

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, DECEMBER 5, 2013  
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 officials and staff members present:

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

John N. Ogburn, III, City Manager  
Michelle H. Dawes, Technical Services Manager  
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal  
John L. Evans, Assistant Community Development Director  
Michael L. Leonard, P.E., City Engineer  
Ralph W. Norton, Chief of Police  
Trevor L. Nuttall, Community Development Director  
Deborah P. Reaves, Finance Director  
Michael D. Rhoney, Water Resources Director  
Christopher P. Schadt, Wastewater Treatment Plant Lead Operator  
John T. Stake, Assistant Wastewater Treatment Plant Manager  
Jeffrey C. Sugg, City Attorney  
Bernadine L. Wardlaw, Water Quality Manager  
Jody P. Williams, Assistant Chief of Police

**1. Call to order.**

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

**2. Silent prayer and pledge of allegiance.**

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

**3. Presentation by W. Corey Basinger, Chairman of the North Carolina Water Pollution Control System Operators Certification Commission, of the 2013 Wilbur E. Long, Jr. Operator of the Year Award to Chris Schadt, Wastewater Treatment Plant Lead Operator.**

Mr. W. Corey Basinger, Chairman of the North Carolina Water Pollution Control System Operators Certification Commission, presented the 2013 Wilbur E. Long, Jr. Operator of the Year Award to Mr. Chris Schadt, who is the City of Asheboro's Wastewater Treatment Plant Lead Operator. This award was presented to Mr. Schadt as the municipal operator of the year.

The purpose of the award is to recognize a properly certified Wastewater Treatment Plant Operator in North Carolina who has exhibited outstanding knowledge and innovation in the continuing operation of a wastewater treatment facility or who has contributed his time and efforts toward the training, education, and general upgrading of the Wastewater Treatment Plant Operator or who has devised, discovered or invented devices or techniques which enhance the science of plant operation.

Mayor Smith congratulated Mr. Schadt on his award and accomplishments.

**4. Report from Tammy O'Kelley, Director, Heart of North Carolina Visitors Bureau on Asheboro tourism activities for calendar year 2013.**

Ms. Tammy O'Kelley, Director of the 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 during the 2013 calendar year. Ms. 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. Some of the tourism activities included, but are not limited to, the 2013 American Legion Baseball Southeast Regional Tournament and Cycle NC (a bicycle tour from Spruce Pine, NC to Atlantic Beach, NC).

During her presentation, Ms. O'Kelley utilized a visual presentation depicting percentages of hotel demand during the weekends of said events. The demand for hotel rooms for these weekends was above the national average. The baseball tournament is scheduled to return for an additional year in 2014.

Additionally, Ms. O'Kelley presented a draft of a downtown walking map that was created in partnership with the city's Community Development Division and individuals on the Chamber of Commerce's Downtown Committee. This map will help citizens find places to eat, shop, bank, etc. in the downtown area. These maps will be printed and available to citizens at the welcome centers and various city facilities.

Ms. O'Kelley's presentation was informational in nature. No request for council action was made, and no action was taken. A copy of the visual presentation utilized by Ms. O'Kelley is on file in the City Clerk's office.

#### **OLD BUSINESS:**

##### **5. Consent agenda:**

Upon motion by Mr. Carter and seconded by Mr. Swiers, Council voted unanimously to approve the following consent agenda items.

- (a) The minutes of the City Council's regular meeting on November 7, 2013.**
- (b) Acknowledgement of the receipt of the minutes of the Asheboro ABC Board's meeting on October 7, 2013, including a copy of the required independent audit for the fiscal year ending June 30, 2013.**

Copies of the documents received from the Asheboro ABC Board are on file in the City Clerk's office.

- (c) Acknowledgement of the receipt of the Asheboro ABC Board's minutes of its meeting on November 4, 2013.**

Copies of the documents received from the Asheboro ABC Board are on file in the City Clerk's office.

- (d) Acknowledgement of the receipt from the Randolph County Board of Elections of a copy of the abstract of votes in the municipal general election held on November 5, 2013.**

A copy of the abstract of votes is on file in the City Clerk's office.

#### **NEW BUSINESS:**

With the conclusion of old business, Mayor Smith asked the Council Members to turn their attention to the City Council's organizational meeting.

##### **6. Organizational meeting:**

- (a) Administer Oath of Office for the Mayor and City Council Members.**

City Clerk Holly H. Doerr administered the oath of office to Mayor David H. Smith and Council Members Clark R. Bell, Linda H. Carter, Michael W. Hunter, and Walker B. Moffitt as follows:

**OATH OF MAYOR**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

CITY OF ASHEBORO

I, David H. Smith, do solemnly swear (~~or affirm~~) that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Mayor of the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

\_\_\_\_\_  
/s/David H. Smith  
David H. Smith

Sworn to and subscribed before me this 5<sup>th</sup> day of December, 2013.

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

**OATH OF COUNCIL MEMBER**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, Clark R. Bell, do solemnly swear (~~or affirm~~) that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Council Member for the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

\_\_\_\_\_  
/s/Clark R. Bell  
Clark R. Bell

Sworn to and subscribed before me this 5<sup>th</sup> day of December, 2013.

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

**OATH OF COUNCIL MEMBER**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, Linda H. Carter, do solemnly swear (~~or affirm~~) that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Council Member for the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

\_\_\_\_\_  
/s/Linda H. Carter  
Linda H. Carter

Sworn to and subscribed before me this 5<sup>th</sup> day of December, 2013.

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



**1. Committee appointments: [Agenda Item 6(b)]**

**(i) Appointments by Mayor**

Mayor Smith presented a proposed list of committee appointments for the City Council.

**(ii) Council adoption of list of appointments**

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

**52 RES 12-13**

**A RESOLUTION STATING THE CONCURRENCE OF THE ASHEBORO CITY COUNCIL WITH THE COMMITTEE APPOINTMENTS MADE BY MAYOR DAVID H. SMITH**

**WHEREAS**, the Code of Asheboro (hereinafter referred to as the "Code") authorizes the Mayor to appoint Council members to the various committees listed in Section 31.02 of the Code as well as to other committees established by and organized in accordance with Resolutions adopted by the Council independent of the committee framework established in the Code; and

**WHEREAS**, the appointment of individuals to these Council committees is to take place during the organizational meeting that follows the municipal general election; and

**WHEREAS**, Section 31.02 of the Code provides that the above-referenced committee appointments are subject to the approval of the Council; and

**WHEREAS**, during the organizational meeting held on December 5, 2013, Mayor David H. Smith, consistent with the Code, made the following committee appointments:

Finance and Public Safety Committee

1. Mayor, Chair (Designated as Chair by the Code)
2. Clark Bell
3. Linda Carter
4. Charles Swiers

Public Works Committee

1. Mayor Pro Tempore, Chair (Designated as Chair by the Code)
2. Edward Burks
3. Michael Hunter
4. Walker Moffitt

Personnel Evaluation Committee

1. Mayor, Chair (Designated as Chair by the Code)
2. Mayor Pro Tempore
3. Linda Carter

Tourism and Marketing Committee

1. Mayor, Chair (Designated as Chair by the Code)
2. Edward Burks
3. Walker Moffitt

Identity Theft Prevention Program Committee

1. Mayor, Chair (Designated as Chair by the Code)
2. Linda Carter
3. Michael Hunter; and

**WHEREAS**, the members of the City Council concur with these appointments;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that, without exception, the committee appointments specified in the preceding recitals are hereby approved.

This Resolution was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 5<sup>th</sup> day of December, 2013.

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

ATTEST:

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

**2. Election of Mayor Pro Tempore [Agenda Item 6(c)]**

Mr. Moffitt nominated Talmadge S. Baker for re-election as Mayor Pro Tempore, and Mr. Bell seconded this nomination. Mayor Smith asked if there was agreement to elect Mr. Baker as Mayor Pro Tempore by acclamation, and Mr. Moffitt and Mr. Bell agreed to so move and second. This motion to close nominations and elect Talmadge S. Baker as Mayor Pro Tempore by acclamation was approved unanimously by the City Council.

**3. Consent agenda: [Agenda Item 7]**

Upon motion by Mr. Baker and seconded by Burks, Council voted unanimously to approve the following consent agenda items.

- (a) **An ordinance setting the Asheboro City Council's schedule for regular meetings during the 2014 calendar year.**

34 ORD 12-13

**AN ORDINANCE SETTING THE DATES OF THE REGULAR MEETINGS OF THE ASHEBORO CITY COUNCIL DURING THE 2014 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**, the Thursday after the first Monday in September 2014 is September the 4<sup>th</sup>, which falls within the same week as the Labor Day holiday on September 1, 2014; and

**WHEREAS**, in an effort to avoid reasonably foreseeable scheduling conflicts, the members of the Asheboro City Council have agreed to reschedule the Council's regular meeting in September 2014;

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

**Section 1.** The regular meeting of the Asheboro City Council in September 2014 shall be held in the Council Chamber of the Asheboro Municipal Building, with a beginning time of 7:00 p.m., on the 11<sup>th</sup> day of September, 2014.

**Section 2.** For purposes of clarity, the schedule for regular meetings of the Asheboro City Council during the 2014 calendar year is as follows:

<u>Month</u>	<u>Meeting Date</u>
January	9 <sup>th</sup>
February	6 <sup>th</sup>
March	6 <sup>th</sup>
April	10 <sup>th</sup>
May	8 <sup>th</sup>
June	5 <sup>th</sup>
July	10 <sup>th</sup>
August	7 <sup>th</sup>
September	11 <sup>th</sup>
October	9 <sup>th</sup>
November	6 <sup>th</sup>
December	4 <sup>th</sup>

**Section 3.** 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 2 of this Ordinance. With the exception of rescheduling the Asheboro City Council's regular meeting in September 2014, the provisions of Section 31.04 of the Code of Asheboro remain in full force and effect.

**Section 4.** This Ordinance shall become effective upon adoption and shall sunset on December 31, 2014.

This ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 5<sup>th</sup> day of December, 2013.

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

ATTEST:

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

- (b) **An ordinance establishing “No Parking Any Time” on the south side of Cooper Street from the intersection of Cooper Street and Lee Street to approximately 165 feet east of said intersection. [The following request for a “No Parking” sign was placed on the agenda at the request of a Lee Street resident, Orene M. Akers.]**

**35 ORD 12-13**

**AN ORDINANCE PROHIBITING PARKING ON A SECTION OF COOPER STREET**

**WHEREAS**, Section 160A-301(a) of the North Carolina General Statutes provides that the “city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city;” and

**WHEREAS**, Section 71.01(A)(1) of the Code of Asheboro provides as follows:

Pursuant to instructions given to him by the City Council from time to time and entered in the council minute book, the City Manager shall [c]ause all streets and parts of streets where parking shall be prohibited at all times to be posted accordingly, or cause the curbs thereof to be painted yellow. He shall then notify the City Clerk, who shall enter the description of such streets or parts of streets in Schedule 1 of § 72.02; and

**WHEREAS**, Cooper Street is located within the corporate limits of the City of Asheboro; and

**WHEREAS**, an issue has been raised by a resident on Cooper Street as to the appropriateness of allowing the parking of vehicles on the south side of Cooper Street in the vicinity of the intersection of Cooper Street and Lee Street (this area is located in close proximity to the resident’s driveway); and

**WHEREAS**, the City of Asheboro Engineering Department has reviewed the citizen’s request for the designation of a new “No Parking” zone, and this request has been found to be compatible with sound practices for managing on-street parking on a public street such as Cooper Street; and

**WHEREAS**, the Asheboro City Council has concluded that the citizen’s request for a “No Parking” zone on Cooper Street should be approved;

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

**Section 1.** On-street parking is hereby prohibited at all times on the south side of Cooper Street from the intersection of Cooper Street and Lee Street to a point on Cooper Street that is located approximately one hundred sixty-five feet (165’) east from the centerline of Lee Street.

**Section 2.** The City Manager is hereby authorized and directed to cause the “No Parking” zone described in Section 1 of this Ordinance to be marked or posted in accordance with Section 71.01(A)(1) of the Code of Asheboro.

**Section 3.** The City Clerk shall enter a description of the “No Parking” zone established by this Ordinance on Cooper Street in Schedule 1 of Section 72.02 of the Code of Asheboro.

**Section 4.** All ordinances and clauses of ordinances in conflict with this Ordinance are hereby repealed.

**Section 5.** This Ordinance shall take effect and be in force from and after the date of its adoption.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 5<sup>th</sup> day of December, 2013.

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

ATTEST:

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

- (c) **A resolution authorizing the City Manager to enter into a Utility Agreement between the City of Asheboro and the N.C. Department of Transportation to replace water and sewer lines along Draper Street at the Penwood Branch crossing for the proposed NCDOT Bridge Replacement Project, wherein the estimated cost to the City is \$130,184.00, to be paid within sixty (60) days of receipt of invoice.**

53 RES 12-13

**RESOLUTION APPROVING AN AGREEMENT WITH THE NORTH  
CAROLINA DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the North Carolina Department of Transportation (hereinafter referred to as the "NCDOT") has prepared and adopted plans to make certain street and highway improvements under Project 17BP.8.R.19; and

**WHEREAS**, the adopted plans pertain to Bridge No. 419 over Penwood Branch on North Carolina Secondary Road 2159 (Draper Street); and

**WHEREAS**, city staff members have concluded that it would be advisable for the city to enter into an agreement with the NCDOT for certain utility work to be performed by the NCDOT's construction contractor with full reimbursement by the city for the cost of such work; and

**WHEREAS**, the proposed utility work would consist of the adjustment and relocation of municipally owned water and sewer lines impacted by Project No. 17BP.8.R.19; and

**WHEREAS**, the attached UTILITY AGREEMENT (hereinafter referred to as the "Agreement"), which is attached hereto as ATTACHMENT A and is hereby incorporated into this Resolution by reference as if copied fully herein, has been presented to the city as the legal instrument that must be used in order to procure the proposed utility work under the above-described terms and conditions; and

**WHEREAS**, city staff members have uniformly recommended approval of the said Agreement, and the City Council concurs with this recommendation;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the Agreement attached hereto as ATTACHMENT A is hereby approved; and

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

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 5<sup>th</sup> day of December, 2013.

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

ATTEST:

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

[A copy of the ATTACHMENT A referenced in the preceding Resolution is on file in the City Clerk's office.]

**4. Community Development Division Items: [Agenda Item 8]**

- (a) **Consideration of a request to adopt the Asheboro Comprehensive Transportation Plan prepared in conjunction with the North Carolina Department of Transportation:**

(i) **Public hearing:**

Mayor Smith opened the public hearing on the request to adopt the Asheboro Comprehensive Transportation Plan prepared in conjunction with the North Carolina Department of Transportation.

Ms. Hemal Shah of the North Carolina Department of Transportation utilized a visual presentation in order to highlight draft Comprehensive Transportation Plan recommendations that included improvements to various highways, including but not limited to, I-74/74 U.S. 220 Bypass, U.S. 220 Business, U.S. 64, and U.S. 64-Asheboro Southern Bypass (New Location).

Two public workshops were held on November 1, 2012 and October 29, 2013. Draft Comprehensive Transportation Plans were presented to the Planning Board on December 2, 2013. The Piedmont Triad Rural Planning Organization is scheduled to endorse the Comprehensive Transportation Plans on December 18, 2013. Randolph County is scheduled to adopt the Comprehensive Transportation Plans on January 6, 2014.

A copy of the visual presentation, including maps, utilized by Ms. Shah is on file in the City Clerk's office.

**(ii) Action by the City Council on the request for adoption of the Asheboro Comprehensive Transportation Plan:**

Upon motion by Mr. Bell and seconded by Mr. Moffitt, Council voted unanimously to adopt the Asheboro Comprehensive Transportation Plan as presented.

**(b) Zoning Case RZ-13-15: A legislative zoning hearing on the application filed by H.R. Gallimore (Agent for Nancy Jordan) to rezone property located east of Mountain Road, south of Springdale Lane, and west of Lincoln Avenue from CURA6 (Conditional Use High Density Residential) to RA6 (High Density Residential).**

Mayor Smith opened the public hearing on the following request.

Before any presentation was made by Community Development Director Nuttall, Mr. H.R. Gallimore, Agent for Nancy Jordan, informed the Mayor and Council that the applicant would like to have more time to evaluate the concerns and issues raised by property owners and residents in the vicinity of the parcel of land (Randolph County Parcel Identification Number 7751362459) for which the rezoning has been requested. Consequently, Mr. Gallimore specifically requested a continuance of this public hearing and the Council's consideration of the rezoning application to the Council's regular meeting in January 2014.

Prior to the Council taking any action on this request, Council Member Bell disclosed that he is a member of the church that owns land across the street from the property for which this rezoning has been requested. However, Mr. Bell has no financial interest that is impacted by this request, and he, after consulting with the City Attorney, has concluded that no conflict of interest exists that would prevent him from considering and ultimately taking action as a Council Member on this rezoning application. No concerns or contrary opinions were expressed by any other parties after his disclosure was made.

Upon motion by Mr. Swiers and seconded by Mr. Burks, Council voted unanimously to continue the above-referenced request to its regular January meeting.

**(c) Zoning Case RZ-13-16: A legislative hearing on the application filed by the City of Asheboro to amend Article 900 of the Asheboro Zoning Ordinance concerning the Board of Adjustment.**

Mayor Smith opened the public hearing on the following request.

Mr. Nuttall presented an overview of the Community Development Division staff's proposed amendments to Article 900 of the Asheboro Zoning Ordinance that reflect (a) the reduction in the territory and population included within the City's extraterritorial planning jurisdiction and the (b) recent statutory amendments pertaining to Boards of Adjustment that were enacted by the North Carolina General Assembly.

The proposed amendments to the zoning ordinance are as follows:

\*\*\*\*\*Beginning of Text for Proposed Zoning Ordinance Amendment\*\*\*\*\*

**ARTICLE 900**

**BOARD OF ADJUSTMENT &  
WATERSHED REVIEW BOARD**

**901: Establishment of Board of Adjustment & Watershed Review Board**

**901.1:** The Asheboro Planning Board shall serve as the Board of Adjustment and/or the Watershed Review Board for this Ordinance. ~~There shall be two alternate members of the Board of Adjustment. The members appointed as alternate members shall be the most recent appointees to the Planning Board who are not city residents and reside beyond the boundary line for the city's extraterritorial planning jurisdiction as shown on the map entitled "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area" that is recorded in Plat Book 135, Pages 28-34, Randolph County Registry (Amended 4-4-2013).~~

~~The alternate members of the Board of Adjustment shall be called upon to attend only those meetings and hearings at which one or more members are absent or unable to participate in the hearing of a case because of financial or other interest.~~

**901.2:** ~~Members of the Planning Board, when acting as the Board of Adjustment and/or Watershed Review Board, shall serve without compensation, but may be reimbursed for direct expenses incurred in connection with the discharge of their duties. Reserved for future amendments.~~

**901.3:** Members length of term and filling of vacancies shall be as provided for in the Asheboro City Code for members of the Asheboro Planning Board.

**901A. Powers of the Watershed Review Board**

The powers and duties of the Watershed Review Board are established in Article 300B, Section 325B of the Asheboro Zoning Ordinance.

**902: Powers of Board of Adjustment**

The Board of Adjustment shall have the following powers:

**902.1:** Hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator or his authorized designee.

**902.2:** Hear and grant a properly filed request for a variance from the terms of this ordinance where ~~practical difficulties or~~ unnecessary hardships would result from carrying out the strict letter of this ordinance and where the requested variance serves to observe the spirit of the ordinance, secure public safety and welfare, and do substantial justice. (02/01) Nothing in this Section shall be construed to authorize the Board of Adjustment to permit a use in a district where that use is neither a permitted use nor a permissible Special Use.

**902.3:** Pass upon, decide or determine such other matters as may be required by this Ordinance.

**902.4:** To make interpretations of the meaning and intent of this Ordinance in accord with Section 906.

**903: Board of Adjustment Administration.**

**903.1:** The Board shall adopt rules of procedures and regulations for the conduct of its affairs.

**903.2:** All meetings of the Board shall be open to the public.

**903.3:** The Board shall keep a record of its meetings, including the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it and all official actions.

**903.4:** The Board shall give notice of matters coming before it by causing a public notice to be placed in a newspaper of general circulation in the City of Asheboro. The notice shall appear once a week for two consecutive weeks, the first insertion to be not less than 15 days prior to the meeting date. Notice also shall be given in accordance with N.C.G.S. 160A-388(a2).

**903.5:** The person acting as Chairman of the Board or the clerk to the Board is authorized to administer oaths to any witnesses in any matter coming before the Board.

**903.6:** Applications for variances, requests for interpretations and appeals for review of decisions of the Zoning Administrator, or his authorized designee, shall be filed with the Zoning Administrator, or his authorized designee, as agent for the Board, on forms prescribed by the Zoning Administrator at least 30 days prior to the Board of Adjustment meeting at which the request will be considered. A fully dimensional plat of the property with sufficient information to illustrate the necessity for the variance shall be submitted along with the application. Appeals of decisions of administrative officials charged with enforcement of the Zoning Ordinance shall be filed with the City Clerk no more than 30 days after written or constructive notice of the decision being appealed.

**903.7:** It shall be the responsibility of the Zoning Administrator, or his authorized designee to notify by certified mail the applicant or appellant of the disposition which the Board made of the matter.

**903.8:** It shall be the responsibility of the Zoning Administrator, or his authorized designee to issue permits in accord with the Board's action on an appeal or application, if a permit is authorized by the Board action.

**903.9:** The Zoning Administrator, or his authorized designee shall see to the faithful execution of all portions of the Board's actions, including the enforcement of all conditions which may have been attached to the granting of a variance or approval of a Special Use.

**904: Quorum and Vote Required**

Regular members, on receiving notice of a special meeting which they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly give notice to the secretary of the Board that they are unable to attend or to participate. On receiving such notice, the secretary, shall, by the most expeditious means, notify an alternate member to attend. At any meeting which they are called upon to attend, alternate members shall have the same powers and duties as regular members.

Except at the election of officers, at no time shall more than 8 members participate officially in any meeting or hearing.

**904.1:** A quorum of the Board, necessary to conduct any other business of the Board, shall consist of six members, a majority of the Board membership. For purposes of this Article, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority.

**904.2:** The concurring vote of seven members four-fifths of the Board present for the hearing shall be necessary to grant a variance, in order:

(1) to reverse any order, requirement, decision or determination of the Zoning Administrator, or his authorized designee;

(2) to decide in favor of the applicant any matter upon which it is required to pass by this Ordinance;

(3) to approve any application for a variance.

**904.3:** The concurring vote of a majority of the Board shall be necessary to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

**904.4** A simple majority vote of the quorum shall be necessary to conduct any other business of the Board.

**905: Application of the Variance Power**

A variance may be allowed by the Board of Adjustment only in cases involving practical difficulties or unnecessary hardships when substantial evidence in the official record of the application supports all the following findings:

When unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

**905.1:** That the alleged hardships or practical difficulties are unique and singular as regards the property of the person requesting the variance and are not those suffered in common with other property similarly located;

~~Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.~~

**905.2:** ~~That the alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with the provision of this Ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.~~

~~The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.~~

**905.3:** ~~That the variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.~~

~~The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.~~

**905.4:** ~~That the variance is in harmony with and serves the general intent and purpose of this Ordinance and the adopted Land Development Plan.~~

~~The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.~~

**905.5:** ~~That allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.~~

All of these findings of fact shall be made in the indicated order by the Board of Adjustment, which is not empowered to grant a variance without an affirmative finding of fact on all ~~five~~ four categories above. Each finding of fact shall be supported by substantial evidence in the record of proceedings before the Board.

The Board may impose reasonable appropriate conditions upon the granting of any variance ~~to insure that the public health, safety, and general welfare shall be protected and substantial justice done provided that the conditions are reasonably related to the variance.~~ Violation of such conditions shall be a violation of this Ordinance.

**906: Application of Interpretation Power.**

An appeal from an order, requirement, decision or determination of the Zoning Administrator, or his authorized designee shall be decided by the Board, based upon its findings of fact and to achieve the intent of the Ordinance. In exercising this power, the Board shall act in a prudent manner so that the purposes of the Ordinance shall be served. The effect of the decision shall not be to vary the terms of the Ordinance nor add to the list of permitted or permissible uses in the districts.

**907: Appeal Stays Further Proceedings.**

An appeal to the Board of Adjustment from a decision or determination of the Zoning Administrator, or his authorized designee stays all proceedings in furtherance of the decision or determination appealed from, except as provided in Section 908.

**908: Exceptions to Stay of Action.**

An appeal to the Board of Adjustment of a determination or decision of the Zoning Administrator or his authorized designee, shall not stay further proceedings in furtherance of the decision or determination appealed from, if the Zoning Administrator, or his authorized designee certifies to the Board after notice of appeal has been filed either:

**908.1:** That a stay would cause imminent peril to life and/or property.

**908.2:** That the situation appealed from is transitory in nature and, therefore, an appeal would seriously interfere with enforcement of this Ordinance.

**908.3:** In each instance, the Zoning Administrator, or his authorized designee, shall place in the certificate facts to support the conclusion.

**909: Appeals of Board of Adjustment Actions.**

Every **quasi-judicial** decision of the Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certioraris. The appeal to Superior Court must be filed within **30 days of the filing by the Secretary of the Board of the decision in the office of the Zoning Administrator or the delivery by the Zoning Administrator, or his authorized designee, of the notice required in 903.7, whichever is later the timeframe prescribed in N.C.G.S. 160A-388.**

**910: Re-hearings**

The Board shall refuse to hear an appeal or application previously denied, if it finds there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

**911: Coordination with Flood Damage Prevention Ordinance**

When the Board of Adjustment is requested to consider and decide upon any issue within their power which falls within an area of a Flood Damage Prevention Zone, the foregoing regulations and those regulations in Article 700 Flood Damage Prevention Ordinance, Section 704, shall apply except in the case where Article 700 requirements conflict with the requirements of this section. In such situation, Article 700 requirements shall govern.

\*\*\*\*\***End of Text for Proposed Zoning Ordinance Amendment**\*\*\*\*\*

The Planning Board concurred with the following Community Development Division staff's analysis:

"The amendments are advisable due to changes in both local and state policy related to the Board of Adjustment. As stated by the Land Development Plan and Zoning Ordinance Section 1011.2(4), ordinance provisions need to be kept current to reflect changing conditions and legislation in order to promote the public health, safety, and general welfare."

Upon motion by Mr. Bell and seconded by Mr. Baker, Council accepted the recommendations of the Planning Board and the Community Development Division staff and unanimously approved, without modification, the proposed text amendments to the Asheboro Zoning Ordinance along with adopting, as its own, the following consistency statement:

"Considering the above factors, Council believes that the text amendments are reasonable and in the public interest."

**(d) Receipt of a report concerning the applications submitted for a vacant seat on the Asheboro Planning Board.**

Mr. Nuttall reported to the Council that the City Clerk had received only one (1) application for the vacant seat (extraterritorial planning jurisdiction representative) on the Asheboro Planning Board and asked the Council for authorization to advertise the vacancy for an additional thirty (30) days and to report back to the Council during its regular meeting in January 2014.

Upon motion by Ms. Carter and seconded by Mr. Burks, Council voted unanimously to direct city staff to advertise the vacancy for the Asheboro Planning Board for an additional thirty (30) days.

**5. Public comment period. [Agenda Item 9]**

Mayor Smith opened the floor for comments from the public.

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



- **Asheboro Fire Department Christmas Party at Station #1 from 6:00 p.m. until 9:00 p.m. on December 19, 2013.**
- **Asheboro Police Department Christmas Party at Public Works Conference Room from 11:30 a.m. until 1:30 p.m. on December 20, 2013.**

There being no further business, the meeting was adjourned at 8:00 p.m.

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

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