



Agenda

Greenville City Council

October 6, 2008
6:00 PM
City Council Chambers
200 West Fifth Street

Assistive listening devices are available upon request for meetings held in the Council Chambers. If an interpreter is needed for deaf or hearing impaired citizens, please call 252-329-4422 (voice) or 252-329-4060 (TDD) no later than two business days prior to the meeting.

I. Call Meeting To Order

II. Invocation - Council Member Spell

III. Pledge of Allegiance

IV. Roll Call

V. Approval of Agenda

VI. Consent Agenda

1. Minutes of the September 8 and September 11, 2008 City Council meetings
2. Resolution accepting dedication of rights-of-way and easements for Tull's Cove, Section 1
3. Lease agreement for Roses Parking Lot located at the corner of Evans and Fourth Streets
4. Ordinance establishing Section 12-1-21 of the City Code relating to the Extreme Park
5. Resolution of assurances for State Revolving Fund loan for Greenville Utilities Commission's Water Treatment Plant Raw Water Pump Station Improvements Project
6. Water system capital projects budget ordinance for Greenville Utilities Commission's Aquifer Storage and Recovery Wellhead Facilities Project
7. Water system capital projects budget ordinance for Greenville Utilities Commission's Tar River Temporary Dam Drought Mitigation Project

8. Water system capital projects budget ordinance for Greenville Utilities Commission's Eastside Water Tank Rehabilitation Project
9. Sewer system capital projects budget ordinance for Greenville Utilities Commission's Westside Pump Station and Force Main Project
10. Budget ordinance amendment #4 to the 2008-2009 City of Greenville budget
11. Various tax refunds

VII. Old Business

12. Ordinance requested by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) has monthly sales of prepared and/or packaged food in a ready-to-consume state in excess of thirty (30) percent of the total gross receipts for such establishment and such sales are not less than seventy-five thousand dollars (\$75,000.00) for such establishment for each quarter-year period of each year, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready-to-consume state in the definitions for conventional restaurant and fast food restaurant

VIII. New Business

13. Presentations by Boards and Commissions
 - a. Recreation and Parks Commission
 - b. Pitt-Greenville Airport Authority
 - c. Police Community Relations Committee
14. Acquisition of parcels for the Intermodal Bus Transportation Center Site
15. Financial audit for the fiscal year ended June 30, 2008
16. Comprehensive Recreation and Parks Master Plan
17. West Greenville Brownfields Project
18. Expansion of the façade improvement grant project area boundaries

IX. Review of October 9, 2008 City Council agenda

X. Comments from Mayor and City Council

XI. City Manager's Report

XII. Adjournment



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Minutes of the September 8 and September 11, 2008 City Council meetings

Explanation: Drafts of the September 8 and September 11, 2008 City Council minutes have been prepared and are ready for City Council consideration.

Fiscal Note: None

Recommendation: Approval of the September 8 and September 11, 2008 City Council minutes.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

[September 8 2008 City Council Meeting Minutes 784561](#)

[September 11 2008 City Council Minutes 785347](#)

MINUTES PROPOSED FOR ADOPTION BY CITY COUNCIL

Greenville, NC
September 8, 2008

The Greenville City Council met in a regular meeting on the above date at 6:00 PM in the City Council Chambers, third floor of City Hall, with Mayor Patricia C. Dunn presiding. The meeting was called to order, followed by the invocation by Mayor Dunn and the pledge of allegiance to the flag. The following were present.

Mayor Patricia C. Dunn
Mayor Pro-Tem Mildred A. Council
Council Member Rose H. Glover
Council Member Max Joyner, Jr.
Council Member Bryant Kittrell
Council Member Calvin Mercer
Council Member Larry Spell
Wayne Bowers, City Manager
Wanda T. Elks, City Clerk
David A. Holec, City Attorney

APPROVAL OF AGENDA

Motion was made by Council Member Spell and seconded by Council Member Joyner to approve the agenda as presented. Motion carried unanimously.

APPROVAL OF CONSENT AGENDA – APPROVED

Motion was made by Council Member Spell and seconded by Council Member Joyner to approve all the items under the consent agenda. Motion carried unanimously. Those items included:

1. Minutes for the August 11 and August 14, 2008 City Council meetings
 2. Supplemental Agreement with the North Carolina Department of Transportation for the South Tar River Greenway Project (Resolution No. 08-51; Contract No. 1719)
 3. Acceptance of the 2008 Edward Byrne Memorial Justice Assistance Grant
 4. Appointment of North Carolina Eastern Municipal Power Agency (NCEMPA) Commissioner and First Alternate Commissioner (Resolution Nos. 08-48 and 08-49)
 5. Ordinance amending Greenville Utilities' FY 2008-2009 Budget (Ordinance No. 08-92)
 6. Budget ordinance amendment #3 to the 2008-2009 City of Greenville Budget (Ordinance No. 08-93)
 7. Report on bid awarded
- | <u>Date Awarded</u> | <u>Description</u> | <u>Vendor</u> | <u>Amount</u> | <u>M/WBE</u> |
|---------------------|---|-----------------------------|---------------|--------------|
| 8/06/2008 | 10 ea. Scott Air-Pak AP75 with Cylinders And Valve Assemblies | MES-Asheville Fire & Safety | \$51,850 | No |

PRESENTATIONS BY BOARDS AND COMMISSIONS

Human Relations Council

Ms. Franchine Pena, Chairman of the Human Relations Council, gave the annual report for the Council. The Greenville Human Relations Council is committed to promoting equal opportunity and working to create a climate where differences are valued. From January through August 2008, the Human Relations office responded to a total of 73 tenant/landlord concerns, 58 requests from families needing utilities assistance, and 29 requests from families needing assistance with rental payments or assistance for finding adequate housing. The Human Relations Office continues to conduct mediation sessions for tenant/landlord disputes and from January through August, three mediation sessions were conducted by the Human Relations Office. One of the Council's primary goals is to promote the City's efforts to become a more inclusive community. The Council continues to sponsor public meetings to obtain input from the community. The remaining public meetings are scheduled for September 15, 2008 at Boyd Lee Park and September 29, 2008 in the Council Chambers. There are two events scheduled to promote inclusiveness for the City—the inclusive community breakfast scheduled for October 23, 2008 and the inclusive community walk scheduled for October 25, 2008. Each event will consist of a small program and entertainment. Plans are being made to present a report to City Council early next year consisting of the process and meetings, goals and objectives, the community views, and information on implementation of any recommendations, programs or projects that are created. Ms. Pena concluded by stating that the Human Relations Council will continue to be dedicated to the charge as dictated by Ordinance No. 382 and looks forward to the many challenges in creating a more inclusive community for all of Greenville.

REPORT ON OFF-LEASH DOG AREA

Mr. Tim Langley, Animal Control Supervisor, stated that the off-leash dog area has been a very successful endeavor. Off-leash dog areas are growing in popularity from North Carolina to California. The parks are popular and unite animal lovers in their respective communities. They enable people to get to know each other, in addition to allowing the animals to get exercise. There have been some issues with the park; however, they are the same as in others across the country. There have been eight animal attacks, and an aggressive dog policy has been prepared that should be approved soon. The laws and policies have to be strict. Staff will continue to look for innovative ways to deal with the bully breed, which has caused most of the problems. As far as calls for service to the area, 80% were for general violations, and 20% were for animal-related issues. The Greenville Police Department has responded 18 times since the grand opening, mostly for traffic-related issues. Five percent of the Police Department calls in the area have been for fireworks. One of the things the Police Department has done has been to get out of vehicles and get to know people in the park. This public-private partnership is a win-win situation for the community. There have been hundreds of calls and e-mails to thank staff for the area.

Ms. Dawn Clark, a Board Member of the Friends of GOLDA (Greenville Off-Leash Dog Area) stated that this group has ten board members and over thirty volunteers who are interested in monitoring, maintaining and improving a fenced off-leash dog recreation area in the City of

Greenville where well-behaved canine citizens can exercise and enjoy in a clean, safe environment. They are also working in partnership with the City of Greenville and actively raise funds in support of the City of Greenville's Off-Leash Dog Area. The group has created dog area rules, guidelines and incident report; established a logo and T-shirt; established by-laws; and designed and maintained a website that has been extensively used. In monitoring the use of the off-leash dog area, the number of dogs there has ranged from 4 to 33 dogs at any one time. A Fundraising Inaugural Spring Fling was held in partnership with the City and \$570 was raised. The festivities included dog games, competitions and interactive agility demonstration; children's crafts, refreshments and raffle, and local vendors. The goals are to get more people involved in the board, committees, volunteering activities; raise additional funds; continue actively monitoring park needs, improving the park, addressing issues, and providing recommendations; obtaining non-profit status; and continuing to work in close partnership with the City.

Mr. Mark Gillespie, Parks Superintendent, stated that even though he feels another dog park is needed, it may be wise to have one more year of operation, finalize the aggressive dog policy, and revisit the need for another park in a year. Parks Superintendent Mark Gillespie informed the Council that enhancements have been made to the Off-Leash Dog Area, and the routine mowing cost for the area is \$2700 per year.

AMENDED MUNICIPAL INFRASTRUCTURE REIMBURSEMENT AGREEMENT FOR THE THOMAS LANGSTON ROAD EXTENSION – APPROVED

City Attorney Dave Holec stated that the City Council approved an infrastructure agreement for the construction of the Thomas Langston Road extension on June 8, 2006. The owner of the property east of Memorial Drive agreed to an arrangement in which the City is responsible for the construction of the extension and the City will receive the necessary 90 foot right-of-way upon the owner's property at no cost (an estimated value of \$559,000) and, additionally, a reimbursement of \$600,000 of the expense incurred for the design and construction of the project. The agreement provided that the reimbursement is to occur in stages as identified tracts are developed but in no event later than in seven years. The agreement also provided for surety in the form of a deed of trust, letter of credit, or deposit of funds in escrow to guarantee the payment. Other provisions in the agreement related to the responsibility for other improvements, the circumstances in which the owner may accomplish, at an earlier time, a portion of the improvements on its own, the ability of the owner to assign its rights and obligations, and what occurs if the project is not constructed. The agreement provided that if the City did not receive approval from the Seaboard Coastline Railroad to cross the railroad right-of-way with the extension by December 31, 2008, then the extension was not to be constructed, the street right-of-way would be reduced from 90 to 50 feet, and the owner would build a standard, collector street instead. Although the design of the thoroughfare has been completed and the project is ready to be bid, approval from Seaboard has not yet been received. This approval is anticipated but not guaranteed. An amendment to the agreement is necessary so that the right-of-way does not automatically reduce and so that the extension will be built even if the approval from Seaboard is not received by December 31, 2008. Additionally, as a result of the ongoing residential development adjacent to this extension, there is a need to proceed with construction of a portion of the extension to accommodate the residential traffic. In order to accommodate this, an amendment to provide for the construction of the extension in phases is needed. Phase I

would consist of the extension from Memorial Drive to the eastern right-of-way of Branson Drive and this would commence so that it can be completed by the end of 2009. The balance of the extension eastward would occur after the approval by Seaboard Coastline Railroad was received. The amendment accomplishes the following:

1. The portion of the Thomas Langston Road extension from Memorial Drive to Branson Road will be constructed no later than December 31, 2009.
2. The possibility of an automatic reversion of a portion of the right-of-way of the extension as a result of not receiving the Railroad's approval to cross its right-of-way by December 31, 2008, is eliminated.
3. Payment of the owner's and developer's share of the cost of the extension is based upon a rate per acreage developed rather than upon identified tracts partially developed regardless of acreage actually developed. The final date of payment, regardless of developed acreage, is extended one year to June 30, 2014.
4. The balance of the needed right-of-way for the extension to the railroad right-of-way is dedicated to the City at no cost including turn lanes and right distances near Memorial Drive and temporary construction easements.
5. The responsibility is established for the developer to pay the differences between the developer's and the City's share of the stormwater improvements associated with the extension and associated with the residential development. This difference amounts to an additional \$40,048 to be paid to the City as the property is developed in the same manner as the payment by the developer to the City for its share of the cost of the extension to occur.

The parties to the amendment are the City of Greenville, Langston Farms, LLC, Tommie L. Little and Marilee M. Little, and Greenville Properties of North Carolina, LLC.

Motion was made by Council Member Max Joyner, Jr. and seconded by Mayor Pro-Tem Mildred A. Council to the amended municipal infrastructure reimbursement agreement for the Thomas Langston Road extension. Motion carried unanimously. (Contract No. 1719; Resolution No. 08-51)

POLICY FOR IMPLEMENTING THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) SYSTEM ("GREEN BUILDING") IN THE CITY'S BUILDING PROGRAM

Director of Public Works Wes Anderson stated that the City Council adopted the US Mayor's Climate Protection agreement. One of the agreement's objectives is to practice and promote sustainable building practices using the U. S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program or other similar system. Additionally, one of the City Council's objectives for 2008-2009 is to have staff recommend a policy for all City buildings to meet a minimum of LEED-Certified standard. LEED is a green building rating system that is nationally accepted for designing, constructing, and operating green buildings. The US Green Building Council reviews and issues all certificates for buildings that will be

certified through the LEED Program. According to the US Green Building Council, buildings account for 40% of all Greenhouse gas emissions. The US Green Building Council developed the LEED program in an effort to reduce the impact of constructing and operating buildings on the environment. The Program addresses sustainable sites, water efficiency, energy and atmosphere, materials and resources, and indoor environmental quality. The program has four levels of certification, and the higher the certification level the building is designed to obtain, the less impact it has on the environment. Staff's research has determined that the cost to obtain the lowest level of certification (Certified) is typically 0.66% more than the cost of "normal" construction. The typical cost to obtain the next higher level of certification (Silver) is 1.9% more than the cost of "normal" construction. Operating costs of a typical green building tend to be lower, thus generating operational savings and returning the additional capital investment over time. Staff has been working with the local Homebuilder's Association to start a Green Building Council. Staff's objective is to increase the number of green buildings through voluntary measures. For the City to effectively promote sustainable building practices within the City, the City should participate in the program itself.

Motion was made by Council Member Spell and seconded by Council Member Mercer to strive for the Silver level. Motion carried unanimously.

Council Member Joyner requested that a report on savings be presented to the Council after a year.

RESOLUTION AFFIRMING SUPPORT AND PARTNERSHIP WITH THE 2010 CENSUS – ADOPTED

City Clerk Wanda Elks explained that every year more than \$300 billion in federal funds are awarded to states and communities based on census data. Census data guide local decision makers in important community planning efforts, including where to build new roads, hospitals, and schools. Census data affect the City's voice in Congress by determining how many seats each state will have in the U. S. House of Representatives as well as the redistricting of State legislators, county commissioners, city councils, and voting districts. The US Census Bureau has asked the City of Greenville to become an official 2010 Census partner to ensure the success of the monumental effort. The goal of the Census Bureau's partnership program is to combine the strengths of local governments, community-based organizations, faith-based organizations, schools, media, businesses, and others to ensure a complete and accurate 2010 Census. The Census Bureau will provide promotional materials, regular updates, and data assistance to partners to assist in this effort.

Motion was made by Mayor Pro-Tem Mildred A. Council and seconded by Council Member Max Joyner, Jr. to adopt the resolution affirming support of and partnership with the 2010 Census. Motion carried unanimously. (Resolution No. 08-50)

PROPOSED 2009 CITY COUNCIL MEETING SCHEDULE

City Clerk Wanda Elks presented the City Council with a draft 2009 City Council meeting schedule that reflected the possible conflicts.

After discussion of potential conflicts, motion was made by Council Member Spell and seconded by Council Member Joyner adopt the 2009 City Council Meeting Schedule. Motion carried unanimously. The schedule, as adopted, is as follows:

2009 CITY COUNCIL MEETING SCHEDULE
(All Meetings are Held in the Council Chambers Unless Otherwise Noted)

January 5 - 6:00 PM
January 8 - 7:00 PM
January 24 - 8:00 AM (Annual Planning Session)

February 9 – 6:00 PM
February 12 – 7:00 PM
February 23 – 6:00 PM

March 2 – 6:00 PM
March 5 – 7:00 PM
March 23 – 6:00 PM

April 6 – 6:00 PM
April 9 – 7:00 PM
April 20 – 6:00 PM

May 11 – 6:00 PM
May 14 – 7:00 PM

June 1 – 6:00 PM (Budget Meeting)
June 8 – 6:00 PM
June 11 – 7:00 PM
June 22 – 6:00 PM

August 10 – 6:00 PM
August 13 – 7:00 PM
August 24 – 6:00 PM

September 10 – 7:00 PM
September 21 – 6:00 PM

October 5 – 6:00 PM
October 8 – 7:00 PM
October 19 – 6:00 PM

November 9 – 6:00 PM
November 23 – 6:00 PM

December 7 – 6:00 PM
December 10 – 7:00 PM

December 21 – 6:00 PM

REVIEW SEPTEMBER 11, 2008 CITY COUNCIL AGENDA

The Council did a cursory review of the items on the September 11, 2008 City Council Meeting agenda and reviewed the appointments to Boards and Commissions.

City Manager Bowers reported that East Carolina University has requested that the Forbes Cemetery Item be continued to the November 6, 2008 City Council meeting.

Motion was made by Council Member Joyner and seconded by Mayor Pro-Tem to continue the Forbes Cemetery item scheduled for September 11 until November 6, 2008. Motion carried unanimously.

After discussion about whether to open the public hearing back up for the request by Jeremy Spengeman to amend the definition of “conventional restaurant”, motion was made by Council Member Joyner and seconded by Council Member Glover to reopen the public hearing and allow each side 30 minutes to speak. Motion carried unanimously.

COMMENTS FROM MAYOR AND CITY COUNCIL

Motion was made by Council Member Joyner and seconded by Council Member Spell to request the following information from East Carolina University:

- The type of training that security officers receive to prepare themselves for ECU sponsored functions. Is it done quarterly or yearly?
- The duties and responsibilities of security at ECU-sponsored functions. Do they have a manual to use? How do they operate?
- The duties and responsibilities of the fans at ECU-sponsored functions.
- A list of persons arrested at the ECU/West Virginia game on September 6, the charges stemming from the post game celebration and the report of all injuries.
- A report from ECU on what happened and why.
- Keep the City Council abreast of any changes in procedure that will be put in place so that the citizens and guests of Greenville can expect to be treated with respect and provide safety when dealing with security personnel at all ECU sponsored functions.

The Council Members made general comments about upcoming and past events.

CITY MANAGER'S REPORT

City Manager Bowers expressed appreciation to everyone who helped in the preparations for Hurricane Hanna. With coordination from Pitt County Emergency Management, staff was prepared.

City Manager Bowers reported that the Washington/Greenville Joint Issues Committee meeting is scheduled for Monday, September 15, at Bradford Creek. He asked for a volunteer to attend

the meeting since Mayor Pro-Tem Council will not be in attendance. Council Member Glover volunteered to attend.

ADJOURN

Motion was made by Council Member Mercer and seconded by Council Member Spell to adjourn the meeting at 7:15 p.m. Motion carried unanimously.

Respectfully submitted,

Wanda T. Elks

Wanda T. Elks, MMC
City Clerk

MINUTES PROPOSED FOR ADOPTION BY CITY COUNCIL

Greenville, NC
September 11, 2008

The Greenville City Council met in a regular meeting on the above date at 7:00 PM in the City Council Chambers, third floor of City Hall, with Mayor Patricia C. Dunn presiding. The meeting was called to order, followed by a moment of silence in remembrance of the victims of September 11, 2001, and the pledge of allegiance to the flag. The following were present.

Mayor Patricia C. Dunn
Council Member Rose H. Glover
Council Member Max Joyner, Jr.
Council Member Bryant Kittrell
Council Member Calvin Mercer
Council Member Larry Spell
Wayne Bowers, City Manager
Wanda T. Elks, City Clerk
David A. Holec, City Attorney

ABSENT: Mayor Pro-Tem Mildred A. Council

APPROVAL OF AGENDA

Motion was made by Council Member Glover and seconded by Council Member Joyner to approve the agenda as presented. Motion carried unanimously.

SPECIAL RECOGNITIONS

Mr. Stuart Aronson was presented a plaque and appreciation was expressed to him for coordinating Sunday in the Park for the past 35 years.

APPOINTMENTS

Appointments to Boards and Commissions

Community Appearance Commission

Motion was made by Council Member Spell and seconded by Council Member Joyner to appoint Troy Jensen for a first three-year term expiring July 2011 replacing Laveta Weatherington, who resigned and to continue the replacement for Doreen Winston, who did not meet the attendance requirements. Motion carried unanimously.

Human Relations Commission

Motion was made by Mayor Pro-Tem Council and seconded by Council Member Joyner to appoint John Pierpoint for a first three-year term expiring September 2011, replacing Walter Sadler, who resigned; to reappoint Robert Hudak and Nikki Miller for a first three-year term expiring September 2011; and to continue the replacements for Mary Bragaw and Reginald Watson, who are ineligible for reappointment until October 9, 2008. Motion carried unanimously.

Pitt-Greenville Convention and Visitors Authority

It was requested that the appointment for the Pitt-Greenville Convention and Visitors Authority be continued to October 9, 2008.

Appointments to the Cable Television Government Access Channel Ad Hoc Advisory Committee

Appointments to the Cable Television Government Access Channel Ad Hoc Advisory Committee were announced as follows:

Frank Schenck (Larry Spell)
Beth Winstead (Mayor Dunn)
Cherie Spell (Council Member Mercer)
Javier Castillo (Council Member Kittrell)
Margie Parkins (Mayor Pro-Tem Council)

Council Members Joyner and Glover announced that they would announce their appointments at a later date.

RESOLUTION CONSENTING TO REINTERMENT OF GRAVES FROM THE FORBES FAMILY CEMETERY TO HOMESTEAD MEMORIAL GARDENS – CONTINUED TO NOVEMBER 6, 2008

ORDINANCE REQUESTED BY JEREMY SPENGE MAN TO AMEND DEFINITION OF “CONVENTIONAL RESTAURANT”, FOR PURPOSES OF QUALIFYING AS A PRINCIPAL USE RESTAURANT UNDER THE ZONING REGULATIONS, TO REDUCE THE MINIMUM SALES REQUIREMENT OF PREPARED AND/OR PACKAGED FOODS, IN A READY-TO-CONSUME STATE, DURING ANY MONTH, FROM MORE THAN FIFTY (50) PERCENT OF TOTAL GROSS RECEIPTS IN ALL CASES TO EITHER (I) MORE THAN FIFTY (50) PERCENT OF TOTAL GROSS RECEIPTS OR (II) HAS MONTHLY SALES OF PREPARED AND/OR PACKAGED FOOD IN A READY-TO-CONSUME STATE IN EXCESS OF THIRTY (30) PERCENT OF THE TOTAL GROSS RECEIPTS FOR SUCH ESTABLISHMENT AND SUCH SALES ARE NOT LESS THAN SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) FOR SUCH ESTABLISHMENT FOR EACH QUARTER-YEAR PERIOD OF EACH YEAR, AND TO INCLUDE SPECIFIC CRITERIA FOR DETERMINING WHICH SALES CAN BE ATTRIBUTED IN THE PORTION OF SALES OF PREPARED AND/OR PACKAGED FOOD IN A READY-TO-

CONSUME STATE IN THE DEFINITIONS FOR CONVENTIONAL RESTAURANT AND FAST FOOD RESTAURANT – PUBLIC HEARING HELD; VOTING TO TAKE PLACE ON OCTOBER 6, 2008

Upon being asked to do so, City Attorney Holec explained the voting requirements that would be required to pass the ordinance, that being four affirmative votes.

Chief Planner Harry Hamilton explained that the proposed amendment only applies to the definition of conventional restaurant and does not affect or change the definition of fast food restaurant. Under the zoning regulations, the primary distinction between a restaurant and a public or private club is the minimum percent of food sales to total sales requirement applicable to restaurants and the option of a club to require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation. Under the proposed ordinance, restaurants will not be permitted to charge a cover under any circumstances. A public or private club may continue to charge a cover. For purposes of alcoholic beverage control, the State currently qualifies as a restaurant any establishment that has revenue from food sales in excess of 30% of total sales during any month. The State requirement at one time (mid-1990's) mirrored the current city standard; however, the percentage was lowered by the State to allow more locations to qualify for a restaurant mixed beverage license. Prior to State adoption of the reduced requirement, establishments not meeting the 50% rule had to qualify as a private membership club.

Chief Planner Hamilton stated that under the City's current zoning regulations, both restaurant and public or private club are clearly defined. A restaurant is an establishment in which the principal use is the sale and/or consumption of food—a 50% food sales requirement applies and a cover charge is not allowed. Restaurants may sell alcoholic beverages; however, for purposes of qualification as a restaurant, the sale and consumption of alcoholic beverages is not considered a food product and does not count toward the 50% rule requirement. Conventional restaurants are currently allowed as a permitted and/or special use in the MS, MO, MCG, MCH and OR districts, all commercial districts and all industrial districts. Public or private clubs are currently allowed as a special use only in commercial zones (CD, CDF, CG and CH). Under the current definition, restaurants and clubs are clearly separate uses. A significant portion of a restaurant's total sales must be food (more than 50%). A club does not have to sell any food. The proposed definition will create a new use category—a 30% food sales qualified restaurant subject to a minimum quarterly sales requirement of \$75,000. In staff's opinion, the proposed use (a 30% rule restaurant) is not a restaurant in the traditional sense. If City Council is of the opinion that 30% rule restaurants are appropriate in all districts that currently allow conventional restaurants, the adoption of the proposed ordinance will accomplish this. The Planning and Zoning Commission considered this issue over several months and recommended denial. The City Council held the required public hearing in June.

City Attorney Dave Holec stated that City Council continued the request so that a review could be completed as to the City's authority relating to its current definition of a restaurant in the Zoning Ordinance. The review was to focus upon the portion of the definition in the Zoning Ordinance which specifies a different percentage of the minimum food sales than the percentage established by State statute for restaurants which have obtained an ABC permit. The North Carolina ABC Commission's assertion is that the Zoning Ordinance definition of a restaurant is

preempted by the State Statute. The Commission has been consistent and resolute in their position. North Carolina ABC Commission Chief Counsel Fred Gregory expressed his opinion that the City's Zoning Ordinance provision relating to the percentage of food sales which an establishment is to have to qualify as a restaurant is preempted by the statutory definition of a restaurant for ABC permit purposes. There is support for this position in the General Statutes and case law; however, there is also a valid legal argument to support the position that the zoning ordinance definition is not preempted. The Zoning Ordinance definition of a restaurant relating to the 50% percent has been in effect since 1991. In addition to the higher percentage, the Zoning Ordinance differs from the State ABC permit definition in that the percentage applies to all gross receipts not just to sales of food and beverages (both alcoholic and nonalcoholic) and that it is neutral as to alcohol by its express terms in that it does not specify alcohol sales as being limited. The City acknowledges that the State has a complete system for regulating the sale and consumption of alcoholic beverages and, as a result, the City cannot regulate alcohol sales. The City's position is that the City may, however, define a restaurant for the purpose of zoning regulations, and this local zoning authority does not override or conflict with the State's definition of restaurant for the sale of alcohol. The State's definition of restaurant and regulation of alcohol sales and the City's definition and regulation of a restaurant are independent in purpose and application. Alcohol sales can continue to occur at this location; however, the location must also be a permitted use in accordance with the zoning regulations. In this case, the issue will be whether the preemption extends to a provision of a zoning ordinance which is neutral on the issue of alcohol sales and does not prohibit alcohol sales. Preemption should not be for all zoning ordinance provisions (such as parking requirements, setbacks, etc.) and should not be for all ordinances (such as the noise ordinance, anti-littering ordinance, etc.). Preemption may only be limited to ordinances which regulate alcohol sales and which are the subject of statutory and regulatory provisions of the ABC Commission. The City's ordinance does not regulate alcohol sales. Alcohol sales can continue to occur at the location; however, the location must also be a permitted use in accordance with the zoning regulations.

City Attorney Holec further stated that the purpose of the definition of a restaurant in the Zoning Ordinance is to ensure that the establishment which is classified as a restaurant is truly a restaurant. The impacts caused by an establishment which has as its principal purpose providing food service are different than an establishment which has as its principal purpose providing entertainment service while both such establishments may or may not sell alcoholic beverages. Zoning regulations are designed to address these differing impacts with one of the purposes of zoning being to ensure that the community's land uses are properly situated in relation to one another so that one use does not become a nuisance for its neighbors. City Attorney Holec spoke with David Owens of the UNC School of Government, who concentrates in this area of the law. Mr. Owens expressed that, in his opinion, the scope of the preemption by ABC laws has not been clearly established by Statute or court decisions and that a provision similar to the City's Zoning Ordinance provisions relating to the percentage of food sales which an establishment is to have to qualify as a restaurant may be able to withstand a challenge of preemption by the statutory definition of a restaurant for ABC permit purposes. In summary, although there is a substantial argument to support an assertion that there is a preemption of the City's definition of a restaurant as a result of the State statutory definition for ABC permit purposes, there is also a valid legal argument to refute an assertion that there is such a preemption. There is no brightline rule as it applies to Greenville's ordinance. There are facts and law to support the assertion that there is a preemption. There are also facts and law to support the assertion that Greenville's ordinance

provision is not preempted. The City Attorney concluded that, in his opinion, the City could prevail in its enforcement action and overcome a defense that there is preemption; however, such a result is not guaranteed.

City Attorney Holec provided options for City Council consideration.

1. Adopt the ordinance as proposed—includes a 30% food sales rule to coincide with the State ABC requirement, subject to a minimum \$75,000 per quarter food sales requirement. The proposed ordinance would only apply to conventional restaurants and not to fast food restaurants.
2. Deny the proposed ordinance and retain the current restaurant definition and the 50% food sales rule requirement.
3. Initiate an amendment to the definition of “restaurant (conventional and fast food)” to include a 30% food sales rule. Food sales will determine the use regardless of the extent of other activities. It does not include a minimum quarterly food sales requirement (\$75,000 rule as proposed in the Spengeman request).
4. Initiate an amendment to the Neighborhood Commercial district table of uses to include “public or private club” as a special use subject to Board of Adjustment approval. Standard club conditions would apply. “Public or private clubs” are currently allowed as a special use in the commercial (CD, CDF, CG and CH) zones only.
5. Initiate an amendment to establish a new land use category entitled “restaurant/club” that would be allowed as a permitted or special use in all zones that allow restaurants or in limited zones. “Restaurants” are currently a use option in all nonresidential medical zones with the exception of the MI and OR zone and all commercial and industrial zones. A 30% food sales rules would be applied to coincide with the State ABC requirements.
6. Initiate an amendment to include “public or private club” as a permitted use subject to ordinance imposed conditions in all commercial zones.
7. Initiate an amendment to adopt a 30% food sales requirement for all conventional and fast food restaurants and delete restaurant as a use option in the CN district. The three existing restaurants located in a CN district would be grandfathered (no expansion allowed); however, no new restaurants would be allowed in a current or future CN district.

City Manager Bowers stated that the Council received a request from Phil Dixon, Attorney for the applicant, that the vote on this request be delayed to a future meeting.

Motion was made by Council Member Joyner and seconded by Council Member Glover to conduct the public hearing tonight and delay action until October 6, 2008 so that all Council Members can be present. Motion carried unanimously.

Mayor Dunn announced, with the concurrence of Council, that there will be no comments from the public after tonight's public hearing. She then declared the public hearing open and solicited comments from the audience.

Mr. Phil Dixon, representing Jeremy Spengeman, stated that Dr. Unks changed its name to Unks yesterday to eliminate the bar connotation of its name. The current ordinance is a bad ordinance, as there is no method of computing food sales included in it. Planning staff indicated that it used the formula the ABC Board uses; however, it is not in the ordinance. The State of North Carolina looks at the suitability of the location and of the applicant. Local ordinances are not allowed to alter the rules. The 2007 government bulletin addressing this issue goes into great detail about the process. Even if the City says it is not a suitable location, they can make that decision independently. Other university cities have 30% or less as their rule. In cities like Chapel Hill, Greensboro, and Raleigh, there is no minimum. Boone allows it as a permitted use. Winston-Salem has no percentage of food sale. The Planning and Zoning Commission turned this down on a split vote.

Mr. Jeremy Spengeman stated that all seven cities have a 30% requirement or revert to State food sales. Others allow it in neighborhood commercial zones. Mr. Spengeman asked that he be allowed to keep his business as a restaurant. The two residents who live closest to the establishment stated that it is a positive addition to neighborhood and made the neighborhood safer. Unks is a scapegoat for the residents' frustration. Mr. Spengeman asked if the City wanted to be known as anti-business. He has compromised on this issue by no longer offering pizza buffet because the City says it is a cover charge, by changing his name from Dr. Unks, and by using new signage. He asked the Council at what point will a compromise be made by the City to allow him to stay in business. He asked that it not waste taxpayers' dollars on legal action relating to the issue of the preemption of the zoning ordinance. He asked those in the audience who were in favor of his restaurant being allowed to remain as it is to stand, and approximately 35 people stood.

Mr. Terry Boardman stated that in looking for compromise, Mr. Holec's Option #7 is a compromise. As far as Council Member Mercer's assertion that restaurants would open up all over the City under the 30% rule, no other restaurants would be allowed in that zoning area. There are so many problems to solve in this City, there are other things to be concerned over. He asked that the Council allow the legitimate businesses such as Christy's Europub and Unks to exist, and that is accomplished by Option #7.

Ms. Linda (Unclear) stated that her husband and she are partners in this and Basils. She applauded the Council for continuing the vote on this item until October. She explained how she attended East Carolina University and has strong ties to and feelings about Greenville. She has consistently donated to many organizations and charities within the community. They are responsible business owners who enjoy doing for the community. For the City to begin enforcing an ordinance that has not been enforced in 10 years has been an attack. Other businesses are doing the same thing as Dr. Unks. She stated that she doesn't remember there ever being a divide between the residents and students like there is now. Greenville is changing and growing, and the Council needs to stop being so anti-development and work with students and the businesses that cater to them.

Mr. Scott Webb, the food broker for Unks, informed the Council that the decision to shut Dr. Unks down is monetary. It does not just affect Dr. Unks; it affects drivers, people in other locations, etc. It takes away money from everyone that works at CISCO. Mr. Webb stated that he is aware that some of the people in the Colonial Heights area are in favor of the ordinance amendment. He is also in favor of it and would like for the Council to adopt the ordinance.

Ms. Susan Ingram thanked the City Council for continuing to consider this request. She stated that Option #7 is a compromise and would meet the needs of a growing Greenville. Change happens and it is good. She is surprised to see so much support and that the restaurant definition wasn't already at the 30% rule. She encouraged the Council to vote for Option #7, which would meet the needs of the community.

Mr. Kevin Brooks, a business partner, stated that they have attempted to compromise on the ordinance, and he is disappointed and frustrated that they are being singled out for selective enforcement. Many other restaurants are operating in the same fashion. The City should not be attacking promising businesses.

Mr. Durk Brown stated that this request isn't just about Dr. Unks. On Tuesdays, a group from his church goes there to eat, drink and talk about current events. During the week, there are young professionals that go there, and on Sunday mornings there are three and four-year old children meeting with older people. Greenville is trying to be a city of neighborhoods, and more places like Dr. Unks are needed. People go there to hang out.

Mr. Lambert (Unclear) stated that this issue started with a citation for charging a cover to everything that has transpired regarding the 50% rule. This is a smoke screen.

Mr. Ben Hardy stated that he moved to this downtown neighborhood in 1999 and makes his living as a cook. He is a former employee of one of the two establishments in question. Those two establishments mean a lot to people in the area who come together for sporting events, to eat and enjoy each others' company. They can walk to anything they need in the neighborhood. To deny their rights to operate is unfair. He implored the Council to not hinder their operations any further.

Mr. John Gresham expressed concern that Unks may be able to operate the nightclub in a residential neighborhood status quo, while the concerns of the residents that live near this bar and investors in the neighborhood go completely unaddressed. The owners of Unks have shown what the bottom line is here. It is not the Greenville being against business. It's what has been said all along, this single establishment wants an exemption to allow it to operate a nightclub in a neighborhood. He asked that the Council not allow the threats of a lawsuit blanket the real responsibilities of the City to defend the rights of its citizens. The property owners of the neighborhood have a right to have their investments protected, also. There are far more individuals that have made investments in the neighborhood with the confidence that the City would protect their rights and laws on the books without a compromise. The proposed ordinance is only supported by the owners that made the improper investment, the patrons of the nightclub, and the supplier of beer, liquor and food to Unks. The requested change in restaurant definition is opposed by: the Greenville Planning and Zoning Commission, Greenville Community Development Department, Greenville Police Department, Pitt County Substance Abuse

Coalition, neighborhood associations, individual neighbors living in this area, and investors in the neighborhood. Mr. Gresham asked the Council to consider not allowing this petition to pass and allowing this type of establishment to move into City neighborhoods. There is a place for bars and nightclubs to operate in the city. Mr. Gresham concluded by asking that if there must be a compromise in this matter, to please not let the compromise be completely one sided allowing this nightclub to continue to operate in a residential neighborhood status quo.

Ms. Christy McLawhorn, President of the Colonial Heights Neighborhood Association, stated that she is relaying what she believes to be the majority opinion in the neighborhood. She asked the Council to consider the difference between a restaurant and a bar—a restaurant serves food and a bar serves alcohol. The Colonial Heights neighborhood is dealing with the effects of a recently opened nightclub, and the sounds burst into their yards all hours of the night. Nightclubs have no place in or near residential neighborhoods.

Mr. Richard Crisp, representing the Englewood neighborhood of 269 families stated that they stand behind The University Neighborhood Association in recommending that the conventional definition of restaurant not be changed and that equal consideration be given to financial implications of The University Neighborhood Association neighbors who have had enough and who are trying to sell their house in a depressed market. The amendment would have an effect on the neighborhood and on the City as a whole. While it is a genuine concern that legal fees may prohibit fighting this, he would like for the Council to consider the cost to the City long term as property values devalue as more and more people move from the neighborhood.

Dr. David Ames, a member of the Substance Abuse Coalition and the previous Director of the Mental Health Center, stated that at last week's meeting of the Executive Committee of the Substance Abuse Coalition, the group voted to ask the Council to not approve the ordinance, to put the health and welfare of university students uppermost. It influences that attitudes and behavior of people living around it. Dr. Ames gave statistics on alcohol usage among college students.

Mr. Chris Mansfield, Chair of the Tar River Neighborhood Association, stated that the City Attorney has given the Council good advice. The issue is whether Unks operates as a bar or restaurant. Mr. Spengeman should have known what the uses were when he purchased the restaurant. The Council goals for 2008 included promoting a safe community, promoting and strengthening economic development opportunities, and promoting sustainability and livability in old and existing neighborhoods. Mr. Mansfield questioned how amending the ordinance would accomplish those goals. He encouraged the Council to not diminish the quality of life in the neighborhoods and jeopardize their homes, to do what is best for all the city, and to do the greater good for the greatest number.

Mayor Dunn declared the public hearing closed.

ORDINANCE REQUESTED BY THE COVENGTON GROUP, LIMITED AMENDING THE FUTURE LAND USE PLAN MAP FOR AREA DESCRIBED AS BEING LOCATED AT SOUTHWEST CORNER OF INTERSECTION OF B'S BARBEQUE ROAD AND WEST FIFTH STREET FROM "HIGH DENSITY RESIDENTIAL" CATEGORY TO "OFFICE/INSTITUTIONAL/ MULTI-FAMILY" CATEGORY - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider a request by The Covengton Group, Limited to amend the Future Land Use Plan Map for the area described as being located at the southwest corner of the intersection of B's Barbeque Road and West Fifth Street, containing approximately 4.8 acres, from a "High Density Residential" category to an "Office/Institutional/ Multi-family" category. The Planning and Zoning Commission voted to approve the request.

Ms. Chantae Gooby, Planner, delineated the property on a map and explained the request, explaining that it is in general compliance with the Comprehensive Plan.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Joyner and seconded by Council Member Kittrell to adopt the ordinance amending the Future Land Use Plan Map for the area described as being located at the southwest corner of the intersection of B's Barbeque Road and West Fifth Street, containing approximately 4.8 acres, from a "High Density Residential" category to an "Office/Institutional/ Multi-family" category. Motion carried unanimously. (Ordinance No. 08-94)

ORDINANCE REZONING A CURIOUS SOUP, LLC PROPERTY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST THIRD STREET AND SOUTH PITT STREET FROM CDF TO CD - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider a request by A Curious Soup, LLC to rezone 0.84 acres located at the southwest corner of the intersection of W. Third Street and S. Pitt Street from CDF to CD. The Planning and Zoning Commission voted to approve the request.

Mr. Seth Laughlin, Planner, delineated the property on a map and explained the request, stating that it is in compliance with the Comprehensive Plan.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Joyner and seconded by Council Member Glover to adopt the ordinance rezoning 0.84 acres located at the southwest corner of the intersection of W. Third Street and S. Pitt Street from CDF to CD. Motion carried unanimously. (Ordinance No. 08-95)

ORDINANCE REQUESTED BY THE CITY OF GREENVILLE REDEVELOPMENT COMMISSION REZONING PROPERTY LOCATED ALONG THE SOUTHERN RIGHT-OF-WAY OF WEST FIFTH STREET WEST OF ITS INTERSECTION WITH SOUTH PITT STREET, KNOWN AS "NATHANIEL VILLAGE TRACT", FROM CDF TO CD - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider a request by City of Greenville Redevelopment Commission to rezone 3.07 acres located along the southern right-of-way of West Fifth Street approximately 260 feet west of its intersection with S. Pitt Street, known as the "Nathaniel Village Tract", from CDF to CD. The Planning and Zoning Commission voted to approve the request.

Mr. Seth Laughlin, Planner, delineated the property on a map and explained the request, stating that it is in compliance with the Comprehensive Plan.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Spell and seconded by Council Member Joyner to adopt the ordinance rezoning 3.07 acres located along the southern right-of-way of West Fifth Street approximately 260 feet west of its intersection with S. Pitt Street, known as the "Nathaniel Village Tract", from CDF to CD. Motion carried unanimously. (Ordinance No. 08-96)

ORDINANCE REZONING CARL W. BLACKWOOD ET. AL. PROPERTY LOCATED AT THE SOUTHEAST CORNER OF INTERSECTION OF FROG LEVEL ROAD AND WAINRIGHT LANE FROM R6A TO O - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider a request by Carl W. Blackwood et. al. to rezone 4.1667 acres located at the southeast corner of the intersection of Frog Level Road and Wainright Lane from R6A to O. The Planning and Zoning Commission voted to approve the request.

Mr. Seth Laughlin, Planner, delineated the property on a map and explained the request, stating that it is in compliance with the comprehensive plan.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Joyner and seconded by Council Member Glover to adopt the ordinance rezoning 4.1667 acres located at the southeast corner of the intersection of Frog Level Road and Wainright Lane from R6A to O. Motion carried unanimously. (Ordinance No. 08-97)

ORDINANCE REZONING NICHOLS OF GREENVILLE, LLC PROPERTY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WHICHARD ROAD AND JACKSON AVENUE FROM RA-20 TO CH - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider a request by Nichols of Greenville, LLC to rezone 2.1399 acres located at the southwest corner of the intersection of Whichard Road and Jackson Avenue from RA-20 to CH. The Planning and Zoning Commission voted to approve the request.

Mr. Seth Laughlin, Planner, delineated the property on a map and explained the request, stating that it is in general compliance with the land use plan and comprehensive plan.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Mercer and seconded by Council Member Glover to adopt the ordinance rezoning 2.1399 acres located at the southwest corner of the intersection of Whichard Road and Jackson Avenue from RA-20 to CH. Motion carried unanimously. (Ordinance No. 08-98)

ORDINANCE REQUESTED BY THE PITT COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE 2004 GREENWAY MASTER PLAN TO INCLUDE A NEW GREENWAY CORRIDOR ENTITLED "CHARLES BOULEVARD – SIGNATURE DRIVE – PITT COUNTY RECREATION COMPLEX CONNECTOR" - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider a request by the Pitt County Board of County Commissioners to amend the 2004 Greenway Master Plan to include a new greenway corridor entitled "Charles Boulevard – Signature Drive – Pitt County Recreation Complex Connector". The Environmental Advisory Commission at its July 31, 2008 meeting voted to approve the request. The Planning and Zoning Commission voted to approve the request.

Mr. Andy Thomas, Planner, explained that the proposed greenway corridor will begin at Bells Fork Road and run southeast along Charles Boulevard and southwest along Signature Drive to a point on the Worthington Property approximately 500 feet east of County Home Road, then running south across the Worthington Property to a point on the Pitt County Recreation Complex property. The purpose of the proposed amendment is to provide a greenway corridor from the residential developments located in the southeast quadrant of the City to the Pitt County Recreation Complex property to facilitate a direct connection between the existing greenway system and the trails, paths, and facilities located on the Pitt County Recreation Complex property. The proposed greenway will consist of sidewalks and bike paths located within the right-of-way of public streets and within dedicated greenway easements. The minimum greenway easement width is twenty feet in this case. Per the Greenway Master Plan requirements, the property owner must dedicate the specified greenway easement at the time of final plat or site development. The landowner is not required to fund any greenway

improvements unless such improvements are related to standard site or subdivision development, such as sidewalks located within a street right-of-way as required per the subdivision regulations. The Environmental Advisory Commission recommended approval of the ordinance amendment at its July 31, 2008 meeting. The request is in compliance with the Horizons Plan.

Mayor Dunn declared the public hearing open and solicited comments from the audience.

Mr. Fred Mattox, representing the petitioner, stated that initially there was some concern about the location of the connector; however, the ordinance has been amended to alleviate those concerns. He recommended adoption of the ordinance.

Mr. James Rhodes, Pitt County Director of Planning, stated that this would be a good connection to a newly constructed, almost open, district park. The County Commissioners are requesting an extension of a greenway connecting to a greenway park. There is a lot of development in that area of county facilities, such as the farmer's market, school sites, recreation site, and the senior center. This is a great destination point. There have been favorable recommendations of the extension from the Environmental Advisory Commission, Recreation and Parks Commission and Planning and Zoning Commission.

Ms. Alice Keene of Pitt County Community Schools and Recreation stated that part of the mission of the Recreation and Parks Department is to provide a safe, appealing place to walk, bike and play. She stated that she felt that connectivity to the walking trails in the district park was important to provide opportunities for increased physical activity.

There being no further comments, the public hearing was closed.

Motion was made by Council Member Spell and seconded by Council Member Joyner to adopt the ordinance amending the 2004 Greenway Master Plan to include a new greenway corridor entitled "Charles Boulevard – Signature Drive – Pitt County Recreation Complex Connector". Motion carried unanimously. (Ordinance No. 08-99)

ORDINANCE REQUIRING REPAIR OR DEMOLITION AND REMOVAL OF THE DWELLING LOCATED AT 1913 SOUTH PITT STREET - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider an ordinance requiring the repair or the demolition and removal of the dwelling located at 1913 South Pitt Street.

Ms. Rhonda Jordan, Code Enforcement Coordinator, explained that the initial notice of violation was sent by certified mail on November 11, 2003, informing the property owner of the minimum housing violations cited by the Code Enforcement Officer and of the remedies necessary to bring the dwelling into compliance. Since that date, there have been three certified notices mailed to the property owner regarding minimum housing violations of the dwelling. Staff has attempted to work with the owner, but no repairs have been made. On October 29, 2007, a hearing was held concerning the property and the owner of record did not appear for the hearing. The most recent notice sent to the owner was sent on August 7, 2008 and provided notice to the owner that

the dwelling was considered an abandoned structure. There have been no calls for service to the Greenville Police Department for this property. The dwelling has been vacated and closed for a period of at least six months. The utilities to the dwelling have been disconnected since April 2, 2003 on Side A and September 2, 2003 on Side B. Taxes on the property are current. As of August 20, 2008, the Pitt County Tax Assessor's Office valued the property at \$9,554 (building value of \$6,854 and land value of \$2,700). The estimated costs for repairs to the property are \$37,250.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Joyner and seconded by Council Member Spell to adopt the ordinance requiring the repair or the demolition and removal of the dwelling located at 1913 South Pitt Street. Motion carried unanimously. (Ordinance No. 08-100)

ORDINANCE REQUIRING REPAIR OR DEMOLITION AND REMOVAL OF DWELLING LOCATED AT 1915 SOUTH PITT STREET - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider an ordinance requiring the repair or the demolition and removal of the dwelling located at 1915 South Pitt Street.

Ms. Rhonda Jordan, Code Enforcement Coordinator, explained that the initial notice of violation was sent by certified mail on October 18, 2007, informing the property owner of the minimum housing violations cited by the Code Enforcement Officer and of the remedies necessary to bring the dwelling into compliance. Since that date, there have been three certified notices mailed to the property owner regarding minimum housing violations of the dwelling. Staff has attempted to work with the owner, but no repairs have been made. On October 29, 2007, a hearing was held concerning the property and the owner of record did not appear for the hearing. The most recent notice sent to the owner was sent on August 7, 2008 and provided notice to the owner that the dwelling was considered an abandoned structure. There have been no calls for service to the Greenville Police Department for this property. The dwelling has been vacated and closed for a period of at least six months. The utilities to the dwelling have been disconnected since July 23, 2002 on Unit A and November 12, 2003 on Unit B. Taxes on the property are current. The estimated costs of repairs for the structure are \$37,650. As of August 20, 2008, the Pitt County Tax Assessor's Office valued the property at \$9,554 (building value of \$6,854 and land value of \$2,700). The estimated costs of repairs for the structure are \$37,650.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Joyner and seconded by Council Member Kittrell to adopt the ordinance requiring the repair or the demolition and removal of the dwelling located at 1915 South Pitt Street. Motion carried unanimously. (Ordinance No. 08-101)

ORDINANCE REQUIRING REPAIR OR DEMOLITION AND REMOVAL OF DWELLING
LOCATED AT 516 VANCE STREET - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1 and September 8, 2008 setting this time, date and place for a public hearing to consider an ordinance requiring the repair or the demolition and removal of the dwelling located at 516 Vance Street.

Ms. Rhonda Jordan, Code Enforcement Coordinator, explained that the initial notice of violation was sent by certified mail on February 20, 2008, informing the property owner of the minimum housing violations cited by the Code Enforcement Officer and of the remedies necessary to bring the dwelling into compliance. Since that date, there have been two certified notices mailed to the property owner regarding minimum housing violations of the dwelling. Staff has attempted to work with the owner, but no repairs have been made. On March 3, 2008, a hearing was held concerning the property and the owner of record did not appear for the hearing. Staff has attempted to work with the owner, but no repairs have been made. The most recent notice sent to the owner was sent on August 7, 2008 and provided notice to the owner that the dwelling was considered an abandoned structure. There have been four calls for service to the Greenville Police Department for this property. The dwelling has been vacated and closed for a period of at least six months. The utilities to the dwelling have been disconnected since January 7, 2008. Taxes on the property are current. As of August 20, 2008, the Pitt County Tax Assessor's Office valued the property at \$21,751 (building value of \$18,951 and land value of \$2,800). The estimated costs for repairs to the property are \$21,250.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Joyner and seconded by Council Member Mercer to adopt the ordinance requiring the repair or the demolition and removal of the dwelling located at 516 Vance Street. Motion carried unanimously. (Ordinance No. 08-102)

ORDINANCE ANNEXING DAVENCROFT VILLAGE AND LOT 30, PHASE 5,
DAVENCROFT LOCATED ON DUBLIN ROAD SOUTH OF ITS INTERSECTION WITH
THOMAS LANGSTON ROAD - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1, 2008 setting this time, date and place for a public hearing to consider a request to annex Davencroft Village and Lot 30, Phase 5, Davencroft containing 12.260 acres located on Dublin Road south of its intersection with Thomas Langston Road. This is a contiguous annexation.

Mr. Seth Laughlin, Planner, delineated the property on a map and stated that the property is located in Voting District 5. The property is currently vacant and the proposed use is 42 single-family homes. The current population is 0 and the anticipated population at full development is 99 with 53 being minority.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Joyner and seconded by Council Member Mercer to adopt the ordinance annexing 12.260 acres located on Dublin Road south of its intersection with Thomas Langston Road. Motion carried unanimously. (Ordinance No. 08-103)

THE 10-YEAR PLAN TO END CHRONIC HOMELESSNESS IN PITT COUNTY

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 1, 2008 setting this time, date and place for a public hearing to consider a 10-Year Plan to End Chronic Homelessness in Pitt County.

Director of Community Development Merrill Flood and Dr. Bob Thompson, Co-Chair of the Blue Ribbon Task Force to End Chronic Homelessness in Pitt County, explained that the United States Interagency Council on Homelessness issued a challenge to communities across the country to address the problem of homelessness, specifically the chronically homeless. In the fall of 2006 and spring of 2007, the Pitt County Board of Commissioners and the City of Greenville adopted resolutions to develop a 10-Year Plan to end Chronic Homelessness in Pitt County. The 10-Year Plan is a comprehensive effort of various community organizations, leaders, and citizens. Using the expertise of service providers, government officials, and homelessness experts, the plan has been designed to specifically address the needs of Pitt County's chronically homeless population in order to redirect, minimize, and ultimately resolve the substantial economic and social costs associated with these individuals and families. The January 2008 Point-in-Time Count revealed that approximately 131 homeless persons were in Pitt County and approximately 10% of those persons were chronically homeless. Chronically homeless is defined as those individuals having a disability and living on the streets or in shelter for one year or having four episodes of homelessness in three years. According to the United States Interagency Council on Homelessness, people who are chronically homeless consume over 50 percent of community resources, including emergency medical services, psychiatric treatment facilities, shelters, law enforcement and correctional facilities. The economic cost associated with people who are chronically homeless is high. The Blue Ribbon Task Force to End Chronic Homelessness in Pitt County has spent approximately eight months gathering data on homelessness in the community and reviewing best practices approaches being used in other communities to reduce and end homelessness. The Task Force held focus groups and forums to help determine the best approaches for the community. The 10-Year Plan to End Chronic Homelessness in Pitt County represents the culmination of the Task Force work over the past year. The plan features recommendations for increasing housing inventory and building the community's capacity to provide supportive services. In addition, the plan recommends ways to maximize the ability of homeless individuals to obtain and maintain income. It provides a structural framework and projected budget for the first two years of implementation.

Mayor Dunn declared the public hearing open and solicited comments from the audience.

Mr. Tony Calpanno, representing Chapter 272 of the Vietnam Veterans of America, stated that they work closely with the continuum of care with the City and County. They put on the first homeless stand down for veterans, and it is hoped that it will expand every year. Last year, they

brought in seven pallets of equipment to be given out to the homeless population. There are more and more homeless veterans who are coming home with other problems. Homelessness is the tip of the iceberg. Substance abuse, the lack of ability to carry on relationships, etc. is pushing them on the streets. Mr. Calpanno stated that he is in favor of the plan. There are numerous independent nonprofits set up around the State to build transitional housing, and they are running into funding problems. With the joint effort of the City and County, they can help solve some of the veterans' homeless problems.

Dr. Bob Thompson stated that the recommendations will complement the programs the Redevelopment Commission has been working on and will be the first major step they take to address the needs of the chronically homeless in the community. The Council's investment will help leverage additional funds. It will pay off both in return for the money and helping different groups. It will help the city, county and other nonprofits and set the stage for further cooperation. It will also put them in line with what is occurring across the state and nation. Letters of support have been received from such agencies as the United Way, ECU Behavioral Health, Pitt County Social Services, Greenville Community Shelter, North Carolina Alliance on Mental Illness, and many others. Dr. Thompson expressed appreciation to the Council for providing him the opportunity to work on this for the community.

Ms. Cheryl Easter addressed the Council regarding homelessness, encouraging them to show the homeless that they are a part of society.

Ms. Lynne James, Executive Director of the Greenville Community Shelter encouraged the Council's support and adoption of the Ten-Year Plan. One of the major challenges is a lack of coordinated resources and money to make it possible to provide the housing and support services that would reduce the amount of time that people need to remain in homeless shelters. There are many people residing in shelters who would not be there were there not a shortage of affordable housing and supportive services. Ms. James asked the Council to take that into consideration and adopt the plan.

There being no further comments, Mayor Dunn closed the public hearing.

Upon being asked how much money this will take and whether it is incorporated in the budget, Mr. Thompson responded that it is a two-year commitment that allows them to set the stage for subsequent parts of it. City Manager Bowers responded that it is through CDBG funds, and they have to go through a formal process to adopt the budget.

Motion was made by Council Member Kittrell and seconded by Council Member Spell to approve the Blue Ribbon Task Force to End Chronic Homelessness in Pitt County's 10-Year Plan, and designate \$60,000 over a two-year period in CDBG funds to assist with the funding of a Project Manager to coordinate implementation of the plan. Motion carried unanimously. (Document No. 08-06)

CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT
SUBMISSION TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT - APPROVED

Director of Community Development Merrill Flood stated that the FY 2007 Consolidated Annual Performance and Evaluation Report (CAPER) represents the fifth year of the City of Greenville and Pitt County HOME Consortium Consolidated Plan, which was approved June 9, 2003. The plan identifies a comprehensive strategy to address community needs for the five-year period. The CAPER is a requirement of the Department of Housing and Urban Development as a condition of receiving funding under certain federal grant programs. The end-of-year report outlines the City of Greenville and Pitt County HOME Consortium progress in providing decent housing, establishing and maintaining a suitable living environment, and expanding economic opportunities.

Mayor Dunn declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Joyner and seconded by Council Member Mercer to approve the submission of CAPER to the United States Department of Housing and Urban Development. Motion carried unanimously. (Document No. 08-07)

PUBLIC COMMENT PERIOD

Mr. Jeff Savage expressed his concern about the Council enacting a curfew without first trying to do other things. He also expressed concern about the excessive use of law enforcement used for crowd management at the post-game event on Saturday.

COMMENTS FROM MAYOR AND CITY COUNCIL

The Mayor and City Council made general comments.

Council Member Mercer asked the City Manager to explore the feasibility and advisability of moving the Thursday night meetings to 6:00 p.m.

CITY MANAGER'S REPORT

City Manager Wayne Bowers reminded the City Council of the joint meeting with the Pitt County Commissioners on September 30 at 5:30 p.m. at the Convention Center. He also announced that diversity training has been scheduled for the regularly scheduled October 20 and November 24 City Council meetings and that the time of the meetings needs to be changed from 6:00 p.m. to 5:00 p.m. for those two meetings, so that two four-hour sessions may be held.

Motion was made by Council Member Joyner and seconded by Council Member Mercer to amend the 2008 City Council Meeting Schedule by changing the time and location of the October 20 and November 24, 2008 City Council meetings from 6:00 to 5:00 p.m. at City Hall. Motion carried unanimously.

Upon being told that there is no business for the September 22, 2008 City Council agenda, motion was made by Council Member Mercer and seconded by Council Member Joyner to cancel the September 22, 2008 meeting. Motion carried unanimously.

ADJOURN

Motion was made by Council Member Joyner and seconded by Council Member Spell to adjourn the meeting at 9:38 p.m. Motion carried unanimously.

Respectfully submitted,

Wanda T. Elks

Wanda T. Elks
City Clerk



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

-
- Title of Item:** Resolution accepting dedication of rights-of-way and easements for Tull's Cove, Section 1
- Explanation:** In accordance with the City's Subdivision regulations, rights-of-way and easements have been dedicated for Tull's Cove, Section 1 (Map Book 69 at Pages 127-128).
- Fiscal Note:** Funds for the maintenance of these rights-of-way and easements are included within the 2008-2009 budget.
- Recommendation:** Adopt the attached resolution accepting dedication of rights-of-way and easements for Tull's Cove, Section 1.
-

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

- [Tull's Cove Section 1](#)
 - [October Right of Way Resolution 787594](#)
-

RESOLUTION NO. 08- _____

A RESOLUTION ACCEPTING DEDICATION TO THE PUBLIC OF
RIGHTS-OF-WAY AND EASEMENTS ON SUBDIVISION PLATS

WHEREAS, G.S. 160A-374 authorizes any city council to accept by resolution any dedication made to the public of land or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction; and

WHEREAS, the Subdivision Review Board of the City of Greenville has acted to approve the final plats named in this resolution, or the plats or maps that predate the Subdivision Review Process; and

WHEREAS, the final plats named in this resolution contain dedication to the public of lands or facilities for streets, parks, public utility lines, or other public purposes; and

WHEREAS, the Greenville City Council finds that it is in the best interest of the public health, safety, and general welfare of the citizens of the City of Greenville to accept the offered dedication on the plats named in this resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville, North Carolina:

Section 1. The City of Greenville accepts the dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes offered by, shown on, or implied in the following approved subdivision plats:

Tull's Cove, Section 1

Map Book 69

Pages 127-128

Section 2. Acceptance of dedication of lands or facilities shall not place on the City any duty to open, operate, repair, or maintain any street, utility line, or other land or facility except as provided by the ordinances, regulations or specific acts of the City, or as provided by the laws of the State of North Carolina.

Section 3. Acceptance of the dedications named in this resolution shall be effective upon adoption of this resolution.

Adopted the 6th day of October, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk

NORTH CAROLINA
PITT COUNTY

I, Patricia A. Sugg, a Notary Public, do hereby certify that Wanda T. Elks, City Clerk, personally appeared before me this day and acknowledged that she is the City Clerk of the City of Greenville, a municipality, and that by authority duly given and as the act of the municipality, the foregoing instrument was signed in its name by its mayor, sealed with the corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and notarial seal this 6th day of October, 2008.

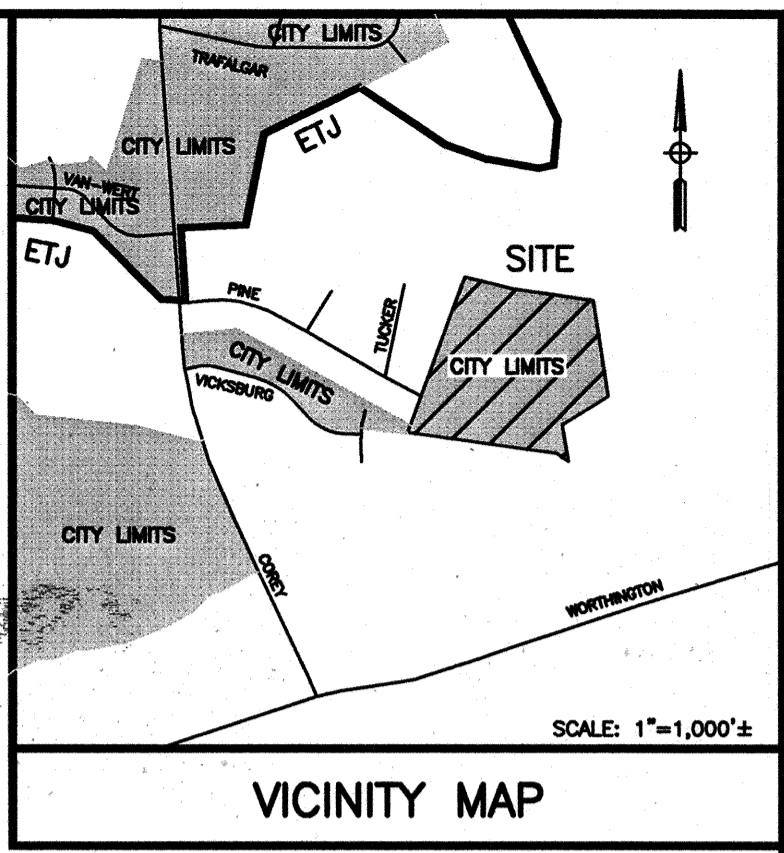
Notary Public

My Commission Expires: 9/4/2011

SITE DATA

TOTAL AREA 7.153 AC.
 NUMBER OF LOTS CREATED 28
 AREA IN COMMON AREA 43,530 SF
 AREA IN PARKS, RECREATION AREAS
 CEMETERIES AND THE LIKE 0

Doc ID: 004210430002 Type: CRP
 Recorded: 01/11/2008 at 09:02:39 AM
 Fee Amt: \$42.00 Page 1 of 2
 Pitt County, NC
 Judy J. Tart Register of Deeds
 BK 69 Pg 127-128



C/L CURVE DATA

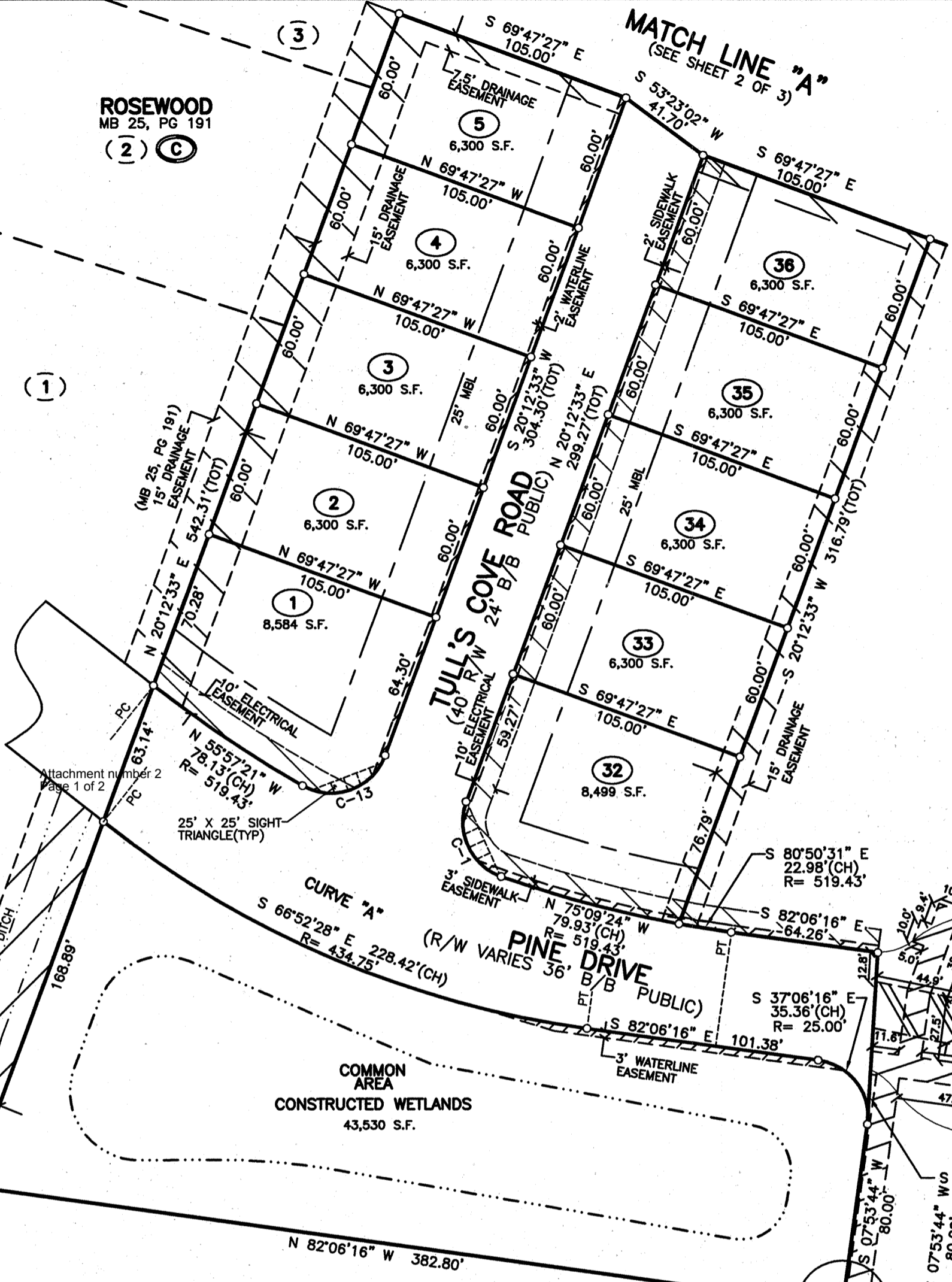
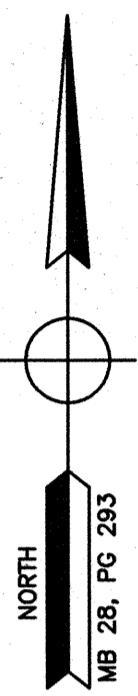
CURVE "A"
 R = 477.09'
 Δ = 30°27'38"
 L = 253.64'
 T = 129.89'
 CH = S 66°52'27" E
 250.66'

COPY

CHARIS PROPERTIES, LLC
 DB 2195, PG 383

GENERAL NOTES

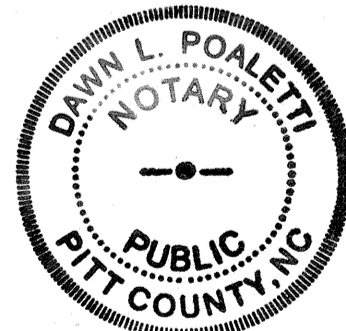
1. ALL AREAS CALCULATED BY COORDINATE GEOMETRY.
2. THIS MAP IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.
3. THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARDOUS AREA AS DETERMINED BY FEDERAL EMERGENCY MANAGEMENT AGENCY. REF: 3720468500 J DATED JANUARY 2, 2004.
4. THE DESIGNATION NOTED OVER WATER, SANITARY SEWER, GAS OR ELECTRICAL LINES IS FOR THE PURPOSE OF ESTABLISHING THE WIDTH OF SAID EASEMENT. THE EASEMENTS ARE NOT EXCLUSIVE AND WILL PERMIT THE INSTALLATION OF WATER, SANITARY SEWER GAS AND ELECTRIC LINES WITHIN THOSE DESIGNATED WIDTHS.
5. NO BUILDINGS, STRUCTURES, OR OTHER IMPROVEMENTS, MATERIALS AND SURFACES, INCLUDING BUT NOT LIMITED TO PRINCIPAL AND ACCESSORY STRUCTURES AND ADDITIONS OR APPURTENANCES THERETO, SIGNAGE, FENCES, WALLS, MECHANICAL EQUIPMENT, CANOPIES, ANTENNAS, MASTS, AERIALS, MONUMENTS, LANDSCAPE PLANTINGS, FILL MATERIALS, DEBRIS, SOLID WASTE COLLECTION CONTAINERS, MAIL RECEPTACLES AND IMPERVIOUS SURFACES, SHALL ENCR OACH WITHIN ANY DEDICATED EASEMENT WITHOUT PRIOR APPROVAL OF THE CITY OF GREENVILLE.
6. COMMON AREA TO BE MAINTAINED BY HOMEOWNERS ASSOCIATION.



CURVE TABLE

CURVE	RADIUS	CHORD	CH. BEARING
C-1	25.00'	35.65'	N 25°16'02" W
C-13	25.00'	38.17'	S 69°58'10" W

T.H. WORTHINGTON
 DB M-49, PG 627



JENNIE W. FAULKNER
 DB K-49, PG 448



CHARIS PROPERTIES, LLC
 DB 2195, PG 383

CERTIFICATION

I, MICHAEL W. BALDWIN CERTIFY THAT UNDER MY DIRECT SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK PAGE ETC. (OTHER) THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK PAGE ; THAT THE RATIO OF PRECISION AS CALCULATED BY LATITUDES AND DEPARTURES IS 1:10,000; THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH GS 7-30 AS AMENDED. WITNESS MY HAND AND SEAL THIS 11th DAY OF SEPT. AD 2008.

SIGNED: *[Signature]*
 REGISTRATION NO. L-3082

REVIEW OFFICER'S CERTIFICATE

Andrew Thomas, Jr.
 REVIEW OFFICER OF PITT COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.
 SIGNED: *[Signature]* 1/10/08
 REVIEW OFFICER DATE

NORTH CAROLINA, PITT COUNTY
 FILED FOR REGISTRATION THIS THE 20th DAY OF 20, AT O'CLOCK M.
 JUDY J. TART, REGISTER OF DEEDS
 BY: _____
 DEPUTY REGISTER OF DEEDS

PARCEL #037501
 FINAL PLAT SHEET 1 OF 2

TULL'S COVE

SECTION 1

REFERENCE: BEING A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 2195, PAGE 383 OF THE PITT COUNTY REGISTRY

GREENVILLE, WINTERVILLE TOWNSHIP, PITT COUNTY, N.C.

OWNER: **CHARIS PROPERTIES, LLC**
 ADDRESS: PO BOX 1549
 WINTERVILLE, NC 28590
 PHONE: (252) 355-4688

Baldwin and Associates
 ENGINEERING, LAND SURVEYING
 AND PLANNING
 1015 CONFERENCE DRIVE
 GREENVILLE NC, 27858
 (252) 756-1390

SURVEYED: DF APPROVED: MWB
 DRAWN: SCB DATE: 09/11/2007
 CHECKED: MWB SCALE: 1" = 50'

SOURCE OF TITLE
 THIS IS TO CERTIFY THAT THE LAST INSTRUMENT(S) IN THE CHAIN OF TITLE(S) OF THIS PROPERTY AS RECORDED IN THE PITT COUNTY REGISTRY AT GREENVILLE, NORTH CAROLINA IS:

DEED BOOK 2195 PAGE 383
 DEED BOOK 2259 PAGE 628
 DEED BOOK _____ PAGE _____

OWNERS STATEMENT
 THIS IS EVIDENCE THAT THIS SUBDIVISION IS MADE AT THE REQUEST OF

SWORN AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 2008.
[Signature]
 NOTARY PUBLIC
 MY COMMISSION EXPIRES: 03/28/09

APPROVAL
 THIS FINAL PLAT NO. 07-125 WAS APPROVED BY THE SUBDIVISION REVIEW BOARD IN ACCORDANCE WITH TITLE 9, CHAPTER 5 OF THE GREENVILLE CITY CODE THE 12th DAY OF DECEMBER, 2007.

SIGNED: *[Signature]*
 CITY PLANNER

DEDICATION
 THE UNDERSIGNED HEREBY ACKNOWLEDGES THIS PLAT AND ALLOTMENT TO BE THEIR FREE ACT AND DEED, AND HEREBY DEDICATES TO PUBLIC USE AS STREETS, PARKS, PLAYGROUNDS, OPEN SPACES AND EASEMENTS FOREVER ALL AREAS AS SHOWN OR SO INDICATED ON SAID PLAT.

SIGNED: *[Signature]*
 ATTEST: *[Signature]*

C/L CURVE DATA

CURVE "B"	CURVE "C"
R = 105.00'	R = 105.00'
Δ = 78°10'11"	Δ = 32°10'28"
L = 143.25'	L = 58.96'
T = 85.29'	T = 30.28'
CH = N 59°17'39" E 132.40'	CH = S 65°32'01" E 58.19'

CURVE TABLE

CURVE	RADIUS	CHORD	CH. BEARING
C-2	85.00'	56.87'	N 39°45'06" E
C-3	85.00'	56.87'	N 78°50'11" E
C-4	125.00'	50.00'	N 60°58'59" W
C-5	125.00'	19.83'	N 77°04'14" W
C-6	25.00'	35.36'	N 36°37'16" W
C-7	25.00'	35.36'	S 53°22'44" W
C-8	125.00'	6.56'	N 83°07'27" W
C-9	125.00'	50.00'	S 83°50'09" W
C-10	125.00'	50.00'	S 60°45'43" W
C-11	125.00'	50.00'	S 37°41'17" W
C-12	125.00'	12.96'	S 23°10'49" W

LEGEND

- R/W = RIGHT-OF-WAY
- B/B = BACK OF CURB TO BACK OF CURB
- R = RADIUS
- CH = CHORD
- PC = POINT OF CURVATURE
- PT = POINT OF TANGENCY
- EIP = EXISTING IRON PIPE
- = NOT TO SCALE
- = IRON PIPE SET UNLESS OTHERWISE NOTED

COPY

Doc ID: 004210430002 Type: CRP
 Recorded: 01/11/2008 at 09:02:39 AM
 Fee Amt: \$42.00 Page 1 of 2
 Pitt County, NC
 Judy J. Tart Register of Deeds
 BK 69 Pg 127-128

JOHNNY B. WORTHINGTON, JR.
 DB K-49, PG 452

JOHNNY B. WORTHINGTON, JR.
 DB W-34, PG 435

JENNIE W. FAULKNER
 DB K-49, PG 448
 DB M-49, PG 624

CHARIS PROPERTIES, LLC
 DB 2195, PG 383

CHARIS PROPERTIES, LLC
 DB 2195, PG 383



CERTIFICATION

I, MICHAEL W. BALDWIN CERTIFY THAT UNDER MY DIRECT SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK PAGE ETC.(OTHER); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK PAGE ; THAT THE RATIO OF PRECISION AS CALCULATED BY LATITUDES AND DEPARTURES IS 1:10,000; THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH GS 47-30 AS AMENDED. WITNESS MY HAND AND SEAL THIS 11th DAY OF SEPT. 2007.

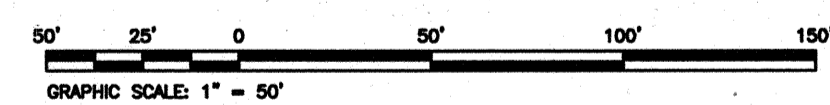
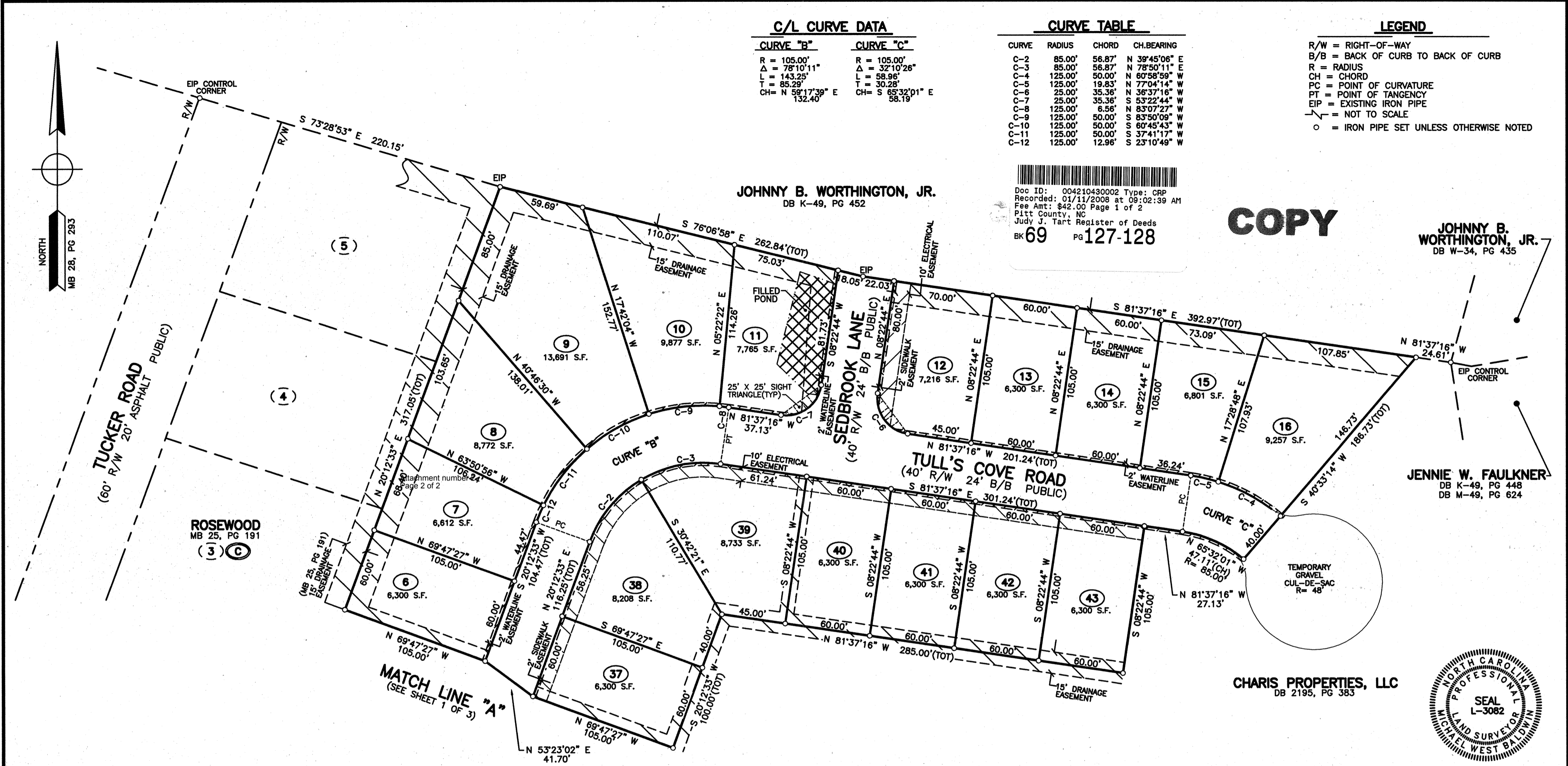
SIGNED: *[Signature]*
 REGISTRATION NO. L-3082

REVIEW OFFICER'S CERTIFICATE

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

SIGNED: *[Signature]* 1/10/08
 REVIEW OFFICER DATE

NORTH CAROLINA, PITT COUNTY FILED FOR REGISTRATION THIS 20th DAY OF SEPTEMBER 2007 AT 10:00 O'CLOCK A.M. JUDY J. TART, REGISTER OF DEEDS
 BY: _____ DEPUTY REGISTER OF DEEDS



PARCEL #037501 SHEET 2 OF 2
 FINAL PLAT

TULL'S COVE

SECTION 1

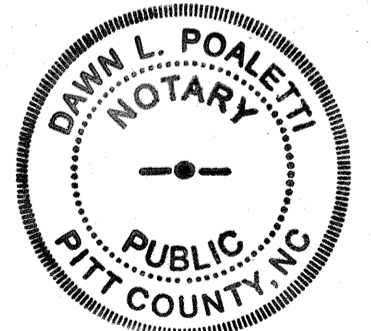
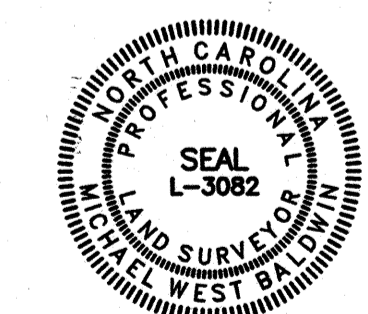
REFERENCE: BEING A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 2195, PAGE 383 OF THE PITT COUNTY REGISTRY

GREENVILLE, WINTERVILLE TOWNSHIP, PITT COUNTY, N.C.

OWNER: **CHARIS PROPERTIES, LLC**
 ADDRESS: PO BOX 1549 WINTERVILLE, NC 28590
 PHONE: (252) 355-4688

Baldwin and ASSOCIATES
 ENGINEERING, LAND SURVEYING AND PLANNING
 1015 CONFERENCE DRIVE GREENVILLE NC, 27858 (252) 756-1390

SURVEYED: DF APPROVED: MWB
 DRAWN: SCB DATE: 09/11/2007
 CHECKED: MWB SCALE: 1" = 50'



CLOSURE CHECK BOUNDARY		CLOSURE CHECK LOT	
CHECKED: BAW	DATE: 09/12/2007	CHECKED: BAW	DATE: 09/12/2007

SOURCE OF TITLE
 THIS IS TO CERTIFY THAT THE LAST INSTRUMENT(S) IN THE CHAIN OF TITLE(S) OF THIS PROPERTY AS RECORDED IN THE PITT COUNTY REGISTRY AT GREENVILLE, NORTH CAROLINA IS:
 DEED BOOK 2195 PAGE 383
 DEED BOOK 2259 PAGE 628
 DEED BOOK _____ PAGE _____
 REGISTRATION NO. L-3082

OWNERS STATEMENT
 THIS IS EVIDENCE THAT THIS SUBDIVISION IS MADE AT THE REQUEST OF
[Signature]
 SWORN AND SUBSCRIBED BEFORE ME THIS 12th DAY OF SEP, 2008.
[Signature]
 NOTARY PUBLIC
 MY COMMISSION EXPIRES: 03/28/09

APPROVAL
 THIS FINAL PLAT NO. 07-125 WAS APPROVED BY THE SUBDIVISION REVIEW BOARD IN ACCORDANCE WITH TITLE 9, CHAPTER 5 OF THE GREENVILLE CITY CODE THE 12th DAY OF DECEMBER, 2007.
 SIGNED: *[Signature]*
 CITY PLANNER

DEDICATION
 THE UNDERSIGNED HEREBY ACKNOWLEDGES THIS PLAT AND ALLOTMENT TO BE THEIR FREE ACT AND DEED, AND HEREBY DEDICATES TO PUBLIC USE AS STREETS, PARKS, PLAYGROUNDS, OPEN SPACES AND EASEMENTS FOREVER ALL AREAS AS SHOWN OR SO INDICATED ON SAID PLAT.
 SIGNED: *[Signature]*
 ATTEST: *[Signature]*



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Lease agreement for Roses Parking Lot located at the corner of Evans and Fourth Streets

Explanation: The City of Greenville leases the property for the Roses Parking Lot from its owner, Nelson B. Crisp. The Roses Parking Lot is located at the northeast corner of the intersection at Evans and Fourth Streets. The lot is used strictly for 2-hour "visitor" parking. The parking lot has 24 spaces.

The existing three-year lease expired in August 2008, and both parties desire to continue to lease the property under the same terms and conditions. The lease includes a 2% fee increase per year. Additionally, the City is responsible for all maintenance of the parking lot.

The rate per month for the first year of the lease is \$764.07 per month. The monthly lease per space is \$31.84.

The agreement is for three (3) years to be re-negotiated at the end of the term and has been approved by Nelson B. Crisp. It has also been approved as to form by the City Attorney.

Fiscal Note: This lease rate equates to a rental fee of \$9,168.84 for the first year, \$9,352.20 for the second year, and \$9,539.28 for the third year. Funds for the first year of this lease are included in the FY 2008-2009 Budget.

Recommendation: Approve the attached lease and authorize the Mayor to execute on behalf of the City of Greenville.

Attachments / click to download

 [2008 Lease Agreement RE Roses Parking Lot Nelson Crisp Property 787874](#)

**NORTH CAROLINA
COUNTY OF PITT**

**LEASE
AGREEMENT**

THIS LEASE AGREEMENT , made and entered into this the ____ day of _____, 2008, by and between Nelson Blount Crisp and Mary Louise Lowe, and husband, Otto W. Lowe, Parties of the First Part and hereinafter referred to as LESSOR, and the City of Greenville, a North Carolina municipal corporation, Party of the Second Part and hereinafter referred to as LESSEE;

WITNESSETH:

That subject to the terms and conditions hereinafter set forth, LESSOR does hereby let and lease unto the LESSEE, and said LESSEE does hereby accept as lessee of said LESSOR a certain parcel of land together with the improvements thereon situate, lying and being in Pitt County, North Carolina, and more particularly described as follows:

Being all of that lot or parcel including any easements and rights of way appearing of record and as described in that certain deed dated January 31, 1985 from Blount-Harvey Company, Inc to Florence T. Blount, Nelson B. Crisp and Mary Louise Crisp and the map prepared by J. Auburn Hall, RLS #L-2630, dated January 25, 1985 and appearing of record in Book Z53, Page 780, Pitt County Public Registry to which reference is made for a more full and accurate description.

The terms and conditions of this lease are as follows:

1) Term. This lease shall begin on the 1st day of September, 2008, and, unless sooner terminated or extended as herein provided, shall exist and continue until the 30th day of August, 2011.

2) Rental. As rental for said premises, the LESSEE shall pay to the LESSOR the following sums, each monthly installment being payable on or before the 1st day of each calendar month for the then current month:

For the first twelve months of this lease beginning on September 1, 2008, the sum of SEVEN HUNDRED SIXTY FOUR AND 07/100THS DOLLARS (\$764.07) per month;

For the second twelve months of this lease beginning on September 1, 2009, the sum of SEVEN HUNDRED SEVENTY NINE AND 35/100THS DOLLARS (\$779.35) per month; and

For the succeeding twelve months of this lease, beginning on September 1, 2010, the sum of SEVEN HUNDRED NINETY FOUR AND 94/100THS DOLLARS (\$794.94) per month.

3) **Taxes.** During the term of this lease, the LESSOR shall pay all taxes and assessments imposed on the demised premises by any lawful authority.

4) **Repairs and Maintenance.** It is understood and agreed that the LESSEE accepts said premises in the physical condition in which the same now are and that the LESSOR shall be under no obligation whatever to make any repairs or replacements to said premises during the term of this lease. LESSEE represents that it has inspected the demised premises and found it to be in acceptable condition for the purposes of being a parking lot, and accepts the demised premises in its current condition. Upon execution of this Lease Agreement, LESSEE shall be fully responsible for the maintenance and upkeep of the demised premises and shall keep the demised premises in the same order and condition as of the date of this Lease Agreement, excepting ordinary wear and tear.

5) **Improvements.** LESSEE may at any time during the term of this Lease make improvements to the demised premises relating to its use as a parking lot including such improvements as repaving, striping, installing signs, and similar improvements. However, LESSEE may erect any buildings or structures upon the demised premises only with the written consent of the LESSOR.

6) **Use of Premises.** It is expressly agreed that the demised premises shall, during the term of this lease, be used exclusively for a parking lot except that the demised premises may be used as a venue for special events for no more than six (6) days during any calendar year.

7) **Assignment and Subletting.** LESSEE shall have the right to sublet any portion of the demised premises for parking purposes but shall not have the right to sublet for any other use without the written consent of the LESSOR.

8) **Quiet Possession.** The LESSOR covenants to and with LESSEE that upon timely payment of rent, LESSEE shall have the right to quiet possession of the demised premises, free from any adverse claims whatsoever from any persons whomsoever, upon the terms and conditions of this Lease Agreement.

9) **Termination.** Except as provided in paragraph 10 herein, this Lease Agreement may not be terminated except upon written consent of both parties.

10) **Default.** If LESSEE shall neglect to pay any installment of rent when due, or shall neglect to do and perform any other matter agreed to be done, and shall remain in default for a period of thirty (30) days after receiving written notice from the LESSOR calling attention to the non-payment or default, the LESSOR may declare this lease terminated and take possession of the demised premises without prejudice to any other legal remedy it may have on account of
Item # 3

such default. If the LESSOR neglects to do or perform any matter agreed to be done in this Lease Agreement and shall remain in default for a period of thirty (30) days after written notice from the LESSEE calling attention to such default, LESSEE may declare this lease agreement terminated without prejudice to any other legal remedy it may have on account of such default.

11) Surrender of Premises. At the end of the term or any final extension thereof, LESSEE shall peaceably yield up the demised premises to the LESSOR in as good repair and condition as of the date of this Lease Agreement.

12) Holding Over. If LESSEE remains in possession of the demised premises after the expiration of the term of this Lease Agreement, LESSEE shall be deemed to be occupying said premises as a tenant from month-to-month only, but otherwise subject to all of the terms and conditions of this Lease Agreement. The month-to-month tenancy may be terminated by either party as provided by law.

13) Exercise of Rights and Notice. The exercise of any right or privilege by a party hereunder shall be made effective by the personal delivery or by the mailing of a written notice of such exercise to the other party unless a specific provision of this Lease Agreement provides otherwise. Notice shall be effective upon any actual delivery or three days after mailing by first class, United States mail, postage prepaid, addressed to the other party at the address set forth below:

LESSEE:
City Manager
City of Greenville
P.O. Box 7207
Greenville, NC 27835

LESSOR:
Nelson Blount Crisp
P.O. Box 7146
Greenville, NC 27835-7146

14) Survival and Binding Effect. This Lease Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, beneficiaries, legal representatives, successors and assigns.

15) Waiver and Modification. Neither this Lease Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated, except by written instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. Failure by the LESSOR or LESSEE to insist on strict compliance with any term or condition shall not be deemed a waiver of said compliance.

16) Unenforceability. If any provision of this Lease Agreement is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be severable and the remainder of the Lease Agreement shall continue in full force and effect.

17) Public Liability. Lessor shall not be liable to Lessee or to Lessee's employees, agents, licenses, invitees, visitors, or to any other person or persons, for any damage or injury to person or property arising out of or in any way connected with the Premises. Lessee shall and does hereby covenant and agree to indemnify and hold Lessor harmless from and against any and all claims, damages, injuries, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising out of or in any way connected with the Premises, use of the Premises by Lessee, or failure of Lessee to maintain the Premises in good condition.

18) Entire Agreement. This Lease Agreement is the only agreement between the parties hereto with respect to the subject matter hereof and contains all of the terms agreed upon, and there are no other agreements, oral or written, between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement in duplicate originals, one of which is retained by each of the parties, on the day and year first written above.

CITY OF GREENVILLE

BY: _____
Patricia C. Dunn, Mayor

ATTEST:

BY: _____
Wanda T. Elks, City Clerk

Nelson B. Crisp

Mary Louise C. Lowe

Otto W. Lowe

**NORTH CAROLINA
PITT COUNTY**

I, _____, a Notary Public in and for the aforesaid County and State, do hereby certify that Wanda T. Elks personally appeared before me this day and acknowledged that she is the City Clerk of CITY OF GREENVILLE, a North Carolina municipal corporation, and that by authority duly given and as the act of the CITY OF GREENVILLE, the foregoing instrument was signed in its corporate name by its Mayor, sealed with its corporate seal, and attested by herself as City Clerk.

Witness my hand and Notarial Seal, this the _____ day of _____, 2008.

Notary Public

My Commission expires: _____.

**NORTH CAROLINA
PITT COUNTY**

I, _____, a Notary Public of Pitt County, North Carolina, do hereby certify that Nelson B. Crisp, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the _____ day of _____, 2008.

Notary Public

My Commission Expires: _____

**NORTH CAROLINA
PITT COUNTY**

I, _____, a Notary Public of Pitt County, North Carolina, do hereby certify that Mary Louise C. Lowe, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the _____ day of _____, 2008.

Notary Public

My Commission Expires: _____

**NORTH CAROLINA
PITT COUNTY**

I, _____, a Notary Public of Pitt County, North Carolina, do hereby certify that Otto W. Lowe, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the ____ day of _____, 2008.

Notary Public

My Commission Expires:_____



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Ordinance establishing Section 12-1-21 of the City Code relating to the Extreme Park

Explanation: The proposal will amend the Greenville City Code by adding Section 12-1-21, which will allow the Recreation and Parks Department to discontinue staff supervision to the Extreme Park or any future facility that is designated for similar activities. The amendment was approved by the Recreation and Parks Commission on September 10, 2008.

This step would significantly expand the hours of availability for facility use, eliminate the \$2 admission charge, and provide a net annual salary savings of up to \$11,500 (facility attendant costs minus anticipated admission revenues).

Current hours of operation are Monday through Friday, 4 p.m. - 10 p.m., Saturday 9 a.m. - 10 p.m., and Sunday 2 p.m. - 9 p.m. New hours will essentially be dawn to 10 p.m. every day.

In 2003, the General Assembly of North Carolina passed Session Law 2003-334 that is now part of the NC General Statutes as Chapter 99E, the "Hazardous Recreation and Parks Safety and Liability Act" (copy attached). According to 99E-22 (2), hazardous recreational activity is defined as "skateboarding, inline skating, or freestyle bicycling." This act encourages governmental agencies to make land available for such activities, and states that the facilities do not need to be staffed as long as the following occur (99E-23):

1. The governmental entity adopts an ordinance requiring any person utilizing the facility for the purpose of the named hazardous recreational activities wear a helmet, elbow pads, and kneepads.
2. Signs are posted at the facility affording reasonable notice that any person utilizing the facility for such activities must wear a helmet, elbow pads, and kneepads and that any person failing to do so will be subject to citation under the ordinance under subdivision (1) of this act.

Fiscal Note: Annual savings of \$11,500.

Recommendation: Approve attached ordinance amending the City Code by adding Section 12-1-21.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Extreme Park Ordinance 788658](#)

 [Hazardous Recreation Parks Safety and Liability 788654](#)

**ORDINANCE NO. 08-
AN ORDINANCE ESTABLISHING SECTION 12-1-21
OF THE GREENVILLE CITY CODE RELATING TO THE EXTREME PARK**

The City Council of the City of Greenville, North Carolina does hereby ordain:

Section 1. That the Code of Ordinances, City of Greenville, is hereby amended by adding a section to be numbered 12-1-21 , which section reads as follows:

Sec. 12-1-21. Extreme Park

(a) For the purpose of this section the following definitions apply:

“Hazardous recreational activity” shall mean skateboarding, inline skating, or freestyle biking.

“Extreme park” shall mean a facility owned or operated by the city that is designed or maintained for recreational skateboarding, inline skating, or freestyle biking.

(b) Any person participating or engaged in a hazardous recreational activity at an extreme park shall wear a helmet, elbow pads, and knee pads.

(c) No person shall participate or engage in a hazardous recreational activity at an extreme park without wearing a helmet, elbow pads, and knee pads.

(d) Signs shall be posted at an extreme park providing notice that any person engaged or participating in hazardous recreational activities at an extreme park must wear a helmet, elbow pads, and knee pads and that any person failing to do so will be subject to citation for violation of the provisions of this section.

(e) Any violation of the provisions of this section shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00). Violators will be issued a written citation which must be paid within seventy-two (72) hours. If a person fails to pay the civil penalty within seventy two (72) hours, the city may recover the penalty together with all costs by filing a civil action in the general court of justice in the nature of a debt.

Section 2. All ordinances or parts of ordinances in conflict herewith 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 or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 4. This ordinance will become effective upon its adoption.

This the 6th day of October, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk

Chapter 99E.
Special Liability Provisions.

Article 3.

Hazardous Recreation Parks Safety and Liability.

§ 99E-21. Purpose.

The purpose of this Article is to encourage governmental owners or lessees of property to make land available to a governmental entity for skateboarding, inline skating, or freestyle bicycling. It is recognized that governmental owners or lessees of property have failed to make property available for such activities because of the exposure to liability from lawsuits and the prohibitive cost of insurance, if insurance can be obtained for such activities. It is also recognized that risks and dangers are inherent in these activities, which risks and dangers should be assumed by those participating in the activities. (2003-334, s. 1.)

§ 99E-22. Definitions.

The following definitions apply in this Article:

- (1) Governmental entity. –
 - a. The State, any county or municipality, or any department, agency, or other instrumentality thereof.
 - b. Any school board, special district, authority, or other entity exercising governmental authority.
- (2) Hazardous recreational activity. – Skateboarding, inline skating, or freestyle bicycling.
- (3) Inherent risk. – Those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding, inline skating, and freestyle bicycling. (2003-334, s. 1.)

§ 99E-23. Duties of operators of skateboard parks.

(a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and kneepads.

(b) For any facility owned or operated by a governmental entity that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements under subsection (a) of this section are satisfied when all of the following occur:

- (1) The governmental entity adopted an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and kneepads.
- (2) Signs are posted at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet,

elbow pads, and kneepads and that any person failing to do so will be subject to citation under the ordinance under subdivision (1) of this subsection. (2003-334, s. 1.)

§ 99E-24. Duties of persons engaged in hazardous recreational activities.

(a) Any person who participates in or assists in hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself or other persons or property that result from these activities. Any person who observes hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself that result from these activities. No public entity that sponsors, allows, or permits skateboarding, inline skating, or freestyle bicycling on its property is required to eliminate, alter, or control the inherent risks in these activities.

(b) While engaged in hazardous recreational activities, irrespective of where such activities occur, a participant is responsible for doing all of the following:

- (1) Acting within the limits of his or her ability and the purpose and design of the equipment used.
- (2) Maintaining control of his or her person and the equipment used.
- (3) Refraining from acting in any manner that may cause or contribute to death or injury of himself or herself or other persons.

(c) Failure to comply with the requirement of subsection (b) of this section constitutes negligence. (2003-334, s. 1.)

§ 99E-25. Liability of governmental entities.

(a) This section does not grant authority or permission for a person to engage in hazardous recreational activities on property owned or controlled by a governmental entity unless such governmental entity has specifically designated such area for these activities.

(b) No governmental entity or public employee who has complied with G.S. 99E-23 shall be liable to any person who voluntarily participates in hazardous recreation activities for any damage or injury to property or persons that arises out of a person's participation in the activity and that takes place in an area designated for the activity.

(c) This section does not limit liability that would otherwise exist for any of the following:

- (1) The failure of the governmental entity or public employee to guard against or warn of a dangerous condition of which a participant does not have and cannot reasonably be expected to have had notice.

(2) An act of gross negligence by the governmental entity or public employee that is the proximate cause of the injury.

(d) Nothing in this section creates a duty of care or basis of liability for death, personal injury, or damage to personal property. Nothing in this section shall be deemed to be a waiver of sovereign immunity under any circumstances.

(e) Nothing in this section limits the liability of an independent concessionaire or any person or organization other than a governmental entity or public employee, whether or not the person or organization has a contractual relationship with a governmental entity to use the public property, for injuries or damages suffered in any case as a result of the operation of equipment for hazardous recreational activities on public property by the concessionaire, person, or organization.

(f) The fact that a governmental entity carries insurance that covers any activity subject to this Article does not constitute a waiver of the liability limits under this section, regardless of the existence or limits of the coverage. (2003-334, s. 1.)



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Resolution of assurances for State Revolving Fund loan for Greenville Utilities Commission's Water Treatment Plant Raw Water Pump Station Improvements Project

Explanation: The Raw Water Pump Station (RWPS) was originally constructed in 1982 as part of the new 12-million gallon per day (MGD) Water Treatment Plant (WTP) project. The RWPS is located on the bank of the Tar River and houses the pumps, valves, piping and wet well that connect to the raw water intake conveyance piping. Two 30" intake pipes extend 180 feet from the RWPS into an outer bend of the Tar River with a pair of intake screens at the end located at center line elevation of -3.4 feet mean sea level (top line elevation -2.5 feet mean sea level). This proposed drought mitigation project will consist of the installation of two new 30" intake pipes with multiple screens in the Tar River that will connect to the existing RWPS. The improvements will increase the reliability of Greenville Utilities' surface water supply by: 1) providing a deeper withdrawal elevation than the existing intake screens to increase the water supply available during drought conditions; 2) providing a redundant means to withdraw water from the Tar River in the event the original intake pipes and screens are damaged or fail; and 3) providing multiple withdrawal elevations to increase operational flexibility in changing river conditions. The engineering services contract and budget for preliminary and final design for the Raw Water Pump Station Project – WCP 99 has previously been approved. GUC's consulting engineer, Brown and Caldwell, has completed the Preliminary Design Report (PDR) in the format necessary to apply for a State Revolving Fund (SRF) loan for the project. The next step is to submit an application along with the PDR and resolutions adopted by GUC and the City. The final design estimate of the total project cost prepared by the consulting engineer, Brown and Caldwell, is \$6,514,000. The SRF loan application for this project includes a required 2% fee of \$130,280, for a total loan request of \$6,644,280. At their meeting on September 16, the GUC Board adopted a resolution of assurances required for the SRF loan application and recommended similar action by the City Council.

Fiscal Note: No cost to the City of Greenville.

Recommendation: Adopt attached resolution of assurances for State Revolving Fund loan application.

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 [Resolution of Assurances for State Revolving Fund Loan](#)

RESOLUTION NO. 08-____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE
STATE REVOLVING LOAN FUND - RESOLUTION OF ASSURANCES, AGREEMENTS
AND AUTHORIZED REPRESENTATIVES

WHEREAS, the Federal Clean Water Act Amendments of 1987, Federal Safe Drinking Water Act Amendments of 1996, and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of drinking water treatment works; and

WHEREAS, the Greenville Utilities Commission of the City of Greenville has need for and intends to construct a drinking water treatment works project described as the Greenville Utilities Commission Raw Water Pumping Station Improvements; and

WHEREAS, the Greenville Utilities Commission of the City of Greenville intends to request state loan assistance for the project and has requested that the City Council of the City of Greenville adopt a resolution relating to this state loan assistance which approves the filing of an application, making the necessary assurances and agreements, and designating authorized representatives;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville:

1. That the City of Greenville, in conjunction with the Greenville Utilities Commission, will arrange financing for all remaining costs of the project, if approved for a State loan award.
2. That the City of Greenville, through the Greenville Utilities Commission, will adopt and place into effect on or before completion of the project, a schedule of fees and charges which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.
3. That the City of Greenville agrees to include in the loan agreement relating to the State loan award a provision authorizing the State Treasurer, upon failure of the City of Greenville or the Greenville Utilities Commission to make any scheduled repayment of the loan, to withhold from the City of Greenville or the Greenville Utilities Commission any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.
4. That the City of Greenville, through the Greenville Utilities Commission, will provide for efficient operation and maintenance of the project on completion of construction thereof.
5. The General Manager/CEO of Greenville Utilities Commission, or his designee(s), are hereby authorized to execute and file an application on behalf of the City of Greenville with the State of North Carolina for a loan to aid in the construction of the project

described above.

6. The General Manager/CEO of Greenville Utilities Commission, or his designee(s), are hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.
7. That the City of Greenville has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

ADOPTED this the ____ day of October, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk

CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified City Clerk of the City of Greenville, North Carolina does hereby certify: That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the Greenville City Council duly held on the ____ day of October, 2008; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of October, 2008.

(Signature of Recording Officer)

City Clerk



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Water system capital projects budget ordinance for Greenville Utilities Commission's Aquifer Storage and Recovery Wellhead Facilities Project

Explanation: The Aquifer Storage and Recovery (ASR) Wellhead Facilities project will provide the pumps, piping, chemical feed equipment, and instrumentation necessary to construct a fully operational ASR system in conjunction with the two existing wells at the site off Old Pactolus Road near the Liquefied Natural Gas Facility. Once complete, the project will allow Greenville Utilities to maximize water treatment plant efficiency by storing water during periods of low demand and recovering the stored water to meet peak demands and provide an emergency water supply.

The proposed Water Capital Projects Budget of \$1,572,000 includes funding for construction (\$929,138), a 10% construction contingency (\$94,195), construction administration, inspection and system testing (\$473,667), grant administration (\$45,000), and GUC installed water lines (\$30,000). Grants from the United States Economic Development Administration (\$703,000) and the North Carolina Rural Center (\$500,000) will be used to fund the project.

The project schedule calls for completion of wellhead construction in June 2009. Afterwards, there will be a period of cycle testing, where water is injected, withdrawn, and tested. Cycle testing will be completed by March 2010. GUC staff anticipates full operating and underground injection control permits will be issued by the State to GUC by May 2010.

At their meeting on September 16, the GUC Board adopted this proposed Water Capital Projects Budget and recommended similar action by the City Council.

Fiscal Note: No cost to the City of Greenville.

Recommendation: Adopt attached water capital projects budget ordinance.

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 [Water Capital Projects Budget - ASR Wellhead Project](#)

ORDINANCE NO. 08-_____

FOR WATER CAPITAL PROJECT BUDGET
AQUIFER STORAGE & RECOVERY (ASR) WELLHEAD FACILITIES PROJECT

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. Revenues. Revenues of Water Capital Project Budget, Aquifer Storage & Recovery (ASR) Wellhead Facilities Project, is hereby established to read as follows:

Revenue:

Economic Development Administration	\$703,000	
North Carolina Rural Center	500,000	
Capital Projects Fund Balance	<u>369,000</u>	
Total Revenue		<u><u>\$1,572,000</u></u>

Section 2. Expenditures. Expenditures of the Water Capital Project Budget, Aquifer Storage & Recovery (ASR) Wellhead Facilities Project, is hereby established to read as follows:

Expenditures:

Project Cost	<u>\$1,572,000</u>	
Total Expenditures		<u><u>\$1,572,000</u></u>

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

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the _____ day of _____, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Water system capital projects budget ordinance for Greenville Utilities Commission's Tar River Temporary Dam Drought Mitigation Project

Explanation: The Greenville Utilities Commission's drought mitigation contingency plan has been developed as a result of several preliminary engineering studies to include three basic components for the short and intermediate term: 1) installation of two additional, redundant raw water intake pipes in the Tar River at a lower elevation; 2) installation of a temporary dam in the Tar River during severe drought conditions to ensure adequate water over the intake pipes and/or block the progression of the salt water wedge; and 3) utilization of sand mine borrow pits near the Tar River as an alternate water supply if upstream river flow is not adequate to meet water supply needs.

Preliminary engineering work accomplished to date for the Tar River Temporary Dam Drought Mitigation project has identified three potential construction technologies and two potential locations for the dam construction. In order to proceed with the project, GUC staff needs to perform additional engineering to identify the preferred dam technology and location, develop an implementation plan, and submit the necessary permit applications including an environmental assessment document.

The GUC Board, at their meeting on September 16, adopted the Water Capital Projects Budget for this project and recommended similar action by the City Council.

Fiscal Note: No cost to the City of Greenville.

Recommendation: Adopt the attached water capital projects budget ordinance.

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 [Water Capital Projects Budget - Temporary Dam Drought Mitigation Project](#)

ORDINANCE NO. 08-_____

FOR WATER CAPITAL PROJECT BUDGET
TAR RIVER TEMPORARY DAM DROUGHT MITIGATION PROJECT

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. Revenues. Revenues of Water Capital Project Budget, Tar River Temporary Dam Drought Mitigation Project, is hereby established to read as follows:

Revenue:

Capital Project Fund Balance	<u>\$220,000</u>	
Total Revenue		<u><u>\$220,000</u></u>

Section 2. Expenditures. Expenditures of the Water Capital Project Budget, Tar River Temporary Dam Drought Mitigation Project, is hereby established to read as follows:

Expenditures:

Project Cost	<u>\$220,000</u>	
Total Expenditures		<u><u>\$220,000</u></u>

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

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the _____ day of _____, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Water system capital projects budget ordinance for Greenville Utilities Commission's Eastside Water Tank Rehabilitation Project

Explanation: The Greenville Utilities Commission's water distribution system has three elevated storage tanks that provide reserve water storage for emergency supply, peak demand periods, fire flow requirements, and to maintain adequate pressure in the system. The 1-million gallon capacity Eastside tank (Greenville Boulevard and 14th Street) was constructed in 1990 and has not been painted since construction.

The results of an analysis of the interior and exterior tank coatings of all three tanks by the certified corrosion specialist at S&ME revealed that the coatings have deteriorated and no longer adequately protect the structural steel from corrosion. S&ME recommended that GUC proceed with repainting the tanks in accordance with the Five-Year Capital Outlay Plan. The Eastside tank repainting is scheduled for the current fiscal year.

The project consists of surface preparation and coating application on the tank exterior, valve vaults, dry interior, wet interior, and tank logo. The project also includes the installation of a mixing system in each tank that will ensure uniform disinfectant residuals throughout the tank and assist in meeting regulatory requirements for minimum disinfectant residuals in the distribution system.

The proposed Water Capital Projects Budget of \$623,000 includes funding for painting (\$429,376), a 5% construction contingency (\$22,689), mixing modifications (\$60,000), and associated fees for contract administration and inspection (\$110,935). Funding for this project was included in the revenue bond issuance in June 2008.

At their meeting on September 16, the GUC Board adopted this Water Capital Projects Budget and recommended similar approval by the City Council.

Fiscal Note: No cost to the City of Greenville.

Recommendation: Adopt the attached water capital projects budget ordinance.

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 [Water Capital Projects Budget - Eastside Tank Rehab Project](#)

ORDINANCE NO. 08-_____

FOR WATER CAPITAL PROJECT BUDGET
EASTSIDE WATER TANK REHABILITATION PROJECT

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. Revenues. Revenues of Water Capital Project Budget, Eastside Water Tank Rehabilitation Project, is hereby established to read as follows:

Revenue:

Bond Series 2008	<u>\$623,000</u>	
Total Revenue		<u><u>\$623,000</u></u>

Section 2. Expenditures. Expenditures of the Water Capital Project Budget, Eastside Water Tank Rehabilitation Project, is hereby established to read as follows:

Expenditures:

Project Cost	<u>\$623,000</u>	
Total Expenditures		<u><u>\$623,000</u></u>

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

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the _____ day of _____, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Sewer system capital projects budget ordinance for Greenville Utilities Commission's Westside Pump Station and Force Main Project

Explanation: The existing Westside pump station and force main was constructed in the 1970's to provide service to the new Pitt County Memorial Hospital, ECU Medical School, and adjacent areas. Since that time, significant development has occurred within the designated Medical District Area and surrounding areas. As a result of this growth and the growth that is forecasted to occur in the future, the existing Westside pump station will not be adequate to meet future demand, and it is necessary to move ahead with the project to construct a new, larger Westside Regional Pumping Station.

In accordance with the recommendations of GUC's Wastewater Collection System Master Plan, the new Westside Regional Pump Station will be designed to accommodate wastewater flows from the Westside Service Area through the design year 2030. In addition, the station will be designed for ready expansion to provide additional capacity for growth beyond 2030.

The proposed Sewer Capital Projects Budget includes funding the engineering services work (\$874,400), land acquisition for the new pumping station site (\$425,000), and easements for the proposed force main and gravity sewer. Funding for this work and easement acquisitions was included in the June 2008 revenue bond issuance.

At their meeting on September 16, the GUC Board adopted the Sewer Capital Projects Budget and recommended similar approval by the City Council.

Fiscal Note: No cost to the City of Greenville.

Recommendation: Adopt attached Sewer Capital Projects Budget Ordinance.

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 [Sewer Capital Projects Budget Ordinance - Westside Pump Station & Force Main Project](#)

ORDINANCE NO. 08-_____

FOR SEWER CAPITAL PROJECT BUDGET
WESTSIDE PUMP STATION AND FORCE MAIN PROJECT

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. Revenues. Revenues of Sewer Capital Project Budget, Westside Pump Station and Force Main Project, is hereby established to read as follows:

Revenue:

Bond Series 2008	<u>\$1,300,000</u>	
Total Revenue		<u><u>\$1,300,000</u></u>

Section 2. Expenditures. Expenditures of the Sewer Capital Project Budget, Westside Pump Station and Force Main Project, is hereby established to read as follows:

Expenditures:

Project Cost	<u>\$1,300,000</u>	
Total Expenditures		<u><u>\$1,300,000</u></u>

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

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the _____ day of _____, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Budget ordinance amendment #4 to the 2008-2009 City of Greenville budget

Explanation: Attached is an amendment to the 2008-2009 budget ordinance for consideration at the October 6, 2008, City Council meeting. For ease of reference, a footnote has been added to each line item of the budget ordinance amendment, which corresponds to the explanation below:

A To allocate grant funds to Fire/Rescue from fiscal year 2007-2008 for swiftwater and urban searches (\$8,239).

B To allocate funds received from the NC Department of Crime Control and Public Safety to reduce gang-related crime and domestic violence. The award names are Integrated Community Anti-Gang Response (\$86,396) and Multi-Disciplinary Response Continuum (\$75,000). Both grants require 25% local matching funds. The Police Department budget contains \$14,399 for the Anti-Gang grant that can qualify as "in-kind" match. The remaining match funds of \$39,399 will be transferred from the General Fund contingency account.

Fiscal Note: The budget ordinance amendment affects the following fund: increase General Fund by \$169,635.

<u>Fund Name</u>	<u>Original Adopted Budget</u>	<u>Proposed Amendment</u>	<u>Adjusted Budget</u>
General Fund	\$ 71,507,424	\$ 169,635	\$ 71,677,059

Recommendation: Approve budget ordinance amendment #4 to the 2008-2009 City of Greenville budget.

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 [Budget Ordinance Amendments 2008 2009 776865](#)

ORDINANCE NO. 08-_____
CITY OF GREENVILLE, NORTH CAROLINA
ORDINANCE (#4) AMENDING ORDINANCE NO. 08-73

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section I. Estimated Revenues. General Fund, of Ordinance 08-73, is hereby amended by increasing estimated revenues in the amount indicated:

<u>Account</u>	<u>Original Adopted Budget</u>	<u>Proposed Amendment</u>	<u>Adjusted Budget</u>
Police Grants ^B	\$ -	\$ 161,396	\$ 161,396
Appropriated Fund Balance ^A	1,838,811	8,239	1,847,050
Total		<u>\$ 169,635</u>	

Section II. Appropriations. General Fund, of Ordinance 08-73, is hereby amended by increasing appropriations in the amount indicated:

<u>Department</u>	<u>Original Adopted Budget</u>	<u>Proposed Amendment</u>	<u>Adjusted Budget</u>
Fire/Rescue ^A	\$11,473,618	\$ 8,239	\$11,481,857
Police ^B	19,965,251	200,795	20,166,046
Total		<u>\$ 209,034</u>	

Section III. Appropriations. General Fund, of Ordinance 08-73, is hereby amended by decreasing appropriations in the amount indicated:

<u>Department</u>	<u>Original Adopted Budget</u>	<u>Proposed Amendment</u>	<u>Adjusted Budget</u>
Contingency ^B	\$ 160,692	\$ 39,399	\$ 121,293

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

Section V. This ordinance will become effective upon its adoption.

Adopted this 6th day of October, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Various tax refunds

Explanation: The Director of Financial Services reports the refund of the following taxes:

<u>Payee</u>	<u>Description</u>	<u>Amount</u>
First American Real Estate Tax Service	Refund of City Taxes Paid	\$315.07
BMW Financial Services	Refund of City Taxes Paid	\$140.90
VT Inc sa Trustee world Omni Lt	Refund of City Taxes Paid	\$144.21
Daimler Crysler Financial Services	Refund of City Taxes Paid	\$119.66
Rainy & Kaliff Eyrich	Refund of City Taxes Paid	\$221.86
First American Real Estate Tax Service	Refund of City Taxes Paid	\$205.21
Wayne Sheridan	Refund of City Taxes Paid	\$172.49

Fiscal Note: The total amount to be refunded is \$1,319.40.

Recommendation: Approve the reported tax refunds.

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City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item:

Ordinance requested by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) has monthly sales of prepared and/or packaged food in a ready-to-consume state in excess of thirty (30) percent of the total gross receipts for such establishment and such sales are not less than seventy-five thousand dollars (\$75,000.00) for such establishment for each quarter-year period of each year, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready-to-consume state in the definitions for conventional restaurant and fast food restaurant

Explanation:

In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: (i) food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, (iv) a membership, cover or other minimum charge for admittance or service during regular or special periods of operation, and (v) any other product, item, entertainment, service, or gratuity which is not specified as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state. For purposes of determining compliance, the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.

This proposed "food sales percentage requirement" amendment only applies to the definition of “conventional restaurant” and does not affect or change the

definition of “fast food restaurant”. For an establishment to qualify as a fast food restaurant, such establishment will require sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of fifty (50) percent of the total gross receipts for such establishment during any month.

Under the zoning regulations, the primary distinction between a “restaurant” and a “public or private club” is the minimum percentage of food sales to total sales requirement applicable to restaurants and the option of a “club” to require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation.

The prohibition of charging a membership or admittance fee and the minimum percentage of food sales to total sales requirement for restaurants is included under subsections (1) and (2) of the City’s definition of restaurant (conventional and fast food). The proposed ordinance will not delete or modify subsection (1) – restaurants will not be permitted to charge a membership or admittance fee under any circumstances. Under the proposed ordinance, a public or private club may continue to charge a membership or admittance fee.

Zoning regulations typically regulate land use activities as either “principal use” or “accessory use”. A “principal use” is simply defined as “the primary purpose for which a building, structure or lot is designed, arranged or intended”. An “accessory use” is defined by its association with an on-site principal use, specifically by combination of several criteria including (i) dependent to, (ii) incidental and subordinate to, and (iii) customarily associated with, the principal use. When a second activity is located on a lot that already contains a principal use and the second activity does not qualify under the definition of “accessory use”, the second use is classified as an additional “principal use”. More than one principal use may be located on one lot. This dual-use scenario is allowed provided both principal uses are permitted in the applicable zoning district. Dual or greater multi-principal use is a common occurrence in planned centers, such as a traditional shopping center. Each principal use may have one or more associated accessory uses, provided the principal use and accessory uses comply with the definitions for each. On the other hand, an accessory use cannot be allowed as a matter-of-right absent a permitted principal use to which it is determined to be accessory.

The qualification of a principal use is therefore based on the determination of the “primary purpose” of the structure or lot. Absent specific standards, staff would rely on the following in addition to other considerations: the comparison of (i) the percentage of building floor area and/or lot area devoted to the various uses, (ii) the percentage of employees devoted to the various uses, and the percentage of customers for each, and (iii) the percentage of total revenue of the various uses in the case of a business establishment. For purposes of Greenville’s zoning regulations, the qualification criteria for both a “restaurant” and a “club” is further established by the definition for each use and includes a percentage of food sales to total sales standard – 50% in the case of a restaurant.

For purposes of alcoholic beverage control, the State currently qualifies as a restaurant any establishment that has revenue from food sales in excess of 30%

of total sales during any month. The State requirement at one time (mid-1990's) mirrored the current City standard; however, the percentage was lowered by the State to allow more locations to qualify for a mixed beverage license under the auspices of a restaurant. Prior to State adoption of the reduced requirement, establishments not meeting the 50% rule had to qualify as a "private membership club".

Staff is of the opinion that the State's current 30% ABC law has no direct relation to the establishment or qualification of a principal use under zoning and should not be utilized to determine the establishment of a "restaurant". The State has a complete system for regulating the sale and consumption of alcoholic beverages and, as a result, the City cannot further regulate alcohol sales. The City may, however, define a restaurant for the purpose of zoning regulation, and this local zoning authority does not override or conflict with the State's definition of restaurant for the sale of alcohol. The State's definition of restaurant and the City's definition and regulation of restaurant are independent in purpose and application.

In summary, under the City's zoning regulations, both "restaurant" and "public or private club" are clearly defined. A restaurant is an establishment in which the principal use is the sale and/or consumption of food – a 50% food sales requirement applies and a minimum admittance fee or cover charge is not allowed. A public or private club is an establishment in which the principal use is entertainment and which cannot qualify under the definition of restaurant.

Restaurants may sell alcoholic beverages; however, for purposes of qualification as a restaurant, the sale and consumption of alcoholic beverages is not considered a food product and does not count toward the 50% rule requirement. The State's alcohol control agency (ABC and ALE) is responsible for periodic inspection of licensed establishments for the purpose of monitoring compliance with the State's 30% rule and other matters. The City routinely requests and receives copies of the ALE inspection reports and utilizes such information in determining the use qualification of the licensed establishments.

Conventional restaurants, as currently defined, are allowed as a permitted and/or special use in the following zoning districts: MS, MO, MCG, MCH (medical), OR (office-residential), all five (5) commercial districts and all four (4) industrial districts. Public or private clubs, as currently defined, are allowed as a special use in the following zoning districts: CD, CDF, CG, and CH (commercial) only. If the minimum food sales standard is reduced from 50% to 30%, the establishments that are currently not qualified as a restaurant solely because of the 50% rule, but which can meet the 30% rule, will then become a permitted or special use option in ten (10) additional zoning districts. Such a change will facilitate the establishment of currently considered principal use public/private clubs, under the relaxed definition of restaurant, in a greater variety of locations, many heretofore not considered appropriate for such use. Specifically, the introduction of such (30% qualified) establishments in the medical districts, the CN (neighborhood commercial), O (office only district) and all industrial districts is not in keeping with the purpose and intent of those districts.

Due to the anticipated negative impact of this proposed change, staff is of the

opinion that the requested amendment is not in compliance with the comprehensive plan, and staff recommends denial of the request to amend the definition of “conventional restaurant”.

The public hearing on this requested ordinance amendment was conducted on June 12, 2008. At the conclusion of the public hearing the City Council voted to continue the item to the August 14, 2008 meeting and requested staff to prepare a report providing additional information. On June 13, 2008 staff provided a memorandum to the City Council listing the additional information that had been requested during the June 12, 2008 meeting and asking the City Council to inform staff of any other information needed relative to this item. Since no other information was requested by City Council, the report was completed based on the June 13, 2008 listing and delivered to the City Council on July 25, 2008. Based on a recommendation from City staff and the concurrence of the petitioner, on August 14, 2008 the City Council continued the item to September 11, 2008.

An additional public hearing on this requested ordinance amendment was conducted on September 11, 2008. City Council voted to continue the item to October 6, 2008.

Fiscal Note: No direct cost to the City.

Recommendation: In staff’s opinion, the request is not in compliance with Horizons: Greenville’s Community Plan.

The Planning and Zoning Commission recommended denial of the ordinance amendment at their April 15, 2008 meeting.

If City Council determines to approve the amendment request, a motion to adopt the attached ordinance will accomplish this. The ordinance includes the statutorily required statement describing whether the action taken is consistent with the comprehensive plan and explaining why Council considers the action taken to be reasonable and in the public interest.

If City Council determines to deny the amendment request, in order to comply with this statutory requirement, it is recommended that the motion be as follows: Motion to deny the requested text amendment and to make a finding and determination that the denial of the text amendment request is consistent with the adopted comprehensive plan and that the denial of the text amendment request is reasonable and in the public interest due to the denial being consistent with the comprehensive plan and, as a result, the denial furthers the goals and objectives of the comprehensive plan.

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Attachments / click to download

 [Restaurant definition ordinance applicant substitute 747492](#)

 [Jeremy Spengeman minutes 3 18 08 751524](#)

 [Yellow Sheet Memo to Mayor and CCM re Preemption of Zoning Ordinance Dr. Unk s 782843](#)

ORDINANCE NO. 08-__
AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the General Statutes of North Carolina, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on June 12, 2008 at 7:00 p.m., in the City Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance amending the City Code; and

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the City Council does hereby find and determine that the adoption of the ordinance involving the text amendment is consistent with the adopted comprehensive plan and that the adoption of the ordinance involving the text amendment is reasonable and in the public interest due to its consistency with the comprehensive plan and, as a result, its furtherance of the goals and objectives of the comprehensive plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1: That Title 9, Chapter 4, Article B, Section 9-4-22, of the City Code, is hereby amended to delete subsection “(2)” of the definition of “Restaurant, conventional” in its entirety and substitute the following subsection “(2)” as follows:

- “(2) Meets one (1) or more of the following criteria: (i) has monthly sales of prepared and/or packaged food in a ready to consume state in excess of fifty (50) percent of the total gross receipts for such establishment, or (ii) has monthly sales of prepared and/or packaged food in a ready to consume state in excess of thirty (30) percent of the total gross receipts for such establishment and such sales are not less than seventy-five thousand dollars (\$75,000.00) for such establishment for each quarter-year period of each year. For the purpose of this subsection (2), quarter-year periods shall be as follows: (i) January, February, and March, (ii) April, May, and June, (iii) July, August, and September, and (iv) October, November, and December. When a restaurant establishment is in operation for less than any quarter-year period, the minimum amount of the sales of prepared and/or packaged food requirement during that quarter-year period shall be reduced from seventy-five thousand dollars (\$75,000.00) so that it is directly proportional to the number of days of operation during that quarter-year period in comparison to the number of days during that quarter-year period. For purposes of this subsection (2), days of operation shall be the total number of days, including all weekdays, between and including the date of initial operation during that quarter-year period and the last date of that quarter-year period. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the

establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, (iv) a membership, cover or other minimum charge for admittance or service during regular or special periods of operation, and (v) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.”

Section 2: That Title 9, Chapter 4, Article B, Section 9-4-22, of the City Code, is hereby amended to delete subsection “(2)” of the definition of “Restaurant, fast food” in its entirety and substitute the following subsection “(2)” as follows:

“(2) Has monthly sales of prepared and/or packaged food in a ready to consume state in excess of fifty (50) percent of the total gross receipts for such establishment. In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready to consume state, the following sales shall be included: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, (iv) a membership, cover or other minimum charge for admittance or service during regular or special periods of operation, and (v) any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready to consume state. For purposes of determining compliance under this subsection (2), the zoning enforcement officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.”

Section 3: That all ordinances and sections of ordinances in conflict with this ordinance are hereby repealed.

Section 4: That this ordinance shall become effective upon its adoption.

ADOPTED this 6th day of October, 2008.

Patricia C. Dunn, Mayor

ATTEST:

Wanda T. Elks, City Clerk

Excerpt from the Draft Planning and Zoning Commission meeting minutes (4/15/08)

REQUEST BY JEREMY SPENGE MAN (as amended by the applicant) – DENIED

Request by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) has monthly sales of prepared and/or packaged food in a ready to consume state in excess of thirty (30) percent of the total gross receipts for such establishment and such sales are not less than seventy-five thousand dollars (\$75,000.00) for such establishment for each quarter-year period of each year, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready to consume state in the definitions for conventional restaurant and fast food restaurant.

Chairman Tozer stated that a public hearing was held in February for this request. Adjustments were requested and made. Another public hearing was held in March with additional adjustments requested. Chairman Tozer stated he did not believe there was a need to hold another public hearing. He gave the commission members an opportunity to ask Harry Hamilton any questions. No questions were asked. Chairman Tozer opened the discussion to the board. Mr. Ramey stated he felt it would be wrong to change the criteria given that the city and the people in the community were against it.

Motion was made by Mr. Baker to approve the proposed amendment, to advise that it is consistent with the comprehensive plan or other applicable plans, and to adopt the staff report which addresses plan consistency and other matters. Motion was seconded by Mr. Randall. Bell, Baker, Lehman and Randall voted in favor of the request. Gordon, Moyer, Wilson and Ramey voted in opposition to the request. Chairman Tozer cast the tiebreaker vote in opposition of the motion to approve the amendment. Motion to approve failed 5 to 4.

City Attorney Dave Holec asked for a reverse motion to deny the request.

Mr. Ramey made a motion to deny the proposed amendment, to advise that it is inconsistent with the comprehensive plan or other applicable plans, and to adopt the staff report which addresses plan consistency and other matters. Motion was seconded by Mr. Moyer. Gordon, Moyer, Wilson and Ramey voted in favor. Bell, Baker, Lehman and Randall voted in opposition. Chairman Tozer cast the tiebreaker vote in favor of the motion to deny the amendment. Motion to deny passed 5 to 4. The request is therefore recommended for denial.

[See the 3/18/08 Planning and Zoning Commission public hearing minutes – pg 2]

Excerpt from the Planning and Zoning Commission meeting minutes (3/18/08)

REQUEST BY JEREMY SPENGE MAN (as amended by applicant) - CONTINUED TO THE APRIL 15, 2008 MEETING

Request by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) more than thirty (30) percent of total gross receipts and such sales are not less than twenty thousand dollars (\$20,000.00), for such establishment for each month, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready to consume state in the definitions for conventional restaurant and fast food restaurant.

This amendment was continued from the February Planning and Zoning meeting. Mr. Hamilton read the substitute amendments for consideration. Mr. Hamilton stated that staff had revised the ordinance and the ordinance amendment report to reflect those changes. Mr. Hamilton stated the following items could be used in determining the portion of sales to be attributed to the sale of foods in a ready-to-consume state: food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, packaged foods sold to accompany the meal and non-alcoholic beverages sold to accompany the meal. Mixed alcoholic beverages, including the mixer, any other alcoholic beverages, grocery items not ordered and purchased with the meal, a membership cover or other charge for admittance, and any product, item, entertainment, service or gratuity are not to be included in the sales. Mr. Hamilton stated the \$20,000 food sales rule was based on an estimated average of food sales per month. Mr. Hamilton gave comparisons to other similar restaurants, noting that the \$20,000 food sales requirement was significantly lower than the food sales of Buffalo Wild Wings and Pirates Pub.

Mr. Randall asked how many seats were in Pirates Pub. Mr. Hamilton stated he did not know exactly how many seats it held; however, it was not as large as Dr. Unk’s.

Attorney Phil Dixon, representing the applicant, spoke on behalf of the request.

Mr. Dixon stated the applicant was one of several owners of Dr. Unk’s and Basil’s restaurants. Mr. Dixon stated that neither restaurant had ever had any ABC citations nor had Basil’s had any city citations. He stated that Dr. Unk’s had recently received a city citation and promptly paid the \$50 fine. Mr. Dixon stated that the other university cities in North Carolina have the 30% rule that they are proposing. Mr. Dixon clarified that the request was not for \$20,000/month, but for \$250,000/year, of food sales. Mr. Dixon stated that a number of restaurants in the area are not meeting the rule that have not been cited and felt they were being treated unfairly. Mr. Dixon stated that Dr. Unk’s was in the top 10 purchasers of Cisco Foods for the Greenville area. Mr. Dixon stated in order to stay in business, they could reduce the cost of alcoholic beverages to meet the 50% rule,

but felt that was the opposite of what the city wanted and would encourage people to drink more. Mr. Dixon stated he felt the request was reasonable.

Mr. Baker asked if any complaints had been reported on the restaurant.

Mr. Dixon stated they had not, other than the recent citation from the city regarding the 50% rule.

Mr. Baker asked if Mr. Dixon had met with the city staff since the last meeting.

Mr. Dixon stated he had not, yet he had requested information from Mr. Hamilton and it had been submitted to him.

Mr. Baker asked what percentage of food sales was achieved.

Mr. Spengeman as well as Mr. Hamilton stated it was just over 30%.

Mr. Hamilton stated the city had a formula and it was stated in the ordinance and the existing regulations were included in the report. In order to qualify as a restaurant you must have more than 50% of your total gross receipts from the sale of food. Mr. Hamilton stated that the city's ordinance included language directly from the ABC regulations. Mr. Hamilton also stated that all businesses that sell alcoholic beverages are required to maintain 3 full years of records on the premises and the ABC Commission can check this at any time.

Mr. Ramey asked if Mr. Hamilton considered the current ordinance adequate.

Mr. Hamilton stated he did. He stated that the city did not go out on a monthly basis and check to see if people are meeting the standards unless there was an operational complaint. A number of restaurants had been checked in the last two years and a significant number had applied for Special Use Permits because they were in zones that allowed public clubs. Mr. Hamilton stated the city had received a number of complaints that Dr. Unk's was charging an admission charge. He stated that the zoning for this restaurant does not allow for the Special Use Permit for the public/private club. Mr. Hamilton stated in staff's opinion this was a zoning issue and this area did not allow this type of use for this zoning. Mr. Hamilton stated the city recommends staying with the 51% rule.

Mr. Tozer asked Mr. Hamilton if he was comfortable with the way the amendment was worded.

Mr. Hamilton stated that the substitute amendment put in the \$20,000 exemption in order to monitor the food sales on a monthly basis.

Mr. Moyer stated he felt food sales would fluctuate during certain months due to the city being a university town, which may affect the monthly totals.

Mr. Hamilton stated the city would issue a warning prior to issuing a citation and that being out of compliance for 30 days was not the issue. He stated that Dr. Unk's had been out of the 50% threshold for some time.

Mr. Randall asked if excluding the office and medical districts would be appeasable.

Mr. Hamilton stated that would exclude the restaurants from those districts and would be counterproductive.

Jeremy Spengeman, applicant, spoke in favor of the request. Mr. Spengeman stated he wanted to be responsible and work with the city to resolve the problem and stay in business.

Mr. Wilson asked Mr. Spengeman if he was aware of what could happen when he opened the restaurant in a neighborhood zone.

Mr. Spengeman said he was not, and had he known, he would have contacted an attorney prior to purchasing the property.

Jean Winstead spoke in favor of the request.

Linda Vlahos, business partner to Jeremy Spengeman, spoke in favor of the request.

John Gresham spoke in opposition to the request.

Mr. Baker asked if there had been any complaints with the neighbors.

Mr. Gresham stated that they did have disruptions late at night.

Mrs. Basnight asked what time the restaurant closed.

Mr. Spengeman replied that they closed at 2 a.m.

Chris Mansfield, president of the Tar River University Neighborhood Association, spoke in opposition to the request.

Myron Casper spoke in opposition to the request.

Mr. Dixon spoke in favor in rebuttal. Mr. Dixon stated that the request was for 30% or food sales of \$250,000, not \$20,000/month and stated that the board should be voting on the \$250,000, not the \$20,000/month.

Mr. Wilson asked Mr. Dixon if the city records had been checked.

Mr. Dixon stated they had and no complaints were found.

Mr. Mansfield spoke in opposition in rebuttal.

Mr. Tozer closed the public hearing.

City Attorney Dave Holec stated the amendment was made at \$250,000/year and was translated by the staff to \$20,000/month in order to make it more enforceable. Mr. Holec stated that Mr. Hamilton did send the draft with the \$20,000 exemption to Mr. Dixon several weeks before the meeting and had not heard back from Mr. Dixon. Mr. Holec stated that the board could vote on the \$20,000/month or the \$250,000/year, depending on what the applicant wanted.

Mr. Ramey asked if he was correct in thinking that the board could not change what was presented.

Mr. Holec said that was correct and that is what they were trying to clarify.

Mr. Dixon stated either was acceptable to the applicant.

Mr. Bell asked if the discussion could be tabled.

Mr. Dixon stated he was in favor of tabling the discussion in order to get the wording right.

Mr. Ramey made a motion to carry the request forward for another month. Motion was seconded by Mr. Bell. Motion carried unanimously.

Excerpt from the Planning and Zoning Commission meeting minutes (2/19/08)

REQUEST BY JEREMY SPENGE MAN – CONTINUED TO THE MARCH 18, 2008 MEETING

Request by Jeremy Spengeman to amend the definition of “conventional restaurant” to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from fifty (50) percent of total gross receipts to thirty (30) percent of total gross receipts, for purposes of qualifying as a principal use restaurant under the zoning regulations.

TO: Mayor and City Council Members

FROM: David A. Holec, City Attorney

DATE: August 29, 2008

SUBJECT: Possible Preemption of Zoning Ordinance Definition of Restaurant

At its August 11, 2008, meeting, City Council continued the request of Jeremy Spengeman to amend the definition of a conventional restaurant in the Zoning Ordinance so that a review could be completed as to the City's authority relating to its current definition of a restaurant in the Zoning Ordinance. The review was to focus upon the portion of the definition in the Zoning Ordinance which specifies a different percentage of the minimum food sales than the percentage established by State statute for restaurants which have obtained an ABC permit. The review was initiated as a result of the NC ABC Commission's assertion that the Zoning Ordinance definition of a restaurant which specifies a certain percentage of food sales required for an establishment to qualify as a restaurant that is different than the percentage established by State statute for the purpose of receiving an ABC permit is preempted by the State statute.

In summary, although there is a substantial argument to support an assertion that there is a preemption of the City's definition of a restaurant as a result of the State statutory definition for ABC permit purposes, there is also a valid legal argument to refute an assertion that there is such a preemption. There has been no conclusive determination that the City's authority to define a restaurant in this manner is preempted. A conclusive determination would result from an enforcement action by the City if a defense to the enforcement action asserted the issue of preemption. In my opinion, the City could prevail in its enforcement action and overcome a defense that there is preemption, however, such a result is not guaranteed.

State Regulation of Alcohol Sales

The North Carolina General Assembly has established the laws relating to the sale of alcohol by the adoption of Chapter 18B of the North Carolina General Statutes. G.S. 18B-100 states that the intent of Chapter 18B is to "establish a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina" and that "except as provided in Chapter 18B, local ordinances establishing different rules on the manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages, or requiring additional permits or fees, are prohibited."

G.S. 18B-801 provides that the ABC Commission issues all ABC permits and that the Commission has the sole power to determine the suitability and qualifications of an applicant for

a permit and also has the authority to determine the suitability of the location to which the permit may be issued.

G.S. 18B-901 further provides that when the Commission issues a permit, it is to be satisfied that the applicant is a suitable person for the permit and that the location is a suitable place for the permit and that a factor that the Commission shall consider in making these determinations is the zoning laws. Although the Commission is to consider zoning laws, it is not required to follow them in making permitting decisions.

City Zoning Authority

The City's authority to act is derived from action by the North Carolina General Assembly. G.S. 160A-381 specifically grants to the City zoning authority including the authority to regulate the location and use of buildings, structures, and land. G.S. 160A-382 specifically authorizes the City to divide its territorial jurisdiction into districts in which a variety of uses are permissible and in which the use of buildings, structures, or land are regulated.

There are limitations on City ordinance making power even when there is a specific grant of authority. G.S. 160A-174 provides that a City ordinance must be consistent with the laws of North Carolina and that an ordinance is not consistent with the laws of North Carolina when the ordinance purports to regulate a field for which a State statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.

State Definition of Restaurant

G.S. 18B-1000(6) defines a restaurant, for ABC permit purposes, as an establishment substantially engaged in the business of preparing and serving meals with the gross receipts from food and nonalcoholic beverages to be not less than 30% of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. The 30% rule was established by a 2003 Act of the General Assembly. Prior to 2003, the percentage was established by a 1994 Act of the General Assembly to be not less than 40%. Prior to 1994, the statutory provision was that the establishment's gross receipts from food and nonalcoholic beverages shall be greater than the gross receipts from alcoholic beverages.

Zoning Ordinance Definition of Restaurant

As it relates to the percentage sale of food, the Zoning Ordinance defines a restaurant as an eating establishment open to the general public which has sales of prepared and/or packaged food in a ready to consume state in excess of fifty percent (50%) of the total gross receipts for such establishment during any month. In addition to the higher percentage, the Zoning Ordinance differs from the State ABC permit definition in that the percentage applies to all gross receipts not just to sales of food and beverages (both alcoholic and nonalcoholic) and that it is neutral as to alcohol by its express terms in that it does not specify alcohol sales as being limited. So, for example, this definition would be applied to an establishment which sells prepared food and other items but not alcoholic beverages so that it would not be classified as a restaurant if the sales of prepared foods was less than 50% – such as Barnes and Nobles Bookstore (with its café

in the book store) or Target (its small eating area in a department store) or Carmike Movie Theatre (with its concession stand in the theatre). Conversely, an establishment which sells prepared food and other items but not alcoholic beverages would still be classified as a restaurant provided that its sales of prepared foods is greater than 50% - such as Cracker Barrel (with its gift shop in a restaurant).

In addition to the percentage of food sales requirement, the Zoning Ordinance definition of a conventional restaurant also contains other provisions which are not included in the definition of a restaurant for ABC permit purposes. This includes provisions relating to providing table cleaning and clearing (busboy) services, not offering drive-in attendant services, and not charging a minimum charge for admittance (cover charge).

The purpose of the definition is to ensure that the principal purpose of the establishment which wants to qualify as a restaurant is to provide food service.

City Position Through the Years

The Zoning Ordinance definition of a restaurant relating to the 50% percentage has been in effect since 1991. At that time, the State definition of a restaurant for ABC permit purposes required that an establishment's gross receipts from food and nonalcoholic beverages were to be greater than its gross receipts from alcoholic beverages. When the State changed its definition of restaurant for ABC permit purposes to 40% in 1994 and 30% in 2003, there was a deliberate decision administratively to not propose an amendment to the Zoning Ordinance definition to comply with the State's definition. In applying the Zoning Ordinance, the City's position has been that the Zoning Ordinance definition of restaurant can be enforced as it relates to the permissible location of a restaurant. The City's position has been that the State's current lower percentage provided by ABC law has no direct relation to the establishment or qualification of a principal use under zoning and should not be utilized to determine the establishment of a restaurant. The City acknowledges that the State has a complete system for regulating the sale and consumption of alcoholic beverages and, as a result, the City cannot regulate alcohol sales. The City's position is that the City may, however, define a restaurant for the purpose of zoning regulations, and this local zoning authority does not override or conflict with the State's definition of restaurant for the sale of alcohol. In other words, the State's definition of restaurant and regulation of alcohol sales and the City's definition and regulation of a restaurant are independent in purpose and application.

Court Decisions

Two North Carolina Court decisions have prohibited local governments from imposing zoning restrictions on alcohol sales which are more restrictive than those applied by State law. In the Stanly v. Winston-Salem case, it was decided that a City ordinance could not override a State provision which allowed wine sales. In this case, the City ordinance said that a business which is nonconforming from a zoning perspective could not sell wine. In Melkonian, the Court determined that the decision by the ABC Commission to grant a permit for alcohol sales preempted a City's decision to deny a special use permit to operate a tavern and the resulting non-issuance of a city beer permit. The basis of these decisions is that local ordinances are

preempted by State law when the State law provides a complete regulatory scheme relating to the sale of alcohol. However, both of the local regulations determined to be preempted specifically addressed the sale of alcohol - - - the sale of wine in one case and the operation of a tavern and the non-issuance of a city beer permit in the other case.

Preemption

Unless either Mr. Spengemen complies with the City's Zoning Ordinance or City Council determines to amend its Zoning Ordinance definition of a restaurant so that the percentage of food sales coincides with the State's percentage for ABC permit purposes, preemption of the City's Zoning Ordinance definition is an issue which will ultimately be addressed in this matter. The issue of preemption can be raised as a defense if the City proceeds with an enforcement action to secure compliance with the terms of the current ordinance. The issue will be the scope of the preemption. In this case, the issue will be whether the preemption extends to a provision of a zoning ordinance which is neutral on the issue of alcohol sales and does not prohibit alcohol sales. Preemption should not be for all zoning ordinance provisions (such as parking requirements, setbacks, etc.) and should not be for all ordinances (such as the noise ordinance, anti-littering ordinance, etc.). Preemption may only be limited to ordinances which regulate alcohol sales and which are the subject of statutory and regulatory provisions of the ABC Commission.

Purpose of Regulation

The purpose of the definition of a restaurant in the Zoning Ordinance is to ensure that the establishment which is classified as a restaurant is truly a restaurant. This is because of the consequences which result from determining that a particular establishment is a restaurant - - - it can be located in certain areas where a restaurant is appropriate but which may not be appropriate for a different use which has more of an impact on adjacent uses and the neighborhood within which its located. This would include the amount of activity at the location, the parking demands, the noise generated, the litter generated, and similar issues. Although the ABC Commission has the authority to regulate alcohol sales, regulations relating to the proper location of a restaurant and other more intensive uses is properly regulated by zoning ordinances established by the local government. The impacts caused by an establishment which has as its principal purpose providing food service are different than an establishment which has as its principal purpose providing entertainment service while both such establishments may or may not sell alcoholic beverages. Zoning regulations are designed to address these differing impacts with one of the purposes of zoning being to ensure that the community's land uses are properly situated in relation to one another so that one use does not become a nuisance for its neighbors.

Discussion with Other Authorities

I have spoken with the NC ABC Commission Chief Counsel Fred Gregory concerning the preemption issue in this matter. Mr. Gregory expressed to me his opinion that the City's Zoning Ordinance provision relating to the percentage of food sales which an establishment is to have to

qualify as a restaurant is preempted by the statutory definition of a restaurant for ABC permit purposes.

Additionally, I have spoken with David Owens of the UNC School of Government concerning the preemption issue in this matter. Professor Owens expressed to me his opinion that the scope of the preemption by ABC laws has not been clearly established by statute or court decisions and that a provision similar to the City's Zoning Ordinance provision relating to the percentage of food sales which an establishment is to have to qualify as a restaurant may be able to withstand a challenge of preemption by the statutory definition of a restaurant for ABC permit purposes.

Options

The options for City Council in this matter are as follows:

- (1) Initiate an amendment to the City's Zoning Ordinance definition of a restaurant so that the percentage of food sales coincides with the State's percentage for ABC permit purposes. If this is done, Council may also want to consider initiating an amendment to the Zoning Ordinance which will delete a restaurant as a permitted use in the CN Neighborhood Commercial District. Existing establishments would be allowed to continue to operate as non-conforming uses but new restaurants at other locations would not be able to be established as a result of the City being able to state on the Zoning and Compliance Form which is submitted to the ABC Commission in connection with the ABC permit application process that a restaurant is not in compliance with its zoning regulations.
- (2) Approve the amendment proposed by Mr. Spengeman. If the proposed amendment is approved, then Mr. Spengeman's establishment will be in compliance.
- (3) Deny the amendment proposed by Mr. Spengeman. If the proposed amendment is not approved and Mr. Spengeman's establishment and other establishments do not comply with the terms of the existing ordinance, then enforcement actions by the City would be initiated. An enforcement action would be a civil suit in Pitt County Superior Court seeking an order that the property be brought into compliance with the provisions of the Zoning Ordinance.



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Presentations by Boards and Commissions

- a. Recreation and Parks Commission
- b. Pitt-Greenville Airport Authority
- c. Police Community Relations Committee

Explanation: The Recreation and Parks Commission, Pitt-Greenville Airport Authority, and Police Community Relations Committee will make their annual presentations to City Council at the October 6, 2008 meeting.

Fiscal Note: N/A

Recommendation: For information only; no action recommended

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City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Acquisition of parcels for the Intermodal Bus Transportation Center Site

Explanation: The Intermodal Transportation Center Steering Committee was created in 2007 for the purpose of providing broad input and representation in the intermodal site selection and program design process. A list of the members is attached. The Steering Committee met with City Staff and Ken Mayer of Moser, Mayer and Phoenix (city's project consultant), on September 26, 2008.

The meeting's purpose was to receive a report from Ken Mayer, project transportation consultant, and City Staff about the completion of the Phase I Environmental Site Assessment and whether the project is ready to move forward with the acquisition activities. Following a presentation by Ken Mayer and a report from Thom Moton, Assistant City Manager, the Steering Committee unanimously approved a recommendation that the City Council be requested to authorize formal acquisition of the parcels.

Steering Committee members Robert Thompson and Peg Gemperline will present this request to the City Council.

The parcels are bordered by the following streets: Cotanche, East 8th, East 9th and Evans. Acquisition activities will be regulated by federal requirements.

Approval of this request is consistent with the City Council's 2008-09 Goal #4, Objective C, wherein:

- Action Item #3: Continue process for constructing Intermodal Transportation Center by completing site selection process and development of a conceptual plan; and
- Action Item #4: Continue process for constructing Intermodal Transportation Center by completing land acquisition and building design.

The Phase I Environmental Site Assessment (ESA) Report For: Proposed Multimodal Center is attached. This attachment excludes the referenced

appendices, which are very large files. A complete copy of the report and all of the appendices can be found at the City's Intermodal Bus Transportation Center website at www.greatnc.com.

Fiscal Note:

Federal-state funds will pay 90% of land acquisition costs and the City will be required to pay 10%. The City's share is available in the 2008-09 Capital Improvement Program budget. All parcels will be appraised and the offer prices will be established.

Recommendation:

Approve the Steering Committee's recommendation that City Staff be authorized to begin the formal acquisition phase of the Intermodal Bus Transportation Center development.

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 [ITC_Steering_Committee_Original_788874](#)

 [IT ESA Final Report](#)

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***Replaced by Mike Kozak, Assistant Director, NCDOT/PTD

PHASE I
ENVIRONMENTAL SITE ASSESSMENT (ESA)
REPORT FOR:
Proposed Intermodal Bus Transportation Center
Greenville, NC 27858

SUBMITTED TO:
Ken Mayer
Moser Mayer Phoenix Associates
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Greensboro, NC 27401

SUBMITTED BY:
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NFE Project No. 07-100

August, 2008

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EXECUTIVE SUMMARY

NFE Technologies, Inc., (NFE) has completed this limited Phase I, Environmental Site Assessment (ESA) for properties located in the blocks bounded by Evans St., 8th St., Cotanche St., and 9th St. in Greenville, North Carolina. NFE is pleased to submit this report of our findings to Moser Mayer Phoenix Associates, attention Mr. Ken Mayer.

This Phase I ESA was conducted in accordance with the *American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process (E 1527-00)*. The scope of work conducted by NFE included a review of existing records, onsite and area reconnaissance. NFE also performed a site reconnaissance to record and photograph current site conditions with specific regard to land use or conditions that would indicate the past or current release of hazardous substances.

The review of recorded site history and background information focused on the potential for a release of hazardous materials onto the site from properties adjacent to the property. After thorough investigation, NFE has concluded that there appears to be little evidence of hazardous material adjacent to the site. The potential for impact from these and other sources appears to be low. Most environmental concerns in the area are related to underground petroleum storage tanks. Many of these sites are at the same or lower elevation to the target property.

Within the target property boundaries there is apparently at least one remaining underground heating oil storage tank. This has not been identified as leaking and is not registered due to its residential nature. Upon demolition of the structures this tank will have to be removed and some contamination may be found beneath it. Other hidden heating oil tanks may exist on other parcels within the target site. Exploration for potential contamination from underground storage tanks is beyond the scope of this investigation.

1.0 INTRODUCTION

1.1 Project Description and Scope of Work

NFE Technologies, Inc. was retained by Moser Mayer Phoenix Associates to perform this limited Phase I Environmental Site Assessment (ESA) on the properties located at the proposed site of the multimodal transportation center, Greenville, NC. The ESA was conducted in support of proposed property purchase

This Phase I ESA was conducted in accordance with the *American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessment (E 1527-05)*. Phase I ESA activities included the following scope of work:

- Identification of previous land uses or occupancies of the properties;
- Research of federal, state, and local environmental regulatory agency records for site-associated or locally-occurring hazardous substance reports, if any;
- Compilation of data on topography, geology, and hydrogeology;
- Examination of information on past uses of the property and adjoining properties;
- Noting any environmental concerns on the site, such as asbestos, mercury or PCB's;
- Area visual survey to observe the potential use of hazardous materials in proximity to the properties;
- Reconnaissance of the site and adjacent properties in order to evaluate and record present site conditions;
- Providing the Moser Mayer Phoenix Associates with recommendations for further investigation.

Based on the combined results of these assessments, conclusions have been made that address the present likelihood of hazardous or toxic substances to impact the property.

1.2 Purpose

The purpose of this report is to define good commercial and customary practices (E 1527-05) for conducting an environmental site assessment of a parcel of commercial real estate. As such, this assessment is intended to permit a user to satisfy one of the requirements to qualify for the innocent landowner defense to CERCLA liability. This ESA constitutes an appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice. The intent of an ESA is to evaluate the presence, or likely presence, of hazardous substances or petroleum products that might have impacted the subject site. In essence, the ESA evaluates and records conditions that indicate an existing release, a past release, or a material threat of a release into the soil, groundwater or surface water of the subject property.

2.0 SITE HISTORY

2.1 Location and Legal Description

The site in Greenville, North Carolina, consists of a parcel bordered by East 8th Street on the north, Cotanche (formerly Reade) Street on the east, Evans Street on the west, and East 9th Street to the south. The site consists of a number of properties with tax PIN#s as follows: 2289, 2730, 7738, 7818, 8457, 10225, 11244, 12469, 16500, 17972, 19613, 19623, 21244, 22866, 23220, 23377, 24841, 24842, 25192, 40515, and 44144.

2.2 Site and Vicinity Characteristics

The site and vicinity lie within the city limits of Greenville, North Carolina.

The site consists of approximately 11.64 acres of urban property zoned for office & institutional (OR) or commercial use (CDF). The topography of the surrounding area is flat, with the site relief, ranging in elevation between approximately 48 and 53 feet above Mean Sea Level (MSL).

The surrounding area is characterized by a mix of residential and commercial activity, with most residential use to the west and south and the remainder offices, retail facilities, and parking lots.

2.3 Structures and Site Improvements

The site contains a number of structures utilized for residential or retail/commercial purposes. Single family residential structures are located at 802 and 804 Forbes St., and at 111 and 113 9th St. Duplex housing is located at 110 8th St. and 201 9th St. A multifamily apartment structure is located at 810 Cotanche St. These structures will hereafter be referred to by the street address of each structure. The structure at 200 8th St. is an office building designed to resemble a residential structure. The property at 823 Evans St. is an office building with a parking lot. The parcels identified as 811 and 813 Evans St. are office/retail in nature. At 809 Evans St. is a residential structure currently used for offices. The corner lot at Evans and 8th St is a medical office building with an address of 801 Evans St.

The residence at 802 Forbes appears as it may date from the 1950's. The building is wood frame with asbestos cement shingle siding, typical for the era. Heating and cooling at the present appears to be heat pump, but the structure has a chimney, possibly indicating the former presence of a furnace. No indications of heating oil tanks were observed.

The residence at 804 Forbes appears as it may be original construction from the 1950's. The building is wood frame with wood siding. Heating at the present appears to be gas. No indications of above- or below-ground heating oil tanks were observed.

The structures at 111 and 113 9th St. are shown on property maps as early as the 1920's. These structures are wood frame construction with asbestos siding. This siding may have been applied over the original wood plank walls, or the original structures may have been demolished and reconstructed at a later date. Both structures presently have gas heat and window air conditioning units. No evidence of heating oil tanks was observed.

The residence at 112 8th St. is currently a two story duplex with one residence on the lower floor and another on the upper floor. Heating and cooling appears to be by heat pump, as no gas connection or oil tank evidence was observed. While a dwelling appears on property maps back into the early 1900's, the current structure does not have the same footprint, leading to the conclusion that the present structure is of fairly recent construction.

The residence at 201 9th St. appears to date from the 1960's or later. The present structure is a single story duplex. The building is of wood frame construction. There appears to be gas heat in the structure and central air conditioning. No indications of heating oil tanks were observed.

The structure at 810 Cotanche is a multifamily two story apartment building of brick veneer construction. There are ten units in the building. Present heating and cooling appears to be electric, but a disconnected gas valve in the rear indicates that the units may have had gas heat in the past. The structure is estimated to be less than 20 years old.

At the corner of 8th and Forbes Streets the Campus Christian Fellowship ministry occupies the 200 8th St address. The building appears to be less than 20 years old. Heating and cooling is electric, and the building does not have a chimney, indicating that it does not have a combustion heating system.

823 Evans is currently occupied by the Family Violence Center. The structure is two story brick, and appears to be heated and cooled by electric heat pump. The front portion of the property is a paved parking lot. The structure appears to be of relatively recent construction.

At 813 Evans St. there is a commercial/retail structure. The first evidence of this use of the property is during the 1950's. The structure is concrete masonry construction. Heating and cooling at the present appears to be gas, but former heating systems are unknown. No indications of heating oil tanks were observed. Attached to this structure is another on the 811 Evans St. parcel. Mr. George Saad indicated that he purchased the 811 Evans property and added another concrete block structure to the side of the 813 Evans structure. The 811 Evans structure is heated and cooled with electricity. At the time of construction of the 811 Evans addition Mr. Saad added a new pitched shingle roof over both halves. At present the Good Shepherd Apostolic Faith Church uses the majority of the building, and a computer sales office occupies the rear of the 813 Evans structure.

The former residence at 809 Evans appears as it may be original construction with

minor additions/modifications . The building is wood frame wood siding of a style popular at the turn of the last century. Heating at the present appears to be gas, but the stub of an apparent heating oil vent pipe is on the side of the structure. At the present the structure is used for offices of The Family Center.

At 801 Evans Dr. Lee R. Trent II has a medical office. The structure is one story brick with gas heat. No evidence of any former heating system was observed. The structure occupies the location of a former long time residence. Estimated construction date is within the last 25 years.

The remainder of the parcels are presently unimproved. The parcel at 809 Forbes was a residence as late as the 1950's, but the site presently is graded and grassy.

Unpaved parking lots occupy the former 813 9th St. and the spot between 201 9th St. and 810 Cotanche. Paved parking occupies the two parcels at the corner of 8th St. and Cotanche St, and is used by Campus Towers student housing. The lots between the 801 Evans St. medical office and the residence at 112 8th St. are partly paved and are used by the medical office for parking.

Note that evidence of one heating oil tank was observed, and records exist from the removal of another. The remaining residential structures may or may not have underground storage tanks (UST's) or aboveground storage tanks (AST's). During this survey only one fill/vent pipe was observed. Others may have been cut off, or the tanks may have been removed.

2.4 Current and Past Uses of the Site and Adjoining Properties

Based on aerial photographs and historic maps, the land-use of the area surrounding the subject site has been residential since at least the late 1890's. Historical maps show that the original structures were modified or replaced at various times. By the 1950's many of the current structures were present. Only one site was developed as commercial/retail. The 813 Evans St. site was formerly occupied by a printing company/copy center.

The surrounding areas have been largely residential throughout the site history, but have turned increasingly commercial throughout the 1900's. Across Cotanche to the east, East Carolina University has gradually increased the density of development of the area into various campus facilities. The area along 10th Street to the south has supported commercial facilities including automotive related enterprises since at least the 1950's. The blocks between 9th St. and 10th St., directly across from the project site, have gradually turned from residential into commercial use. Commercial buildings and apartments have existed on the parcels to the north of 8th St. for many years. Across Evans St. the area has gradually turned from residential into office use, with some offices occupying former residences.

2.5 Utilities

Greenville Utilities supplies electricity in the site vicinity. Most of the electric utilities are underground except along Forbes St. and 9th St.. There are several transformers on the site. Two transformers on two poles are along 9th St. One transformer labeled as containing 75 gallons of oil is at the northwest corner of 9th St. and Forbes St.. Another transformer labeled as containing 37.5 gallons of oil. These transformers appear clean, with no evidence of leaks. A table showing the power pole identification numbers for each of the transformers can be found in Appendix A.

Greenville Utilities also provides natural gas services to the target property. All gas lines appear to be in good condition. Water and sewer services to the site are also supplied through the City of Greenville.

3.0 USER PROVIDED INFORMATION

3.1 Reason for Phase I Site Assessment

This site assessment is performed for Moser Mayer Phoenix Associates in support of their efforts to purchase the property.

4.0 RECORDS REVIEW

4.1 Standard Environmental Records: Federal, State and Local

Federal, state, and local environmental agency records were reviewed to determine if any hazardous reports had been filed with public agencies. These records reveal the details of past or at present contamination by hazardous substances or toxic waste at or near the subject site, if any. NFE's records review was supplemented by Environmental Data Resources, Inc., an environmental database research company (Section 3.3.12 and Appendix A).

4.1.1 USEPA CERCLIS

The United States Environmental Protection Agency (USEPA) maintains a compilation of known, alleged, and potential hazardous waste sites in the *Comprehensive Environmental Response, Compensation and Liability Information System* (CERCLIS) database. The sites on the CERCLIS list consist of known or suspected uncontrolled or abandoned hazardous waste sites. These listed sites have either been investigated, or are currently under investigation by the USEPA for the release, or threatened release, of hazardous substances under what is commonly known as the *Superfund Program*. Superfund provides administrative means to determine the source and extent of soil and water contamination and to mandate necessary remedial action. The CERCLIS list is based upon the discovery of hazardous substances, notification of closure for unknown substances, or sales of businesses whose operations are monitored by

the USEPA.

The CERCLIS listings revealed that the subject property is not recognized as a known, alleged, or potential hazardous waste site. No sites were identified by CERCLIS within a one-mile radius of the subject site. For radius map and CERCLIS information, see Appendix B.

4.1.2 North Carolina State Environmental Records

The North Carolina Department of Environment and Natural Resources (NCDENR), maintains incident complaints and event files describing spills and leaks to soils, groundwater, and surface waters, such as unauthorized releases from underground storage tanks (USTs). Research of these files revealed no impact related directly to the site; however the NCDENR files contained site reports describing nearby properties. Active and inactive investigations in proximity to the site are listed in Section 4.3.

4.2 Federal, State, and, Local File Search

4.2.1 NCDENR State Hazardous Waste Sites

NFE researched the files for state hazardous waste sites. The subject property is not on this list. No sites were identified within one mile of the subject property.

4.2.2 Leaking Underground Storage Tanks (LUST)

NFE researched the incident and release files for underground storage tanks, information from tank closure, site assessment, complaints, facilities registration and notification, and collection of fees. NCDENR records indicate active and inactive release locations and remediation projects existing at/or within 0.5 miles of the site, mainly related to LUST activities. These sites are listed in Section 4.3.

4.3 Federal/State Database Review

NFE reviewed standard environmental record sources for the subject site and surrounding property. This section summarizes database lists and includes search distance radii from the site (in parentheses). Differences in property titles for the same site, varying site descriptions, or inconsistencies in site addresses are due to discrepancies in various reports filed by the property owners' representatives. Multiple listings for the same site may also relate to the severity of contamination reported at a given time during an ongoing investigation. For further details on each site listed, and a map showing the site locations by ID number, see Appendix B.

4.3.1 Federal NPL or proposed NPL Site (within 1.0 mile):

No listing found.

4.3.2 Federal CERCLIS list (within 0.5 mile):

No listing found.

4.3.3 Federal RCRIS TSD Facilities list (within 1.0 mile):

No listings found.

4.3.4 Federal RCRIS Large Quantity Generator's List (within 0.25 miles):

No listings found.

4.3.5 North Carolina AST database:

No listings found.

4.3.6 Brownfields Database:

No listings found.

4.3.7 Federal RCRIS Small Quantity Generators (within 0.25 mile):

- Scotts Cleaners, 111 W. 10th St., 0-1/8 mi, Map ID # B12

4.3.8 North Carolina Hazardous Waste Sites (within 1 mile):

No listings found.

4.3.9 North Carolina State LUST list, i.e., non-priority (within 0.5 miles):

There are 28 reported Leaking Underground Storage Tank (LUST) sites at higher or equal elevation within 0.5 miles of the subject property. Those sites are listed below. A complete list is found in the Appendix. Some of these sites may be closed, but the records of closure are not complete. These sites may or may not have some impact on

the subject property. Further investigation is beyond the scope of this report. Some sites have been omitted from this list because the address of record is the address of the owner and not that of the site of the tanks.

- Joe Davis Rental Property, 111 E. 9th St., 0-1/8 mi WSW, Map ID # A1
- Daughtridge Oil – Evans 76, 10th St. / Evans St., 0-1/8 mi SW, Map ID # B6
- University Amoco, 101 E. 10th St., 0-1/8 mi. SW, Map ID #B7
- Wilcar Executive Center, 223 W. 10th St., 1/8-1/4 mi. WSW , Map ID # D17.
- City of Greenville Property - TA, 527 Dickinson Ave., 1/8-1/4 mi. NNW, Map ID # 20
- Stop Shop, 213 E. Fifth St., ¼-1/2 mi. NNE, Map ID # F22
- Sam Pollard & Son, Inc., 400 W. 10th St., ¼-1/2 mi. WSW, Map ID # 24
- Tacker Residence, 503 E. Eleventh St., ¼-1/2 mi. SSE, Map ID # G25
- Pugh's Shell Station, Fifth/Green St., ¼-1/2 mi. NN W, Map ID # H29
- Nimmo Property (Hazel), 113 W. Fourth St., ¼-1/2 mi. N, Map ID # 31
- Harrison Property #409, 409 Holly St., ¼-1/2 mi. NE, Map ID # I32
- Harrison Property #407, 407 Holly St., ¼-1/2 mi. NE, Map ID # I35
- Fletcher Rental, 405 Summit St., ¼-1/2 mi. NE, Map ID # 37
- Herbert Corey Property, Dickinson Ave./Grande, ¼ -1/2 mi. W, Map ID# 38
- Steve Horne Law Office, 300 Cotanche St., ¼-1/2 mi. NNE, Map ID # 39
- Magnolia Apartments, 418 W. Fifth St., ¼-1/2 mi. NW, Map ID # 40
- Perco/Perkins Oil, 111 W. Fourteenth St., ¼-1/2 mi. SSW, Map ID # J41
- Perco Station, 111 W. Fourteenth St., ¼-1/2 mi. SSW, Map ID # J42
- Perkins Oil Co., 111 W. Fourteenth St., ¼-1/2 mi. SSW, Map ID # J43
- Bill's Fast Food/Planter Nation., 323 S. Greene St., ¼-1/2 mi. NNW, Map ID#44
- Bucks Supply, 201 Grand Ave., ¼-1/2 mi. W, Map ID # 45

- Coastal Chemical, 3702 Evans St. Ext., ¼-1/2 mi. N, Map ID # 46
- Peralion Residence (Pat), 408 Student St., ¼-1/2 mi. ENE, Map ID# K47
- Eaton's Shell, 601 Albemarle St., ¼-1/2 mi. WNW, Map ID # 49
- Fast Fare #508 (Former), 220 Cotanche St., ¼-1/2 mi. NNE, Map ID # 50
- Wooten-BB&T, Pitt/W. Third St., ¼-1/2 mi. NNW, Map ID # L51
- Montaquila, Lucy Residence, 805 E. Third St., ¼-1/2 mi. NE, Map ID # M53
- Zoretic Property (Phillip), 808 E. Third St., ¼-1/2 mi. NE, Map ID # M55

4.3.10 North Carolina State Registered UST list (within 0.25 miles):

The following sites have registered underground storage tanks

- A & B Auto Service, 9th & Evans St., 0-1/8 mi WSW, Map ID # A3, 10 tanks
- University Amoco, 101 E. 10th St. 0-1/8 mi SW, Map ID #B8, 9 tanks
- Party Center, 10th & Evans St., 0-1/8 mi. SW, Map ID # B9, 2 tanks
- 10th & Evans 76, 100 W. 10th St., 0-1/8 mi. SW, Map ID # B10, 4 tanks
- Sheetz Inc. 397, 1000 Charles Blvd., 1/8-1/4 mi. SSE, Map ID # C13, 4 tanks
- The Pantry 799, 316 E. 10th St., 1/8-1/4 mi. SSE, Map ID # C14, 3 tanks
- Trade/Wilco 1802, 210 W. 10th St., 1/8 – ¼ mi. WSW, Map ID # D15, 8 tanks

4.3.11 North Carolina Hazardous Substance Disposal Sites

No listings found.

4.3.12 North Carolina LUST Trust Sites

This database is a list of sites where there are claims against North Carolina's state trust funds for reimbursement of LUST cleanup costs. There are 13 sites within 0.5 mile of the subject property. The following sites are within 1/2 mile of the subject property. For information on the remaining sites see the Appendix.

- A & B Auto Service, 103 W. 9th St., 0-1/8mi WSNW, Map ID # A4
- Wilcar Executive Center, 223 W. 10th St., 1/8-1/4 mi. WSW , Map ID # D17
- Tacker Residence, 503 E. Eleventh St., ¼-1/2 mi. SSE, Map ID # G26
- Pugh’s Shell Station, Fifth/Green St., ¼-1/2 mi. NN W, Map ID # H28
- Harrison Property #409, 409 Holly St., ¼-1/2 mi. NE, Map ID # I33
- Fletcher Rental, 405 Summit St., ¼-1/2 mi. NE, Map ID # 37
- Perco Station, 111 W. Fourteenth St., ¼-1/2 mi. SSW, Map ID # J42
- Perkins Oil Co., 111 W. Fourteenth St., ¼-1/2 mi. SSW, Map ID # J43
- Peralion Residence (Pat), 408 Student St., ¼-1/2 mi. ENE, Map ID# K48
- Wooten-BB&T, Pitt/W. Third St., ¼-1/2 mi. NNW, Map ID # L52
- Montaquila, Lucy Residence, 805 E. Third St., ¼-1/2 mi. NE, Map ID # M53
- Zoretic Property (Phillip), 808 E. Third St., ¼-1/2 mi. NE, Map ID # M54

4.3.13 Environmental Data Resources, Inc (EDR)

In an effort to provide thorough research, NFE utilized Environmental Data Resources, Inc. (EDR), a commercial data-collecting firm, to crosscheck and supplement our research activities. Information provided by EDR was obtained from available public and other secondary sources (Appendix B).

A Table of Underground Storage Tanks Within ¼ mile and a locator map for these tanks are in Appendix A.

4.4 Physical Setting -- Site Topography, Geology, Hydrogeology

4.4.1 Topography

Based on the USGS 7.5 minute Topographic Map, Greenville SW, NC, 1968 (photo revised 2) the natural elevation of the site is approximately 45 feet above MSL (**Appendix A**). The site is sloping downward toward the northwest, with a relief of less than five feet.

4.4.2 Geology and Soil

The site is located in the coastal plain physiographic province. The predominant rock types in this portion of the coastal plain are bluish gray fossiliferous clay with fine grained sand and shelly lenses. Locally may be shelly medium to coarse sand. (*Brown, Philip M., et. al 1985, Geologic Map North Carolina*). The rocks are generally well weathered and outcrops of the actual rocks are rare except where exposed in stream banks or pits.

Soils are typically described Wagram Sandy Loam, 0-6% slopes. The basic soil is derived from weathering of the underlying sedimentary rocks. The soil is well drained loamy sand and friable sandy clay. Infiltration is rapid and runoff is slow. (*USDA Soil Conservations Service, 1974, Soil Survey of Pitt County, North Carolina*). The soils at the subject site have been somewhat disturbed by construction the various structures, however, and residual surficial soil layers may not be typical.

4.4.3 Hydrogeology

Local groundwater in the geologic environment is derived from precipitation, generally assumed to infiltrate the ground and flow down-slope roughly following existing topography. Subsurface investigations to groundwater were not included in this scope of work. Groundwater flow directions in the surrounding area derived from existing sources are shown in Figure 4 (Appendix A). The subject property generally slopes slightly toward the south and west, and the shallow groundwater is likely to do the same. This means that contaminants from identified sources are not likely to flow under the property from those outside sources,

4.5 Historic Land Use

The objective of land use research is to develop a history of the previous uses or occupancies of the site and the surrounding area in order to identify those uses or occupancies that are likely to have led to recognized environmental conditions that would adversely impact the subject property.

4.5.1 Chain of Title

NFE researched the chain-of-title for properties that make up the target property. Available records indicate that properties have been divided and assembled into various configurations through the years. Some properties can easily be traced back to their nineteenth century origins, most others can be traced back at least 50 years. Until recently most structures were residential in nature, with no immediately obvious environmental impacts. Complete chain of title record summaries are presented in Appendix E.

4.5.2 Historic Aerial Photographs

In order to evaluate the past land use of the site corridor and surrounding property, NFE obtained air photographs of the vicinity for each decade beginning with the 1970's. Aerial photographs can be found in Appendix D. A discussion of each photo follows.

1977 (Clarity --good)

The 1959 aerial photograph shows the subject property with many of the present structures. The block between Cotanche and Forbes shows two structures on Cotanche, one at the corner of 8th St., and one near the corner of 9th St. A number of smaller structures that appear to be dwellings line Forbes St. on both sides of the street. Three main structures can be observed along Evans St. The surrounding area is residential to the south and west, commercial to the north and largely open land to the east.

NFE detected no recognizable areas of stored drums, no landfill activity, or dumping. Likewise, no cemeteries were observed.

1982 (Clarity --poor)

The 1982 aerial photograph is of such poor quality that the target area can barely be recognized. One large structure can be identified in the area to the north of the subject property.

NFE detected no recognizable areas of stored drums, no landfill activity, or dumping. Likewise, no cemeteries were observed.

1998 (Clarity --fair)

The 1988 aerial photograph shows structures on Cotanche St. that were visible in 1977 appear to be gone. The corner of Cotanche and 8th appears to be vacant. Structures along Evans and Forbes St. are difficult to discern. The area immediately to the north appears to be largely commercial. To the south the area between 9th and 10th St. has become commercial. To the east, the previous vacant land now contains a large structure associated with East Carolina University.

NFE detected no recognizable areas of stored drums, no landfill activity, or dumping. Likewise, no cemeteries were observed.

2006 (Clarity --good)

The 2006 aerial photograph clearly shows the subject property with a large structure on the corner of Cotanche and 8th St. A number of smaller structures can be discerned along Forbes St. and 9th St. What appears to be a commercial building is seen at the corner of Evans and 8th St. Most of the surrounding areas

appear to have largely lost their residential use. The University land to the east is much more densely developed.

NFE detected no recognizable areas of stored drums, no landfill activity, or dumping. Likewise, no cemeteries were observed.

4.5.3 Sanborn Fire Insurance Maps

Sanborn Fire insurance map coverage is available for the target property is available for a number of years. Maps from 1898, 1900, 1905, 1911, 1916, 1923, 1929, 1946, and 1958 were observed. Relevant portions of these maps are reproduced in Appendix D.

1898

This early map only covers the block between Evans and Forbes. Five dwellings face Evans St. at the present 801, 805, 811, 813, and 823 sites. Most of the lots extend all the way from Evans to Forbes (then Cotanche) St. One dwelling is on 8th St. Most buildings have outbuildings including stables and other sheds. There is a one-room school at the present 804 Forbes St. location.

1900

This early map mostly only covers the block between Evans and Forbes, with a small part of the opposite side of Forbes. Structures are as before, with the addition of several on Forbes (former Cotanche). The one room school is vacant.

1905

By 1905 some of the stables are gone and there is some infilling on the block between Forbes and Cotanche. The schoolhouse is still vacant. City water lines have been run to the section, as evidenced by the presence of hydrants.

1911

Not much changed by the time of this map. Some additional sheds have been constructed, and the schoolhouse is gone.

1916

By 1916 the block deep lots at 823 and 813 Evans have been divided to make two lots along 9th St. The first automobile garage appears on the NE corner lot of Forbes and 9th St.

1923

By 1923 all lots have at least one dwelling on them. A third dwelling is added

along 9th St. between Evans and Forbes (present 111, 113, and 115 9th St.).

1929

This map shows very little difference from the previous one. Some structures have had minor additions.

1946

By 1946 the structure at the present 809 Forbes St. location has been divided into a duplex with brick veneer.

1958

The former dwelling at 805 Evans has been demolished and replaced by a single story wood frame store. Dwellings have been added at 804 Forbes and 802 Forbes. The structure at 823 Evans has been divided into four apartments... Brick has been added to the 110 8th St. structure.

5.0 SITE RECONNAISSANCE

5.1 Background

The objective of the site reconnaissance is to obtain first-hand information on current environmental conditions of the site, and to further evaluate adjacent site conditions that might indicate adverse impact to the site. Site reconnaissance by qualified professionals was limited to visual observation through a site walk and photographic inventory of the subject properties and adjacent properties to establish land use as it may relate to the presence or storage of hazardous or toxic substances. Dr. Harry W. Boyd, P.G., Senior Environmental Project Manager for NFE, conducted the site reconnaissance on July 21, 2008. Photographs of the site and surrounding area can be found in Appendix C.

5.1.1 General Site Setting

Evans Street has small commercial and office properties in the immediate vicinity of the target property. The target property occupies the summit of a high point along this stretch of Evans, and the topography generally slopes down toward the west. Of note is the auto repair facility to the southwest of the site. Other commercial and auto care facilities are located further to the south, beyond a potential area of impact on the target property.

9th Street is residential and commercial south of the subject property. The

residential structures along the site boundary may have had below ground heating oil tanks in the past. To the 9th street runs through part of the East Carolina University campus. To the west there is the auto repair facility at the corner of Evans Street and then medical, residential and commercial structures.

Cotanche Street runs along the east side of the site, and includes a few apartment and university structures. The section to the north of the site has several apartment buildings, and immediately to the east are several structures associated with East Carolina University

8th Street runs along the north side of the site, and includes residential and commercial structures. Along the north side of the site there is a restaurant and an apartment building. To the west 8th street has an art museum, commercial structures and a cleaning supplies manufacturing/distribution facility. The industrial facility is at a lower elevation than the site and has no record of any environmental violations.

Forbes Street runs through the site, and then to the south toward 10th Street. It includes a few residential structures and a church. Section to the north of the site has several apartment buildings, and immediately to the east are several structures associated with East Carolina University.

Other areas of note include a stretch of 10th street south of the site. This street is heavily commercialized and includes a gas station (Sheetz) at the southwest corner of Cotanche and 10th streets. This is a new facility and replaces a previous gas station. A dry cleaning facility is at the southwest corner of Evans and 10th Street. Both the Sheetz station and the cleaners are at least a block away from the site.

5.1.2 Surrounding Land Uses

A reconnaissance of properties surrounding the subject site revealed commercial properties, residential structures a church and parking lots with no structures. No cemeteries were observed; likewise no dumping or surface storage of hazardous materials was noted during the exterior examination of adjacent properties. No wetlands were observed, and no unusual odors were noted at the time of the site survey. The existing use of the surrounding properties appears to be compatible with the City of Greenville Zoning Ordinances.

5.2 Exterior Observations

The property is currently in use for residential and office purposes.

The parking lot pavement at the corner of 8th street and Cotanche is in good condition, and the pavement of the small lot in the 100 block of 8th street is in fair condition, with

some unevenness.

Curb inlets along 8th street and 9th street drain water away along the apparent course of a former intermittent stream. This stream has been covered over since around the turn of the last century.

Pole-mounted transformers, servicing the 9th street area, were observed along 9th street. These transformers appeared in good condition with no signs of damage or release of contents. Evans, 8th street and Cotanche all have underground electric utilities.

The open lot at 809 Forbes Street is grassed and largely free of trash.

Vegetation around the properties has been minimally maintained, but was not observed to be stressed.

5.3 Interior Observations

The interior spaces within the subject office buildings have been maintained in a useable state. The walls and floors are intact. No signs of water leaking from the roof or HVAC units were observed. There are fluorescent fixtures throughout all three structures. These fixtures should be examined to ascertain whether they are labeled “Non-PCB”. Until such determination is made it must therefore be assumed that all fluorescent fixtures inside the structures contain PCB ballasts. Any fluorescent tubes remaining in the fixtures should be assumed to contain mercury.

Residential structures were not entered, and therefore were not evaluated for interior environmental issues..

6.0 FINDINGS AND CONCLUSIONS

Based on the data presented herein, NFE has formed an opinion as to the potential for impact to the subject site by hazardous materials originating on and/or migrating from adjacent properties. NFE has endeavored to perform this Phase I ESA in accordance with the *American Society for Testing and Materials (ASTM) Standards) Standard Practice for Environmental Site Assessment (E 1527-05)* unless noted previously.

6.1 Off Site Impacts

While there is little evidence of major environmental concerns on the subject properties, there are still issues to be addressed. Some of these are discussed below. Since the residential structures on the subject properties were largely constructed in the early- to mid-1900's, there is ample reason to suspect the presence of underground heating oil tanks (UST's). One such tank was removed from 111 E. 9th street, and is discussed below. Evidence for another can be seen beside the 809 Evans St. structure. Other residences on Forbes Street do not currently show physical evidence for UST's, but there are no records of tanks being removed. Also, the vacant site at 809 Forbes may or may not still have buried tanks.

111 East 9th Street (Map ID No. A1)

In 1995 a heating oil tank was removed from this site. Soil and groundwater contamination were discovered, and the site was cleaned up to North Carolina 2L.0200 standards. The site was officially closed out on 2/25/2005.

NFE is of the opinion that the potential for impact from this site is apparently low.

6.2 Off Site Impacts

Considering their immediate proximity to the subject property, the following sites are discussed below with specific regard to their potential to impact the subject site. Site addresses are limited to one service station actively engaged in the retail sale of vehicle fuels, an auto repair facility, and several commercial buildings.

111 West 10th Street (Map ID No. B12)

Scott's Cleaners is designated as a Conditionally Exempt Small Quantity Generator (CESQG). Spent halogenated solvents are the primary items stored at this facility. Two minor violations were found for this facility – in 1988 and 1994. In each case the facility was in compliance within 30 days. All subsequent evaluations have found no violations. The site is cross-gradient from the target property.

NFE is of the opinion that the potential for impact from this site is apparently low.

Corner of 9th and Evans (Map ID No. A2)

A & B Auto at one time was a gas station. Tanks were installed at various times from 1935 to 1955. According to available records the tanks were last used in 1980, and were recorded as empty in 1988. All tanks were removed in 1992. Some contamination under the property was found, both soil and groundwater. This site had incident records closed out in 1998. This site is somewhat down gradient from the target property. State records place this site as a low priority for cleanup, indicating a low level of risk.

NFE is of the opinion that the potential for impact from this site is apparently low.

Corner of 10th and Evans (Map ID No. B6)

Daughtridge Oil Co. occupied this corner at one time. The number, size and contents of any UST's is unknown. The site was officially closed out in 1996. State records place this site as a low priority for cleanup, indicating a low level of risk.

NFE is of the opinion that the potential for impact from this site is apparently low.

101 E. 10th St. (Map ID No. B7)

This site at one time was a gas station, known as University Amoco. A total of nine tanks were removed from the site in 2004. Some contamination under the property was found, both soil and groundwater. This site had incident records closed out in 2005. This site is somewhat down gradient from the target property. State records place this site as a low priority for cleanup, indicating a low level of risk.

NFE is of the opinion that the potential for impact from this site is apparently low.

Other sites are deemed to be of low potential impact due to distance and gradient. The Sheetz gas station has new tanks with double wall tank systems, corrosion control and a spill monitoring system.

6.3 Asbestos

There are no known asbestos surveys on these properties. The presence of asbestos-containing materials has been visually identified on the exteriors of several residential structures. These include residences at 111 and 113 9th St., and 802 Forbes St.

Other suspect material for buildings of this age include but are not limited to floor tile, ceiling tile, spray ceiling texture, roofing materials, and pipe/duct insulation.

6.4 PCB's

A visual survey was not performed on existing fluorescent light fixtures in the buildings, so a determination that the ballasts are "non-PCB" could not be made. For this reason, it is recommended that all fluorescent light fixtures be assumed to contain PCB's and be disposed of accordingly.

6.5 Mercury

All fluorescent light fixtures should be assumed to contain mercury in the light tubes. Most fluorescent fixtures in the guest rooms have already had tubes removed, but the remaining tubes should be disposed of appropriately.

6.6 Drainage

There are seven curb inlets around the subject property that drain water away from the paved streets. These are primarily along 9th St, Evans St., and 8th St. In addition, three drains are across 9th St. from the property, and one across 8th St. The collected water is drained away by the city storm drainage system. Any construction activities should take the underground drainage into account.

7.0 QUALIFYING STATEMENTS

NFE has performed this limited Phase I Environmental Site Assessment of the proposed site of the Greenville Multimodal Transportation Center.. We have done so by conforming to the scope and limitations of *ASTM Practice E 1527-05*. NFE has employed investigative and research procedures during the course of this assessment that should be understood to indicate actual conditions only at the precise locations investigated. Additionally, the conclusions rendered from this work are based on qualitative information gathered on or near the date of this report.

As is customary with such investigations, NFE has made certain inferences and conclusions based on our findings and results. Outside sources have provided NFE with data and information regarding current site conditions, test results collected by others, and facility operations. As is customary, NFE has assumed the data and information supplied by Environmental Data Resources to be factual and complete. Conclusions rendered from these data are subject to professional opinion, and thus, could result in differing interpretations.

7.1 Limitations

The site assessment described herein is limited to observations made during NFE's visual inspection and data research of the subject site. No soil, surface water, or ground water samples have been collected for laboratory analysis during this investigation. NFE makes no representations or certifications concerning any building materials, hidden items, soil, surface water, or groundwater quality.

7.2 Restrictions

NFE performed this limited environmental site assessment to identify potential liabilities associated with current site conditions based on existing documentation and information available at the time of this report. This work has been performed in accordance with generally accepted engineering practices. No other warranty is expressed or implied. Recommendations rendered from our work in no way eliminate site hazards or the owner's obligation to federal, state, or local laws. NFE will not be held liable for the future discovery or elimination of hazards encountered that may potentially cause damage, accidents, or injuries. The site and adjacent property owners are solely responsible to notify the proper authorities of any condition that violates current applicable laws and regulations. Changes to the content or form of this report require NFE's expressed, written approval.

8.0 SIGNATURES OF ENVIRONMENTAL PROFESSIONALS

Dr. Harry W. Boyd conducted the research and site inspection necessary to complete this Phase I Environmental Site Assessment. The work was approved by Mr. V. K. Goel, P.E.

Mr. Harry W. Boyd, PG
NC License No. 1145
Senior Geologist/Environmental Manager



Signature



Mr. V. K. Goel, P.E.
N.C. License No. 18283
President



Signature



Date: 09/30/08

APPENDIX A

SITE MAPS AND FIGURES

Fig. 1: Topographic Map

Fig. 2: Tax Parcel Map

Fig. 3: Area Zoning Map

Fig. 4: Soils Map

Fig. 5: Groundwater Flow Map

Fig. 6: Floodplain Map

Table 1: Table of UST's within ¼ Mile

Fig. 7: Locator Map for UST Table

Table 2: Power Pole and Transformer Information

APPENDIX B

ENVIRONMENTAL DATA BASE
RESEARCH SERVICE

APPENDIX C

SITE AND VICINITY PHOTOGRAPHS

APPENDIX D

REPRODUCED FIGURES FROM SITE-SPECIFIC PUBLICATIONS

Sanborn Maps
Historic Aerial Photographs

APPENDIX E

Chain of Title Records



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Financial audit for the fiscal year ended June 30, 2008

Explanation: The City's independent auditor, Martin Starnes & Associates, will present the firm's unqualified opinion of the financial statements for the fiscal year ended June 30, 2008 for the governmental and business-type activities, each major fund, and the remaining fund information. Additionally, the Financial Services Department will provide the financial position of the City for the year along with other comparative financial information.

This presentation will include the auditor's unqualified opinion for the year ended June 30, 2008, which disclosed no material internal control weaknesses or material violations of laws and regulations relative to its major federal programs.

The final phase of the annual audit will include submission of financial statements to the Local Government Commission to ensure appropriate review and accountability. That process should be completed by October 31, 2008. Following review and final revisions, the Comprehensive Annual Financial Report (CAFR) will be finalized and submitted to the Mayor, City Council Members, and the City Manager. A copy will also be submitted to the Government Finance Officers Association for the Award for Excellence in Financial Reporting consideration.

Fiscal Note: When reviewing the annual performance of a municipality, reliance is placed on the fund balance levels, which is determined based on General Fund activity. Fund Balance levels fluctuate based on the operating results between revenues and expenditures. Revenues, including transfers from other funds, for the General Fund amounted to \$70,792,517 for the fiscal year ended June 30, 2008. Expenditures for the General Fund amounted to \$71,279,241, which is \$486,724 over total revenue. As a result, the General Fund balance at fiscal year end was \$26,971,916. This fund balance reduction was largely due to higher workers compensation claims that occurred during the fiscal year. The General Fund balance continues to remain strong as it has over the past five years and exceeds the City Council adopted threshold of 14% of the current budget.

Historical review of General Fund balance:

<u>6/30/2004</u>	<u>6/30/2005</u>	<u>6/30/2006</u>	<u>6/30/2007</u>	<u>6/30/2008</u>
\$23,031,474	\$26,521,729	\$28,678,338	\$27,458,640	\$26,971,916

Recommendation: Accept the audit report as presented by Martin Starnes & Associates and receive the information on the results of operations for the fiscal year ended June 30, 2008 presented by Financial Services.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / [click to download](#)



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: Comprehensive Recreation and Parks Master Plan

Explanation: In early 2008, City Council approved contracting with Site Solutions of Charlotte, NC, for an update of the 2000 Recreation and Parks Comprehensive Master Plan.

Site Solutions and company President Derek Williams have been working with the Recreation and Parks Department and the community since then, gathering information and public input regarding current and future recreation and parks needs within the City of Greenville. The process included an inventory and analysis of the City's existing facilities, as well as facilities provided by other area governments, non-profits, and the private sector.

The Recreation and Parks Commission received a draft copy of and a presentation on the updated plan at its September meeting. At its meeting on October 8, 2008, the Commission will consider recommending the plan for City Council approval.

Mr. Williams will be in attendance to discuss the process, present the findings of the plan, and answer any questions Council members may have regarding that process or its findings.

Fiscal Note: The proposed Plan includes total capital improvements of \$53,519,500.

Recommendation: Receive a report on the draft Comprehensive Recreation and Parks Master Plan.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

Title of Item: West Greenville Brownfields Project

Explanation: In the spring of 2008, City Council authorized a contract with South Carolina-based Concurrent Technologies Corporation (CTC) to manage the City's \$200,000 brownfields grant awarded by the U.S. Environmental Protection Agency. CTC and their subcontractors have been working with City staff over the last few months to design a public participation program, as well as to develop a strategy for the inventory and assessment phases of the project. City staff and the consulting team will update City Council on the project.

Fiscal Note: There are no direct costs to the City of Greenville as all costs are covered through the \$200,000 EPA grant. In addition to the inventory and assessment of brownfield sites, some of the grant funding will be used in support of visioning and planning activities related to the reuse of brownfield sites for public and private ventures.

Recommendation: Receive a status report on the West Greenville EPA Brownfields Project.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Brochure for Brownfields](#)

Brownfields and Land Revitalization Highlights

(selected project examples)

- **Gardena, California**

A Brownfields Assessment grant helped to leverage more than \$29 million in redevelopment funding, giving Gardena a new economic outlook.

http://www.epa.gov/brownfields/success/gardena_ca.pdf

- **Houston, Texas**

A Brownfields Cleanup grant helped to turn an abandoned hospital facility into modern, loft-style apartments.

http://www.epa.gov/brownfields/success/houston_tx_BRAG.pdf

- **Boston, Massachusetts**

A Brownfields Job Training grant prepared un- and under-employed residents of suburban Boston for environmental careers.

http://www.epa.gov/swerosps/bf/success/jfy_boston.pdf

- **Maryland / District of Columbia**

A project under EPA's Urban Rivers Restoration Initiative, the Anacostia River Watershed Restoration Pilot promotes pollution reductions, ecological restoration, and public stewardship of Maryland's Anacostia watershed.

<http://www.epa.gov/landrevitalization/urbanrivers/>

- **Additional Project Highlights**

<http://www.epa.gov/brownfields/success.htm>

- **More Information on Individual Brownfields Grant Types**

<http://www.epa.gov/brownfields/pilot.htm>

Links for Additional Information

EPA's Office of Brownfields and Land Revitalization:

<http://www.epa.gov/swerosps/bf>

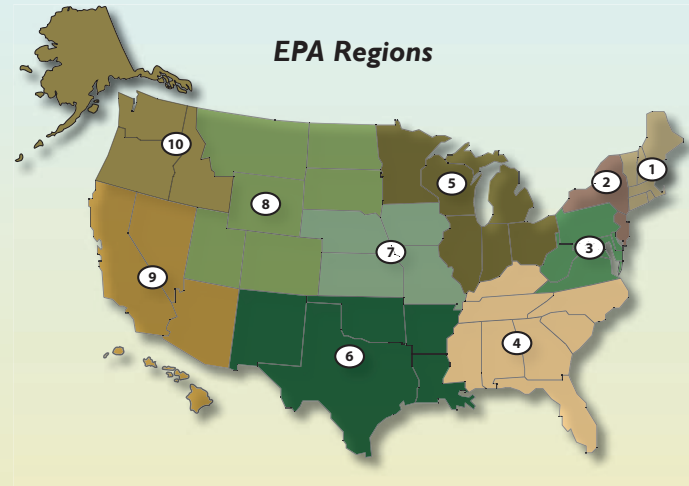
Brownfields Grant Application Information:

<http://www.epa.gov/swerosps/bf/applicat.htm>

Grants and Funding Opportunities Under Other EPA Cleanup Programs:

<http://www.epa.gov/swerosps/bf/matters.htm>

<http://www.epa.gov/oswer/grants-funding.htm>



Contact Information

Office of Brownfields and Land Revitalization
(202) 566-2777

Office of Enforcement and Compliance Assurance
(202) 564-2440

Superfund Redevelopment Program
(703) 603-8864

Office of Underground Storage Tanks
(703) 603-7164

Federal Facilities Restoration and Reuse Office
(703) 603-0048

RCRA Brownfields Initiative
(703) 308-8399

Additional EPA Land Revitalization Contacts:
<http://www.epa.gov/landrevitalization/contactus.htm>



Brownfields/Land Revitalization
General Brochure

Solid Waste
and Emergency
Response (51067)
Item #17

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April 2008
www.epa.gov/brownfields

EPA's Brownfields and Land Revitalization Programs:

Changing American Land and Lives



The Gateway Park redevelopment project in Worcester, Massachusetts, creating more than 1.5 million square feet of commercial space.

An Overview of Land Revitalization

“Brownfields cleanup and redevelopment has grown to become one of the greatest environmental and economic stories of the past decade... and I’m pleased that the Environmental Protection Agency can be a partner in this effort.”

—EPA Administrator
Stephen Johnson
November 2006

As part of its mission to protect human health and the environment, EPA is dedicated to revitalizing all types of contaminated land for productive reuses. Cleaning up and reusing contaminated properties can protect the environment, reinvigorate communities, jump-start local economies, preserve greenspace, and prevent sprawl. Revitalized land can be reused in ways that offer the greatest local benefit— from creating public parks and restoring local ecosystems to commercial and residential redevelopment projects.

The Agency’s land revitalization efforts emphasize that cleanup and reuse are mutually supportive goals and consideration of anticipated property reuse should be an integral part of EPA’s cleanup decisions. Whether a property is a Superfund site, an operating waste disposal site, a petroleum facility, a former gas station, or an abandoned industrial facility, EPA believes that environmental cleanup and the beneficial reuse of land across all Agency programs must be achieved.

The Agency’s land revitalization efforts place an emphasis on:

- Promoting effective tools that address barriers to land revitalization;
- Developing land revitalization statistics, measures, and outcomes;
- Conducting land revitalization public outreach;
- Providing training;
- Enhancing government coordination to promote land revitalization; and
- Building strong land revitalization partnerships.

EPA’s Brownfields Program

EPA’s Brownfields Program has been instrumental in furthering the Agency’s land revitalization goals. The Program’s grants and technical assistance give communities, states, tribes, and other stakeholders the resources they need to prevent, assess, safely clean up, and sustainably reuse brownfields.

A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. It is estimated that there are more than 450,000 brownfields in the U.S.



Bird-watchers at the Hoquarton Interpretive Trail, built on a former brownfield in Tillamook, Oregon.

What are the Goals of the Brownfields Program?

- **Protecting the Environment**
Addressing brownfields to promote the health and well-being of America’s people and environment.
- **Promoting Partnerships**
Enhancing collaboration and communication essential to facilitate brownfields cleanup and reuse.
- **Strengthening the Marketplace**
Providing financial and technical assistance to bolster the private market.
- **Sustaining Reuse**
Redeveloping brownfields to enhance a community’s long-term quality of life.

Brownfields Funding

Assessment

Funding to inventory, characterize, assess, and conduct planning and community involvement related to brownfields. An eligible entity may apply for up to \$200,000 to assess a site contaminated by hazardous substances, pollutants, or other contaminants and up to \$200,000 to address a site contaminated by petroleum. Three or more eligible entities may apply together as a coalition for up to \$1 million to assess a minimum of five sites.

Cleanup

Funding to carry out cleanup activities at brownfields. An eligible entity may apply for up to \$200,000 per site, which may be used to address

sites contaminated by petroleum and hazardous substances, pollutants, or other contaminants.

Revolving Loan Fund (RLF) Grants

Funding to establish revolving loan funds to make loans and subgrants to clean up brownfields. An eligible entity may apply for up to \$1 million or coalitions of eligible entities may apply together for up to \$1 million per entity. The fund “revolves” by lending to public and private borrowers in order to finance environmental cleanup activities at brownfields, and then using loan repayments to provide new loans.

Job Training

Funding to establish environmental cleanup and health and safety training programs for residents of brownfields-affected communities who are seeking new skills and career opportunities. An eligible entity may apply for up to \$200,000 to develop training programs that help clean up brownfields, spur economic development, and produce highly qualified environmental technicians.

Technical Assistance

Funding to agencies and organizations for innovative training, research, and technical assistance projects that support brownfields revitalization.

State and Tribal Response Programs

Financial assistance to states and tribes increases their capacity to oversee and support brownfields projects.

Targeted Brownfields Assessments

Direct assistance for site-specific assessments.

What is the Brownfields Grant Application Process?

For details on the grant application process, including frequently asked questions (FAQ) and proposal guidelines, please visit:
<http://www.epa.gov/swerosps/bf/applicat.htm>

Other EPA Programs and Offices Working Toward Land Revitalization

Superfund

Superfund is the environmental program established to address abandoned hazardous waste sites, allowing EPA to clean up such sites and to compel responsible parties to perform cleanups or reimburse the government for EPA-led cleanups.
<http://www.epa.gov/superfund/index.htm>

Underground Storage Tanks (UST)

The greatest potential hazard from a leaking UST is that the petroleum or other hazardous substance can seep into the soil and contaminate groundwater, the source of drinking water for nearly half of all Americans.
<http://www.epa.gov/OUST/index.htm>

Federal Facilities

The Federal Facilities Restoration and Reuse Program works with other federal and state agencies to facilitate the cleanup and reuse of the nation’s federal facilities, including Base Realignment and Closure (BRAC) sites.
<http://www.epa.gov/swerrfr/index.htm>

Resource Conservation and Recovery Act (RCRA)

Through RCRA, EPA has the authority to control hazardous waste from

“cradle-to-grave,” including the waste’s generation, transportation, treatment, storage, and disposal. RCRA also establishes a framework for the management of non-hazardous wastes.
<http://www.epa.gov/compliance/cleanup/rcra/index.html>

Office of Enforcement and Compliance Assurance (OECA)

Employing an integrated approach of compliance assistance, compliance incentives, and innovative civil and criminal enforcement, OECA and its partners seek to maximize compliance and reduce threats to public health and the environment.
<http://www.epa.gov/compliance/about/index.html>



Depot Park in Gainesville, Florida, built on a former brownfield.
Photo © 2006 Matthew Dube



City of Greenville, North Carolina

Meeting Date: 10/6/2008
Time: 6:00 PM

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- Title of Item:** Expansion of the façade improvement grant project area boundaries
- Explanation:** The Historic Preservation Commission has requested that the Façade Improvement Grant Project Area be expanded to include all of the land parcels contained within Dickinson Avenue, 10th Street, and Evans Street, as well as all of the parcels contained within Evans Street, 10th Street, and Cotanche Street. Currently, only some of the parcels within those areas are covered under the grant. Along with increasing per façade grants to \$5,000, which the City Council approved at its August 11, 2008 meeting, the HPC believes that opening up the grant to additional business and property owners will spur more competitive grant cycles and better enable the program to support those projects that will have the most significant, positive visual and economic impacts on the City's historic urban core.
- Fiscal Note:** This request does not involve raising program funding levels. Rather, the purpose is to increase accessibility to program funds. Since program inception, the City has allocated \$25,000 annually every year except for fiscal year 2002-03, while Uptown Greenville contributed \$10,000 in 2003-04, 2004-05, 2006-07, and 2007-08 respectively.
- Recommendation:** The Historic Preservation Commission at its September 23, 2008 meeting recommended that the Façade Improvement Grant Project Area be expanded to include the areas described in Exhibit A.
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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

- [Facade Improvement Grant Boundary Expansion Map](#)
 - [HPC FIG memo to CMO requesting Project Area expansion 788189](#)
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Community Development

Department

MEMO

TO: Thom Moton, Assistant City Manager

FROM: Merrill Flood, Director of Community Development

DATE: September 25, 2008

SUBJECT: Expansion of the Façade Improvement Grant Project Area

At their September 23rd, 2008 meeting, the Historic Preservation Commission requested that the Façade Improvement Grant (FIG) Project Area be expanded as follows.

Phase-I expansion (Current Request): Expand the boundaries to include all of the land parcels contained within Dickinson Avenue, 10th Street, and Evans Street, as well as all of the parcels contained within Evans Street, 10th Street, and the Cotanche Street. Currently, only some of the parcels within those areas are covered under the grant. See: Exhibit A.

The Phase I expansion area includes mostly commercial/light-industrial properties located in either the Center City or West Greenville revitalization areas.

Along with increasing per façade grants to \$5,000, which the City Council approved at its August 11, 2008 meeting, the HPC believes that opening up the grant to additional business and property owners will spur more competitive grant cycles and better enable the program to support those projects that will have the most significant positive visual and economic impacts on the City's historic urban core.

If the request is approved, it could become effective immediately and applied to the fall 2008 grant cycle slated to run through early November.

Phase-II expansion (Future Request): Prior to considering additional expansion areas for future grant cycles, the HPC plans to hold public hearings to solicit input from business and property owners and residents about expanding the Project Area to include more of the West Greenville Redevelopment Area. The potential Phase-II

expansion areas would cover additional commercial/light-industrial properties. It might also add historic residential properties at the edge of downtown projected by the Future Land Use Plan to be converted into commercial/office in coming years. The HPC is also aware that owners of businesses and commercial properties in the West Greenville Redevelopment Area are eligible to apply for Building Blocks Grants, a program overseen by the Redevelopment Commission. In response to public feedback, the HPC will evaluate the benefits of expansion against possible impacts before recommending additional expansion areas.

If additional information is needed, please feel free to contact me.

Cc: Carl Rees, Urban Development Planner
Tom Wisemiller, Historic Preservation & Redevelopment Planner

Existing Project Area; Areas Recommended for Expansion

