and

WHEREAS, city staff members have recommended, and the City Council has agreed, that it is advisable for the city to enter into an agreement with the NCDOT and secure federal funding to construct additional sidewalk area along East Dixie Drive; and

WHEREAS, such a sidewalk agreement was previously approved by the City Council with the adoption of Resolution Number 37 RES 10-14 on October 9, 2014; and

WHEREAS, subsequent to the adoption of Resolution Number 37 RES 10-14, the NCDOT revised the agreement approved by means of the adoption of the October 2014 resolution in order to incorporate legislative action taken by the North Carolina General Assembly with regard to the interplay between municipal contracting requirements and the E-Verify program; and

WHEREAS, city staff members have reviewed the NCDOT's revised agreement and found no substantive changes in the agreement that would warrant withdrawing the previously granted authorization to execute a sidewalk agreement prepared by NCDOT for the purpose of providing the sidewalk funding described in the above-stated recitals; and

WHEREAS, the City Council concurs with the analysis performed by the city staff members; and

WHEREAS, consistent with the earlier version of the sidewalk agreement, the NCDOT has agreed, subject to the terms and conditions found in the attached revised SIDEWALK AGREEMENT (hereinafter referred to as the "Revised Agreement") prepared by the NCDOT, to participate in the cost of the proposed sidewalk construction; and

WHEREAS, the said Revised Agreement that must be executed in order to procure the requested funding for sidewalk construction is attached hereto as EXHIBIT 1 and is hereby incorporated into this resolution by reference as if copied fully herein;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that the attached Revised Agreement is hereby approved; and

BE IT FURTHER RESOLVED that the Mayor, City Clerk, and all other necessary city officials are hereby authorized to execute duplicate originals of the said Revised Agreement.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 4th day of December, 2014.

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

ATTEST:

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

[A copy of Exhibit 1 referenced above is on file in the City Clerk's office.]

7. Community Development items:

(a) Zoning Case RZ-14-11: A legislative zoning hearing continued from the City Council meeting held on November 6, 2014, on the application filed by H.R. Gallimore to rezone property located at 379 Patton Avenue from R10 (Medium-Density Residential) to OA6 (Office-Apartment).

Mayor Smith opened the public hearing on the following request.

Mr. Nuttall presented a request from the Applicant, Mr. H.R. Gallimore, to continue the above-referenced request until the Council's regular meeting on January 8, 2015. No one spoke in opposition to this request.

Upon motion by Mr. Moffitt and seconded by Mr. Burks, Council voted unanimously to continue the above-referenced case, including the hearing, to the January 8, 2015 regular council meeting.

(b) Zoning Case RZ-14-14: A legislative zoning hearing on the application filed by Attorney Ben C. Morgan to rezone property located at 520 Greensboro Street from R7.5 (Medium-Density Residential) and RA6 (High-Density Residential) to O&I (Office and Institutional).

Mayor Smith opened the public hearing on the following request.

Mr. Nuttall presented a request from the Applicant's attorney, Mr. Ben C. Morgan, to continue the above-referenced request until the Council's regular meeting on January 8, 2015. No one spoke in opposition to this request.

Upon motion by Mr. Moffitt and seconded by Mr. Baker, Council voted unanimously to continue the above-referenced case, including the hearing, to the January 8, 2015 regular council meeting.

(c) Authorization to solicit applications for a vacancy on the Redevelopment Commission due to the resignation of Mr. Michael Moore.

Mr. Nuttall reported to the Council that Mr. Michael Moore has resigned from the city's Redevelopment Commission. Therefore, Mr. Nuttall asked the Council for authorization to solicit applications for the vacancy. Mr. Moore's term expires in April 2018.

Upon motion by Mr. Bell and seconded by Mr. Burks, Council voted unanimously to authorize the city staff to solicit applications for the vacancy on the Redevelopment Commission due to Mr. Michael Moore's resignation.

(d) Reappointment of Ritchie Buffkin to a 5 year term of office on the Asheboro Planning Board.

Mr. Nuttall reported that Mr. Ritchie Buffkin has agreed to serve a new 5-year term on the Asheboro Planning Board. Additionally, Mr. Nuttall recommended his reappointment.

Upon motion by Mr. Burks and seconded by Mr. Swiers, Council voted unanimously to reappoint Mr. Ritchie Buffkin to a new 5-year term of office on the Asheboro Planning Board.

(e) Consideration of a resolution supporting and authorizing an application on behalf of the Randolph Society for the Prevention of Cruelty to Animals for funding from the North Carolina Department of Commerce to assist with the renovation of a building located at 300 W. Bailey Street.

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

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

45 RES 12-14

RESOLUTION SUPPORTING THE RENOVATION OF A BUILDING IN ASHEBORO FOR THE PROPOSED RANDOLPH COUNTY SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS' COMMUNITY ADOPTION CENTER AND AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE NORTH CAROLINA DEPARTMENT OF COMMERCE FOR FUNDING

WHEREAS, the City of Asheboro acknowledges the need to provide community-based and compassionate solutions to address pet overpopulation and promote responsible pet ownership; and

WHEREAS, the Randolph County Society for the Prevention of Cruelty to Animals (hereinafter referred to as "RSPCA") proposes to provide programs to the community, including without limitation low or no-cost spay and neuter services, educational series for students covering bite prevention and guidelines for properly caring for pets that are designed to impact in a positive and meaningful manner the goal of improving the quality of life of the community's animals and their caretakers; and

WHEREAS, RSPCA has purchased a facility at 300 West Bailey Street in Asheboro that, with appropriate renovations, can accommodate the necessary programming to achieve the above-stated goal through its conversion from a former manufacturing facility to an attractive, durable, and environmentally friendly adoption center; and

WHEREAS, the services that will be facilitated by the proposed renovation of the existing building will enable RSPCA to create ten (10) full-time jobs; and

WHEREAS, RSPCA has committed itself to renovating and repurposing the former industrial building by undertaking fundraising efforts to help pay for the estimated \$245,000 building rehabilitation project; and

WHEREAS, the Asheboro City Council is willing to assist RSPCA in obtaining grant funding that can bring the proposed Community Adoption Center to reality; and

WHEREAS, one of the potential sources of grant funding that has been identified for this project is the Building Reuse Program undertaken by the North Carolina Department of Commerce with the design to spur economic activity and job growth; and

WHEREAS, the City of Asheboro as an eligible applicant (an eligible applicant is defined as a unit of government located in a Tier 2 County) may apply for grant funding under the Building Reuse Program in an amount that does not exceed five thousand dollars (\$5,000) per job created; and

WHEREAS, based on the formula stated in the immediately preceding recital, the City Council wishes to proceed with an application for grant funding through the Building Reuse Program in the total amount of fifty thousand dollars (\$50,000);

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the City Council supports the Randolph County Society for the Prevention of Cruelty to Animals' project to renovate the existing building at 300 West Bailey Street and convert this former industrial building into a Community Adoption Center that will enable RSPCA to provide community-based and compassionate solutions to address pet overpopulation and promote responsible pet ownership in Asheboro and Randolph County; and

BE IT FURTHER RESOLVED, by the City Council of the City of Asheboro that the City of Asheboro's financial commitment to the project will satisfy the Building Reuse Program Grant requirement that the applicant provide a cash match of five percent (5%) of the grant request toward the building renovation project; and

BE IT FURTHER RESOLVED that the Mayor and the city's appointed officials are hereby authorized to execute the legal instruments required by the North Carolina Department of Commerce to successfully complete the grant application process prescribed for the Building Reuse Program.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 4th day of December, 2014.

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

ATTEST:

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

(f) Nonresidential Building Maintenance Code:

(i) Public hearing on the question of enacting a nonresidential building maintenance code.

Mayor Smith opened the public hearing on the question of enacting a nonresidential building maintenance code.

Mr. Nuttall utilized a visual presentation in order to present and summarize an ordinance enacting a nonresidential building maintenance code for the City of Asheboro. As part of his presentation, Mr. Nuttall recommended adoption, by reference, of the said ordinance.

There being no opposition or comments from the public, Mayor Smith transitioned to the deliberative phase of the hearing. A copy of the visual presentation utilized by Mr. Nuttall is on file in the City Clerk's office.

(ii) Discussion and vote on the question of adopting an ordinance to enact the proposed code.

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

ORDINANCE NUMBER _____ **22 ORD 12-14**

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

NONRESIDENTIAL BUILDING MAINTENANCE CODE

WHEREAS, Section 160A-439 of the North Carolina General Statutes enables the City Council to adopt ordinances that establish minimum standards of maintenance, safety, and sanitation for nonresidential buildings or structures; and

WHEREAS, the above-referenced minimum standards are to be limited to addressing conditions that are dangerous and injurious to public health, safety, and welfare, and these standards are to identify

circumstances under which a public necessity exists for the repair, closing, or demolition of dilapidated nonresidential buildings; and

WHEREAS, staff members in the city's community development division have recommended consideration of the adoption of a maintenance code for nonresidential buildings or structures located within the corporate limits of the City of Asheboro, and the Asheboro City Council previously responded to this recommendation by adopting Resolution Number 39 RES 11-14 on November 6, 2014; and

WHEREAS, pursuant to Resolution Number 39 RES 11-14, a public hearing on the question of whether to adopt such a maintenance code for nonresidential buildings or structures was advertised and then conducted by the Asheboro City Council during a regular meeting held on the 4th day of December, 2014; and

WHEREAS, based on a review of the information presented during the public hearing held on December 4, 2014, the Asheboro City Council has concluded that a nonresidential building or structure maintenance code should be adopted for the City of Asheboro;

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

SECTION 1. A new Chapter 152 of the Code of Asheboro is hereby enacted to provide as follows:

~~CHAPTER 152: (RESERVED)~~

CHAPTER 152: NONRESIDENTIAL BUILDING MAINTENANCE CODE

§ 152.01 TITLE.

This Chapter shall be known and may be cited and referred to as the "Nonresidential Building Maintenance Code."

§ 152.02 PURPOSE.

Pursuant to and in accordance with the enabling legislation found in G.S. § 160A-439, this Chapter is enacted for the purpose of protecting the health, safety, and welfare of the city and its citizens by establishing minimum standards of maintenance, sanitation, and safety for nonresidential buildings or structures. Furthermore, this Chapter identifies the circumstances under which a public necessity exists for the repair, closing, or demolition of nonresidential buildings or structures that are dangerous to the public health, safety, and welfare.

§ 152.03 DEFINITIONS.

When used in this Chapter, the following words and terms shall, unless the context clearly indicates or requires a different meaning, be defined as follows:

(A) *Basic structural elements.*The parts of a building which provide the principal strength, stability, integrity, shape, and safety of the building, including but not limited to plates, studs, joists, rafters, stringers, stairs, sub-flooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry, and all other essential components.

(B) *Building.*Any structure, place, or any other construction built for the shelter or enclosure of persons, animals, chattels, or property of any kind or any part of such structure, shelter, or property.

(C) *City Enforcement Officer.*The City of Asheboro Chief Building Inspector or the City of Asheboro Code Enforcement Officer.

(D) *Nonresidential.*Any building or portion of a building occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space, or sleeping space for one or more human beings, either permanently or transiently.

(E) *Occupant.*Any person who is a tenant or has actual possession of a nonresidential building or part thereof.

(F) *Operator.*Any person who has charge, care, or control of a nonresidential building or part thereof.

(G) *Owner.*Any person who alone or jointly and severally with others shall have:

- (1) Title in fee simple to any nonresidential building, with or without accompanying actual possession thereof; or
- (2) Charge, care, or control of any nonresidential building as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner. Any person thus representing the actual owner shall be bound to comply with

the provisions of this Chapter, and with any rules, regulations, and orders adopted pursuant thereto, to the same extent as if he or she were the owner.

(H) Parties in interest. All individuals, associations, and corporations who have interests of record in a nonresidential building and any who are in possession thereof.

(I) Premises.Any lot or parcel of land inclusive of any building or improvements located thereon.

(J) Safe. A condition that is not likely to do harm to humans or to real or personal property.

(K) Structurally sound.Substantially free from flaw, defect, decay, or deterioration to the extent that the building or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

(L) Structure.Anything constructed or placed upon a property which is supported by the ground or which is supported by any other structure, except a currently operable licensed vehicle.

(M) Unsafe.A condition which is reasonably likely to do harm to humans or to real or personal property if not corrected or stopped.

(N) Vacant industrial warehouse.Any building designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

(O) Vacant manufacturing facility.Any building previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

§ 152.04 **APPLICABILITY AND COMPLIANCE.**

(A) The provisions of this Chapter shall apply to all nonresidential buildings which are now in existence or which may be built within the corporate limits of the city.

(B) Every nonresidential building and the premises on which such a building is situated shall comply with the provisions of this Chapter, whether or not the building shall have been constructed, altered, or repaired before or after the enactment of this Chapter, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or for the installment or repair of equipment or facilities. This Chapter establishes minimum standards for all nonresidential buildings and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or the equipment/facilities contained therein.

§ 152.05 **MAINTENANCE STANDARDS FOR NONRESIDENTIAL BUILDINGS.**

(A) All nonresidential buildings shall be free of all conditions that are dangerous and injurious to the public health, safety, and welfare of occupants or members of the general public.

(B) Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety, and welfare:

- (1) Interior walls, vertical studs, partitions, supporting members, sills, joists, rafters, or other basic structural members that list, lean, or buckle to such an extent as to render the building unsafe; that are rotted, deteriorated, or damaged; and that have holes or cracks which might admit rodents;
- (2) Exterior walls that are not structurally sound, free from defects and damages, and capable of bearing imposed loads safely. Where a wall of a building has become exposed as a result of the demolition of an adjacent building, the exposed wall must be painted, stuccoed, or bricked and sufficiently weatherproofed to prevent deterioration of the wall;
- (3) Floors or roofs which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used. Floors or roofs must have adequate supporting members and strength to be reasonably safe for the purpose used. Roofs must be kept structurally sound and must be maintained in such a manner so as to prevent rain or other objects from penetrating into the interior of the building;
- (4) Such damage by fire, wind, or other causes as to render the building unsafe;
- (5) Dilapidation, decay, unsanitary conditions, or disrepair that is dangerous to the health and safety of the occupants or members of the general public;
- (6) Lack of adequate ventilation, light, heating, or sanitary facilities to such an extent as to endanger the health, safety, or general welfare of the occupants or members of the general public;
- (7) Buildings, including their environs, with an accumulation of garbage, trash, or rubbish that creates health and sanitation problems. All garbage and solid waste must be in approved containers or stored in a safe and sanitary manner;

- (8) Buildings with loose and insufficiently anchored overhanging objects that pose a danger of falling on persons or property;
- (9) Buildings, including their environs, that have insufficiently protected holes, excavations, breaks, projections, obstructions, and other such dangerous impediments on and around walks, driveways, parking lots, alleyways, and other areas that are accessible to and generally used by persons on or around the premises;
- (10) Buildings and structures that have cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic, or other objects/materials existing in such quantities and/or configurations as to create dangerous or hazardous conditions;
- (11) Buildings with objects and elements protruding from walls or roofs that are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects;
- (12) Chimneys, flues, and vent attachments thereto that are not structurally sound. Chimneys, flues, gas vents, or other draft-producing equipment that are in use must provide sufficient draft to develop the rated output of the connected equipment and must be structurally safe, durable, smoke-tight, and capable of withstanding the action of flue gases;
- (13) Exterior porches, landings, balconies, stairs, or fire escapes that are not structurally sound. All exterior porches, landings, balconies, stairs, and fire escapes must be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same must be kept sound, in good repair, and free of defects;
- (14) Cornices that are not structurally sound. Rotten or weakened portions must be repaired and/or replaced. Exposed wood must be treated or painted;
- (15) Improperly attached gutters or down-spouts that are located so as to cause a hazard to pedestrian, vehicular traffic, or adjacent property;
- (16) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members, and other similar attachments and structures that cause a safety hazard to the occupants or members of the general public;
- (17) Exterior surfaces that may cause unsafe conditions due to a lack of maintenance. Exterior surfaces must be painted or sealed in order to protect the underlying surface from deterioration. All exterior surfaces that have been painted must be maintained generally free of peeling and flaking. Where 50% or more of the aggregate of any painted surface has peeling or flaking or previous paint worn away, the entire surface must be properly prepped, repainted, or otherwise clad in order to prevent further deterioration;
- (18) Windows containing broken or cracked glass that could be in danger of falling or shattering. All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints, or broken or loose mullions;
- (19) Openings originally designed as windows, doors, loading docks, or other means of egress or ingress that have been temporarily closed by boarding or in some other manner that is non-secure and allows unauthorized admittance. If an opening is temporarily closed by boarding to secure the building or structure, the boarding must be trim fit, sealed to prevent water intrusion, and painted or stained to properly conform to the other exterior portions of the building. The building must be maintained in a state that secures the building from any unauthorized admittance from humans, animals, or birds; and
- (20) Any combination of conditions that in the judgment of the City Enforcement Officer renders a building dangerous or injurious to the health, safety, or general welfare of occupants or members of the general public.

(C) When any of the conditions listed in Division (B) of this Section are found by the City Enforcement Officer to exist in connection with a nonresidential building located within the City of Asheboro, a public necessity exists for the repair, closing, or demolition of the building, and such conditions must be corrected in accordance with the provisions of this Chapter.

§ 152.06 DUTIES OF THE CITY ENFORCEMENT OFFICER.

(A) The City Enforcement Officer is hereby designated as the public officer to enforce the provisions of this Chapter and to exercise the duties and powers herein prescribed.

(B) It shall be the duty of the City Enforcement Officer:

- (1) To carry out the objectives of this Chapter by inspecting and investigating the conditions of nonresidential buildings located in the city in order to determine which nonresidential buildings reflect a lack of adequate maintenance that, in turn, jeopardizes the health and safety of the building's occupants or members of the general public;
- (2) To take such action, together with other appropriate departments, agencies, and public or private entities, as may be necessary to effect the repair or demolition of nonresidential buildings that have not been properly maintained in compliance with the minimum standards established by this Chapter;
- (3) To keep a record of the results of inspections made under this Chapter and an inventory of those nonresidential buildings that have not been properly maintained in compliance with the minimum standards established by this Chapter; and
- (4) To perform such other duties as may be herein prescribed.

§ 152.07 POWERS OF CITY ENFORCEMENT OFFICER.

The City Enforcement Officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this Chapter, including the following powers in addition to others herein granted:

- (A) To investigate nonresidential buildings located within the city to determine whether they have been properly maintained in compliance with the minimum standards established by this Chapter so that the safety and health of the occupants and members of the general public are not jeopardized;
- (B) To administer oaths and affirmations, examine witnesses, and receive evidence;
- (C) To enter upon premises for the purpose of making examinations and inspections, provided that the entries shall be made in accordance with all applicable Constitutional protections, statutes, ordinances, and regulations and in such a manner as to cause the least possible inconvenience to the persons in possession; and
- (D) To appoint and designate the duties of such officers, agents, and employees as the City Enforcement Officer deems necessary to carry out the purposes of this Chapter.

§ 152.08 INSPECTIONS.

- (A) For the purpose of making inspections, the City Enforcement Officer is hereby authorized to enter, examine, and survey, at all reasonable times, nonresidential buildings.
- (B) If entry upon the premises for purposes of investigation is necessary, the entry shall be made pursuant to a duly issued administrative search warrant that is obtained and served in accordance with G.S. § 15-27.2 or with the permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

§ 152.09 PROCEDURE FOR ENFORCEMENT.

- (A) Preliminary investigation. Whenever it appears to the City Enforcement Officer that a nonresidential building has not been properly maintained and that the safety or health of the building's occupants or members of the general public is jeopardized due to the failure of the property to meet the minimum standards established by this Chapter, the City Enforcement Officer shall undertake a preliminary investigation.
- (B) Complaint and hearing. If the preliminary investigation of a nonresidential building discloses evidence of a violation of the minimum standards established by this Chapter, the City Enforcement Officer shall issue and cause a complaint to be served upon the owner and the parties in interest identified during the investigation of the nonresidential building. The complaint shall state the charges and contain a notice that a hearing will be held before the City Enforcement Officer at a place and time on a date specified within the notice, the said hearing date shall not be less than ten (10) days nor more than thirty (30) days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and to give testimony at the place and time specified in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the City Enforcement Officer.
- (C) Procedure after hearing.
 - (1) If, after notice and hearing, the City Enforcement Officer determines that the nonresidential building has been maintained so as to meet the minimum standards established by this Chapter, the City Enforcement Officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of the determination.
 - (2) If, after notice and hearing, the City Enforcement Officer determines that the nonresidential building has not been properly maintained and, consequently, the safety or health of the building's occupants or members of the general public is jeopardized by the failure of the property to meet the minimum standards established by this Chapter, the City Enforcement Officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of divisions (C)(3) and (C)(4) of this Section and subject to the limitations set forth in § 152.10 and § 152.11.
 - (3) If the City Enforcement Officer determines that the cost of repair, alteration, or improvement of the building would not exceed 50% of the building's then current value, then the City Enforcement Officer shall state in writing the findings of fact in support of the determination and issue an order that requires the owner, within a reasonable time period that shall be no less than sixty (60) days and that shall be clearly stated in the order, to either: repair, alter, or improve the nonresidential building in order to bring the

- building into compliance with the minimum standards established by this Chapter; or vacate and close the nonresidential building for any use.
- (4) If the City Enforcement Officer determines that the cost of repair, alteration, or improvement of the building would exceed 50% of the building's then current value, then the City Enforcement Officer shall state in writing the findings of fact in support of the determination and issue an order that requires the owner, within a reasonable time period that shall be no less than sixty (60) days and that shall be clearly stated in the order, to either: repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this Chapter; or to remove or demolish the nonresidential building.

(D) Failure to comply with order and subsequent action to be taken.

- (1) If the owner fails to comply with an order to repair, alter, or improve the nonresidential building or, alternatively, vacate and close the nonresidential building, the City Enforcement Officer shall submit to the City Council an ordinance ordering the City Enforcement Officer to either cause the nonresidential building to be repaired, altered, or improved in order to bring the building into compliance with the minimum standards established by this Chapter or to cause the building to be vacated and closed for any use. The property shall be described in the ordinance. If the City Council adopts the ordinance, the City Enforcement Officer shall cause the building to be repaired, altered, or improved or to be vacated and closed for any use.
- (2) If the owner fails to comply with an order to repair, alter, or improve the nonresidential building or, alternatively, to remove or demolish the building, the City Enforcement Officer shall submit to the City Council an ordinance ordering the City Enforcement Officer to cause the nonresidential building to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building until the owner has first been given a reasonable opportunity to bring the building into conformity with the minimum standards established by this Chapter. The property shall be described in the ordinance. If the City Council adopts the ordinance, the City Enforcement Officer shall cause the building to be removed or demolished.

§ 152.10 **LIMITATIONS ON ORDERS AND ORDINANCES; HISTORIC LANDMARK OR HISTORIC DISTRICT.**

Notwithstanding any other provision of this Chapter, if the nonresidential building is designated as a local historiclandmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historicdistrict listed in the National Register of Historic Places and the City Council determines, after a public hearing, that thenonresidential building is of individual significance or contributes to maintaining the character of thedistrict, and the nonresidential building has not been condemned as unsafe, an order issued by the City EnforcementOfficer pursuant to § 152.09(C) and an ordinance approved by the City Council pursuant to § 152.09(D) may onlyrequire that the nonresidential building be vacated and closed until it is brought into compliance with the minimumstandards established by this Chapter.

§ 152.11 **LIMITATIONS ON ORDERS AND ORDINANCES; VACANT MANUFACTURING FACILITY ORVACANT INDUSTRIAL WAREHOUSE.**

Notwithstanding any other provision of this Chapter, an order issued by the City Enforcement Officer pursuant to § 152.09(C) and an ordinance approved by the City Council pursuant to § 152.09(D) may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and ordinance may require the building to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building closed for any use.

§ 152.12 **VACATED AND CLOSED NONRESIDENTIAL BUILDINGS.**

(A) If the City Enforcement Officer has issued an order and the City Council has adopted an ordinance requiring a nonresidential building to be repaired, altered, or improved or, alternatively, to be vacated and closed, and the building has been vacated and closed for a period of two (2) years pursuant to the order and/or ordinance, then if the City Council finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building and that the continuation of the building in its vacated and closed status would be inimical to the health, safety, and welfare of the city in that the building would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area, then the City Council may, after the expiration of the two-year period, adopt an ordinance and serve the ordinance on the owner setting forth the following:

- (1) The ordinance shall require that the owner repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this Chapter within ninety (90) days or, alternatively, demolish and remove the nonresidential building within ninety (90) days.

- (2) The ordinance shall require that if the owner fails to repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this Chapter within ninety (90) days or, alternatively, fails to demolish and remove the nonresidential building within ninety (90) days, then the City Enforcement Officer shall demolish and remove the nonresidential building.

(B) In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building must have been vacated and closed pursuant to an order and/or ordinance for a period of five (5) years before the City Council may take action under this Section.

(C) If the owner fails to comply with the requirements of the ordinance within ninety (90) days, the City Enforcement Officer shall demolish and remove the nonresidential building.

§ 152.13 METHODS OF SERVICE OF COMPLAINTS AND ORDERS.

(A) Complaints or orders issued by the City Enforcement Officer under this Chapter shall be served upon persons either personally or by registered or certified mail and, in conjunction therewith, may be served by regular mail. When the manner of service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after mailing, service shall be deemed sufficient. The person mailing the complaint or order by regular mail shall certify that fact and the date thereof, and the certificate shall be conclusive in the absence of fraud. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(B) If the identities of any owner or the whereabouts of persons are unknown and cannot be ascertained by the City Enforcement Officer in the exercise of reasonable diligence, and the City Enforcement Officer files an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons who have not been identified and/or located may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Chapter. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

§ 152.14 IN REM ACTION BY THE CITY ENFORCEMENT OFFICER.

After failure of an owner of a nonresidential building to comply with an order of the City Enforcement Officer issued pursuant to the provisions of this Chapter and upon adoption by the City Council of an ordinance authorizing and directing the owner to do so, as provided by G.S. 160A-439(f) and § 152.09(D) of this Chapter, the City Enforcement Officer shall proceed to cause the nonresidential building to be repaired, altered, or improved to comply with the minimum standards established by this Chapter, to be vacated and closed, or to be removed or demolished, as directed by the ordinance of the City Council. The City Enforcement Officer may cause to be posted on the main entrance of any nonresidential building that is to be vacated and closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building so posted shall be guilty of a Class 3 misdemeanor.

§ 152.15 COSTS ARE A LIEN ON PREMISES.

(A) As provided by G.S. 160A-439(i), the amount of the cost of any repairs, alterations, or improvements, vacating and closing, or removal or demolition caused to be made or done by the City Enforcement Officer pursuant to § 152.09(D) or § 152.12 shall be a lien against the real property upon which the costs were incurred. The lien shall be filed, have the same priority, be enforced, and the costs collected as provided by G.S. Chapter 160A, Article 10. The amount of the costs shall also be a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

(B) If the nonresidential building is removed or demolished by the City Enforcement Officer, such officer shall offer for sale the recoverable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited in the Superior Court by the City Enforcement Officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

§ 152.16 EJECTMENT.

If any occupant fails to comply with an order to vacate a nonresidential building, the City Enforcement Officer may file a civil action in the name of the city to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building. The Clerk of Superior Court shall issue a

summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed ten (10) days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the City Enforcement Officer produces a certified copy of an ordinance adopted by the City Council pursuant to G.S. 160A-439(f) and § 152.09(D) to vacate the occupied nonresidential building, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building be vacated shall be enforced in the same manner as the judgment for summary ejection entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building who is a tenant of the owner may not be in the nature of a summary ejection proceeding pursuant to this subsection unless the occupant was served with notice, at least thirty (30) days before the filing of the summary ejection proceeding, that the City Council has ordered the City Enforcement Officer to proceed to exercise his or her duties under G.S. 160A-439(f) and § 152.09(D) to vacate and close or remove and demolish the nonresidential building.

§ 152.17 FILING OF ORDINANCES.

An ordinance adopted by City Council pursuant to § 152.09(D) or § 152.12 of this Chapter shall be recorded in the office of the Register of Deeds of Randolph County and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-439(f) and (g).

§ 152.18 ALTERNATIVE REMEDIES.

Neither this Chapter nor any of its provisions shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their abatement by summary action or otherwise, to enforce this Chapter by criminal process as authorized by G.S. 14-4 and § 152.22 of this Chapter, and to utilize any remedy provided herein or in other ordinances or laws.

§ 152.19 BOARD OF ADJUSTMENT TO HEAR APPEALS.

(A) All appeals that may be taken from decisions or orders of the City Enforcement Officer pursuant to this Chapter shall be heard and determined by the Board of Adjustment. As the appeals body, the Board of Adjustment shall have the power to set the times and places of its meetings, to adopt necessary rules of procedure, and to adopt any other rules and regulations that may be necessary for the proper discharge of its duties.

(B) Appeals shall be subject to the following:

- (1) An appeal from any decision or order of the City Enforcement Officer may be taken by any person aggrieved thereby. Any appeal from the City Enforcement Officer shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the City Enforcement Officer and the Secretary to the Board of Adjustment a notice of appeal that shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the City Enforcement Officer shall forthwith transmit to the Board of Adjustment all of the papers constituting the record upon which the decision under appeal was made. When the appeal is from a decision of the City Enforcement Officer refusing to allow the person aggrieved thereby to do any act, the City Enforcement Officer's decision shall remain in force until modified or reversed. When any appeal is from a decision of the City Enforcement Officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board of Adjustment, unless the City Enforcement Officer certifies to the Board, after the notice of appeal is filed, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant) a suspension of the requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order that may be granted for due cause shown, upon not less than one day's written notice to the City Enforcement Officer, by the Board or by a court of record upon petition made pursuant to G.S. 160A-446(f) and § 152.20.
- (2) The Board of Adjustment shall set a reasonable time for the hearing of all appeals, shall give notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board of Adjustment may reverse or affirm, in whole or in part, or may modify the decision or order appealed from and may make such decision and order as in its opinion ought to be made in the matter. To that end, the Board of Adjustment shall have all the powers of the City Enforcement Officer when ruling upon a duly filed appeal. A simple majority of the members of the Board of Adjustment shall be necessary to reverse or modify any decision or order of the City Enforcement Officer. When considering an appeal, the Board of Adjustment shall have the power, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case by granting a variance to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice

done; provided, however, that the concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to grant a variance rather than the simple majority that is sufficient, when the variance power is not utilized, to reverse or modify a decision or order of the City Enforcement Officer.

(C) Every decision of the Board of Adjustment shall be subject to review by the Superior Court by proceedings in the nature of certiorari instituted within thirty (30) days of the decision of the Board, but not otherwise.

§ 152.20 **TEMPORARY INJUNCTION REMEDY FOR AGGRIEVED PERSON.**

Any person aggrieved by an order issued by the City Enforcement Officer or a decision rendered by the Board of Adjustment shall have the right within thirty (30) days after issuance of the order or rendering of the decision to petition the Superior Court for a temporary injunction restraining the City Enforcement Officer pending a final disposition of the cause, as provided by G.S. 160A-446(f).

§ 152.21 **CONFLICT WITH OTHER PROVISIONS.**

In the event any provision, standard, or requirement of this Chapter is found to be in conflict with any other ordinance or code of the city, the provisions that establish the higher standard or more stringent requirement for the promotion and protection of the health and safety of the citizens of the city shall prevail.

§ 152.22 **VIOLATIONS; PENALTIES.**

(A) It shall be unlawful for the owner of any nonresidential building to fail, neglect, or refuse to repair, alter, or improve the same, to vacate and close, or to remove or demolish the same upon order of the City Enforcement Officer duly made and served in accordance with the provisions of this Chapter within the time specified in the order, and each day that any such failure, neglect, or refusal to comply with the order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any nonresidential building, with respect to which an order has been issued pursuant to section § 152.09(C) of this Chapter, to occupy or permit the occupancy of the same after the time prescribed in the order for its repair, alteration, improvement, or its vacation and closing, and each day that the occupancy continues after the prescribed time shall constitute a separate and distinct offense.

(B) The violation of any provision of this Chapter shall constitute a misdemeanor, as provided by G.S. 14-4.

(C) In addition to or in lieu of the other remedies provided by this Chapter, any owner of a nonresidential building that fails to comply with an order of the City Enforcement Officer within the time specified therein, shall be subject to a civil penalty in the amount of fifty dollars (\$50) for the first offense, one hundred dollars (\$100) for the second offense in the calendar year, and two hundred fifty dollars (\$250) for the third and subsequent offenses in the calendar year. Each subsequent offense after the third will be subject to a civil penalty of two hundred fifty dollars (\$250). Each 30-day period or part thereof in which a violation is allowed to persist will constitute a separate and distinct offense.

SECTION 2. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 3. Any part or provision of this Ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States of America or the State of North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the Ordinance.

SECTION 4. This Ordinance shall be in full force and effect on and after January 1, 2015.

This Ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 4th day of December, 2014.

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

ATTEST:

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

8. Public comment period.

Mayor Smith opened the floor for comments from the public.

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

9. Upcoming events that were announced by Mayor Smith:

- **Annual Christmas Parade beginning at 7:00 p.m. on Friday, December 5, 2014.**
- **Crossroad Retirement Community Christmas Parade on Saturday, December 6, 2014 at 9:45 a.m.**
- **“Christmas on Sunset” street festival beginning at 6:00 p.m. on Friday, December 12, 2014.**
- **Asheboro Fire Department Christmas Party at Fire Station #1 from 6:00 p.m. until 9:00 p.m. on Wednesday, December 17, 2014.**
- **Chamber of Commerce Christmas Party at the Exchange from 5:30 p.m. until 7:30 p.m. on Thursday, December 18, 2014.**
- **Asheboro Police Department Christmas Party at the Public Works Conference Room from 11:30 a.m. until 1:30 p.m. on Monday, December 22, 2014.**

There being no further business, the meeting was adjourned at 8:27 p.m.

Holly H. Doerr, CMC, NCCMC, City Clerk

David H. Smith, Mayor

Minutes of the meeting of the Asheboro Alcoholic Beverage Control Board held on December 1, 2014 ^{Item 7 (b)}

The Asheboro ABC Board met on December 1, 2014, at 5:30 PM, in the Board office, 700 South Fayetteville Street, Asheboro, NC.

Present were Chair Brooke Schmidly, Board Member Steve Knight and Bob Morrison and General Manager Rodney Johnson (GM). A quorum being present, the Chair called the meeting to order for the transaction of business and business transacted as follows:

The Chair inquired as to any known conflict of interest, appearance of a conflict of interest, or objections concerning agenda items before the Board; after the Chair and both Board members voiced having no conflict, and there being no objection, the agenda was adopted.

The Board reviewed and there being no objection, approved the Minutes from the November 3, 2014, regular meeting.

Steve Knight and the GM reviewed Board finances and reported all finances remain consistent.

Asheboro ABC Policy Section 33 provides the Board may consider a COLA pay adjustment during the Boards regularly scheduled December meeting. The Board considered, and there being no objection, took no action concerning a COLA adjustment.

The Board heard reports from the General Manager concerning the following issues:

1. The Change-Fund Report ending November 30, 2014, was reviewed with nothing remarkable noted.
2. Asheboro ABC sales statistics comparing:
 - November 2014 sales with the previous month indicate:
 - An overall +5% change (all sales and tax collections)
 - November 2014 sales with sales from the same month last year indicate:
 - Retail Sales +.3%
 - Mixed Beverage Sales: -11%
 - Sales Tax Collections: +.2%
 - Overall Collections: -0.8%
 - November 2014 bottle sales with bottle sales from the same month last year indicate:
 - Retail Bottle Sales: -0.9%
 - Mixed Beverage Bottle Sales: -8.7%
 - Overall Bottle Sales: -1.3%

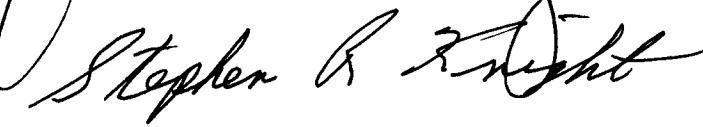
Charts reflecting sales histories were handed out to Board members for review and discussion.

The next regular Asheboro ABC Board meeting will be held Monday, January 5, 2015, at 5:30 p.m.

There being no further business, the meeting was adjourned.

Prepared by Rodney Johnson, GM, and Approved by the Board

1-5-2015 
GM


RESOLUTION NUMBER _____

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**AWARD OF A SERVICE SIDE ARM TO A RETIRING OFFICER OF THE
ASHEBORO POLICE DEPARTMENT**

WHEREAS, after rendering honorable and valuable service to the City of Asheboro and its citizens since the date of his initial employment with the Asheboro Police Department on May 19, 1986, effective March 1, 2015, Master Police Sergeant David Ray Kennedy will begin his retirement from employment with the City of Asheboro; and

WHEREAS, pursuant to and in accordance with Section 20-187.2 of the North Carolina General Statutes, the Asheboro City Council wishes to recognize and honor Sergeant Kennedy for his dedicated service to the city by awarding to him, at a minimal monetary cost, the service side arm issued to the officer at the time of his retirement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that, effective March 1, 2015, in consideration of the combination of his dedicated service to the City of Asheboro and the payment to the City of Asheboro of one dollar (\$1.00), David Ray Kennedy, upon a determination by the Chief of Police that Mr. Kennedy is not ineligible to own, possess, or receive a firearm under the provisions of federal or North Carolina law, is to be awarded ownership of his city-issued service side arm (a Glock 23 Generation 4 with serial no. SFS984 and three magazines).

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 8th day of January, 2015.

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

ATTEST:

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



RZ-14-11 Rezone from R10 (Medium-Density Residential) to OA6 (Office-Apartment)

(H.R. Gallimore: 379 Patton Avenue)

Planning Board Recommendation and Staff Report

Planning Board Recommendation & Comments to City Council

NOTE: Have applicant Certify to Council mailings to all adjoining property owners.

Case # **RZ-14**
-11

Date 10/6/2014 PB

Applicant H.R. Gallimore

Legal Description

The property of Neale A. Kearns and John W. Kearns, located at 379 Patton Avenue, totaling approximately 3.68 acres (+/-) and more specifically identified by Randolph County Parcel Identification Number 7761510840.

Requested Action Rezone from R10 (Medium-Density Residential) to OA6 (Office-Apartment)

Existing Zone R10

Land Development Plan See Rezoning Staff
Report

Planning Board Recommendation
Approve

Reason for Recommendation

The Planning Board concurred with staff reasoning.

Planning Board Comments

Rezoning Staff Report

RZ Case # **RZ-14-11**

Date 10/6/2014 PB.; 11/6/2014,
12/4/2014 and 1/8/2015 CC

General Information

Applicant HR Gallimore

Address 231 South Fayetteville Street

City Asheboro NC 27203

Phone 336-626-5560

Location 379 Patton Avenue

Requested Action Rezone from R10 (Medium-Density Residential) to OA6 (Office-Apartment)

Existing Zone R10

Existing Land Use Single-family residence

Size 3.68 acres

Pin # 7761510840

Applicant's Reasons as stated on application

Neighborhood in transition. Near mall. Will allow urban residential and office-institutional. Area has changed dramatically over the last few years making residential only unlikely.

Surrounding Land Use

North Office/Institutional

East Single-family residential

South Single-family residential

West Office/Single-family residential

Zoning History N/A

Legal Description

The property of Neale A. Kearns and John W. Kearns, located at 379 Patton Avenue, totaling approximately 3.68 acres (+/-) and more specifically identified by Randolph County Parcel Identification Number 7761510840.

Analysis

1. East Salisbury Street is a state-maintained minor thoroughfare at this location. Patton Avenue is a state-maintained road.
2. The area includes a mix of residential, office/institutional, commercial and industrial uses.
3. A portion of the property is outside of the city limits. New development proposed to connect to city services will require the entire tax parcel to be annexed.
4. The proposed land use map designates the northern portion of the property inside the city limits for office and institutional use. The southern portion of the property outside of the city limits is designated for urban residential use.
5. According to the Zoning Ordinance (Art. 200, Sec. 210): "The OA6 District is intended to produce moderate intensity office and residential development to serve adjacent residential areas and to provide a transition from residential to commercial uses. Land designed [sic] OA6 shall normally be located with access to a major or minor thoroughfare with access to local residential streets discouraged."
6. The pavement width of Patton Avenue is approximately 15 to 16 feet in front of the property. Depending on the specific development proposal and subject to North Carolina Department of Transportation (NCDOT) approval, the addition of a driveway(s) on Patton Avenue may require the developer to widen Patton Avenue from the proposed driveway(s) to East Salisbury Street.

Rezoning Staff Report

RZ Case # RZ-14-11

Page 2

Consistency with the 2020 LDP Growth Strategy designations

In reviewing this request, careful consideration is given to each Goal and Policy as outlined in the Land Development Plan. Some Goals and Policies will either support or will not support the request, while others will be neutral or will not apply. Only those Goals and Policies that support or do not support the request will be shown.

Proposed Land Use Map Designation Office & Institutional/Urban Residential

Small Area Plan Central

Growth Strategy Map Designation Adjacent Developed

LDP Goals/Policies Which Support Request

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

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

Checklist Items #12, #13, #14, and #15: 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%. 15.) Rezoning is not located on poor soils

Rezoning Staff Report

RZ Case # RZ-14-11

Page 3

LDP Goals/Policies Which Do Not Support Request

Checklist Item 6: Existing infrastructure is not adequate to support the desired zone. (*water, sewer, roads, schools, etc.*).

Staff Note: Depending on the type/size of the development proposed, improvements to Patton Avenue may be required to ensure access deficiencies are addressed.

Recommendation Approve

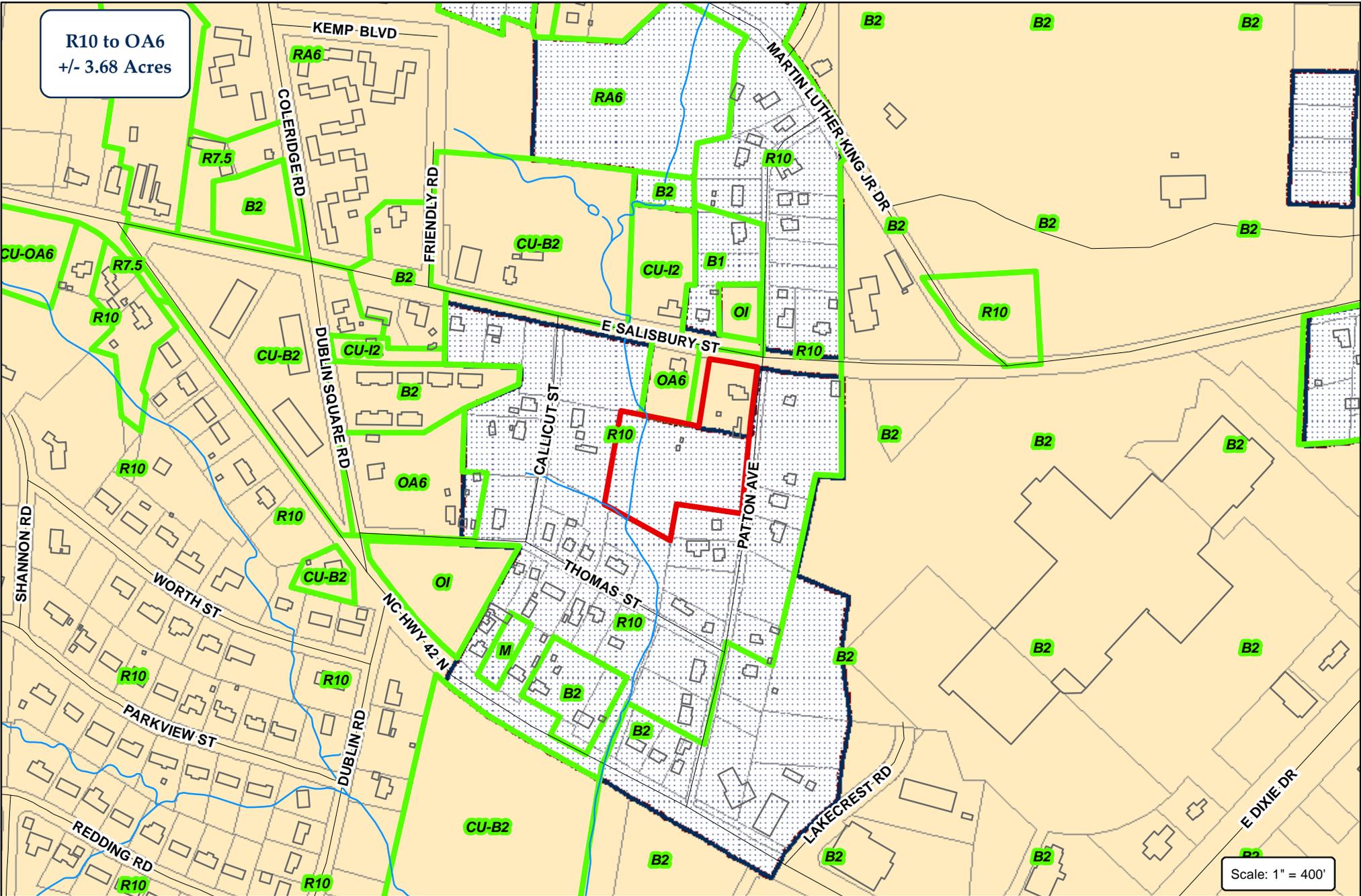
Reason for Recommendation

The request complies with the Land Development Plan proposed land use map which designates the property for office/institutional and urban residential uses, which are consistent with the uses allowed in the OA6 district. The Central Small Area Plan encourages office uses and urban residential uses in strategically designated locations. In this context, the property's proximity to other office, institutional, and commercial uses make the OA6 district appropriate for the property. Additionally, while there is concern over existing conditions on Patton Avenue, driveway permitting requirements and potential improvements required by N.C. Department of Transportation should help ensure safe traffic movements into and out of any future development.

Evaluation of Consistency with Adopted Comprehensive Plans/Reasonableness and Public Interest

Considering the above factors detailed in the recommendation above, staff believes the OA6 designation is in the public interest by allowing a reasonable use of the property and ensuring consistency with the LDP.

R10 to OA6
+/- 3.68 Acres



Scale: 1" = 400'



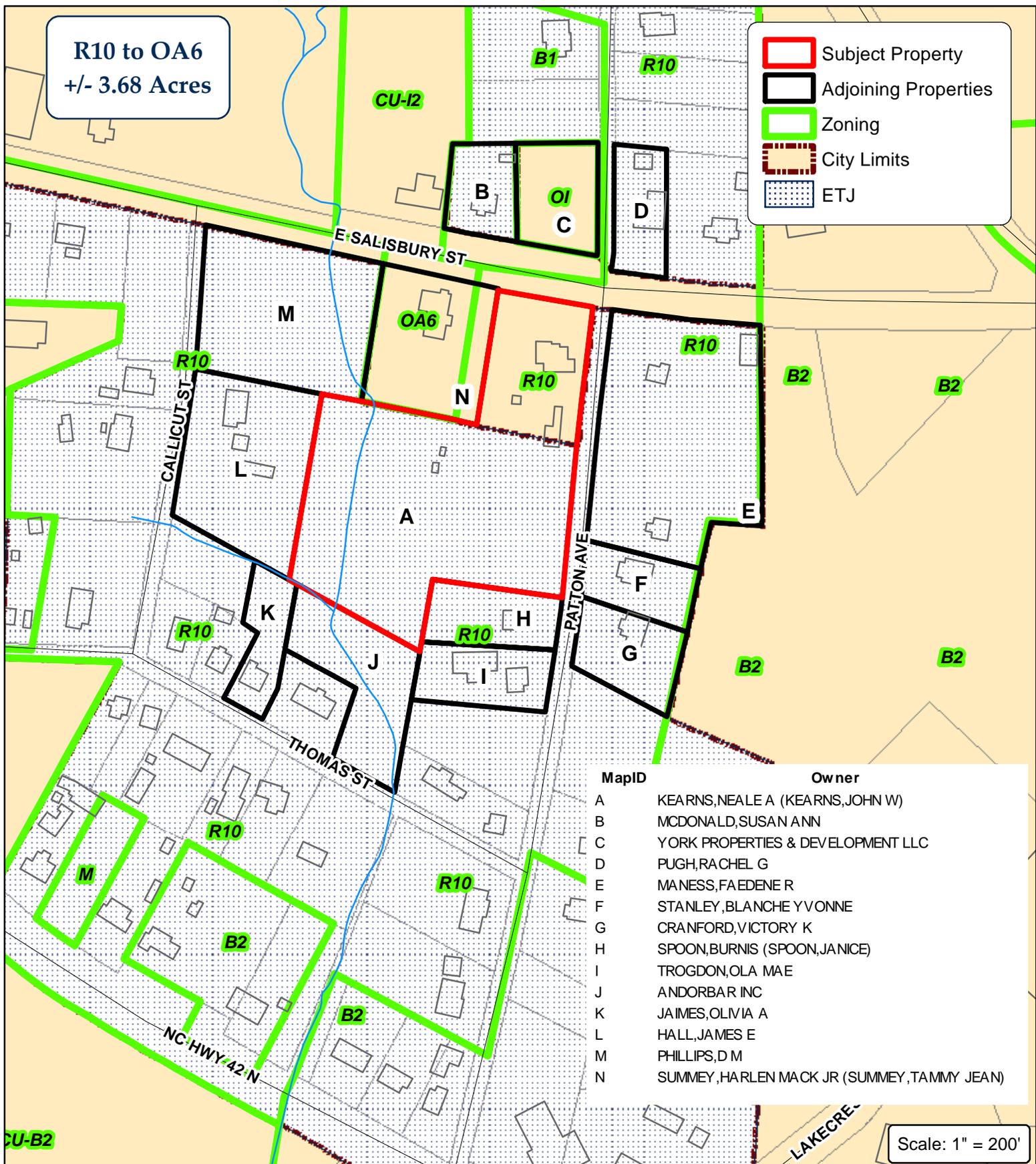
City of Asheboro
Planning & Zoning Department
Rezoning Case: RZ-14-11
Parcels: 7761510840

- Subject Property
- Zoning
- City Limits
- ETJ



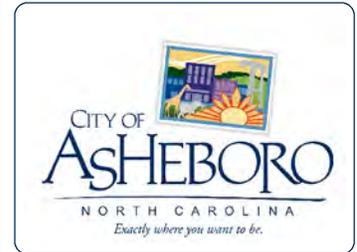
R10 to OA6
+/- 3.68 Acres

-  Subject Property
-  Adjoining Properties
-  Zoning
-  City Limits
-  ETJ



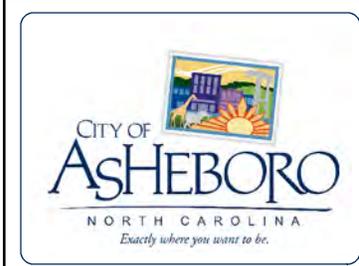
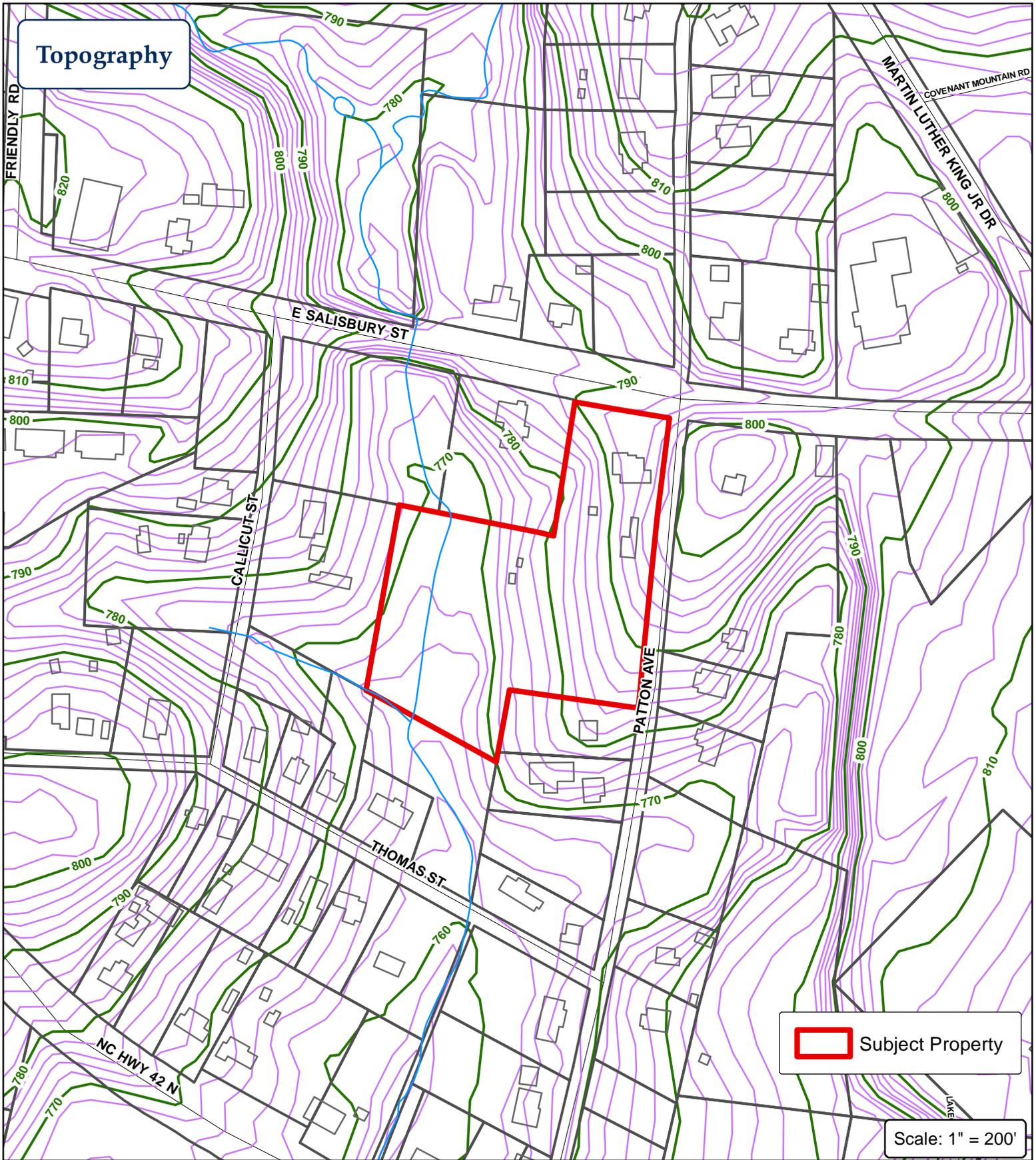
MapID	Owner
A	KEARNS, NEALE A (KEARNS, JOHN W)
B	MCDONALD, SUSAN ANN
C	YORK PROPERTIES & DEVELOPMENT LLC
D	PUGH, RACHEL G
E	MA NESS, FAEDENE R
F	STANLEY, BLANCHE YVONNE
G	CRANFORD, VICTORY K
H	SPOON, BURNIS (SPOON, JANICE)
I	TROGDON, OLA MAE
J	ANDORBAR INC
K	JAIMES, OLIVIA A
L	HALL, JAMES E
M	PHILLIPS, D M
N	SUMMEY, HARLEN MACK JR (SUMMEY, TAMMY JEAN)

Scale: 1" = 200'



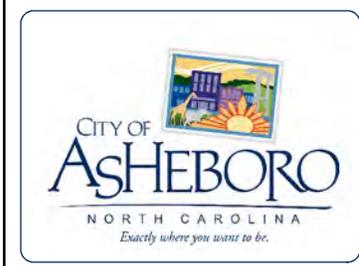
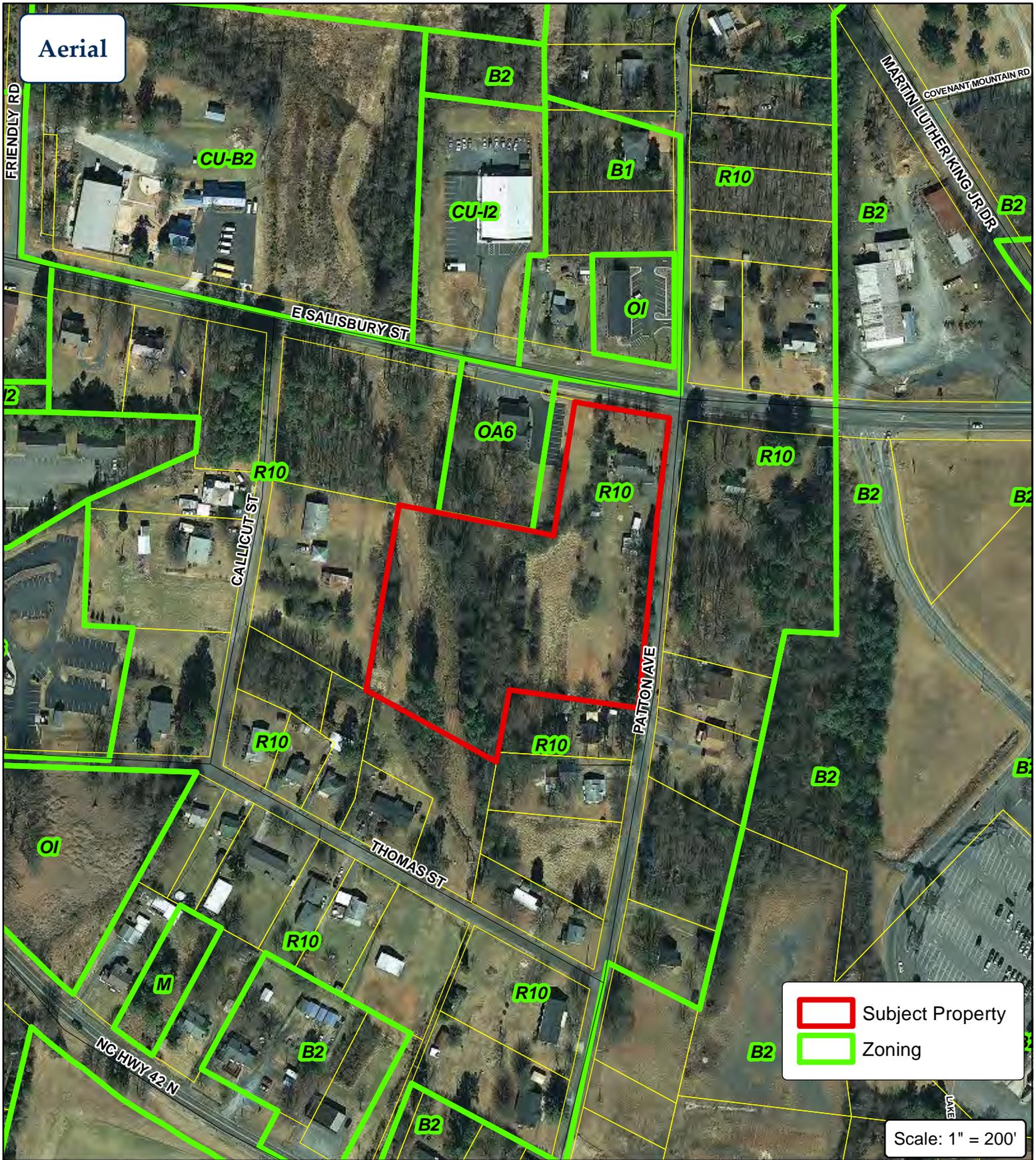
City of Asheboro
Planning & Zoning Department
Rezoning Case: RZ-14-11
Parcels: 7761510840





City of Asheboro
Planning & Zoning Department
Rezoning Case: RZ-14-11
Parcels: 7761510840





City of Asheboro
Planning & Zoning Department
Rezoning Case: RZ-14-11
Parcels: 7761510840





SUP-15-01 Special Use Permit for a Small Child Day Care Center

(Sheila Robbins: 1016 South Cox Street)

Staff Report

SPECIAL USE PERMIT STAFF REPORT

SUP Case No. **SUP-15-01**

1/8/2015 City
Council

General Information

Applicant Sheila Robbins

Address 1496 West Chapel Road

City Asheboro NC 27203

Phone 964-8166

Location 1016 and 1022 South Cox Street

Requested Action Special Use Permit for a Small Child Daycare Center

Existing Zone OA6 (Office-Apartment)

Existing Land Use Single-family residence/personal services

Size 25,551 square feet (+/-)

Pin # 7750875799

Applicants Reason as stated on application

Small Child Daycare Center

Surrounding Land Use

North Single-family residence

East Multi use office/Single-family residence

South Two-family residential

West Office/Single-family residential

Zoning History A portion of the property (located at 1206 South Cox Street) was rezoned from R7.5 Medium-Density Residential to OA6 (Office-Apartment) in March, 2014 (RZ-14-03)

Growth Strategy Map Primary Growth

Proposed LDP Map City Activity Center

Legal Description

The property of Charles S. and Sherry Johnson, located at 1016 and 1022 South Cox Street, totaling approximately 25,551 square feet (+/-) and more specifically identified as Lots 1, 2, and 3 recorded in Plat Book 138, Page 84 of the Randolph County Public Registry, encompassing Randolph County Parcel Identification Number 7750875799.

Analysis

1. The requested permit is for a small Child Day Care Center, at 1016 South Cox Street which is currently an unoccupied single-family residential dwelling.
2. A small child day care center is characterized as being for 13-29 children. This use requires a Special Use Permit when located in an OA6 (Office-Apartment District).
3. The property is also used for personal services (i.e. hair salon). This use is permitted by right in the OA6 district.
4. The property has frontage on South Cox Street (a state-maintained minor thoroughfare) and Oakdale Street (city-maintained). The proposed site plan indicates a one-way entrance from South Cox Street and a one-way exit onto Oakdale Street.
5. There is reciprocal parking between the proposed use at 1016 S. Cox Street and 1022 South Cox Street (used for personal services, specifically a hair salon).
6. The property is located within the Center City Planning Area, Tier 3.
7. As noted on the site plan, an alternate buffer is proposed on the southeastern property boundary. The Zoning Ordinance permits staff review and approval of alternate buffering and the use of existing vegetation to meet buffering requirements. Staff has reviewed alternative buffering as shown on the site plan and it is in conformity with the Zoning Ordinance.

LDP Conformity Issues

SPECIAL USE PERMIT STAFF REPORT

SUP Case No. SUP-15-01

Page 2

NOTE: Applicant shall certify to Council mailings to all adjoining property owners.

Staff Comments

NOTE: If any Special Use is discontinued for a period of 180 days; or the permit is not initiated within 180 days; or replaced by a use otherwise permitted in the zoning district, it shall be deemed abandoned and the Special Use Permit shall be null and void and of no effect.

Suggested Conditions

(A) The requirement to pave parking at the time the initial zoning compliance permit is issued will be based on the enrollment, staff, and facility vehicle(s) in use at the time the permit is issued. Additional enrollment, staff, and facility vehicles(s) to the maximum numbers indicated on the site plan will require paving of parking areas on the Zoning Lot required by expansion. Review and approval of these required improvements to the existing parking area on the Zoning Lot may be completed ministerially by staff.

(B) The proposed site plan indicates that land uses other than the proposed small child day care center currently exist on the Zoning Lot. The Applicant can continue to engage in the land use activities that do not require a special use permit and are noted on the approved site plan to the full extent permitted by the Asheboro Zoning Ordinance. Such continued engagement in these existing land use activities shall not be deemed to be a modification requiring the issuance of a new special use permit.

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

SPECIAL USE PERMIT STAFF REPORT

SUP No. SUP-15-01

Page 3

For Special Use Permit Hearings:

The following tests shall be found in favor of the applicant by the City Council.

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

SUP Requirements

616 Child Day Care Facilities in Districts where such facilities require a Special Use Permit.

Child Day Care Facilities may be permitted provided that the following requirements are met:

616.1 Child Day Care Facilities must meet the standards provided by the Child Day Care Commission. Evidence that Commission requirements are met shall be presented to the City prior to any Certificate of Zoning Compliance being issued.

616.2 Child Day Care Facilities may be permitted in Industrial Districts provided they are operated as an accessory use to a legal permitted use.

616.3 Facilities permitted in any Residential, OA6, O & I and B1, B2 and B3 Districts or that are contiguous to any residential district shall provide screening around play areas and parking areas to avoid any nuisance to adjoining residentially zoned property.

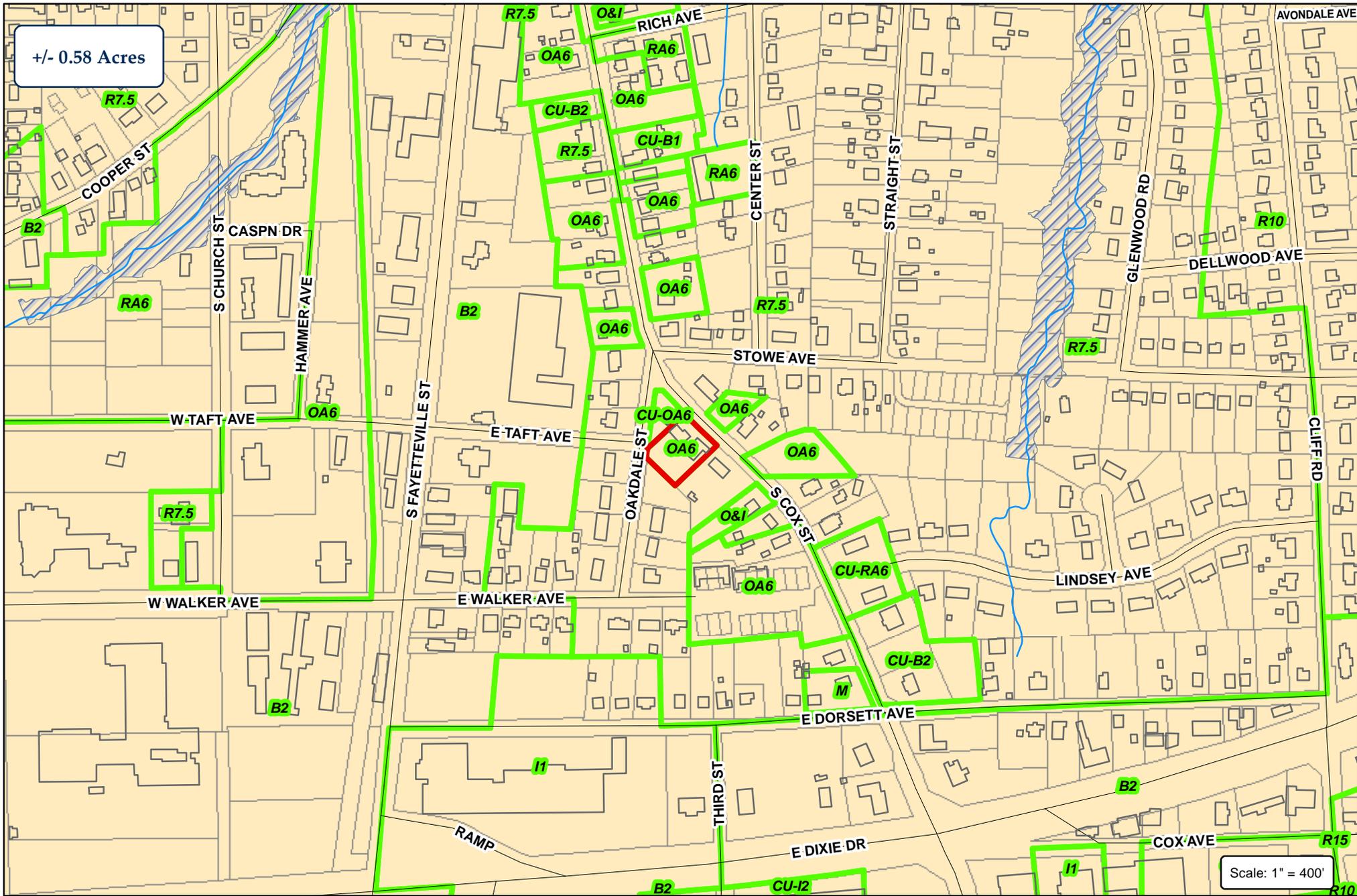
616.4 Facilities permitted in any residential district shall maintain the character and appearance of a residential use.

616.5 All facilities shall meet the standards of the N. C. Building Code.

616.6 Offstreet parking shall be provided in accordance with Article 400.

616.7 Applications for permits under this Section shall be accompanied by a site plan or plat which includes the location of all structures; parking areas including ingress, egress and maneuvering space; play areas; required screening; permitted signs and additional information as may be necessary to indicate compliance with these regulations.

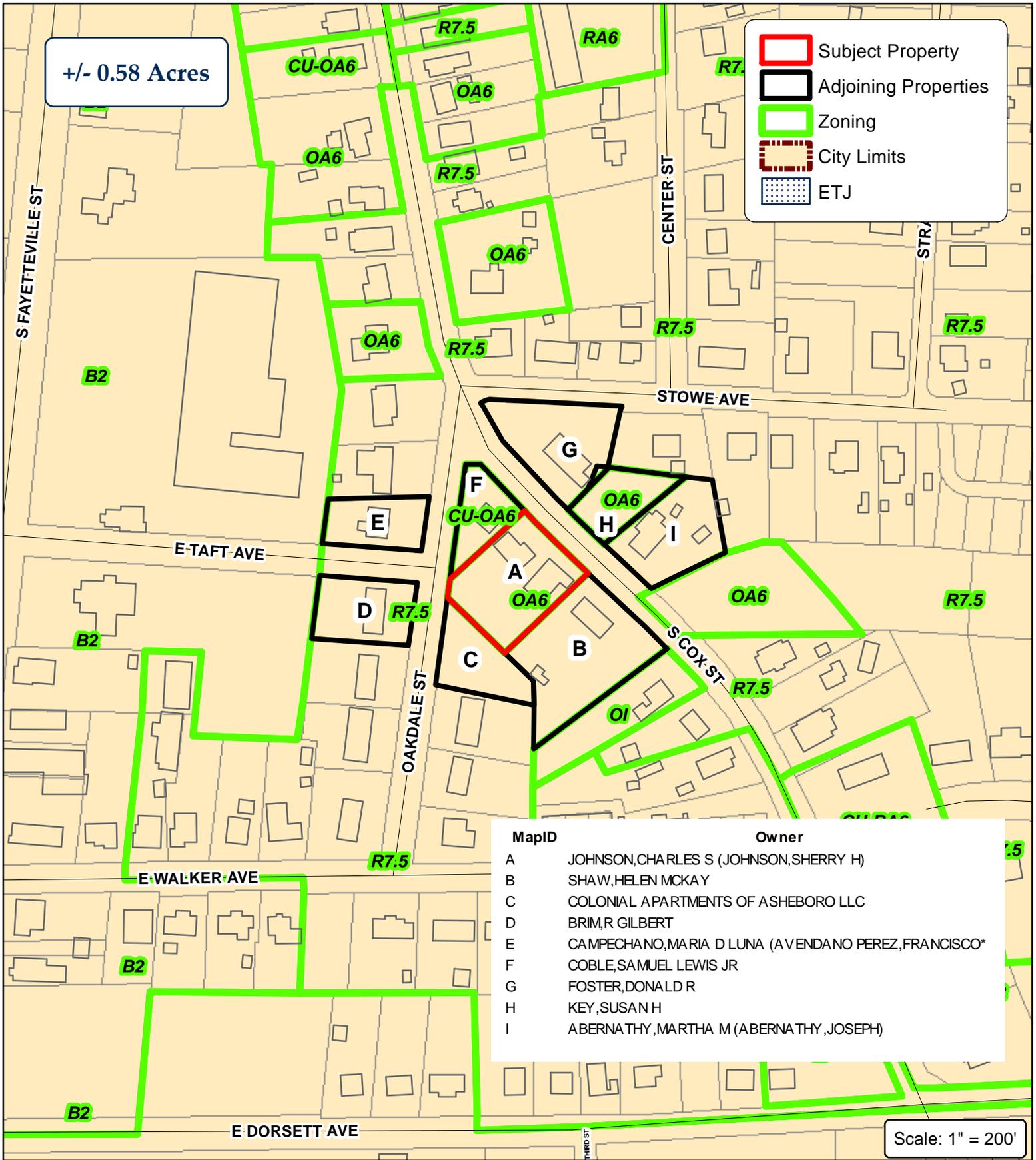
+/- 0.58 Acres



City of Asheboro
Planning & Zoning Department
Special Use Permit: SUP-15-01
Parcel: 7750875799

-  Subject Property
-  Zoning
-  City Limits
-  ETJ

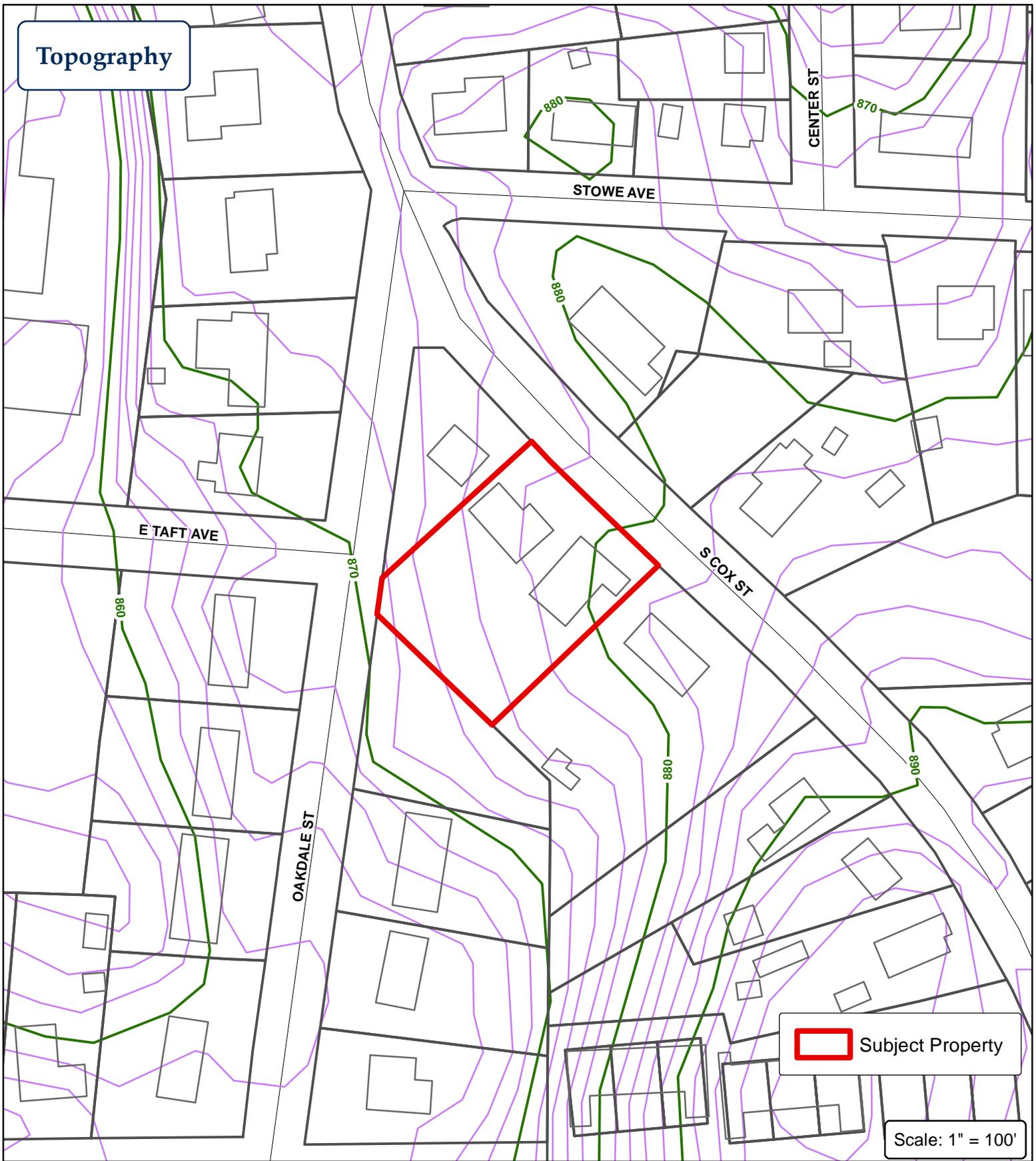




City of Asheboro
Planning & Zoning Department
Special Use Permit: SUP-15-01
Parcels: 7750875799



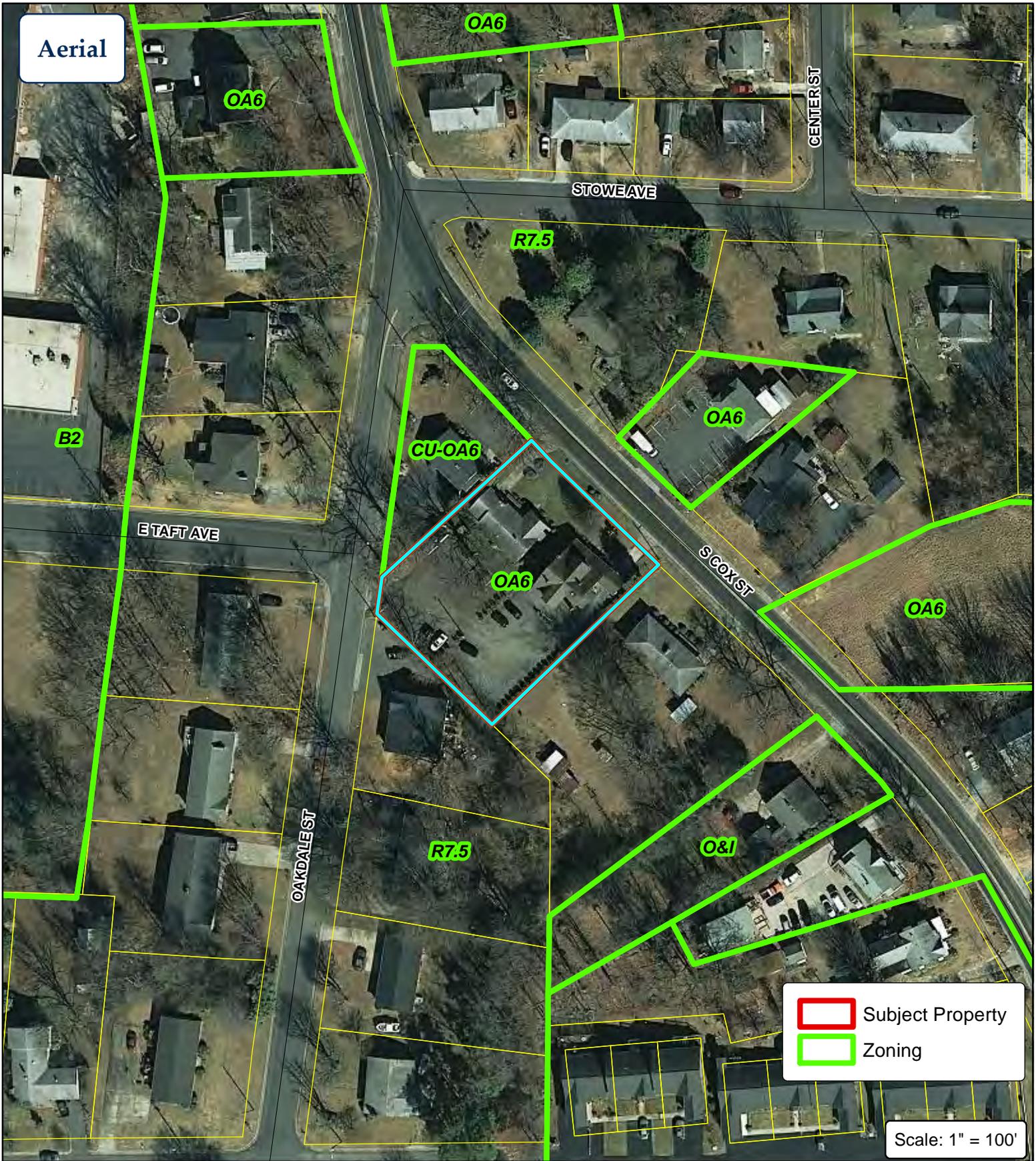
Topography



City of Asheboro
Planning & Zoning Department
Special Use Permit: SUP-15-01
Parcels: 7750875799



Aerial



Subject Property
 Zoning

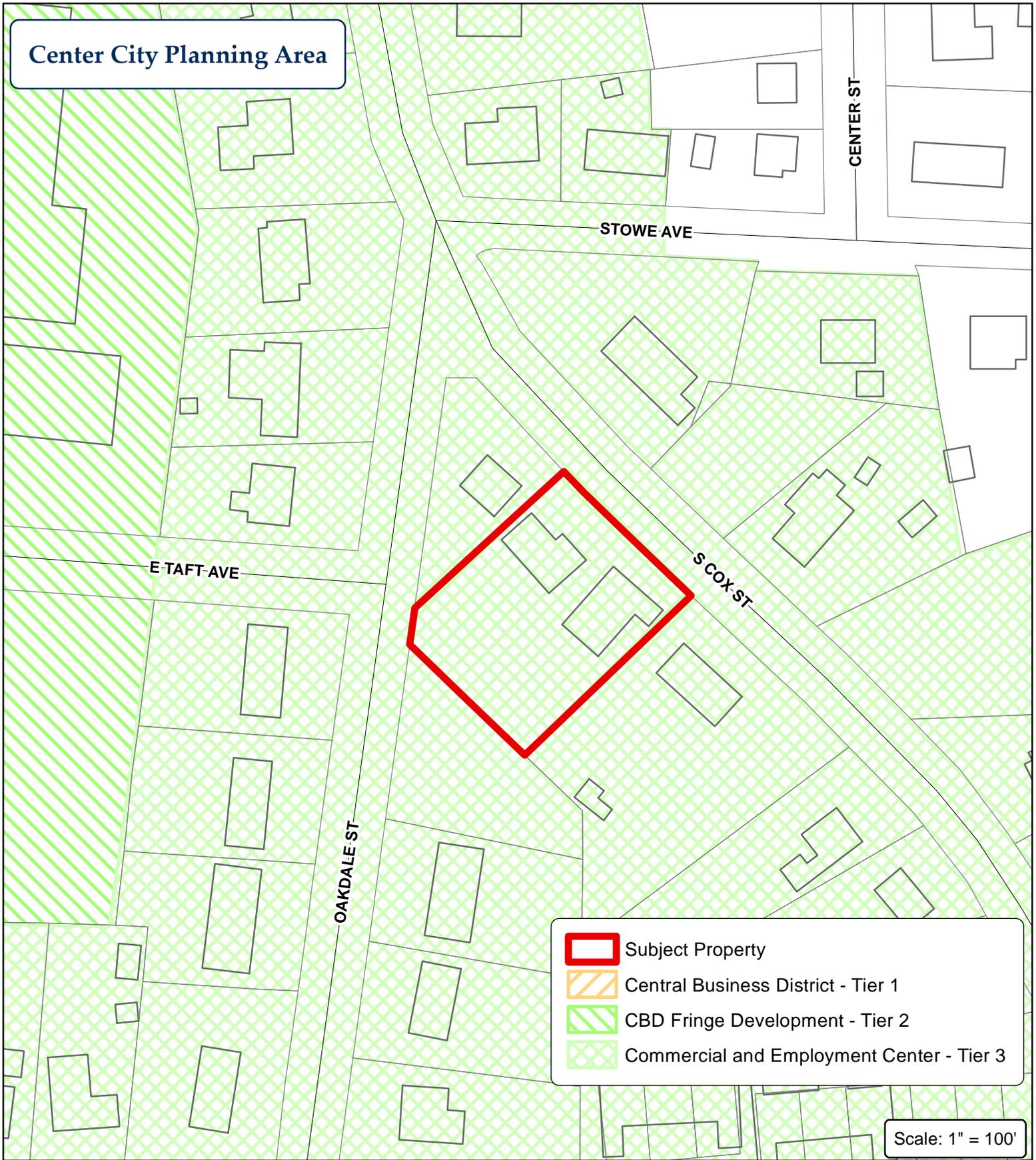
Scale: 1" = 100'



City of Asheboro
Planning & Zoning Department
Special Use Permit: SUP-15-01
Parcel: 7750875799



Center City Planning Area



-  Subject Property
-  Central Business District - Tier 1
-  CBD Fringe Development - Tier 2
-  Commercial and Employment Center - Tier 3

Scale: 1" = 100'



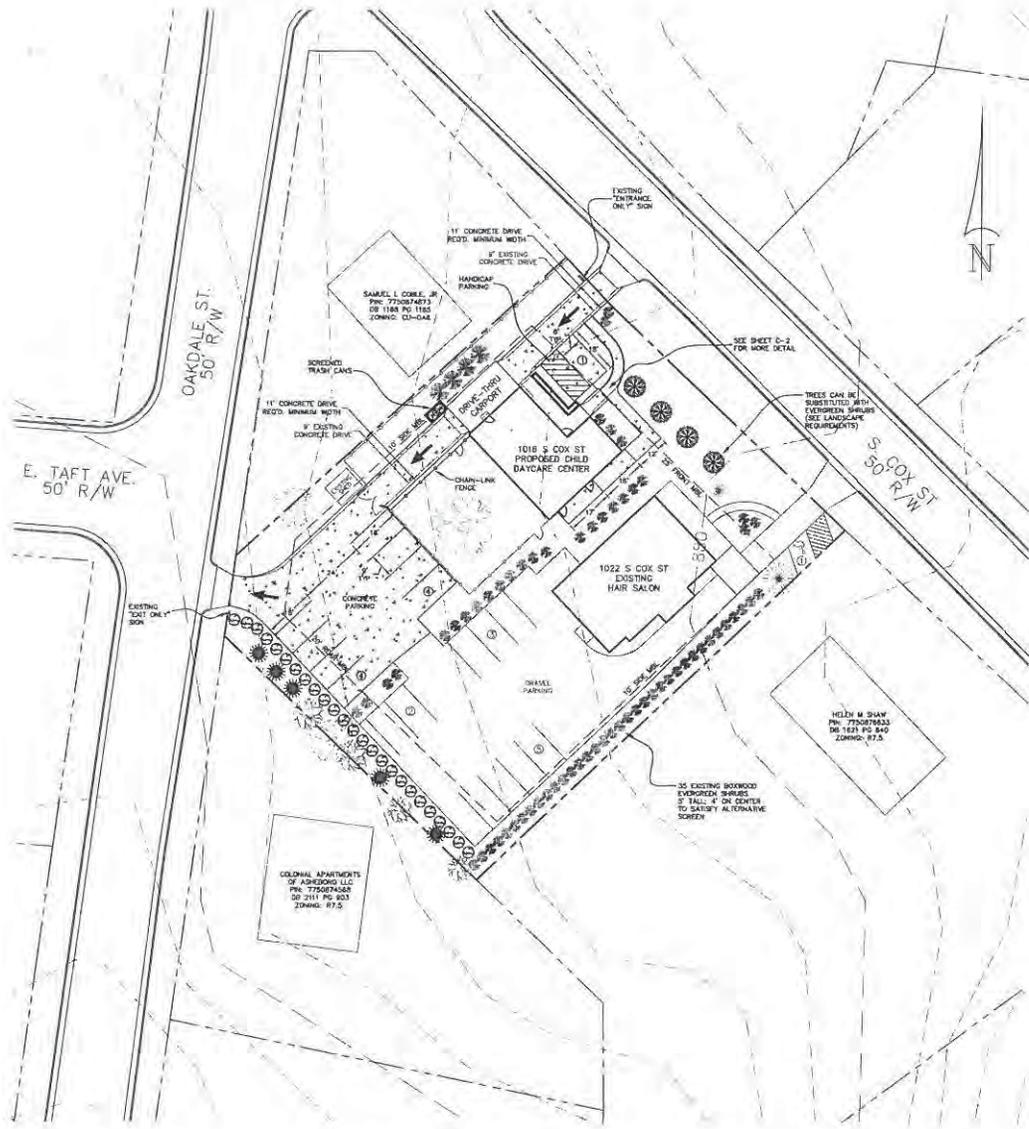
City of Asheboro
Planning & Zoning Department
Special Use Permit: SUP-15-01
Parcel: 7750875799





Summey Engineering Associates, PLLC
 Engineering - Land Planning - Consulting

PO Box 407
 Ashboro, NC 27203
 Phone: 336-221-4242
 Fax: 336-221-4243



NOTES:

OVERALL SITE AREA: 0.345 AC (2471 SF)
 EXISTING IMPERVIOUS AREA: 0.328 AC (2409 SF) (2.7%
 PROPOSED IMPERVIOUS AREA: 0.342 AC (2462 SF) (8.5%
 TOTAL FLOOR AREA RATIO (FOR MAX): 11.8% (2,882 SF)
 PROPERTY USE: PRESENT ZONING = O4B PROPOSED ZONING = O4B (SAME)
 PRESENT USE = VACANT HOUSE (1,342 SF) PROPOSED USE = CHILD DAYCARE CENTER - SMALL (1,342 SF)
 HAIR SALON (2,540 SF)

PARKING & LOADING: TOTAL NUMBER OF PARKING SPACES = 20 (5 HANDICAP) REQUIRED BY SECTION 400-4. (13 REQUIRED)
 CHILD DAYCARE CENTER - SMALL: 10 EMPLOYEES PLUS 1 FACILITY VEHICLE PLUS 2.0/10 CHILDREN
 4 EMPLOYEES PLUS 3 FACILITY VEHICLE PLUS 4 SPACES (19 CHILDREN=8 SPACES REQUIRED)
 HAIR SALON (PERSONAL SERVICES): 1 SPACES/200 SF OF A 1840 SF/330 SF=7 = 5 SPACES REQUIRED

NOTE: NOISE FROM THE PROPOSED DEVELOPMENT SHALL MEET SECTION 317A.

GRADE: GRADE SEPARATION OF BUILDING AND PARKING AREAS SHALL BE REQUIRED BY SECTION 408 B.1. WHERE REQUIRED AS SHOWN:

WATER & SEWER: WATER & SEWER SHALL BE PROVIDED FROM THE CITY OF ASHBORO UTILITY SYSTEM.

SPOTS: LOCATION AND SIZE OF ANY SPOTS WILL BE DETERMINED BY OWNER IN ACCORDANCE WITH ARTICLE 306.

BUFFER: BUFFER AS PER ARTICLE 306A, AND 306A.06 REQUIRED 10' FRONT YARD FROM STREET 11' AND SIDESET AVE. AND 10' PLANTED BUFFER ON EAST AND WEST SIDES OF PROPERTY.

SCREENING OF SOLID WASTE AREAS: SOLID WASTE SCREENING SHALL COMPLY WITH ARTICLE 307A. TRASH CANS WILL BE USED FOR THIS SITE & PLACED ON BACK SIDE OF CARPORT.

SCREENING OF MECHANICAL EQUIP: MECHANICAL EQUIPMENT SHALL BE SCREENED AS PER ARTICLE 308A. EQUIPMENT TO BE PAID MOUNTED AS SHOWN:

PERFORMANCE STANDARDS: AS PER SECTION 317A.

THIS AREA IS NOT LOCATED WITHIN ANY KNOWN FLOOD ZONE OR WATER SHED AREA.

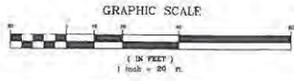
LANDSCAPING REQUIREMENTS	TOTAL # OF PLANTS REQUIRED
STREET YARD = 100' (S. COX ST)	10' STREET YARD 1 TREE PER 50 LF (AT LEAST ONE TREE MUST BE FLOWERING TREE)
SIDE YARD = 100' (SOUTHWEST LOT LINE)	35 EXISTING 5' TALL BOWWOOD EVERGREEN SHRUBS 8" ON CENTER TO MEET ALTERNATIVE SCREENING.
SIDE YARD = 125' (SOUTHWEST LOT LINE)	5 EVERGREEN TREES (COMBINATION OF LAYLAND DYPNOPSIS & RED CEDAR - 8' MIN IN HEIGHT AT PLANTING) 25 EVERGREEN SCREEN SHRUBS (COMBINATION OF SWAMP HORNED HOLLY & COMPACTA HOLLY 12' MIN HEIGHT AT PLANTING)
SIDE YARD = 150' (NORTHWEST LOT LINE)	NO LANDSCAPING REQUIRED ADJACENT LOT HAS SAME ZONING.

LANDSCAPING NOTES:
 1. EXISTING TREES & SHRUBS ARE SHOWN AS LIGHT GRAY
 2. STREET YARD LANDSCAPING BASED ON SECTION 306A. SECTION 317A.1.1.8.2 DO NOT APPLY BECAUSE THERE IS NO NEW CONSTRUCTION OR NEW ADDITION FOR THIS SITE.

LANDSCAPING LEGEND

CANYON TREE	☉
EVERGREEN TREE	●
BUFFER SHRUB	⊙

(SEE LANDSCAPING REQUIREMENTS THIS SHEET)



OWNER:
 CHARLES & SHERRY JOHNSON
 1022 S. COX ST
 ASHBORO, NC 27203
 PH (336) 625-3865

SITE PLAN

SHEILA ROBBINS DAY CARE

1016 S. COX STREET
 RANDOLPH COUNTY - ASHBORO - NORTH CAROLINA

Scale	1" = 20'
Date	NOV 2016
Drawn By	JYS
Checked By	WJS
Job No.	161016

Sheet No. 1 of 1

CITY OF ASHEBORO STREET CLOSURE ORDINANCE NO. _____

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

**IN RE THE PERMANENT CLOSURE OF
A SECTION OF AN UNOPENED STREET
LABELED AS OLD HAMMER ROAD**

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)
)
)
)

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 6th day of November, 2014, during a regular meeting, a Resolution (Resolution Number 40 RES 11-14) declaring the intent of the city council to permanently close approximately 0.1891 of an acre (8,236 square feet) of unopened street right-of-way, which has never been accepted or maintained by the city, but is labeled as street right-of-way for Old Hammer Road on a plat recorded in the office of the Randolph County Register of Deeds in the following location: Plat Book 8, Page 43; and

WHEREAS, Resolution Number 40 RES 11-14 properly called for a public hearing to be held on the question of whether the proposed permanent street closure would be detrimental to the public interest or the property rights of any individual, and, furthermore, the said Resolution of Intent called for the public hearing to be held during the regular council meeting scheduled to begin at 7:00 o'clock p.m. on the 8th day of January, 2015, in the Asheboro City Hall Council Chamber at 146 North Church Street, Asheboro, North Carolina 27203; and

WHEREAS, pursuant to Section 160A-299 of the North Carolina General Statutes, the said Resolution of Intent was published in *The Courier-Tribune*, a newspaper with general circulation in the City of Asheboro, Randolph County, North Carolina, once a week for four successive weeks prior to the above-referenced public hearing (this notice was published on December 11, 2014; December 18, 2014; December 25, 2014; and January 1, 2015); and

WHEREAS, a copy of the said Resolution of Intent was sent by certified mail, return receipt requested, to all of the owners, as determined by reviewing the county tax records, of property adjoining the section of unopened street known as Old Hammer Road, the said property owners are more particularly identified as follows:

1. David Carter and Linda Carter;
2. Mary K. Lemons;
3. Truc T. Nguyen;
4. Thomas S. Such and Bernadette S. Such;
5. Jerry M. Ward and Christopher W. Ward; and

WHEREAS, notice of the city council's intention to permanently close the unopened section of platted street right-of-way for Old Hammer Road, including the call for a public hearing on the question of the proposed permanent street closure, was prominently posted in two locations along the said section of unopened street right-of-way; and

WHEREAS, after holding the public hearing called by the adopted Resolution Number 40 RES 11-14, the City Council of the City of Asheboro has concluded that the permanent closure of the unopened section of platted street right-of-way for Old Hammer Road described below is not contrary to the public interest and that no individual owning property in the vicinity of the platted and unopened section of street right-of-way proposed for permanent closure would thereby be deprived of reasonable means of ingress and egress to his or her property;

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

Section 1. The approximately 0.1891 of an acre (8,236 square feet) of platted and unopened street right-of-way labeled as Old Hammer Road that is described below is hereby permanently closed. The permanently closed section of platted right-of-way for Old Hammer Road is located within the corporate limits of the City of Asheboro and is more particularly described by metes and bounds as follows:

Asheboro Township, Randolph County, North Carolina:

BEGINNING at a ½" new iron rod set flush with the ground in the western margin of the public right-of-way for Shamrock Road, this ½" new iron rod is located the following courses and distances from the centerline intersection of Shamrock Road and Stowe Avenue: North 07 degrees 10 minutes 29 seconds West 1.34 feet from the said ½" new iron rod to a computed point on the western margin of the public right-of-way for Shamrock Road; thence departing from the western margin of the public right-of-way for Shamrock Road and proceeding North 04 degrees 22 minutes 35 seconds East 104.79 feet to the centerline intersection of Shamrock Road and Stowe Avenue; thence from the said beginning point along the western margin of the public right-of-way for Shamrock Road the following courses and distances: South 07 degrees 10 minutes 29 seconds East 20.63 feet to a computed point; thence

South 07 degrees 10 minutes 29 seconds East 20.63 feet to a ½" new iron rod set flush with the ground; thence departing from the western margin of the public right-of-way for Shamrock Road and following the southern margin of the 40-foot right-of-way shown for the unopened Old Hammer Road on a plat of survey recorded in Plat Book 8, Page 43, Randolph County Registry by proceeding in accordance with the following courses and distances across the property of Jerry M. Ward (the Ward property that is located to the north and south of the unopened Old Hammer Road is described in the Office of the Randolph County Register of Deeds in Deed Book 549, Page 228; Deed Book 573, Page 21; and Deed Book 585, Page 324): South 68 degrees 34 minutes 42 seconds West 69.26 feet to a computed point; thence continuing in a southwesterly direction along the southern margin of the platted right-of-way for the unopened Old Hammer Road by following the arc of a curve with a radius of 248.68 feet and an arc length of 104.41 feet a chord bearing and distance of South 56 degrees 55 minutes 32 seconds West 103.64 feet to a computed point; thence South 86 degrees 23 minutes 09 seconds West 30.91 feet within the above-described Jerry M. Ward property and along the southern terminus of the unopened Old Hammer Road to a ½" new iron rod that is 6" above the ground at the northeast corner of the Mary K. Lemons property described in Deed Book 1569, Page 1216, Randolph County Registry; thence continuing along the southern terminus of Old Hammer Road and the Lemons property line South 86 degrees 10 minutes 37 seconds West 24.71 feet to a ½" new iron rod that is 6" above the ground at the southwest corner of the platted right-of-way for Old Hammer Avenue; thence departing from the southern terminus of the platted right-of-way and following the northern margin of the unopened street along the Thomas S. and Bernadette Such property described in Deed Book 1389, Page 833, Randolph County Registry North 52 degrees 49 minutes 15 seconds East 3.66 feet to a ½" new iron rod that is 6" above the ground on the boundary line between the Such and Ward properties; thence continuing within the Ward property along the northern margin of the platted right-of-way for Old Hammer Road in a northeasterly direction by following the arc of a curve with a radius of 288.68 feet and an arc length of 160.37 feet a chord bearing and distance of North 52 degrees 49 minutes 15 seconds East 158.32 feet to a computed point; thence North 68 degrees 34 minutes 42 seconds East 78.02 feet along the northern margin of the platted right-of-way to the point and place of the BEGINNING, and being all of that certain 0.1891 of an acre (8,236 square feet) of land, more or less, encompassed by the preceding metes and bounds description, specifically including the entirety of the platted right-of-way for the above-described section of the unopened Old Hammer Road. 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 drawn under the supervision of Glenn Lee Brown, a Professional Land Surveyor with registration number L-3663. The said plat, which is identified as job no. G14060P and is dated September 18, 2014, is titled "ROAD CLOSURE

PLAT PREPARED FOR CITY OF ASHEBORO OLD HAMMER ROAD.”
The plat of survey identified in the two (2) immediately preceding sentences is hereby incorporated into this Ordinance by reference as if copied fully herein.

Section 2. This ordinance shall take effect and be in force from and after the date of its adoption.

Section 3. Any person aggrieved by the permanent closure of the above-described section of right-of-way labeled as Old Hammer Road may appeal the adoption of this Ordinance and Order to the General Court of Justice of Randolph County, North Carolina within 30 days after the adoption of the Ordinance and Order.

Section 4. In the event there is no appeal within 30 days after the adoption of this Ordinance and Order, a certified copy of this Ordinance and Order shall be filed in the office of the Randolph County Register of Deeds as provided by law.

This Ordinance and Order was approved by the Asheboro City Council in open session during a regular meeting held on the 8th day of January, 2015.

CITY SEAL

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

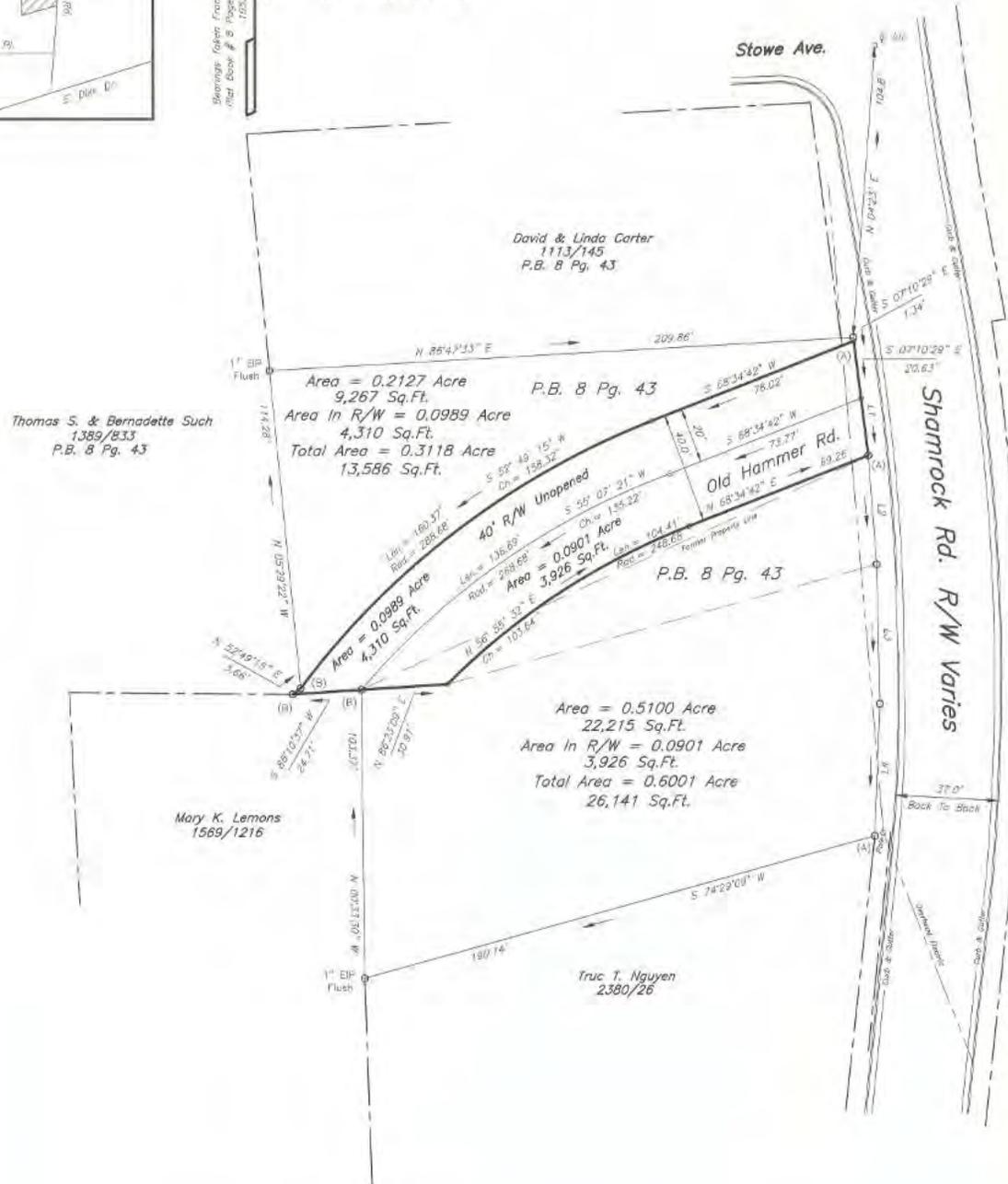
ATTEST:

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

C:\ACT\098\01406001.dwg F:\1.dwg 17 08:35:11 1997 (RUB)



- LEGEND**
- EIP Existing Iron Pipe
 - ER Existing Iron Rod
 - HIR New Iron Rod
 - R/W Right Of Way
 - C.P. Computed Point
 - Ch Existing Centerline
 - (A) 1/2" NIB Flush
 - (B) 1/2" NIB 8" Above



NORTH CAROLINA

I, GLENN LEE BROWN, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED BY BROKEN LINES, DEED DESCRIPTIONS AND OTHER INFORMATION ON RECORD ARE, (AS SHOWN ON THIS PLAT.) THAT THE RATIO OF PRECISION AS CALCULATED IS 1 : 15,000 ± (COMPASS RULE), PREPARED IN ACCORDANCE WITH G.S. 47-30, AS AMENDED, WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 18th DAY OF SEPTEMBER, 2014.

Glenn L. Brown
 PROFESSIONAL LAND SURVEYOR
 REGISTRATION NO. L-3663

STATE OF NORTH CAROLINA

REVIEW OFFICER OF _____ COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

DATE: _____ REVIEW OFFICER

THIS PLAT MUST BE RECORDED WITHIN (60) SIXTY DAYS OF APPROVAL.

P.B. _____ PG. _____

Line #	Bearing	Distance
L1	S 07°10'29" E	20.83'
L2	S 04°17'27" E	39.12'
L3	S 01°11'04" E	50.00'
L4	S 22°19'47" W	47.33'

- I, GLENN L. BROWN, PROFESSIONAL LAND SURVEYOR NO. L-3663, CERTIFY TO ONE OF THE FOLLOWING AS INDICATED THUS:
- 1. THAT THE SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND;
 - 2. THAT THE SURVEY IS LOCATED IN A PORTION OF A COUNTY OR MUNICIPALITY THAT IS UNREGULATED AS TO AN ORDINANCE THAT REGULATES PARCELS OF LAND;
 - 3. ANY ONE OF THE FOLLOWING:
 - 1. THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET;
 - 2. THAT THE SURVEY IS OF AN EXISTING BUILDING OR OTHER STRUCTURES, OR NATURAL FEATURE, SUCH AS A WATERCOURSE; OR
 - 3. THAT THE SURVEY IS A CONTROL SURVEY.
 - 4. THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.
 - 5. THAT THE INFORMATION AVAILABLE TO THE SURVEYOR IS SUCH THAT THE SURVEYOR IS UNABLE TO MAKE A DETERMINATION TO THE BEST OF THE SURVEYOR'S PROFESSIONAL ABILITY AS TO PROVISIONS CONTAINED IN (c) THROUGH (g) ABOVE.
- Glenn L. Brown*
 GLENN L. BROWN, P.L.S. NO.-3663

ROAD CLOSURE PLAT PREPARED FOR
CITY OF ASHEBORO
OLD HAMMER ROAD
 ASHEBORO TOWNSHIP
 RANDOLPH COUNTY, NORTH CAROLINA

JOB ADD: OLD HAMMER ROAD	SCALE: 1" = 30'
AREA = 0.9120 ACRES (TOTAL)	DATE: 9/18/14
DEED REFERENCE: 549/228, 573/21, JOB NO.: G14060P	
585/324, & P.B. 8 PG. 43	CK BY: GLB

30 15 0 30 60 90
SCALE IN FEET

SURVEYED BY
 Glenn Brown Surveying, Inc. C-1979
 912 SEQUOIA AVE., ASHEBORO, N. C. 27205
 PH (336) 625-6882 FAX (336) 825-6883

**ASHEBORO REGIONAL AIRPORT
Work Authorization #4**

**Terminal Building
Concept/Preliminary Design Phase Services
November 6, 2014**

**Contract for Professional Services
Dated July 14, 2011**

Project Description

This work authorization includes the conceptual/preliminary design phase services for a new terminal building at the Asheboro Regional Airport. The new terminal building is anticipated to be 10,000 – 12,000 square feet and to include a restaurant and meeting center as well as provide support facilities to the existing North Carolina Aviation Museum.

All proposed costs are grant eligible and are reimbursable to the OWNER under Non-Primary Entitlement Funds at a ratio of 90% Federal and 10% Local Match. Work will be in accordance with Contract for Professional Services dated July 14, 2011 between the OWNER and the CONSULTANT.

Scope of Services

The CONSULTANT will provide the general Basic and Special Services listed below and in accordance with Section I & Section II of the General Provisions of the Contract for Professional Services, dated July 14, 2011.

Basic Services

A. Project Development Phase:

1. Site Layout Preliminary Design: The CONSULTANT will provide the following services:
 - A. Conduct meetings with representatives of Asheboro Regional Airport to develop a program of spaces for the new facility and review developed options.
 - B. Prepare preliminary drawings of new terminal building site layout.
 - C. Prepare preliminary budgetary costs estimates for new terminal building site layout.
 - D. Meet with Airport Authority to present the design concepts and preliminary estimates.

City of Asheboro
Terminal Building
Concept/Preliminary Design
WA #4



- E. Anticipate process will require five design committee meetings and one presentation to the Airport Authority.
 - F. Assemble, review, coordinate and submit project closeout documentation to NCDOA as per FAA guidelines.
2. Terminal Building Concept Design: The CONSULTANT will provide the following services through the Sub-Consultant:
- A. Provide concept design services for the proposed facility. Services will include conceptual design of the new building(s) including integration of the new facility with the museum and the existing airport infrastructure.
 - B. Meet with representatives of Asheboro Regional Airport to develop a program of spaces for the new facility.
 - C. Develop concept options for the new Terminal / Meeting Center and meet with representatives of Asheboro Regional Airport to review those options.
 - D. Document all meetings and the decisions made in those meetings.
 - E. Prepare Concept Design drawings for approval by the Airport Authority. Presentation materials will include color floor plan(s) and one exterior rendering. Presentation materials will be provided on 30" x 42" boards (or similar size) and in electronic (PDF) format.
 - F. Prepare an opinion of probable cost for the proposed facility using a cost per square foot method developed from historical data of projects of similar size and complexity.
 - G. Meet with the Airport Authority to present the Design Concept and Preliminary Cost Estimate.
 - H. Anticipate process will require five design committee meetings and one presentation to the Airport Authority.

Special Services

- 1. Project Formulation: The CONSULTANT will assist OWNER in initial grant form preparation, project coordination with review agencies and Sub-consultant coordination, complete grant application forms & subsequent requests for reimbursement.



Deliverables

1. The CONSULTANT will provide electronic copies to the OWNER, in pdf and/or AutoCAD format of drawings and renderings produced under this Work Authorization.
2. Copies of grant applications, agreements and reimbursements.

Fee Schedule

The OWNER will pay, and the CONSULTANT agrees to accept as full compensation for services under this Work Authorization a fee of Forty-Nine Thousand Six Hundred Sixty Five Dollars (\$49,665) as indicated.

Basic Services

Site Layout Preliminary Design	Lump Sum	\$18,225
Terminal Building Concept Design	At Cost	\$26,250

Special Services

Project Formulation	Lump Sum	\$5,190
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Any Additional Services requested shall be approved by the Owner and will be completed in accordance with the Rate Schedule in effect at the time of services.

OWNER:

CONSULTANT:

John N. Ogburn, III
City Manager

Brian L. Tripp, PE Vice President
W.K. Dickson & Co., Inc.

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

Deborah P. Reaves, Finance Officer



PROJECT TITLE: Terminal Building					DATE PREPARED:11-6-2014					AVIATION NUMBER:				
PREPARED BY: CGF					TIP NUMBER:					WBS NUMBER:				
TASK NUMBER	PHASE AND TASK DESCRIPTION	Employee Classifications											SUB-TOTAL	
		Principal	Program Manager	Sr. Project Manager	Project Manager	Sr. Project Engineer	Project Engineer	Sr. Civil Designer	Civil Designer	Const. Observer				Admin. Manager
	<u>BASIC SERVICES</u>													
	I. Site Layout Preliminary Design Phase													
1	Preliminary Site Layout Drawing	2.00	2.00			14.00	48.00							66.00
2	Preliminary Cost Estimates					4.00	8.00							12.00
3	Meetings with owner & subconsultant (up to six meetings)		15.00			42.00								57.00
4	Project Close-out documentation					4.00							1.00	5.00
	TOTAL WORKDAYS/CATEGORY:	2.00	17.00	0.00	0.00	64.00	56.00	0.00	0.00	0.00	0.00	0.00	1.00	140.00
	RATES PER HOUR:	\$70.00	\$58.50	\$55.25	\$45.50	\$38.25	\$35.00	\$34.00	\$29.50	\$35.00			\$26.00	
	PAYROLL BURDEN:	\$140.00	\$994.50	\$0.00	\$0.00	\$2,448.00	\$1,960.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$26.00	
	TOTAL WORK HOURS:	140.00												
	TOTAL PAYROLL BURDEN:	\$5,568.50												
	GENERAL OVERHEAD @ 169.20.00 %:	\$9,421.90												
	SUBTOTAL:	\$14,990.40												
	COMPARATIVE FEE @ 9%:	\$1,349.14												
	Cost of Capital @ 0.43 %	\$23.94												
	TOTAL:	\$16,363.48												
	DIRECT EXPENSES:	\$1,860.00												
	PRIME GRAND TOTAL:	\$18,223.48												
	Sub Consultant TOTAL:	\$0.00												
GRAND TOTAL:		\$18,223.48												

From Expenses Tab

PROJECT TITLE: Terminal Building	DATE PREPARED:11-6-2014	AVIATION NUMBER:
PREPARED BY: CGF	TIP NUMBER:	WBS NUMBER:

TASK NUMBER	PHASE AND TASK DESCRIPTION	Employee Classifications											SUB-TOTAL	
		Principal	Program Manager	Sr. Project Manager	Project Manager	Sr. Project Engineer	Project Engineer	Sr. Civil Designer	Civil Designer	Const. Observer				Admin. Manager
	<u>Special Services</u>													
	PROJECT FORMULATION													
1	Project Scoping/Manhour Budget/Contract Development and Coordination	4.00		4.00		16.00							2.50	26.50
2	Subconsultant Scope/Contract Development					2.00								2.00
3	Project Administration					12.00							2.00	14.00

TOTAL WORKDAYS/CATEGORY:	4.00	0.00	4.00	0.00	30.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.50	42.50
RATES PER HOUR:	\$70.00	\$58.50	\$55.25	\$45.50	\$38.25	\$35.00	\$34.00	\$29.50	\$35.00				\$26.00	
PAYROLL BURDEN:	\$280.00	\$0.00	\$221.00	\$0.00	\$1,147.50	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$117.00	
TOTAL WORK HOURS:	42.50													
TOTAL PAYROLL BURDEN:	\$1,765.50													
GENERAL OVERHEAD @ 169.20.00 %:	\$2,987.23													
SUBTOTAL:	\$4,752.73													
COMPARATIVE FEE @ 9%:	\$427.75													
Cost of Capital @ 0.43 %:	\$7.59													
TOTAL:	\$5,188.06													
DIRECT EXPENSES:	\$0.00													
PRIME GRAND TOTAL:	\$5,188.06													
Sub Consultant TOTAL:	\$0.00													

From Expenses Tab

GRAND TOTAL:	\$5,188.06
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DIRECT EXPENSES

PROJECT TITLE: Terminal Building

PREPARED BY: CGF

AVIATION NUMBER:

TIP NUMBER:

WBS NUMBER:

DATE PREPARED: 11-6-2014

REVIEWED BY UNIT HEAD ON:

GENERAL PROJECT WORK:	ITEM	QTY	DESCRIPTION		UNIT COST		
	Travel:						
	Sedan	6	Trip(s) @	185	miles @	\$0.565	\$627.15
	Sedan	6	Trip(s) @	185	miles @	\$0.565	\$627.15
	Carry All		Trip(s) @		miles @	\$0.585	\$0.00
	Carry All		Trip(s) @		miles @	\$0.585	\$0.00
	Car Rental				days @	\$45.00	\$0.00
	Gas for Rental				miles @	\$0.200	\$0.00
	Per Diem:		Breakfast			\$8.20	\$0.00
		6	Lunch			\$10.70	\$64.20
		6	Dinner			\$18.40	\$110.40
			Lodging (on lump sum Incl. taxes)			\$73.50	\$0.00
	Reproduction:						
		50	8 1/2 x 11 Xerox Copies @			\$0.04	\$2.00
		51	11 x 17 Xerox Copies @			\$0.10	\$5.10
			Blueprints - 8 1/2 x 11 @			\$0.35	\$0.00
		50	Blueprints - 42 x 72 @			\$1.30	\$65.00
			Bond - 8 1/2 x 11 @			\$0.42	\$0.00
		50	Bond - 34" x 68" @			\$3.50	\$175.00
		1	Vellum			\$3.00	\$3.00
		50	Stick-Ons			\$1.00	\$50.00
		52	Cover(s) @			\$0.50	\$26.00
		50	Binder(s) @			\$0.50	\$25.00
			Mylar - 8 1/2 x 11 @			\$5.90	\$0.00
			Mylar - 3' x 4' @			\$21.00	\$0.00
	Film and Developing:	4	Roll(s) @			\$20.00	\$80.00
			Subtotal				\$1,860.00
MAPS AND DOCUMENTS:	ITEM	QTY	DESCRIPTION		UNIT COST		
	County Tax Maps:	0	Map(s) @			\$7.00	\$0.00
	USGS Maps:	0	Map(s) @			\$7.00	\$0.00
			Subtotal				\$0.00
Miscellaneous Other	Item	Amount	Description		Cost Per		
							\$0.00
							\$0.00
							\$0.00
							\$0.00
	Newspaper Advertisement		Ad in News & Record				\$0.00
			Subtotal				\$0.00
			TOTAL				\$1,860.00

* Sum of all plots

DIRECT EXPENSES

PROJECT TITLE: Terminal Building

PREPARED BY: CGF

AVIATION NUMBER:

TIP NUMBER:

WBS NUMBER:

DATE PREPARED: 11-6-2014

REVIEWED BY UNIT HEAD ON:

GENERAL PROJECT WORK:	ITEM	QTY	DESCRIPTION		UNIT COST	
	Travel:					
	Sedan		Trip(s) @	185 miles @	\$0.565	\$0.00
	Sedan		Trip(s) @	185 miles @	\$0.565	\$0.00
	Carry All		Trip(s) @	miles @	\$0.585	\$0.00
	Carry All		Trip(s) @	miles @	\$0.585	\$0.00
	Car Rental		days @		\$45.00	\$0.00
	Gas for Rental		miles @		\$0.200	\$0.00
	Per Diem:		Breakfast		\$8.20	\$0.00
			Lunch		\$10.70	\$0.00
			Dinner		\$18.40	\$0.00
			Lodging (on lump sum Incl. taxes)		\$73.50	\$0.00
	Reproduction:		8 1/2 x 11 Xerox Copies @		\$0.04	\$0.00
			11 x 17 Xerox Copies @		\$0.10	\$0.00
			Blueprints - 8 1/2 x 11 @		\$0.35	\$0.00
			Blueprints - 42 x 72 @		\$1.30	\$0.00
			Bond - 8 1/2 x 11 @		\$0.42	\$0.00
			Bond - 34" x 68" @		\$3.50	\$0.00
			Vellum		\$3.00	\$0.00
			Stick-Ons		\$1.00	\$0.00
			Cover(s) @		\$0.50	\$0.00
			Binder(s) @		\$0.50	\$0.00
			Mylar - 8 1/2 x 11 @		\$5.90	\$0.00
			Mylar - 3' x 4' @		\$21.00	\$0.00
	Film and Developing:		Roll(s) @		\$20.00	<u>\$0.00</u>
			Subtotal			\$0.00
MAPS AND DOCUMENTS:	ITEM	QTY	DESCRIPTION		UNIT COST	
	County Tax Maps:	0	Map(s) @		\$7.00	\$0.00
	USGS Maps:	0	Map(s) @		\$7.00	\$0.00
			Subtotal			\$0.00
Miscellaneous Other	Item	Amount	Description		Cost Per	
Architect Sub	Architectual Concept Design	1	Architectual Concept Design		\$26,250.000	\$26,250.00
						\$0.00
						\$0.00
	Newspaper Advertisement		Ad in News & Record			\$0.00
			Subtotal			\$26,250.00
			TOTAL			\$26,250.00

* Sum of all plots



October 27, 2014

Ms Crystal Freeburg
WK Dickson
616 Colonnade Drive
Charlotte, North Carolina 28205

Re: Asheboro Regional Airport
Concept Design Services Proposal

Dear Crystal:

We appreciate this opportunity to present a proposal for professional services related to the conceptual design of a replacement Terminal Building, Restaurant and Meeting center at the Asheboro Regional Airport. Below is our understanding of the project and our scope of services:

PROJECT DESCRIPTION:

Boomerang Design will provide Conceptual Design services for a Terminal / Meeting Center, of 10,000-12,000 square feet, to replace the existing Asheboro Regional Airport Terminal Building and provide support facilities for the existing North Carolina Aviation Museum.

SCOPE OF SERVICES:

- Boomerang Design will provide concept design services for the proposed facility. Boomerang's services will include conceptual design of the new building(s) including integration of the new facility with the museum and the existing airport infrastructure.
- Boomerang will meet with WK Dickson and representatives of Asheboro Regional Airport to develop a program of spaces for the new facility.
- Boomerang will develop concept options for the new Terminal / Meeting Center and meet with WK Dickson and representatives of Asheboro Regional Airport to review those options.
- Boomerang will document all meetings and the decisions made in those meetings.
- Boomerang will prepare Concept Design drawings for approval by the Airport Authority. Presentation materials will include color floor plan(s) and one exterior rendering. Presentation materials will be provided on 30" x 42" boards (or similar size) and in electronic (PDF) format.
- Boomerang will prepare an opinion of probable cost for the proposed facility using a cost per square foot method developed from historical data of projects of similar size and complexity.
- Boomerang will meet with the Airport Authority to present the Design Concept and Preliminary Cost Estimate.
- We anticipate this process will require five design committee meetings and one presentation to the Airport Authority.

SERVICES NOT INCLUDED:

- Design Development and Construction Document phase services
- Bidding and Construction Administration phase services
- Boundary and Topographical Survey

Boomerang DESIGN

Page 2 of 2

Letter to: Crystal Freeburg

October 27, 2014

- Environmental and/or Wetlands Evaluation
- Soil Borings or Geotechnical Analysis
- Cost Estimating services (beyond cost per square foot "Opinion of Probable Costs")

COMPENSATION:

- We propose to provide the Services described above (under Scope of Services) for a Lump Sum of Twenty Six Thousand, Two Hundred Fifty Dollars (\$26,250)
- Reimbursable Expenses: (i.e. printing, reproductions, and postage) Actual expenditures made by the Architect, or his employees in the interest of the project shall be billed at a multiple of 1.20 times the actual cost.

We appreciate the opportunity to provide this proposal to you. We look forward to working with you on this project.

Best regards,

Boomerang Design



John F. Thomas, Jr., AIA

/jft

cc: Vanda Hamrick
Angie Crawford

City of Asheboro
Finance Office

To: John N. Ogburn, III, City Manager
 From: Debbie Reaves, Finance Director
 Date: January 7, 2015
 Re: Vehicle Purchase 2014-2015

The fiscal year budget for 2014-2015 included an appropriation for the purchase of new vehicles for water / wastewater maintenance departments, and water quality department.

Below are the bid results:

Full Size Crew Cab Truck (Water Maintenance / Wastewater Maintenance)

Asheboro Ford: 2015 Ford F150		Price \$30,603
Asheboro Auto Mall- Dodge Ram 2015 Ram 2500		Price \$28,441
Asheboro Auto Mall- 2014 Nissan Titan S		Price \$31,000
Capital Ford: 2015 Ford F150	State Contract	Price \$28,126
Sir Walter Chevrolet- 2015 Silverado 1500 -	State Contract	Price \$26,918

Full Size Crew Cab Truck- Diesel (Water Maintenance)

Asheboro Ford: 2015 Ford F250		Price \$39,289
Asheboro Auto Mall- Dodge Ram 2015 Ram 2500		Price \$39,220
Asheboro Auto Mall – Nissan- NO BID		
Capital Ford: 2015 Ford F250	State Contract	Price \$35,342
Sir Walter Chevrolet – 2015 Silverado 3500HD	State Contract	Price \$37,366

New SUV /Compact SUV (Water Quality Dept)

Asheboro Ford: 2015 Ford Escape		Price \$22,131
Asheboro Auto Mall- 2015 Jeep Cherokee Sport 2.4L		Price \$22,138
Sir Walter Chevrolet- 2015 Equinox AWD	State Contract	Price \$20,500
Ilderton Dodge- 2015 Journey	State Contract	Price \$21,903

Recommendation: Based on the lower cost available thru state contract, I recommend that we purchase all vehicles off state contract

CHANGE ORDER

ORDER NUMBER: 2
 NAME OF PROJECT: WASTEWATER TREATMENT PLANT
 DIGESTER GAS-HOLDER COVER AND MIXING SYSTEM
 OWNER: CITY OF ASHEBORO
 CONTRACTOR: HAREN CONSTRUCTION COMPANY, INC.
 DATE: DECEMBER 30, 2014
 AGREEMENT DATE: AUGUST 5, 2014

The following changes are hereby made to the CONTRACT DOCUMENTS:

1. An access platform will be added to the mixer assembly.

Justification: These changes are Owner requested and intended to facilitate operator access to the mixer appurtenant to the digester cover for maintenance.

Change to CONTRACT PRICE: \$17,918.14 (See Contractor cost Breakdown attached)

Original CONTRACT PRICE: \$778,000.00

Current CONTRACT PRICE adjusted by previous CHANGE ORDER: \$823,381.02

The CONTRACT PRICE due to this CHANGE ORDER will be increased by \$17,918.14

The new CONTRACT PRICE including this CHANGE ORDER will be **\$841,299.16**

Requested by: _____
 City of Asheboro Date

Recommended by: _____
 MBD Consulting Engineers, P.A. Date

Accepted by: _____
 Haren Construction Co., Inc. Date

PRE-AUDIT STATEMENT

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

 Finance Officer Date



HAREN CONSTRUCTION COMPANY, INC.
 ETOWAH / MARYVILLE / DYERSBURG, TN

11/6/2014
 1:55 PM

KUB Control No. 11216
 CDM Smith Project No. 79699

PROJECT: City of Asheboro, NC WWTP Digester Spiral Guided Gas Holder Cover and Gas Mixing System
CHANGE ORDER REQUEST SUMMARY NO. 2
 HCCI Project No. 134-411

ITEM	DESCRIPTION	COST
1	Furnish & Install Mixer Access Platform	17,918.14
	Total	\$17,918.14

TOTAL (ROUNDED): \$17,918.00

RESOLUTION NUMBER _____

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**A RESOLUTION APPROVING THE ENTRY OF THE CITY INTO A
BIOSOLIDS MANAGEMENT AGREEMENT WITH
EMA RESOURCES, INC.**

WHEREAS, the city owns and operates a wastewater treatment plant located at 1032 Bonkemeyer Drive, Asheboro, North Carolina 27203; and

WHEREAS, the city is currently seeking a contractor to provide professional, full biosolids management services that specifically include taking primary responsibility for Class B biosolids management activities; and

WHEREAS, after reviewing the responses to a request for proposals to provide biosolids management services, the city's water resources director, with the approval of the city manager, has concluded that it is in the best interest of the city to select the proposal submitted by EMA Resources, Inc. as the basis for negotiating the city's next contract for the management of biosolids; and

WHEREAS, city staff members and authorized representatives of EMA Resources, Inc. have tentatively agreed upon the terms and conditions of a biosolids management agreement between the parties (this proposed agreement with EMA Resources, Inc. shall be hereinafter referred to as the "Contract"); and

WHEREAS, the Contract is attached hereto as EXHIBIT 1 and is hereby incorporated into this Resolution by reference as if copied fully herein; and

WHEREAS, the Asheboro City Council concurs with the recommendation received from the city manager and the water resources director to enter into the Contract attached to this Resolution as EXHIBIT 1;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that the attached Contract is hereby approved; and

BE IT FURTHER RESOLVED that the city manager and all other necessary city officials are hereby authorized to execute duplicate originals of the said Contract with EMA Resources, Inc.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January, 2015.

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

ATTEST:

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

EXHIBIT 1

STATE OF NORTH CAROLINA

**BIOSOLIDS MANAGEMENT
AGREEMENT**

COUNTY OF RANDOLPH

THIS BIOSOLIDS MANAGEMENT AGREEMENT (the "Agreement") is entered into as of this _____ day of January, 2015, by and between the **City of Asheboro, North Carolina**, a North Carolina municipal corporation (the "City"), and **EMA Resources, Inc.**, a North Carolina corporation ("EMA").

RECITALS

WHEREAS, the City owns and operates one (1) wastewater treatment plant located in Randolph County, North Carolina at 1032 Bonkemeyer Drive, Asheboro, North Carolina 27203; and

WHEREAS, the City is seeking a contractor that can provide professional, full biosolids management services that specifically include taking primary responsibility for Class B biosolids management activities; and

WHEREAS, EMA and the City have mutually agreed that EMA will provide the requested professional services upon the terms and conditions set forth below.

AGREEMENT

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

ARTICLE 1. BIOSOLIDS MANAGEMENT PROGRAM

- 1.01 Throughout this Agreement, the term "biosolids" will be used to refer to all wastewater solids that are processed to meet the standards and requirements defined in 40 CFR 503 for the beneficial reuse of wastewater solids. The City produces a Class B biosolids product at its wastewater treatment plant. The purpose of this Agreement is to beneficially reuse all of the Class B biosolids produced at the City's wastewater treatment plant (the "WWTP").
- 1.02 The Class B biosolids produced at the WWTP are a cake of approximately 18% to 25% total solids.
- 1.03 The WWTP is subject to redesign, expansion, repairs, and changes in operation. The City has the right, throughout the initial term of this Agreement and throughout any and all extension terms, if any, to modify the operations at the WWTP,

specifically including by way of illustration and without limitation the solids processing and handling systems.

ARTICLE 2. TERM OF THE AGREEMENT

- 2.01 Unless earlier terminated pursuant to Article 6 of this Agreement, the term of this Agreement shall commence at 12:01 a.m. Eastern Standard Time on February 1, 2015, and shall remain in full force until 11:59 p.m. Eastern Standard Time on January 31, 2017.
- 2.02 The parties shall have the right to extend this Agreement for a total of no more than three (3) consecutive one-year extension terms upon the mutual written agreement of both of the parties. Any such extension term(s) shall be upon the same terms and conditions set out in this Agreement.
- 2.03 Either party may elect to allow this Agreement to expire by not agreeing to an extension term. Such an election may be made by either party, with or without cause, so long as such decision is communicated to the other party in writing no less than ninety (90) days in advance of the expiration date of the then current term, whether that term is the initial term or an extension term, of the Agreement.

ARTICLE 3. COMPENSATION AUTHORIZED UNDER THIS AGREEMENT

- 3.01 Subject to the City’s right in the event of a breach of contract to deduct or holdback payments in accordance with Article 6 of this Agreement, the amount of consideration, whether labeled as compensation, expenses, reimbursements, surcharges, or fees of any type or kind, paid by the City to EMA for the services provided to the City during any and all terms of this Agreement shall be controlled exclusively by the provisions contained within this Article (Article 3) of the Agreement. No sum of money can be paid by the City to EMA unless such payment is explicitly authorized by this Article. Except as explicitly provided within Article 3, no prices stated herein may be adjusted during the course of the initial term or any extension term of this Agreement.
- 3.02 The compensation to EMA for performing the requisite permitting services and for the application of Class B biosolids and lime is as follows:

Land Application of Class B Biosolids	=	\$17.95/Cubic Yard
Ag Lime Application (including soil analysis)	=	\$59.00/Acre
Permitting	=	\$17.00/Acre
- 3.03 Beginning in calendar year 2016, the compensation rate prescribed above in Section 3.02 may be adjusted on an annual basis in accordance with the Consumer Price Index - All Urban Consumers (South Region, All Items, Not Seasonally Adjusted) as published by the U. S. Department of Labor, Bureau of Labor Statistics with an index base period of 1982-84 = 100. Such a price adjustment shall become effective

on the 1st day of July of the year in which the following calculation is made. On such an adjustment date, the then current prices may be increased by a percentage equal to the percent change, if any, in the above-referenced index during the twelve (12) month period preceding February the 1st of the calendar year in which the adjustment is to be made. If the Consumer Price Index (hereinafter referred to as the "CPI") ceases to use as the basis of calculation the standard of 1982-84 = 100, or if a change is made in the items contained in the CPI, or if the CPI is altered, modified, converted, or revised in any other manner, then the foregoing computations shall be made with the use of such conversion factor, formula, or table for converting the CPI as may be published by the Bureau of Labor Statistics. If the Bureau of Labor Statistics does not publish such conversion information, then the foregoing computations shall be made with the use of a conversion factor that adjusts the modified CPI to the figure that would have been calculated had the manner of computing the CPI not been altered.

- 3.04 A fuel surcharge per load of biosolids transported, both positive and negative, when outside the range of \$3.51- \$4.25 per gallon is authorized by this Agreement. Average diesel fuel price will be the monthly average price for Diesel (On-Highway) -All Types – Central Atlantic (PABB 1B) as reported by the US Energy Information Administration.

Fuel Surcharge per Trip								
One Way Distance	Average Diesel Fuel Price							
	<i>(Miles)</i>	<i>Less than \$3.00</i>	<i>\$3.01-\$3.25</i>	<i>\$3.26 - \$3.50</i>	<i>\$3.51 - \$4.25</i>	<i>\$4.26 - \$4.50</i>	<i>\$ 4.51 - \$4.75</i>	<i>\$4.76 - 5.00</i>
0-10	-\$3.00	-\$2.00	-\$1.00	\$0	\$1.00	\$2.00	\$3.00	\$4.00
10.1-20	-\$6.00	-\$4.00	-\$2.00	\$0	\$2.00	\$4.00	\$6.00	\$8.00
20.1-30	-\$9.00	-\$6.00	-\$3.00	\$0	\$3.00	\$6.00	\$9.00	\$12.00
30.1-40	-\$12.00	-\$8.00	-\$4.00	\$0	\$4.00	\$8.00	\$12.00	\$16.00
40+	-\$15.00	-\$10.00	-\$5.00	\$0	\$ 5.00	\$10.00	\$15.00	\$20.00

- 3.05 EMA shall send the City, on a monthly basis, an invoice for the fees calculated and owed pursuant to this Agreement. Subject to the provisions of Article 6 of this Agreement, the City shall pay EMA the full amount within twenty (20) calendar days of receipt of the invoice. Unpaid invoices that are not subject to deductions and/or holdbacks in accordance with the said Article 6 shall carry interest at the lesser of (i) of one and one-half percent (1.5%) per month, or (ii) the maximum amount permitted under applicable law.

ARTICLE 4. SERVICES TO BE PERFORMED BY EMA

- 4.01 Except for the specific responsibilities assigned to the City and detailed in Article 5 of this Agreement, EMA shall furnish all permits, labor, materials, and equipment

necessary to lawfully remove, transport, and beneficially reuse/dispose of all Class B biosolids produced at the WWTP. Limited authorization is hereby provided for EMA to utilize subcontractors for the sole and exclusive purpose of executing transportation and application event operations. Management functions, specifically including without limitation site management of residuals application, may not be delegated to a subcontractor.

- 4.02 EMA will conduct short and long term planning efforts in conjunction with the City to ensure that there will be reliable methods and resources available for biosolids and residuals management. The City's intent is to have a professionally managed residuals reuse program which will employ state of the art methods, equipment, and systems. The services to be performed by EMA include monitoring and evaluating local, state, and federal rules and policy changes; assisting the City in improving the quality of its products and reuse program; and utilizing creative means for the implementation of a sustainable high quality, cost effective management program for all of the City's Class B biosolids and thereby enhance the public acceptance of the City's biosolids management program. EMA's planning, administration, and performance of the services to be provided pursuant to this Agreement shall be undertaken with these goals in mind.
- 4.03 EMA will provide and maintain the requisite land application permit, maps, and operations and maintenance plan, which may incorporate to the extent lawfully feasible the existing permit, maps, and plan. This plan will include a copy of the Residuals Land Application Program Form, Site Deletion Sheet, Land Application Site Certifications, County Manager Notification Cover Letters and Attachment forms, Residuals Source Facility Summary, Site Location Maps, Site Specific Information (by Application Site), Soil Scientist and Agronomist Reports, the Operations and Maintenance Plan, and EMA's Spill Response Plan.
- 4.04 EMA must strictly comply with the standard operating and safety procedures used at the City's WWTP. The City will provide EMA with annual training and updates of such procedures. EMA is responsible under this Agreement for ensuring that all of its employees and contractors attend such training and are provided with procedural updates and revisions as communicated by the City to EMA.
- 4.05 EMA understands and acknowledges that the City does not own the land needed to fulfill the services required by this Agreement. This Agreement is a requirements contract under which EMA agrees, without reservation or limitation of any kind other than the explicit terms and conditions of this Agreement, to meet all of the City's service requirements for the removal, transport, and lawful application to land permitted to the City of all of the Class B biosolids produced at the City's WWTP. Accordingly, EMA is responsible for locating all of the land necessary to apply the entirety of the quantities of Class B biosolids produced at the City's WWTP. EMA will be responsible for lawfully obtaining the requisite permits for the land needed for Class B biosolids applications, and EMA will be responsible for renewing all of the permits necessary for the land application of the Class B

biosolids produced at the WWTP. Furthermore, EMA will provide to the City copies of the vicinity, soil, aerial, application area, and topography maps of land that will be permitted as part of the performance of this Agreement by EMA. All land utilized to perform the land applications required by this Agreement shall be permitted to the City, and EMA shall notify the City before contacting the North Carolina Department of Environment and Natural Resources (“NCDENR”) and/or the United States Environmental Protection Agency (“EPA”) concerning a land application permit or permit application.

- 4.06 EMA is responsible for securing, maintaining, and insuring the necessary equipment for the loading, transport, and application of the City’s biosolids in a timely and expedient manner. The City is not responsible for downtime of biosolids loading equipment, and such equipment downtime does not excuse performance under this Agreement. EMA has the obligation to familiarize itself, its employees, and its contractors with the City’s facilities and equipment in order to perform in a timely manner the services to be rendered under this Agreement.
- 4.07 EMA shall provide to the City a detailed equipment list to include the number and type of units that will be utilized to perform the services required by this Agreement. At a minimum, the equipment needed to perform the contracted services and, therefore, included in the said equipment list, is as follows:
- (a) All of the equipment necessary to load trailers from covered and uncovered storage on a concrete pad at the WWTP.
 - (b) United States Department of Transportation and North Carolina Department of Transportation (collectively referred to as “DOT”) approved dump trailers capable of safely transporting biosolids cake of 18% - 25% total solids.
 - (c) All of the road tractors needed to safely and efficiently transport the above-referenced trailers.
 - (d) All of the equipment necessary to properly apply the entirety of the City’s Class B biosolids, specifically including without limitation biosolids cake at proper application rates as approved by NCDENR and/or the EPA.
 - (e) Land application equipment that minimizes soil compaction and/or damage to the land application sites.
- 4.08 EMA shall ensure that all equipment utilized to perform the services required by this Agreement is operated lawfully, safely, and in compliance with the City’s safety policies and procedures in addition to complying with all applicable DOT and Occupational Safety and Health Administration (“OSHA”) regulations.
- 4.09 All trailers will be numbered, and the identifying number for each trailer will be noted on the daily trip tickets.
- 4.10 Any and all road tractors as well as the trailers pulled by the road tractors shall be marked with all required DOT placards, as well as the contractor’s name and contractor’s telephone number.

- 4.11 All road tractors and their trailers must be equipped with mud flaps. All trailers must be equipped with covers that are used without fail to properly secure the load hauled with the trailer.
- 4.12 EMA is responsible for ensuring all DOT weight requirements are met. The City has the right to weigh and/or inspect any and all transport vehicles (inclusive of the road tractors and trailers) to verify at any time that such transport equipment is filled to its proper volume and is lawfully operated. Any failure by the City to detect noncompliance with the applicable laws does not relieve EMA of its ultimate and final responsibility to ensure that the services provided under this Agreement are performed in a safe and lawful manner.
- 4.13 All equipment shall be clean and provide a positive public image at all times. Good housekeeping, efficient performance, and safety are priorities of the City.
- 4.14 All equipment used to perform the services required by this Agreement shall be equipped and maintained to prevent leakage, spillage, and/or overflow.
- 4.15 EMA shall comply with the following specific operational requirements for the removal, transport, and land application of the City's Class B biosolids:
- (a) All removal, transport, and application of biosolids shall occur during the WWTP's normal business hours of 7:00 AM to 5:00 PM, Monday through Friday. In general, and in the absence of prior permission or directive from authorized City personnel, no transport or application of biosolids shall occur on Saturdays, Sundays, or legal holidays recognized by the City or outside of the City's normal business hours. Under exceptional circumstances, the removal, transport, and application of biosolids may be required on Saturdays, Sundays, and holidays, but such events shall occur only with prior permission or directive from the City.
 - (b) A removal, transport, and application schedule shall be coordinated with the City by means of submitting advance notice to the WWTP manager at least one (1) week in advance of an event. A need to alter this schedule will be communicated immediately to the WWTP manager, and a reschedule date will be coordinated at this time. All schedule changes must be approved by the City.
 - (c) EMA shall communicate with a designated representative of the WWTP to confirm daily activities and plans for the current application event. The City has the right to cancel, without penalty or contract cost of any kind, an application event at any time if concerns arise over application site conditions, changes in weather that will promote biosolids run-off, and/or public concerns.
 - (d) All Class B biosolids removal, transport, and application events and activities must be scheduled so as to avoid any and all conflicts with WWTP facility operations and/or work schedules. In all cases, the operational needs of the WWTP will take precedence over biosolids removal, transport, and application schedules.

- 4.16 All field personnel, whether direct employees or contractors, utilized by EMA shall be knowledgeable of local, state, and federal site management requirements and practices for Class B biosolids. Accordingly, such field personnel will undergo a training class on application site management practices and receive continuing education in this area as rules and requirements change. All field managers are required under this Agreement to be licensed or certified Biosolids Operators.
- 4.17 The application of biosolids to any land not properly permitted or approved by NCDENR is strictly prohibited. EMA is responsible for ensuring that its operators know the boundaries of the application sites and the proper procedures and practices for the land application of biosolids. Accordingly, EMA shall ensure that buffer area markers are properly placed on the application sites along with all other necessary site notices for Class B biosolids application sites. EMA shall ensure that all work areas and field entry/exit roads remain clean and well-marked for traffic purposes. Application events will be conducted in a manner that strictly adheres to all WWTP permits issued by NCDENR.
- 4.18 Biosolids/residuals removed from the WWTP by EMA shall be documented on a daily trip ticket. The daily trip ticket will serve as a manifest for the transport and as necessary support documentation for the monthly invoice submitted to the City for payment. The City shall be provided with a copy of each daily trip ticket, and EMA will use its copies of the daily trip tickets to invoice the City for services rendered. During the transport of biosolids/residuals from the WWTP to the application/disposal site, the driver will maintain in his or her possession at all times during such a transport the daily trip ticket that serves as the manifest for the transport performed by the driver. All trip tickets will contain the following information:
- (a) The generation site of the biosolids/residuals.
 - (b) A description of the biosolids/residuals transported.
 - (c) The amount in cubic yards of biosolids removed from the WWTP.
 - (d) Road tractor and trailer, including their respective identifying numbers.
 - (e) Driver's name and signature.
 - (f) Location and/or land application site ID number where biosolids/residuals were applied or disposed.
 - (g) Date and time of biosolids/residuals removal and application/disposal.
 - (h) Name and Signature of Field Supervisor.
- 4.19 A summary report for each haul event summarizing the quantities of biosolids removed from the WWTP, the location where biosolids are applied/disposed, and the method of application/disposal shall be furnished to the WWTP according to permit requirements. The summary report may be emailed to the City.
- 4.20 In addition to the permitting and reporting requirements specified earlier in this Article (Article 4) of the Agreement, and in order to demonstrate the compliance of EMA's activities under this Agreement with local, state, and federal requirements,

EMA shall develop and implement to the satisfaction of the City an appropriate monitoring, record keeping, and reporting program. As part of this reporting program, EMA will prepare the annual report in accordance with the schedule mandated by the land application permit.

- 4.21 EMA is responsible for determining and tracking proper application rates for Class B biosolids. EMA will provide all nutrient, metal, and pollutant sampling at the frequency specified by the permit. These results shall be used by EMA to calculate the appropriate application rates according to crop agronomic needs. EMA shall annually perform a toxicity characteristic leaching procedure (TCLP) with polychlorinated biphenyls (PCB's) and chlorinated hydrocarbons (RCl's), and the results shall be received prior to the first application event of the calendar year. EMA is responsible for all soil sampling required by the permit. All sampling activities, whether for biosolids or soils, will adhere to state sampling requirements.
- 4.22 A goal of the City's solids management program is to provide a quality Class B biosolids product at all times and to continuously seek methods of improving the quality of the City's biosolids and biosolids processes. EMA will provide assistance to the City in these efforts and will suggest ways of improving the efficiency of producing, processing, removing, transporting, and applying all Class B biosolids.
- 4.23 With regard to spill control and clean-up processes, EMA shall have the following responsibilities and duties under this Agreement:
- (a) EMA shall manage, contain, remove, and properly dispose of any spillage of biosolids and/or wastewater residuals that occurs on City property, roadways regardless of whether the roadway is public or private, or on land application sites during the removal, transport, application, and/or disposal of biosolids.
 - (b) Upon the commencement of this Agreement, EMA shall initiate and implement a plan and procedures for spill control and clean-up. Such a plan and the accompanying procedures shall comply with all DOT, OSHA, NCDENR, and EPA regulations and guidelines. Additionally, the plan and procedures must comply with the WWTP's standard operating procedures as well as the safety procedures adopted by the WWTP. A copy of this plan and procedures will be inserted with the land application permit, the maps, and the operations and maintenance plans.
 - (c) EMA shall immediately notify NCDENR and the City once a spill has occurred. A written report describing the nature of the spill; the quantity of biosolids spilled; the actions taken to manage, contain, remove, and clean-up the spill; the environmental impact of the spill; and an identification of the preventative steps that will be taken in the future to avoid any additional spills shall be submitted to the City within 24 hours of the spill.
 - (d) EMA shall pay for all expenses incurred as a consequence of a spill occurring during the performance by EMA and/or its contractors of the following services pursuant to this Agreement: the removal, transport, unloading, land application,

and/or disposal of biosolids and/or wastewater residuals from the WWTP. This contractual obligation on the part of EMA is inclusive of EMA's obligation to pay all expenses related to or in any way arising out of managing, containing, cleaning-up, removing, conducting environmental testing, undertaking remediation measures, and disposal costs at a licensed site, if necessary, that may occur as a consequence of a spill.

- 4.24 Upon the expiration or termination of this Agreement, EMA shall supply the City with copies of all records or documents generated in connection with the performance of this Agreement.
- 4.25 Prior to the effective date and time of the expiration or termination of this Agreement, EMA shall remove all of its equipment and clean-up in accordance with generally accepted industry standards any and all work areas disturbed by EMA's personnel and/or contractors.
- 4.26 EMA shall procure all permits and licenses and pay all charges and fees necessary and incidental to the lawful conduct of its business throughout the initial term and any extension terms of this Agreement. EMA shall keep itself fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and shall comply with the same.

ARTICLE 5. TASKS AND FUNCTIONS TO BE PERFORMED BY THE CITY

- 5.01 Aside from the compensation to be paid in accordance with Articles 3 and 6 of this Agreement and the provision of City safety program information and updates in accordance with Article 4 of this Agreement, the tasks and functions to be performed by the City under this Agreement are as follows:
 - (a) The City will operate all solids processing units of the WWTP, specifically including thickeners, digesters, and belt filter press.
 - (b) The City will ensure that all Class B biosolids to be beneficially reused meet product quality specifications before removal, transport, and application.
 - (c) The City will arrange for all laboratory analyses of WWTP biosolids necessary for daily operation.
 - (d) The City will be responsible for sampling all of the biosolids generated from the WWTP prior to the biosolids removal and reuse for vector attraction and pathogen reduction requirements. This information will be reported on a Pathogen and Vector Attraction Reduction Report (PVAR).
 - (e) All Class B biosolids generated at the WWTP shall meet EPA and NCDENR 503 Metal, Pathogen, and Vector requirements for beneficial reuse.
 - (f) The City will maintain all of the WWTP biosolids and storage facilities.
 - (g) The City will perform periodic inspections of the removal, transport, and application of Class B biosolids by EMA.

5.02 In order for EMA to address the removal of excessive biosolids volumes in the most efficient manner, the City will notify EMA when the total biosolids storage level reaches the 40% - 50% mark.

ARTICLE 6. RIGHTS OF TERMINATION AND REMEDIES IN THE EVENT OF A BREACH OF THE AGREEMENT

- 6.01 Either party hereto may terminate this Agreement upon any breach or default of any covenant or agreement of the other party hereto set forth in this Agreement upon thirty (30) days written notice and such breach or default remaining uncured at the end of such thirty (30) day period, unless such breach or default can be cured and the other party is undertaking reasonable, good faith efforts to cure the same, in which case an additional thirty (30) days shall be allowed to cure such breach or default prior to any rights of termination. Upon any such termination pursuant to the preceding sentence, either party shall have the right to recover any damages against the other party including, without limitation, any amount necessary to compensate the aggrieved party for all detriment or damages proximately caused by the breaching party's failure to perform its obligations under this Agreement or which in the ordinary course of events would be likely to result therefrom.
- 6.02 In case of default by EMA, the City may procure services from other sources and may recover the loss occasioned thereby from any unpaid balance otherwise due to EMA under this Agreement.
- 6.03 In addition to the termination and recovery options found in paragraphs 6.01 and 6.02 of this Article, the City has additional rights of deduction and holdbacks in the event of a breach of this Agreement by EMA. By way of clarification and not limitation of its otherwise available rights and remedies, the specific additional rights that may be exercised under this Agreement by the City in the event of an uncured default by EMA are as follows:
- (a) The City shall be entitled to full reimbursement for any costs incurred by the City by reason of EMA's failure to perform or to satisfactorily perform its responsibilities and duties under this Agreement. Such costs may include, but are not limited to, the cost of using the City's employees or employees of any other entity to perform the obligations that EMA failed to perform in accordance with this Agreement.
 - (b) The reimbursement referenced above in subparagraph 6.03(a) may be obtained by the City by means of deduction from payments otherwise due to EMA or by any other proper and lawful means. The City reserves the right to hold back or withhold all or part of payments otherwise due to EMA when the contractor fails to correct unsatisfactory work, deficiencies, or breaches of this Agreement. All deductions from any money due to EMA are to be as liquidated damages and not as a penalty. The City's intent is to give EMA a reasonable opportunity, whenever practicable, to correct any such failure to perform or satisfactorily perform its responsibilities and duties under this Agreement. The City will

make the following deductions from the contract sum in the event that EMA fails to perform any of the required work within the required time limits and the City carries out the work using public forces or those of another contractor:

- i. For the use of City forces, the deduction will equal the actual cost incurred by the City, as measured by payroll records for labor costs and as measured by "Powell Bill" rates for equipment charges.
- ii. For the use of another contractor, the deduction will be equal to the amount charged by the contractor utilized to fulfill the work left undone or unsatisfactorily performed by EMA.

6.04 Notwithstanding any other provision within this Agreement, and in addition to any other right of termination listed herein, the City has the right to terminate for convenience this Agreement by providing ninety (90) calendar days advance written notice to EMA.

ARTICLE 7. INDEMNIFICATION

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

7.02 Notwithstanding the immediately preceding paragraph, nothing in this Agreement shall be deemed or construed to require EMA to indemnify and save harmless the City and its personnel, agents, elected and appointed officials, and City Council from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement, court costs, reasonable attorneys' fees, and expert witness and consultation fees) caused by or resulting from (i) any negligent or willful act or omission of the City and its agents, officials, or employees in connection with this Agreement; or (ii) a breach by the City of any of the covenants, agreements, representations, or warranties of the City that are set forth in this Agreement.

ARTICLE 8. INSURANCE REQUIREMENTS

8.01 EMA shall pay for and maintain at its sole expense and at all times during the initial term and any extension terms of this Agreement the following insurance coverage:

- (a) Workers' Compensation Insurance as required by the State of North Carolina.
- (b) Comprehensive and General Liability Insurance, including contractual liability

in products/completed operations, with primary limits of liability of no less than One Million and No Hundredths Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

- (c) Automobile Liability Insurance as required by the laws of the State of North Carolina, but with limits of not less than One Million and No Hundredths Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- (d) Excess Umbrella Liability Insurance with limits of liability of no less than One Million and No Hundredths Dollars (\$1,000,000.00) layered on top of the policies set forth in subparagraphs 8.01(b) and 8.01(c).
- (e) Pollution Liability Insurance with limits of liability of no less than Two Million and No Hundredths Dollars (\$2,000,000.00).

8.02 During the initial term of this contract and any extensions thereof, the City shall be named as an additional insured in the policies set out in section 8.01(b), 8.01(c), 8.01(d), and 8.01(e). Furthermore, the City shall be furnished annually with Certificates of Insurance in a form satisfactory to the City, and all policies shall provide for thirty (30) days advance written notice of material change, cancellation, or non-renewal.

ARTICLE 9. NOTICES

9.01 All notices or other communications to be given to the City pursuant to this Agreement shall be in writing and shall be sent by overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

Mailing Address:

City of Asheboro
Attn: Water Resources Director
Post Office Box 1106
Asheboro, North Carolina 27204-1106

Address for Overnight Delivery:

City of Asheboro
Attn: Water Resources Director
1312 North Fayetteville Street
Asheboro, North Carolina 27203
Telephone: (336) 626-1234, Extension 2210

9.02 All notices or other communications to be given to EMA pursuant to this Agreement shall be in writing and shall be sent by overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

EMA Resources, Inc.
Attn: Erik Blankenship, President
755 Yadkinville Road
Mocksville, North Carolina 27028
Telephone: (336) 751-1441

ARTICLE 10. ASSIGNMENT OF AGREEMENT

- 10.01 This Agreement, and the rights and privileges granted to the parties hereto pursuant to this Agreement, shall be binding upon and inure to the benefit of the successors and assigns of such parties hereto; provided, however, that no party hereto may transfer or assign, whether by operation of law, merger, or otherwise, this Agreement, or such party's rights or obligations under this Agreement, without the prior written consent of the other party hereto, such consent to be exercised in such party's sole discretion.
- 10.02 In the event that a party does not consent, in its sole discretion, to any such requested transfer or assignment of this Agreement, or of any of the party's rights or obligations under this Agreement, the party attempting to effectuate an unapproved transfer or assignment of contractual rights shall remain liable to the non-consenting party for the breaching party's agreements and obligations that are set forth in this Agreement.

ARTICLE 11. ARM'S LENGTH NEGOTIATIONS

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

ARTICLE 12. CONSTRUCTION OF THIS AGREEMENT

- 12.01 The parties agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties. No presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 12.02 Any reference to any federal, state, or local statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

- 12.03 If any party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity), which the party has not breached, shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant.

ARTICLE 13. MISCELLANEOUS

- 13.01 This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representations, or warranties, whether oral or written, by any officer, employee, or representative of either party hereto.
- 13.02 This Agreement may not be modified, amended, supplemented, canceled, or discharged, except by written instrument executed by all of the parties hereto.
- 13.03 There are no restrictions, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to herein.
- 13.04 No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted the waiver.
- 13.05 The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other provision may be invalid or unenforceable in whole or in part.
- 13.06 This Agreement is not intended to confer upon any third parties, other than the parties hereto, any rights or remedies.
- 13.07 This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.
- 13.08 This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be executed on their behalf by duly authorized officers of the respective corporations on the dates indicated below.

**[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.
THE SIGNATURES OF AUTHORIZED OFFICIALS FOR THE PARTIES ARE LOCATED ON THE NEXT PAGE.]**

EMA RESOURCES, INC.,
a North Carolina corporation

By: _____
Signature of Authorized Corporate Official

Name: _____
Printed Name of Authorized Corporate Official

Title: _____
Printed Title of Authorized Corporate Official

Date: _____
Printed Date of Execution on behalf of EMA

THE CITY OF ASHEBORO, NORTH CAROLINA,
a North Carolina municipal corporation

By: _____
Signature of Authorized Municipal Official

Name: _____
Printed Name of Authorized Municipal Official

Title: _____
Printed Title of Authorized Municipal Official

Date: _____
Printed Date of Execution on Behalf of the City

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

Deborah P. Reaves, Finance Officer
City of Asheboro, North Carolina

ORDINANCE NUMBER _____

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

CITY OF ASHEBORO ANIMAL CONTROL ORDINANCE

WHEREAS, Section 160A-174(a) of the North Carolina General Statutes (references to the North Carolina General Statutes will be hereinafter cited with “G.S.” in front of the relevant section or chapter/article number) authorizes the city council to utilize its ordinance making authority to exercise the general police power delegated to the city by the North Carolina General Assembly to define, prohibit, regulate, or abate acts, omissions, or conditions that are detrimental to the health, safety, or welfare of the city’s inhabitants and the peace and dignity of the city; and

WHEREAS, G.S. 160A-182 specifically authorizes the city, by means of the adoption of an ordinance, to exercise the delegated general police power to define and prohibit the abuse of animals; and

WHEREAS, G.S. 160A-186 specifically authorizes the city, by means of the adoption of an ordinance, to exercise the delegated general police power to regulate, restrict, or prohibit the keeping, running, or going at large of any domestic animals, specifically including dogs and cats; and

WHEREAS, G.S. 160A-187 specifically authorizes the city, by means of the adoption of an ordinance, to exercise the delegated general police power to regulate, restrict, or prohibit the possession or harboring of animals that are dangerous to persons or property; and

WHEREAS, G.S. 160A-188 specifically authorizes the city, by means of the adoption of an ordinance, to exercise the delegated general police power to establish a bird sanctuary within the city limits; and

WHEREAS, the City Council has concluded that it is advisable to enhance the animal control services offered by the city by delegating and providing funding to the Asheboro Police Department to take primary responsibility for animal control operations within the city; and

WHEREAS, the city’s current animal control regulations, which are found in Chapter 91 of the Code of Asheboro, must be updated and amended in order to enable the Asheboro Police Department to properly discharge its expanded animal control duties;

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

ORDINANCE SECTION 1. Chapter 91 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 91.01 DEFINITIONS.

~~Unless otherwise specifically provided or unless otherwise clearly required by the context, the following words and phrases shall have the meaning indicated when used in this chapter:~~

~~**CODE ENFORCEMENT OFFICER.**—Any person or persons designated by the City Manager of the City of Asheboro to perform the responsibilities assigned by this chapter to the "Code Enforcement Officer."~~

~~**COUNTY ANIMAL CONTROL ORDINANCE.**—The ordinance entitled "An Ordinance Governing the General Control of Animals in Randolph County," as adopted by the Randolph County Board of Commissioners on January 10, 2000, and as amended on June 5, 2000, September 5, 2000, March 11, 2002, July 7, 2003, August 4, 2003, October 4, 2004, January 7, 2008, July 7, 2008, July 11, 2011, and including any future amendments thereto by the Randolph County Board of Commissioners.~~

§ 91.02 ADOPTION OF ANIMAL CONTROL ORDINANCE.

~~Pursuant to G.S. § 153A-122 and Asheboro City Council Resolution Number 12 RES 3-12, the County Animal Control Ordinance, as defined in § 91.01 of this Code, is applicable within the corporate limits of the City of Asheboro. A copy of the County Animal Control Ordinance shall be kept on file in the Office of the City Clerk.~~

§ 91.03 ADMINISTRATION OF ANIMAL CONTROL REGULATIONS.

- ~~(A) *Delegation to county.*—The Asheboro City Council hereby expressly authorizes the Randolph County Health Director and animal control officers working under the direction of the Randolph County Health Director to enforce the County Animal Control Ordinance within the corporate limits of the city.~~
- ~~(B) *Enforcement by city employees.*—The supplemental animal control laws prescribed by this chapter that are more specific to the City of Asheboro than the provisions of the County Animal Control Ordinance defined in § 91.01 of this Code may be enforced by any employee of the City of Asheboro that has been designated as a Code Enforcement Officer by the City Manager.~~
- ~~(C) *Asheboro Police Department.*—The Asheboro Police Department shall provide support to county animal control officers and to Code Enforcement Officer(s) when enforcement actions are needed.~~

§ 91.04 INTEGRATION WITH ANIMAL CONTROL ORDINANCE.

~~All definitions and provisions of the County Animal Control Ordinance shall apply in the city except where provisions of this chapter are inconsistent with the provisions of the County~~

Animal Control Ordinance, the provisions of this chapter are more specific, and the provisions of this chapter prescribe regulatory action that is to be taken by city employees.

~~§ 91.05~~ ~~MAXIMUM NUMBER OF DOGS ON PREMISES.~~

- (A) ~~It shall be unlawful for any person to keep or maintain more than three dogs per household on any parcel of land or zoning lot having less than 30,000 square feet, and an additional 7,000 square feet shall be required for each additional dog. A total of no more than five dogs per household shall be allowed on any parcel of land or zoning lot within the city limits regardless of square footage.~~
- (B) ~~The limitation prescribed by this Section on the number of dogs per household on a single parcel of land or zoning lot shall not apply to dogs that are less than six months of age.~~
- (C) ~~Notwithstanding the preceding provisions, and subject to the limitation that, on or after April 1, 2012, no new or additional dogs that would increase or perpetuate the noncompliance of a household with this Section may be kept or maintained in a household, any dog lawfully kept or maintained as part of a household located within the corporate limits of the City of Asheboro prior to April 1, 2012 may continue to be kept or maintained as part of the same household for the remainder of the dog's life.~~

~~§ 91.06~~ ~~MAXIMUM NUMBER OF CATS ON PREMISES.~~

- (A) ~~It shall be unlawful for any person to keep or maintain more than three cats per household on any parcel of land or zoning lot having less than 30,000 square feet, and an additional 7,000 square feet shall be required for each additional cat. A total of no more than five cats per household shall be allowed on any parcel of land or zoning lot within the city limits regardless of square footage.~~
- (B) ~~The limitation prescribed by this Section on the number of cats per household on a single parcel of land or zoning lot shall not apply to cats that are less than six months of age.~~
- (C) ~~Notwithstanding the preceding provisions, and subject to the limitation that, on or after April 1, 2012, no new or additional cats that would increase or perpetuate the noncompliance of a household with this Section may be kept or maintained in a household, any cat lawfully kept or maintained as part of a household located within the corporate limits of the City of Asheboro prior to April 1, 2012 may continue to be kept or maintained as part of the same household for the remainder of the cat's life.~~

~~§ 91.07~~ ~~KEEPING SWINE.~~

- (A) ~~Except as provided in division (B) of this section, it shall be unlawful for any person to keep any hogs, pigs, or swine within the city limits.~~

(B) ~~A person may have or keep no more than two miniature or potbellied pigs per household within the corporate limits of the city if the following conditions are satisfied:~~

- ~~(1) The miniature or potbellied pig(s) must be provided with adequate shelter to protect it from the elements.~~
- ~~(2) Any and all miniature or potbellied pigs kept or maintained in the City of Asheboro must be spayed or neutered.~~
- ~~(3) The owner of the miniature or potbellied pig(s) shall provide the pig(s) with access to food and clean water. Active measures shall be taken to limit the availability of this food and water to rodents, wild birds, and predators.~~
- ~~(4) If an outdoor pen or enclosure is utilized, the dimensions of such a pen or enclosure must be no less than 10 feet by 12 feet for one pig or no less than 16 feet by 16 feet for two pigs.~~
- ~~(5) No outdoor pen or enclosure, including without limitation fencing, used for sheltering or confining a miniature or potbellied pig is permitted within 30 feet of any property line or public street right of way line, and no such outdoor pen or enclosure may be located within 100 feet of a hospital, school, eating establishment, or dwelling other than the dwelling of the owner of the miniature or potbellied pig. These separation requirements are in addition to and not in lieu of the land use regulations prescribed by the Asheboro Zoning Ordinance. No provision in this chapter shall be construed or interpreted in any manner that preempts or impacts the application of the land use regulations found in the Asheboro Zoning Ordinance.~~
- ~~(6) A pen or enclosure used for sheltering or confining a miniature or potbellied pig shall be kept clean, sanitary, and free from accumulations of animal excrement that cause an objectionable odor. Such a pen or enclosure shall be cleaned at least twice each week. All waste material removed from a pen or enclosure used to shelter the miniature or potbellied pig shall be disposed of in a manner that is lawful, does not attract flies, and prevents any detectable odor at the property or street right of way line.~~
- ~~(7) All food kept for feeding the miniature or potbellied pig(s) shall be kept and stored in rat free and rat proof containers, compartments, or rooms unless kept in a rat proof building.~~

§ 91.08 KEEPING OF FOWL.

(A) ~~Up to two chicken hens or other fowl may be kept by a household within the corporate limits of the City of Asheboro so long as the fowl do not, by reason of noise, odor, or attraction of flies, become a nuisance or health hazard.~~

(B) ~~Between three and eight chicken hens or other fowl may be kept on any single lot or parcel in the city if the following conditions are satisfied:~~

- ~~(1) The fowl shall not be permitted to run at large and must be maintained in a coop or enclosure of suitable construction and size for the number of fowl maintained in the enclosure.~~
- ~~(2) The fowl must be provided with adequate shelter for protection from the elements.~~
- ~~(3) The owner of the fowl shall provide the animal with access to food and clean water. Active measures shall be taken to limit the availability of this food and water to rodents, wild birds, and predators.~~
- ~~(4) No outdoor coop or enclosure used for keeping fowl is permitted within 30 feet of any property line or public street right of way line, and no such outdoor coop or enclosure may be located within 100 feet of a hospital, school, eating establishment, or dwelling other than the dwelling of the owner of the fowl. These separation requirements are in addition to and not in lieu of the land use regulations prescribed by the Asheboro Zoning Ordinance. No provision in this chapter shall be construed or interpreted in any manner that preempts or impacts the application of the land use regulations found in the Asheboro Zoning Ordinance.~~
- ~~(5) A coop or enclosure used for keeping fowl shall be kept clean, sanitary, and free from accumulations of animal excrement that cause an objectionable odor. Such a pen or enclosure shall be cleaned at least twice each week. All waste material removed from a pen or enclosure used for keeping fowl shall be disposed of in a manner that is lawful, does not attract flies, and prevents any detectable odor at the property or street right of way line.~~
- ~~(6) All food kept for feeding the fowl shall be kept and stored in rat free and rat proof containers, compartments, or rooms unless kept in a rat proof building.~~

(C) ~~Due to the excessive noise created by the following animals, the keeping of roosters and geese is prohibited within the corporate limits of the City of Asheboro.~~

~~§ 91.09 KEEPING OF HORSES, MULES, DONKEYS, COWS, AND GOATS REGULATED.~~

~~It shall be unlawful for any person who owns, operates, or maintains a stable or enclosure in the city, in which horses, mules, donkeys, cows, or goats are kept, to keep such stable in an unclean or unsanitary condition. The person who owns, operates, or maintains such a stable or enclosure shall be responsible for providing for use within the stable or enclosure a bin or pit which shall be watertight and so arranged that it is fly proof, or, alternatively, shall provide a watertight barrel with a close fitting lid. Manure accumulating in such stable shall be placed in the bin, pit,~~

~~or barrel each day and shall be removed from the premises of the owner at least every five days. Effective fly control methods such as the use of approved insecticide shall be practiced during the fly breeding period from April 15 to November 1 of each year. All food kept for feeding the livestock shall be kept and stored in rat free and rat proof containers, compartments, or rooms unless kept in a rat proof building.~~

~~§ 91.10 LOCATION OF STABLES; TETHERING OF HORSES, MULES, DONKEYS, COWS, OR GOATS.~~

~~No person shall locate or maintain upon any lot within the city any horse, mule, donkey, cow, or goat stable nearer than 150 feet to any hospital, school, eating establishment, or dwelling; nor shall any person tether or permit to graze or stand any horse, mule, donkey, cow, or goat within 50 feet of any such place.~~

~~§ 91.11 DISPOSAL OF CARCASSES.~~

~~The bodies of dead sheep, goats, hogs, horses, mules, donkeys, and other animals, or any part of any animal, and all dead fish and dead fowl shall be removed from the city immediately or no later than 24 hours of known death and shall be disposed of by incineration, burial, or transportation to a rendering plant. If a carcass is buried, it shall be buried at a depth of not less than three feet below the surface of the ground and shall not be buried within 300 feet of a stream or body of water.~~

~~§ 91.12 RESPONSIBILITY FOR ANIMALS ON PUBLIC PROPERTY AND THE PROPERTY OF OTHERS.~~

~~It shall be unlawful for the owner or custodian of an animal to fail to remove feces deposited by the animal on either of the following types of property:~~

- ~~(A) Any public street, sidewalk, gutter, park, or other publicly owned property; or~~
- ~~(B) Any property owned or legally controlled by another person or entity that has not given permission for entry onto the property by the animal that defecated on the property.~~

~~§ 91.13 BIRD SANCTUARY CREATED.~~

~~The area embraced within the corporate limits of the city and all lands owned or leased by the city outside the corporate limits is hereby designated as a bird sanctuary.~~

~~§ 91.14 PROHIBITED ACTIVITIES; EXCEPTIONS.~~

- ~~(A) Within the bird sanctuary established by § 91.12 of the Code of Asheboro, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any native wild birds.~~

~~(B) Notwithstanding division (A), the protection afforded to native wild birds within the established sanctuary does not extend to the following situations:~~

- ~~(1) No bird classed as a pest under G.S. Ch. 113, Art. 22A and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971 is protected.~~
- ~~(2) A person may hunt, kill, trap, or otherwise take any bird pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. § 113-274(e)(1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within the city limits.~~
- ~~(3) The use of a firearm for hunting ducks and dark geese (includes Canada geese and white fronted geese) is permitted at Lake Reese when such hunting is undertaken in compliance with § 91.14 and § 91.15 of the Code of Asheboro.~~

§ 91.15 USE OF FIREARMS AT LAKE REESE.

- ~~(A) In its discretion, the City Council may approve the date(s) and time(s) each year when the hunting of ducks and dark geese (including Canada geese and white fronted geese) is allowed upon the waters of Lake Reese.~~
- ~~(B) During the date(s) and time(s) of the hunting season authorized by the City Council in accordance with division (A), the use of a gun for the limited purpose of hunting ducks and dark geese (including Canada geese and white fronted geese) upon the waters of Lake Reese is permitted. Any guns and ammunition used for such hunting shall comply with all applicable state and federal regulations.~~

§ 91.16 HUNTING PROHIBITED ON PROPERTY BEYOND CITY LIMITS.

- ~~(A) No person shall hunt, trap or snare, with or without firearms, any wild animals or birds, on any property owned by the city which is located outside the city limits.~~
- ~~(B) *Exceptions.* Duck and dark geese (including Canada geese and white fronted geese) hunting will be permitted upon the waters of Lake Reese only during the date(s) and time(s) established by the City Council prior to the season opening each year. Additionally, city employees and/or contractors may hunt, trap, or snare wild animals or birds in compliance with the adopted rules and regulations of the North Carolina Wildlife Resources Commission when such action is deemed necessary by the City Manager in order to ensure the safe and efficient operation of city owned infrastructure.~~

§ 91.17 SIGNS ERECTED BY BIRD CLUBS.

~~Bird clubs in the city are hereby granted permission to erect artistic signs, giving notice of the regulations provided in this chapter, at such places and of such design as may be approved by the Public Works Director.~~

§ 91.18 ~~ANIMALS PROHIBITED AT RANDOLPH ARTS GUILD'S ANNUAL FALL FESTIVAL.~~

- (A) ~~Except as provided by this section, it shall be unlawful for any person to possess any animal(s) within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival. Furthermore, except as provided by this section, it shall be unlawful for any person to actively encourage or facilitate the entry or continued presence of any animal(s) within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival.~~
- (B) ~~The provisions of this section are not applicable to "assistance animals," "law enforcement agency animals," and animals allowed to participate in the Annual Fall Festival Parade.~~
- (C) ~~For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~**ANIMAL.** As distinguished from human beings, one of the lower vertebrate animals. By way of illustration and not exclusion, the term includes dogs, cats, birds, reptiles, and fishes.~~

~~**ASSISTANCE ANIMALS.** An animal that is trained and may be used to assist a "handicapped person" as defined in G.S. § 168-1. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a handicapped person as provided in G.S. Ch. 168, Art. 1.~~

~~**LAW ENFORCEMENT AGENCY ANIMALS.** An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.~~

~~**PUBLIC AREAS OF THE CITY THAT ARE ACTIVELY UTILIZED FOR THE RANDOLPH ARTS GUILD'S ANNUAL FALL FESTIVAL.** The streets, sidewalks, and public vehicular areas that fall within the perimeter demarcated by the closure, upon order of the City Council, of Fayetteville Street from Salisbury Street to Kivett Street; North Street at Salisbury Street; Sunset Avenue at Church Street; Worth Street, Scarboro Street, East Academy Street, and Cranford Street at Cox Street; and West Academy Street at the entrance to the city parking lot.~~

- (D) ~~The prohibition of animals from public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival is only in effect during those times when the Annual Fall Festival is scheduled to be in actual operation.~~
- (E) ~~The City Manager shall cause notices of the prohibition of animals from public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival to be prominently posted at the location of the street closures listed in division (C)(4) above.~~

§ 91.19 REMEDIES AND PENALTIES.

- (A) ~~Any person who violates the provisions of this chapter is guilty of a misdemeanor as provided by G.S. § 14-4 and shall be fined not more than \$500. Each day's violation of this chapter is a separate offense.~~
- (B) ~~Enforcement of the provisions found in this chapter may include any appropriate equitable remedy, injunction, or order of abatement issuing from a court of competent jurisdiction.~~
- (C) ~~In addition to or in lieu of any criminal penalties and other sanctions provided in this chapter, a violation of the provisions found in this chapter may also subject the offender to the civil penalties hereinafter set forth:~~
 - (1) ~~The Code Enforcement Officer may issue to the owner or possessor of any animal, or any other alleged violator of this chapter, a written warning or a civil penalty citation giving notice of the alleged violation(s). Written warnings or civil penalty citations may be served on the person charged with a violation by means of personal delivery by the Code Enforcement Officer, mailed by certified or registered mail to the last known address of the person charged, or delivered by a designated delivery service to the person charged. The first civil penalty citation issued to a violator during a rolling 12-month period shall result in the imposition of a civil penalty in the amount of \$50 for each violation of this chapter. The second citation issued to an offender for an uncorrected violation or for a second violation of this chapter within a rolling 12-month period shall result in the imposition of a civil penalty in the amount of \$100 for each violation of this chapter. The third citation for an uncorrected violation or the issuance of citation for the third time, or more, within a rolling 12-month period shall result in the imposition of a civil penalty in the amount of \$150 for each violation of this chapter.~~
 - (2) ~~Each day that any violation exists after the violator receives a written warning or civil penalty citation identifying the unlawful conduct shall be considered a separate offense for purposes of this section.~~
 - (3) ~~Assessed civil penalties shall be paid by the violator or his or her designee in good funds to the City of Asheboro Finance Department within 14 business days of the receipt of the civil penalty citation that gives notice of the fact that the stated civil penalty is due and payable.~~
 - (4) ~~In the event the owner or possessor of an animal, or other violator of this chapter, does not pay the assessed civil penalty within the prescribed time period, a civil action in the nature of a debt may be commenced by the City of Asheboro to recover the assessed civil penalty and costs associated with the collection effort.~~
 - (5) ~~The issuance of a written warning or civil penalty citation by the Code Enforcement Officer may be appealed to the City Manager or his or her designee in accordance with the provisions of this section. An appeal is taken by filing a~~

~~written notice of appeal with the Code Enforcement Officer. The notice of appeal shall identify the written warning or civil penalty citation from which an appeal is taken and shall also state the basis for the appeal. This notice of appeal must be filed within ten business days of the date upon which the written warning or civil penalty citation was served on the violator. Until a final decision is issued by the City Manager or his or her designee, a properly filed appeal stays all efforts to collect an assessed civil penalty and/or stays any further enforcement actions conducted under the authority of this chapter by the Code Enforcement Officer. The City Manager or his or her designee shall hear the appeal at the earliest practicable date. Due notice of the date and time of the appeal hearing shall be given to the individual who received the written warning or civil penalty citation and to any individual who has filed a complaint with the Code Enforcement Officer about the condition that formed the basis for the issuance of a written warning or civil penalty citation. After conducting the hearing and considering the available information, the City Manager or his or her designee may reverse or affirm, in whole or in part, the Code Enforcement Officer's issuance of a written warning or civil penalty citation. The City Manager or his or her designee may also modify the enforcement action(s) taken by the Code Enforcement Officer and, to this end, the City Manager or his or her designee shall have all of the powers conferred by this chapter on the Code Enforcement Officer. The City Manager or his or her designee's decision is final, and there shall be no appeal from the decision of the City Manager or his or her designee to the City Council.~~

- ~~(D) This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed herein.~~

~~**§ 91.20 EXCEPTIONS TO SUPPLEMENTAL ANIMAL CONTROL REGULATIONS.**~~

~~Veterinary clinics and retail pet stores are not subject to the supplemental animal control regulations prescribed in §§ 91.05 through 91.09 of this chapter. The inapplicability of the supplemental regulations found in this chapter to these businesses does not impair or impact to any degree the applicability to these businesses of any other federal, state, or local law, ordinance, or regulation, including by way of illustration and not limitation the County Animal Control Ordinance and the Asheboro Zoning Ordinance.~~

~~**§ 91.01 PURPOSE AND TITLE.**~~

- ~~(A) Pursuant to authority granted by the North Carolina General Assembly, this animal control chapter is enacted to regulate, restrict, or prohibit, if necessary, animals; to protect the public from unvaccinated, diseased, stray, roaming, dangerous, wild, or exotic animals; to make unlawful certain acts of animals that interfere with the enjoyment of property or the peace and safety of the city; to protect animals from abuse or conditions harmful to their well-being; and to carry out any other lawful duties authorized by state laws and applicable ordinances.~~

- (B) Animal control functions are to be performed by city personnel in partnership with the Randolph County Health Department which conducts animal control operations in accordance with the applicable federal and state laws and in accordance with the county animal control ordinance.
- (C) This chapter has been adopted in order to accomplish the above-stated purposes by enacting an animal control ordinance that is enforced by city personnel and is tailored to address the animal control issues that arise in the more densely populated urban setting of the city.
- (D) This chapter may be referred to as the “City of Asheboro Animal Control Ordinance.”

§ 91.02 **JURISDICTION.**

This chapter applies within the corporate limits of the City of Asheboro and upon and within all property owned by the city.

§ 91.03 **DEFINITIONS.**

For the purposes of this chapter, the following words and phrases are defined and shall be construed as set out below, unless it is apparent from the context that a different meaning is intended:

- (1) Abandon means to intentionally, knowingly, recklessly, or negligently leave an animal at a location for more than 48 consecutive hours without providing for the animal's continued care;
- (2) Adequate feed means the provision at suitable intervals of a quantity of wholesome foodstuff that is suitable for the species and age of each animal and is sufficient to maintain a reasonable level of nutrition in each animal;
- (3) Adequate shelter means an enclosure sufficient to provide shelter from extremes of weather and a means to remain cool, dry, and comfortable;
- (4) Adequate water means the provision of, or ready access to, a supply of clean, fresh, potable water provided in a sanitary manner 24 hours a day;
- (5) Animal means every vertebrate nonhuman species of animal, wild or domestic, male or female, including, but not limited to, dogs, cats, livestock and other mammals, domestic fowl, birds, reptiles, amphibians, and fish;
- (6) Animal control officer means persons charged by the city with enforcing all sections of this chapter and applicable state laws pertaining to animal control;
- (7) Animal control shelter means any holding or other facility designated by the city manager, or designee, for the detention of animals;

- (8) Animal under restraint or under restraint means any animal confined within a vehicle; any animal confined by means of a secure enclosure or an electronic enclosure within the real property limits of its owner; or any animal secured by leash or lead, cage, bridle, or similar physical restraint sufficient to allow the animal to be controlled. Electronic leashes or training collars do not constitute restraint;
- (9) At large means any animal found off of the property of its owner and not under restraint; any animal previously determined to be dangerous or potentially dangerous that is not under restraint when off the property of its owner or is not confined to a secure enclosure while on the property of its owner; and any animal off the owner's property and on an electronic leash or training collar;
- (10) Bite means the act of an animal seizing flesh with its teeth or jaws, so as to tear, pierce or injure the flesh;
- (11) Business days means Monday through Friday, inclusive, and excluding local, state, and national legal holidays;
- (12) Cats means domestic felines;
- (13) Chicken means any of the common domestic birds or fowl of the species Gallus gallus domesticus whose eggs or flesh are used for food (also referred to as "poultry"). The female bird is called a "hen;"
- (14) County animal control ordinance means the ordinance entitled "An Ordinance Governing the General Control of Animals in Randolph County" that was adopted by the Randolph County Board of Commissioners on January 10, 2000, and subsequently amended on June 5, 2000, September 5, 2000, March 11, 2002, July 7, 2003, August 4, 2003, October 4, 2004, January 7, 2008, July 7, 2008, and July 11, 2011. Pursuant to G.S. § 153A-122 and Asheboro City Council Resolution Number 12 RES 3-12, the said county animal control ordinance, including any future amendments that may be made to the county ordinance by the Randolph County Board of Commissioners, is applicable within the corporate limits of the City of Asheboro;
- (15) Dangerous dog means any dog that, without provocation, has killed or inflicted severe injury on a person or killed or inflicted severe injury upon a domestic animal when not on the owner's real property, or approached a person when not on the owner's real property in a vicious or terrorizing manner in an apparent attitude of attack;
- (16) Dog means domestic canines;
- (17) Domestic animal means those species of animals that normally and customarily share human habitat in Randolph County and are normally dependent on humans for food and shelter in Randolph County, such as but not limited to cats, dogs, cattle, horses, swine, domestic fowl, sheep, and goats;

- (18) Domestic fowl shall include, but not be limited to, turkeys, geese, chickens, peacocks, guinea fowl, or ducks;
- (19) Electronic enclosure means underground electrical wire which, when used in connection with a pet collar or other device, keeps cats or dogs confined within the limits of the wire on private property. A sign giving notice that an electronic fence is in use must be posted in a manner that complies with the requirements of the city's sign ordinance at some location on the property that is visible from the public right-of-way;
- (20) Exotic mammals means all mammals designated by the Centers for Disease Control and Prevention, Department of Agriculture, or other federal or state public health protection agencies as embargoed or prohibited under legal protection orders. No reference or regulation in this chapter applies to exotic mammals under the control of the North Carolina Zoological Park;
- (21) Exotic reptiles means all reptiles not native to North Carolina. No reference or regulation in this chapter applies to exotic reptiles under the control of the North Carolina Zoological Park;
- (22) Immediately means at once, very close in time;
- (23) Impoundment, Impound, Impounded, or Impounding are all terms utilized in this chapter to mean the possession or seizure of an animal or animals by the animal control unit for placement in the animal control shelter or other appropriate facility;
- (24) In estrus means a female animal in what is commonly called "heat" or "in season;"
- (25) Inoculation means the administration of rabies vaccine by a licensed veterinarian or by a certified rabies vaccinator;
- (26) Kennel, dealer, or breeder means any person, partnership, limited liability company, corporation, or other type of legal entity engaged in buying, selling, breeding, or boarding animals;
- (27) Livestock shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas, and swine as set forth in G.S. Ch. 68, Art. 3;
- (28) Nighttime means the time each day from sunset until sunrise;
- (29) Owner means any person, group of persons, or any type of legal entity owning, keeping, harboring, possessing, or acting as keeper or custodian of an animal for 72 hours or more, unless the animal is boarded for a fee at a duly licensed facility;
- (30) Owner's property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium,

cluster home, apartment complex, or townhouse development, nor does it include the common area of a subdivision or other housing project. A motor vehicle is not a part of the owner's property unless it is physically located on the area described in a deed of conveyance or the area described in a lease. A motor vehicle that is physically located in or on any common areas as described above, or on any other public areas shall be treated as being off of the owner's property;

- (31) Person means and includes any individual or any legal entity, including nonprofit corporations;
- (32) Provocation does not include any actions on the part of an individual that pertain to reasonable efforts of self-defense, and provocation must be clearly established;
- (33) Secure enclosure means an enclosure from which an animal cannot escape by means of digging under or jumping over the enclosure, or otherwise becoming free unless freed by the owner. Neither a motor vehicle nor an electronic enclosure shall constitute a secure enclosure;
- (34) Trespass means that the victim has wrongfully invaded the property of the owner. The reason the individual is on the property and any other relevant circumstances shall be considered in order to determine whether or not a trespass has occurred. A child under the age of seven shall not be deemed to be a trespasser; and
- (35) Wild and dangerous animals means animals of the cat, bear, and wolf species and nonhuman primates that are normally born and live in wild habitat, even though such species may be raised and kept in captivity. No reference or regulation in this chapter applies to wild and dangerous animals that are under the control of the North Carolina Zoological Park.

§ 91.04 ADMINISTRATION OF ANIMAL CONTROL SERVICES

- (A) The city police department is responsible for the enforcement of this chapter through the department's animal control unit (sometimes referred to as the "unit") and the nonsworn animal control officers employed therein. All of the police department's sworn officers and nonsworn animal control officers shall have all powers, responsibilities, and immunities granted by law and this chapter.
- (B) The chief of police ("chief") shall be the chief animal control officer charged with enforcing this chapter. The chief is authorized to initiate legal action to enforce this chapter. The chief may delegate any of the powers granted herein to any member of the animal control unit or the police department. Any act done by an animal control officer or a member of the police department that is within the scope of this chapter shall be considered the official act of the chief.
- (C) The nonsworn animal control officers referenced above in division (A) are not authorized to carry on their person any firearms, but they are authorized to store at the animal

control unit offices, or carry in departmental vehicles, firearms approved for use when necessary to enforce the provisions of this chapter or other applicable laws for the control of wild, vicious, dangerous, or diseased animals. The nonsworn animal control officers are authorized to store drugs, chemicals, and equipment at the animal control unit offices as necessary to enforce the provisions of this chapter or other applicable laws for the control of wild, vicious, dangerous, or diseased animals. The nonsworn animal control officers shall not have the power of arrest, but shall have all rights, powers, and immunities as described in this chapter. Due to the fact that the nonsworn members of the unit only have that limited authority described in this chapter, these members of the police department shall not be considered police officers or sworn law enforcement officers for purposes of evaluating the animal control officers' eligibility for benefits provided to sworn law enforcement officers.

§ 91.05 **GENERAL RESPONSIBILITIES OF ANIMAL CONTROL UNIT; PERSONAL LIABILITY OF MUNICIPAL OFFICERS, AGENTS, EMPLOYEES.**

- (A) The animal control unit is hereby authorized and directed to undertake and discharge the following responsibilities:
- (1) Enforcing and carrying out within the city the provisions of this chapter, any other ordinance assigning animal control duties, and all relevant state laws in addition to coordinating and cooperating with the Randolph County Health Department and other law enforcement agencies in so doing;
 - (2) Canvassing the city, including dwellings, businesses, and institutions located within the city as necessary and practical, for the purpose of ascertaining that all dogs and cats in the city are adequately inoculated against rabies and for the purpose of ascertaining compliance with this chapter and state statutes;
 - (3) Investigating complaints with regard to animals covered by this chapter and protecting animals from abuse;
 - (4) Seizing, relocating, and/or impounding, when necessary, any animals in the city involved in a violation of this chapter or any other ordinance or state law. In addition, employees may scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible;
 - (5) Keeping, or causing to be kept, accurate records of seizures, relocations, impoundments, dispositions of animals coming into the custody of the animal control unit, violations, complaints, investigations, and monies collected; and
 - (6) Issuing citations and orders and assessing civil penalties for violations of this chapter and when otherwise authorized by law.

(B) Except as may be otherwise provided by federal or state law, no officer, agent, or employee of the city charged with the duty of enforcing the provisions of this chapter or other applicable law shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such duties.

§ 91.06 INSPECTIONS AND PROHIBITION OF INTERFERENCE WITH ANIMAL CONTROL OFFICERS

(A) Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, or other applicable law, or whenever an animal control officer has reasonable cause to believe that there exists in any building or upon any premises any violation of this chapter or other applicable law, the animal control officer is empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon them by this chapter or other applicable law, but only if the consent of the occupant or owner of the property is freely given or an administrative search warrant or criminal search warrant is obtained as follows:

(1) If such property is occupied, the animal control officer shall first present credentials to the occupant and request entry, explaining the reasons for the request; or

(2) If such property is unoccupied, the animal control officer shall first make a reasonable effort to locate the owner or other persons having control of the property, present proper credentials, and request entry, explaining the reasons for the request; and

(3) If entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be found after due diligence, an animal control officer may obtain an appropriate warrant to conduct a search or inspection of the property or seizure on the property. Notwithstanding any other provision of this chapter, and so long as the animal control officer's actions are consistent with federal and state Constitutional and statutory protections afforded to persons and their property, an animal control officer shall have the authority to enter upon any land to enforce the provisions of this chapter, specifically including the seizure of animals running at large or to take enforcement action due to any other violation of an applicable animal control law if the violation of such a law is being committed in the presence of the officer and requires immediate action on the part of the officer to protect the health or safety of the animal or the public. In the case of animals at large, so long as the animal is within sight of the officer, this section shall not be interpreted to require that a warrant be obtained before seizing the animal.

(B) It shall be unlawful for any person to interfere with, hinder, resist, or obstruct employees of the animal control unit while they are carrying out any duty created under this chapter or other applicable animal control law.

- (C) It shall be unlawful for any person to conceal from any employee of the animal control unit any animal for the purpose of evading the requirements of this chapter or any other applicable animal control law.
- (D) It shall be unlawful for any person to refuse to show, upon request, proof of a required rabies inoculation to any employee of the animal control unit.
- (E) It is unlawful for any person to seek to release, attempt to release, or to release any animal in the custody of the animal control unit, except as otherwise specifically provided in this chapter. An animal captured in a trap set by the animal control unit shall be deemed to be in the custody of the animal control unit.

§ 91.07 **IMPOUNDMENT.**

- (A) In performing the duties assigned by this chapter, the chief may impound any seized animal. The chief may also impound any animals released by their owners to the city.
- (B) If an animal is impounded for any reason other than the voluntary release of the animal by the owner to the city, the chief will use all reasonable means to promptly notify the owner(s) of the impoundment of the animal.
- (C) The processing, release, and euthanasia, if necessary, of impounded animals delivered to the animal shelter shall be conducted in strict compliance with the county animal control ordinance and any regulations established by the Randolph County Health Director.

§ 91.08 **BIRD SANCTUARY CREATED.**

- (A) The territory embraced within the corporate limits of the city and all lands owned by the city outside of the corporate limits are hereby designated as a bird sanctuary.
- (B) Within the bird sanctuary established by division (A) of this section, it shall be unlawful for any person to intentionally hunt, kill, trap, or otherwise take any native wild birds.
- (C) Notwithstanding the provisions of divisions (A) and (B) of this section, the protection afforded to native wild birds within the established sanctuary does not extend to the following situations:
 - (1) No bird classed as a pest under G.S. Ch. 113, Art. 22A and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971 is protected;
 - (2) A person may hunt, kill, trap, or otherwise take any bird pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. § 113-274(c)(1a) or under any other license or permit of the Wildlife Resources

Commission specifically made valid for use in taking birds within the city limits; and

- (3) The use of a firearm for hunting ducks and dark geese (includes Canada geese and white-fronted geese) is permitted at Lake Reese when such hunting is undertaken in compliance with § 91.10 of the Code of Asheboro.

§ 91.09 **SIGNS ERECTED BY BIRD CLUBS.**

Bird clubs in the city are hereby granted permission to erect artistic signs, giving notice of the regulations provided in this chapter, at such places and of such design as may be approved by the Public Works Director.

§ 91.10 **USE OF FIREARMS AT LAKE REESE.**

- (A) In its discretion, the city council may approve specific date(s) and time(s) each year when the hunting of ducks and dark geese (including Canada geese and white-fronted geese) is allowed upon the waters of Lake Reese.
- (B) During the date(s) and time(s) of the hunting season authorized by the city council in accordance with division (A) of this section, the use of a gun for the limited purpose of hunting ducks and dark geese (including Canada geese and white-fronted geese) upon the waters of Lake Reese is permitted. Any guns and ammunition used for such hunting shall comply with all applicable state and federal regulations.

§ 91.11 **HUNTING PROHIBITED ON PROPERTY BEYOND THE CITY LIMITS.**

- (A) No person shall intentionally hunt, trap, or snare, with or without firearms, animals on any city-owned property that is located outside the city limits.
- (B) Notwithstanding division (A) of this section, the following activities are permitted on city-owned property located outside the city limits:
 - (1) Fishing that is conducted in accordance with all applicable federal, state, and local statutes, ordinances, and regulations, specifically including without limitation the regulations adopted by the city's recreation services department, is permitted upon the waters of Lake Reese and Lake Lucas;
 - (2) Duck and dark geese (including Canada geese and white-fronted geese) hunting is permitted upon the waters of Lake Reese only during the date(s) and time(s) established by the City Council prior to the season opening each year; and
 - (3) City employees and/or contractors may hunt, trap, or snare animals in compliance with the adopted rules and regulations of the North Carolina Wildlife Resources

Commission when such action is deemed necessary by the city manager in order to ensure the safe and efficient operation of city-owned infrastructure.

§ 91.12 **ABANDONED ANIMALS**

- (A) It shall be unlawful for any person owning, possessing, or harboring an animal to abandon that animal.
- (B) If the animal control unit finds that an animal has been abandoned, the animal may be impounded. If the animal has been abandoned in a house or within a fenced area, the unit must make a reasonable effort to locate the owner or manager of the property. If the property owner or manager is not the animal owner, then the unit shall secure permission to remove the animal from the person who occupies the property. If the person who occupies the property is the animal owner and cannot be located or refuses to give permission to remove the animal, the animal control officer shall secure an appropriate warrant to seize the animal.
- (C) An animal seized pursuant to this section shall be impounded as provided in § 91.07.

§ 91.13 **WILD AND DANGEROUS ANIMALS**

- (A) It is unlawful for any person to possess or harbor a wild and dangerous animal or their hybrids.
- (B) Wild and dangerous animals privately owned and maintained within the city limits on or before April 1, 2012 may remain in the city, but such wild and dangerous animals must be registered with the animal control section of the Randolph County Health Department. Furthermore, at the time of registration, owners must submit a recapture plan in the event their animal escapes. Breeding or allowing the reproduction of wild and dangerous animals is prohibited.
- (C) Escapes of wild and dangerous animals must be immediately reported to 911 emergency communications.
- (D) Owners are liable for costs to agencies associated with the recapture of an escaped wild and dangerous animal.
- (E) In order for the owner of a wild and dangerous animal registered in compliance with division (B) of this section to lawfully house such an animal within the city, strict compliance must be maintained at all times with the following requirements:
 - (1) The enclosure housing the animal must securely contain the animal, including secondary containment from escape;
 - (2) The enclosure housing the animal must be adequately ventilated, cooled, heated, lighted, and constructed so that it may be kept in a clean and sanitary condition;

- (3) The enclosure housing the animal must be compliant with the Asheboro Zoning Ordinance;
- (4) The physical and psychological health and well-being of the animal must not be endangered by the manner of confinement;
- (5) The keeper/caregiver must have adequate knowledge of the nutritional, physical, and behavioral needs of the species in his or her care; and
- (6) The owner/caregiver must be able to identify the veterinarian providing medical care for the animal.

§ 91.14 **EXOTIC REPTILES.**

- (A) Individuals must be greater than 18 years of age to own a venomous exotic reptile or an exotic reptile weighing in excess of 40 pounds.
- (B) Owners are required to report to 911 emergency communications any escapes of venomous exotic reptiles and exotic reptiles weighing in excess of 40 pounds.
- (C) It is unlawful for exotic reptiles to run loose unsupervised.
- (D) Owners are required to register venomous exotic reptiles with the animal control section of the Randolph County Health Department which notifies 911 emergency communications of the location of venomous reptiles in order to protect rescue workers and the public during any emergency situations.
- (E) Owners are liable for costs to agencies associated with the recapture of an escaped exotic reptile.

§ 91.15 **EXOTIC MAMMALS.**

- (A) It is unlawful for any person to possess, sell, or harbor an exotic mammal or their hybrids.
- (B) Exotic mammals privately owned prior to any embargo or protection orders may remain in the city if so allowed by the order, but such animals must be registered with the animal control section of the Randolph County Health Department.
- (C) Breeding or allowing the reproduction of exotic mammals is prohibited.

§ 91.16 **ANIMAL BITE AND NOTIFICATION; RABIES CONTROL.**

- (A) It is unlawful for an animal to bite a human being who does not ordinarily reside on the premises of the animal unless the animal has been subject to provocation or unless the victim has been trespassing.
- (B) It is unlawful for a person to fail to report to the animal control unit as soon as possible that an animal has bitten a person.
- (C) It is unlawful for any person to fail to inform the animal control unit of the location to which an animal that has bitten a human being has been taken if the owner has given the animal away, or caused in any way the animal to be taken from the owner's premises.
- (D) The animal control unit shall ensure that all bite notifications are forwarded to the Randolph County Health Department and shall fully cooperate, assist, and strictly comply with all of the rabies control measures required by all applicable state laws and regulations, the county animal control ordinance, specifically including without limitation the county ordinance's quarantine and confinement/destruction measures, and any orders issued by the Randolph County Health Director.
- (E) In furtherance of the prevention component of rabies control, the following prevention measures are required. It is unlawful for an owner to fail to comply with the following requirements:
 - (1) In accordance with state law, the owner of every dog, cat, and ferret over four months of age shall have the animal vaccinated against rabies. The time or times of vaccination shall be established by the North Carolina Commission for Health Services, or any successor entity to this Commission;
 - (2) As required by G.S. 130A-190(a), dogs and cats shall wear rabies vaccination tags at all times. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C.," and the words "rabies vaccine;" and
 - (3) Ferrets are not required to wear the rabies inoculation tags, but the owner of a ferret shall maintain the tag or the rabies vaccination certificate as written evidence to prove the ferret has a current rabies inoculation and shall produce such tag or certificate as requested by animal control and as otherwise required by law.

§ 91.17 **DANGEROUS DOGS**

- (A) In order to fully and effectively implement the provisions of G.S. Ch. 67, Art. 1A pertaining to dangerous dogs, the Randolph County Health Director is hereby designated as the person responsible for determining within the city when a dog is dangerous or potentially dangerous. The appeals board to hear any appeal from such a decision by the Randolph County Health Director is the appeals board established pursuant to and in accordance with the county animal control ordinance.

- (B) Any and all additional requirements established in the county animal control ordinance for dangerous and potentially dangerous dogs are to be fully implemented within the city.
- (C) The chief is to provide full cooperation and assistance to the Randolph County Health Director with implementing G.S. Ch. 67, Art. 1A and the county animal control ordinance in relation to dangerous dogs and potentially dangerous dogs.

§ 91.18 NUISANCE ANIMALS.

- (A) It is unlawful for any person to own, keep, possess, harbor, or maintain an animal or group of animals in such a manner as to unreasonably annoy humans, endanger the life or health of other persons or animals, or substantially interfere with the rights of other citizens to the enjoyment of life or property. By way of example and not of limitation, the following activities are hereby declared to be a public nuisance and are, therefore, unlawful:
 - (1) Allowing an animal to get into or turn over waste or garbage containers;
 - (2) Allowing an animal to repeatedly walk on or sleep on the automobile of another;
 - (3) Allowing an animal to damage the real or personal property of anyone other than its owner;
 - (4) Allowing an animal to repeatedly be or run at large;
 - (5) Maintaining an animal in an unsanitary condition so as to render the animal noxious or offensive to sight or smell;
 - (6) Not confining an animal to a building or secure enclosure while the animal is in estrus;
 - (7) Maintaining an animal that is vicious or failing to effectively prevent an animal from chasing, snapping at, attacking, or otherwise molesting others, including pedestrians, bicyclists, motor vehicle passengers, or domestic animals;
 - (8) Allowing or permitting an animal or group of animals to make frequent or long continued sounds, including barking, whining, screeching, calling, howling, or yowling in an excessive, continuous, habitual, or untimely fashion; or to make other noise in such a manner and at such intervals so as to result in a serious annoyance or interference with the reasonable use and enjoyment of neighboring premises (such sounds shall be collectively referred to as "annoying sound"). For illustrative purposes and without limitation, any such sound made by cats or dogs for more than 15 minutes during any 30 minute period shall be deemed to be an annoying sound. The normal clucking of chickens that are otherwise kept in accordance with the provisions of the Code of Asheboro shall not constitute an

annoying sound. Any person owning, using, or possessing premises affected by an annoying sound ("person annoyed by sounds") shall follow the procedures specified in division (E) below;

- (9) Housing or restraining an animal less than five feet from a public street, road, or sidewalk such that the animal, without provocation, molests, attacks, or otherwise interferes with the freedom of movement of persons in a public right of way, or the location of the animal poses a threat to the general safety, health, and welfare of the general public;
- (10) Keeping an animal that is diseased and creating a threat to the public health; and
- (11) Keeping or maintaining an animal or group of animals in such a manner as to attract excessive insects, pests, rodents, raccoons, snakes, or other wild animals.
- (B) Upon the initiative of an animal control officer or upon receipt of a detailed complaint made to the animal control unit by any of the city's residents that any person is maintaining a nuisance animal or animals, the animal control unit may cause the owner of the animal or animals in question to be notified that a complaint has been received and may cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing by the investigating animal control officer. Notwithstanding any other provision in this section, any person other than an animal control officer who wants to initiate a complaint pertaining to a nuisance animal or group of animals engaged in the activity described in division (A)(8) above shall follow the procedures specified in division (E) below.
- (C) If the written findings of the investigating animal control officer indicate that the complaint is justified, then the chief or designee shall cause the owner or keeper of the animal or animals in question to be so notified in writing, served by personal delivery or by certified mail, return receipt requested, and ordered to abate such nuisance within a reasonable time that is not to exceed 7 days after notification. A citation may, in the discretion of the animal control unit, be issued at the same time for a violation of this chapter or any other animal control law. The chief may specify the particular abatement measures that must be taken, which measures may include, but are not limited to, a requirement that the animal be penned or that a secure enclosure be erected or improved. In the event the owner of the animal is unknown and cannot be ascertained, the notice and order, along with a general description of the animal, shall be published in a local newspaper.
- (D) If any person actually or constructively receiving notice in the manner herein described shall fail or refuse to abate the nuisance upon order of the chief within the specified time, the chief may cause any of the remedies and enforcement measures authorized by this chapter to be utilized in order to bring about an abatement of the nuisance.
- (E) If a complaint pertains to annoying sound, the person annoyed by the sound shall follow the procedures specified below:

- (1) Upon receipt of a detailed written and signed complaint by the person annoyed by the sound, the animal control unit shall provide written notice to the owner or possessor of the premises on which the animal(s) making an annoying sound is maintained ("animal owner") that a complaint has been received about the animal's (animals') annoying sound. The notice shall detail the complaint and may make suggestions on ways to correct the situation;
 - (2) Upon receipt of such notice of complaint, the animal owner shall cure the violation. If the violation is not cured, or if a second complaint is made to the animal control unit about the same animal(s) within any 6 month period, the animal control unit shall cause the animal owner to be served with an order to abate the annoying sound within a reasonable period of time, not to exceed 7 days ("Abatement Order"). Such notice shall be served by personal delivery or by certified mail, return receipt requested; and
 - (3) If the original complainant, or any other affected person notifies the animal control unit that the animal owner has failed or refuses to abate the annoying sound as provided in the Abatement Order, the animal control unit shall investigate and may utilize any of the remedies and enforcement measures authorized by this chapter to bring about an abatement of the nuisance.
- (F) Nothing in this section shall prevent a private citizen from bringing an action at any time against an animal owner.

§ 91.19 **DISPOSAL OF CARCASSES.**

The bodies of dead animals, or the parts of any dead animals, shall be removed from the city immediately or no later than 24 hours of known death and shall be disposed of by incineration, burial, or transportation to a rendering plant. If a carcass is buried, it shall be buried at a depth of not less than 3 feet below the surface of the ground and shall not be buried within 300 feet of a stream or body of water.

§ 91.20 **ANIMAL ABUSE PROHIBITED.**

- (A) All animals shall be kept and treated under sanitary and humane conditions, and it shall be unlawful for any owner to engage in one or more of the following acts:
- (1) Failing to provide adequate feed, water, and shelter for an animal;
 - (2) Confining an animal in a storage room, shed, or other building without proper ventilation and access to natural light;
 - (3) Failing to keep an animal under sanitary and humane conditions that promote the animal's health and general welfare and which maintain a condition of good order and cleanliness that reduces the possibility of the transmission of disease;

- (4) Failing or refusing to provide adequate medical attention for any sick, diseased, or injured animal;
 - (5) Poisoning or exposing a domestic animal to any known poisonous substance or mixing a poisonous substance with food so that it will likely be eaten by a domestic animal. This prohibition does not include attempts or acts of persons to lawfully rid their own property of mice or rats or other vermin, nor does it include other acts permitted by the North Carolina Wildlife Resources Commission;
 - (6) Allowing a collar, rope, or chain to become embedded in or cause injury to an animal's neck, or allowing a choke or pinch collar to be used as a primary collar on an unsupervised animal;
 - (7) Allowing an animal to be chained or tethered such that the animal is not confined to the owner's property or such that the chain or tether can become entangled and prevent the animal from moving about freely, lying down comfortably, or having access to adequate food, water, and shelter; and
 - (8) Placing or confining an animal or allowing an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability, or death.
- (B) Nothing in this section shall be deemed to prohibit the following activities:
- (1) The humane transportation of horses, cattle, sheep, poultry, or other livestock in trailers or other vehicles designed, constructed, and adequate for the size and number of animals being transported;
 - (2) Nothing in this section shall be construed to prohibit the animal control unit, law enforcement officers, employees of the Randolph County Health Department, or veterinarians from euthanizing dangerous, unwanted, injured, or diseased animals in a humane manner; and
 - (3) Nothing in this section shall be construed to prohibit slaughterhouses or medical facilities from the proper, humane, and lawful carrying out of their activities or duties.
- (C) The animal control unit shall have the authority to conduct inspections of pet shops, kennels, dealers, or breeders, to the extent not preempted by state law, in order to determine if there is any abuse of animals. It shall be unlawful for any owner or employee of any pet shop or kennel or any dealers or breeders to violate this section.

§ 91.21

PROHIBITION OF DOMESTIC ANIMALS AT LARGE

It is unlawful for the owner of any domestic animal to allow such animal to be or run at large in the city or on any city property.

§ 91.22 **CONFINEMENT OF FEMALE DOGS AND CATS IN ESTRUS.**

Every female dog and cat, while in estrus, shall be confined in a building or secure enclosure in such manner that she will not be in contact with another dog or cat, as the case may be, nor create a nuisance by attracting other animals; provided, this section shall not be construed to prohibit the intentional breeding of animals within an enclosed area on the premises of the owner of an animal being bred.

§ 91.23 **RESPONSIBILITY FOR ANIMALS ON PUBLIC PROPERTY AND THE PROPERTY OF OTHERS.**

It shall be unlawful for the owner or custodian of an animal to fail to remove feces deposited by the animal on either of the following types of property:

- (A) Any public street, sidewalk, gutter, park, or other publicly owned property; or
- (B) Any property owned or legally controlled by another person or entity that has not given permission for entry onto the property by the animal that defecated on the property.

§ 91.24 **MAXIMUM NUMBER OF DOGS ON PREMISES.**

- (A) It shall be unlawful for any person to keep or maintain more than 3 dogs per household on any parcel of land or zoning lot having less than 30,000 square feet, and an additional 7,000 square feet shall be required for each additional dog. A total of no more than 5 dogs per household shall be allowed on any parcel of land or zoning lot within the city limits regardless of square footage.
- (B) The limitation prescribed by this Section on the number of dogs per household on a single parcel of land or zoning lot shall not apply to dogs that are less than 6 months of age.
- (C) Notwithstanding the preceding provisions, and subject to the limitation that, on or after April 1, 2012, no new or additional dogs that would increase or perpetuate the noncompliance of a household with this Section may be kept or maintained in a household, any dog lawfully kept or maintained as part of a household located within the corporate limits of the City of Asheboro prior to April 1, 2012 may continue to be kept or maintained as part of the same household for the remainder of the dog's life.

§ 91.25 **MAXIMUM NUMBER OF CATS ON PREMISES.**

- (A) It shall be unlawful for any person to keep or maintain more than 3 cats per household on any parcel of land or zoning lot having less than 30,000 square feet, and an additional 7,000 square feet shall be required for each additional cat. A total of no more than 5 cats per household shall be allowed on any parcel of land or zoning lot within the city limits

regardless of square footage.

- (B) The limitation prescribed by this Section on the number of cats per household on a single parcel of land or zoning lot shall not apply to cats that are less than 6 months of age.
- (C) Notwithstanding the preceding provisions, and subject to the limitation that, on or after April 1, 2012, no new or additional cats that would increase or perpetuate the noncompliance of a household with this Section may be kept or maintained in a household, any cat lawfully kept or maintained as part of a household located within the corporate limits of the City of Asheboro prior to April 1, 2012 may continue to be kept or maintained as part of the same household for the remainder of the cat's life.

§ 91.26 **KEEPING SWINE.**

- (A) Except as provided in division (B) of this section, it shall be unlawful for any person to keep any hogs, pigs, or swine within the city limits.
- (B) A person may have or keep no more than 2 miniature or potbellied pigs per household within the corporate limits of the city if the following conditions are satisfied:
 - (1) The miniature or potbellied pig(s) must be provided with adequate shelter to protect the pig(s) from the elements.
 - (2) Any and all miniature or potbellied pigs kept or maintained in the City of Asheboro must be spayed or neutered.
 - (3) The owner of the miniature or potbellied pig(s) shall provide the pig(s) with access to food and clean water. Active measures shall be taken to limit the availability of this food and water to rodents, wild birds, and predators.
 - (4) If an outdoor pen or enclosure is utilized, the dimensions of such a pen or enclosure must be no less than 10 feet by 12 feet for 1 pig or no less than 16 feet by 16 feet for 2 pigs.
 - (5) No outdoor pen or enclosure, including without limitation fencing, used for sheltering or confining a miniature or potbellied pig is permitted within 30 feet of any property line or public street right-of-way line, and no such outdoor pen or enclosure may be located within 100 feet of a hospital, school, eating establishment, or dwelling other than the dwelling of the owner of the miniature or potbellied pig. These separation requirements are in addition to and not in lieu of the land use regulations prescribed by the Asheboro Zoning Ordinance. No provision in this chapter shall be construed or interpreted in any manner that preempts or impacts the application of the land use regulations found in the Asheboro Zoning Ordinance.
 - (6) A pen or enclosure used for sheltering or confining a miniature or potbellied pig shall be kept clean, sanitary, and free from accumulations of animal excrement

that cause an objectionable odor. Such a pen or enclosure shall be cleaned at least twice each week. All waste material removed from a pen or enclosure used to shelter the miniature or potbellied pig shall be disposed of in a manner that is lawful, does not attract flies, and prevents any detectable odor at the property or street right-of-way line.

- (7) All food kept for feeding the miniature or potbellied pig(s) shall be kept and stored in rat-free and rat proof containers, compartments, or rooms unless kept in a rat proof building.

§ 91.27 KEEPING OF DOMESTIC FOWL.

- (A) Up to 2 chicken hens or other fowl may be kept by a household within the corporate limits of the City of Asheboro so long as the fowl do not, by reason of noise, odor, or attraction of flies, become a nuisance or health hazard.

- (B) Between 3 and 8 chicken hens or other fowl may be kept on any single lot or parcel in the city if the following conditions are satisfied:

- (1) The fowl shall not be permitted to run at large and must be maintained in a coop or enclosure of suitable construction and size for the number of fowl maintained in the enclosure.
- (2) The fowl must be provided with adequate shelter for protection from the elements.
- (3) The owner of the fowl shall provide the animal with access to food and clean water. Active measures shall be taken to limit the availability of this food and water to rodents, wild birds, and predators.
- (4) No outdoor coop or enclosure used for keeping fowl is permitted within 30 feet of any property line or public street right-of-way line, and no such outdoor coop or enclosure may be located within 100 feet of a hospital, school, eating establishment, or dwelling other than the dwelling of the owner of the fowl. These separation requirements are in addition to and not in lieu of the land use regulations prescribed by the Asheboro Zoning Ordinance. No provision in this chapter shall be construed or interpreted in any manner that preempts or impacts the application of the land use regulations found in the Asheboro Zoning Ordinance.
- (5) A coop or enclosure used for keeping fowl shall be kept clean, sanitary, and free from accumulations of animal excrement that cause an objectionable odor. Such a pen or enclosure shall be cleaned at least twice each week. All waste material removed from a pen or enclosure used for keeping fowl shall be disposed of in a manner that is lawful, does not attract flies, and prevents any detectable odor at the property or street right-of-way line.

(6) All food kept for feeding the fowl shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-proof building.

(C) Due to the excessive noise created by the following animals, the keeping of roosters and geese is prohibited within the corporate limits of the City of Asheboro.

§ 91.28 **KEEPING OF HORSES, MULES, DONKEYS, COWS, AND GOATS REGULATED.**

It shall be unlawful for any person who owns, operates, or maintains a stable or enclosure in the city, in which horses, mules, donkeys, cows, or goats are kept, to keep such stable in an unclean or unsanitary condition. The person who owns, operates, or maintains such a stable or enclosure shall be responsible for providing for use within the stable or enclosure a bin or pit which shall be watertight and so arranged that it is fly-proof, or, alternatively, shall provide a watertight barrel with a close-fitting lid. Manure accumulating in such stable shall be placed in the bin, pit, or barrel each day and shall be removed from the premises of the owner at least every 5 days. Effective fly control methods such as the use of approved insecticide shall be practiced during the fly-breeding period from April 15 to November 1 of each year. All food kept for feeding the livestock shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-proof building.

§ 91.29 **LOCATION OF STABLES; TETHERING OF HORSES, MULES, DONKEYS, COWS, OR GOATS.**

No person shall locate or maintain upon any lot within the city any horse, mule, donkey, cow, or goat stable nearer than 150 feet to any hospital, school, eating establishment, or dwelling; nor shall any person tether or permit to graze or stand any horse, mule, donkey, cow, or goat within 50 feet of any such place.

§ 91.30 **ANIMALS PROHIBITED AT RANDOLPH ARTS GUILD'S ANNUAL FALL FESTIVAL.**

(A) It is unlawful for any person to possess any animal(s) within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival, and it is also unlawful for any person with an animal within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival to fail to obey the command of a law enforcement officer or an animal control officer to remove such an animal from the area in which animals are prohibited by this section. Furthermore, except as provided by this section, it shall be unlawful for any person to actively encourage or facilitate the entry or continued presence of any animal(s) within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival.

(B) Notwithstanding any other provision to the contrary, the prohibition of animals by this section is not applicable to the following animals:

- (1) Any assistance animal that is trained and/or may be used to assist a person with a disability, specifically including without limitation a "handicapped person" as defined in G.S. 168-1. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a person with a disability.
- (2) Any law enforcement/public safety agency animal that is trained and may be used to assist a law enforcement/public safety officer in the performance of the officer's official duties.
- (C) The "public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival" are the streets, sidewalks, and public vehicular areas that fall within the perimeter demarcated by the closure, upon order of the city council, of Fayetteville Street from Salisbury Street to Kivett Street; North Street at Salisbury Street; Sunset Avenue at Church Street; Worth Street, Scarboro Street, East Academy Street, and Cranford Street at Cox Street; and West Academy Street at the entrance to the city parking lot.
- (D) The prohibition of animals from public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival is only in effect during those times when the Fall Festival is scheduled to be in actual operation.
- (E) The City Manager shall cause notices of the prohibition of animals from public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival to be prominently posted at the location of the street closures listed in division (C) above.

§ 91.31 **EXCEPTIONS.**

- (A) This chapter shall not apply to the lawful taking of animals under the jurisdiction and regulation of the North Carolina Wildlife Resources Commission; lawful activities of agencies conducting or sponsoring biomedical research or training; lawful activities of any law enforcement canine team in the performance of their duties; or the lawful destruction of any animal for the purpose of protecting domestic animals or humans.
- (B) Veterinary clinics and retail pet stores are not subject to the supplemental animal control regulations prescribed in §§ 91.24 through 91.28 of this chapter. The inapplicability of the supplemental regulations found in this chapter to these businesses does not impair or impact to any degree the applicability to these businesses of any other provision within this chapter or any other federal, state, or local law, ordinance, or regulation, including by way of illustration and not limitation the county animal control ordinance and the Asheboro Zoning Ordinance.

§ 91.32 **REMEDIES AND PENALTIES.**

- (A) The animal control unit must have ample authority to impose preventive measures, seize, and impound animals. Escalating fees and other sanctions authorized within this section

are measures that have been adopted to protect the citizens of Asheboro and to declare that the ownership of animals entails publicly related responsibilities. When there is a violation of this chapter, the chief may take one or more of the courses of action set forth in this section. The chief may cause a complaint to be filed or any action to be brought on behalf of the city. Any such action shall be cumulative and shall not be deemed to be a bar to or a waiver of the right to institute any other civil or criminal proceeding for a violation of this chapter.

- (B) Any person who violates the provisions of this chapter is guilty of a misdemeanor as provided by G.S. § 14-4 and shall be fined not more than \$500. Payment of a fine imposed in a criminal proceeding initiated pursuant to this chapter does not relieve a person of his or her liability for fees imposed by this chapter or any other law or ordinance, specifically including without limitation fees imposed by the county animal control ordinance as a consequence of the impoundment of an animal at the animal shelter.
- (C) Pursuant to and consistent with G.S. 160A-175, enforcement of the provisions found in this chapter may include any appropriate equitable remedy, injunction, or order of abatement issuing from a court of competent jurisdiction.
- (D) In addition to or in lieu of any criminal penalties and other sanctions provided in this chapter and any other applicable law, ordinance, or regulation, a violation of the provisions found in this chapter may also subject the offender to the civil penalties hereinafter set forth:
- (1) An animal control officer may issue to the owner or possessor of any animal, or any other violator of this chapter, a written warning or a civil penalty citation giving notice of the alleged violation(s). Written warnings or civil penalty citations so issued may be served on the person charged with a violation by means of personal delivery by the animal control officer or mailed by certified or registered mail, return receipt requested, to the last known address of the person charged;
 - (2) Civil penalties shall be paid in full to the Asheboro Police Department within 15 business days of the receipt of the civil penalty citation that gives notice of the penalty that is due and payable. The civil penalty is in addition to any other costs or fees imposed by this chapter or any other law or ordinance, specifically including without limitation fees imposed by the county animal control ordinance as a consequence of the impoundment of an animal at the animal shelter;
 - (3) In the event that the owner or possessor of an animal or other violator of this chapter does not pay the applicable civil penalty within the prescribed time period, a civil action may be commenced to recover the penalty and costs associated with the collection of the penalty. The chief, or the chief's designee, is expressly authorized to initiate and prosecute small claims actions in District Court to collect civil penalties and fees owed to the city as a consequence of

violation(s) of this chapter. The chief may call on the city attorney for assistance as needed. In lieu of pursuing a civil action to collect the civil penalty, a criminal summons may be issued against the violator for violating this chapter, and, upon conviction, the violator shall be punished in accordance with state law for the misdemeanor offense of violating this chapter; and

(4) In order to encourage responsible conduct, an owner shall be subject to escalating penalties for each violation of this chapter by the owner, regardless of whether the animal is the same animal, a different animal, or various animals belonging to the same owner. Each violation of this Chapter within a rolling 12-month period shall subject the owner to the following escalating civil penalties:

<u>Offense</u>	<u>Civil Penalty Amount</u>
<u>1st</u>	<u>\$35.00</u>
<u>2nd</u>	<u>\$50.00</u>
<u>3rd</u>	<u>\$100.00</u>
<u>4th and Subsequent Offenses</u>	<u>\$150.00</u>

(E) Each violation of a specific provision of this chapter is considered a separate offense for purposes of this section.

(F) Each day that a specific violation occurs is considered a separate offense for purposes of this section.

(G) In addition to the above-listed remedies, domestic animals may be seized and impounded when found at large or as otherwise provided in this chapter. Furthermore, if conditions pose an immediate threat to the health or safety of the animal or the public, the animal control unit is authorized to seize and impound an animal. When an animal is seized, the following steps, at a minimum, must be taken:

(1) The animal control unit, or some other person designated by the chief, shall enter into a seized animal registry maintained by the police department a description of the animal that includes at least the breed, color, and sex of such animal and whether the animal was impounded or processed in some other manner; and

(2) Upon seizing an animal, a notice of seizure shall be left with the owner or affixed to the premises. If an animal is not from a particular premises but has an identification tag, the animal control officer shall cause a prompt and reasonable effort to be made to locate and notify the animal's owner.

(H) Notwithstanding any other provision of this chapter, an animal that cannot be reasonably seized, retrieved, humanely trapped, or tranquilized may be humanely destroyed in the

field upon the authorization of the chief; provided, however, an animal attacking a human being or pet may be summarily destroyed if, in the opinion of animal control, such destruction is necessary for the protection of life or property or for the public health and safety.

- (I) Nothing in this chapter shall be construed to prevent law enforcement officers of any kind from enforcing any of the provisions of this chapter or from exercising their authority as law enforcement officers.
- (J) Nothing in this chapter shall prevent a private citizen from bringing an action to abate a nuisance or from bringing an action for damage, loss, or injury to the private citizen or his or her property resulting from an animal being a nuisance.

§ 91.33 APPEALS.

(A) Any person, owner, or possessor affected by an action taken by the animal control unit may request a review of such action by filing a request for appeal with the city manager. The only exceptions to this right of appeal to the city manager are attempts to appeal an action taken by the animal control unit in compliance with a court order or to appeal an action that is pending in the criminal courts. Any appeal pertaining to a criminal case or an order from a judicial official must be addressed in accordance with laws and rules applicable to the court with jurisdiction to consider the matter for which judicial review is sought.

(B) Unless otherwise provided by law, a request for appeal must be made in writing and filed with the city manager, with a copy to the chief, within 10 business days of the action or decision complained of and must state with particularity the grounds for the appeal. An appeal hearing shall be scheduled and conducted by the city manager as soon as is practicable. Written notice of the date, time, and location of such a hearing will be mailed to the last known address of the person who filed the appeal.

(C) After conducting the hearing and considering the available evidence, the city manager may reverse or affirm, in whole or in part, the action taken by the animal control unit. The city manager may also modify the action(s) taken by the animal control officer. The city manager's decision is final, and there shall be no appeal from the decision of the city manager to the city council. The manager shall render a decision within 5 business days of the conclusion of the hearing. The decision shall be mailed to the person requesting the appeal and to the chief.

(D) If the manager's decision is against the person requesting the appeal, the animal control unit shall implement the action(s) upheld by the manager.

(E) If the decision is against the animal control unit, efforts to implement the action(s) under appeal shall immediately cease.

(F) A decision rendered by the manager applies only to the particular action(s) appealed, and such a decision does not preclude the animal control unit from taking enforcement action in response to a subsequent violation of the same provision or any other provision of this chapter.

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

ORDINANCE SECTION 3. This Ordinance shall take effect and be in force from and after February 1, 2015.

ORDINANCE SECTION 4. No action or proceeding of any nature (whether civil or criminal, administrative, or otherwise) pending at the effective date of this Ordinance shall be abated or otherwise affected by the adoption of this Ordinance.

ORDINANCE SECTION 5. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision, and such a holding shall not affect the validity of the remaining portions thereof.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January, 2015.

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The signature page for this Ordinance is on the next page.]**

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

ATTEST:

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