

**Submittal
Date**

10/24/2017

Request:

**10.14 acres from
R-4-CU & R-10-CU
to R-10-CU
w/**

VICINITY MAP



Map Date: 10/24/2017



To: Ruffin L. Hall, City Manager

From: John Anagnost, Planner II
Ken Bowers AICP, Director, Department of City Planning

Copy: City Clerk

Date: May 22, 2018

Re: City Council agenda item for June 5, 2018 – Z-27-17

The City Council authorized the following case for Public Hearing on March 6, 2018. The public hearing was opened at the March 6 City Council meeting and left open. The case was referred to the Growth and Natural Resources committee for additional discussion with direction that it return to City Council at the second meeting in April. The Growth and Natural Resources committee voted 3-1 to recommend approval of the case if the applicant revises one of the offered conditions to require stormwater control for a 25-year storm rather than the 15-year storm that is currently offered. The committee also received new information about the extent of underground radials on the rezoning site, which is smaller than the 395-foot radius shown on a recorded map from 1999. The committee requested that the March 26 vote of the South Central CAC be removed from consideration and the previous CAC vote be reinstated.

Update for June 5: The City Council closed the public hearing at its April 17 meeting and held the case until its meeting on May 15 to give the applicant time to submit revised conditions. The applicant submitted revised conditions on May 3 which increased the stormwater control requirement to a 25-year storm event only if the total number of dwelling units exceeds 50. At its May 15 meeting, the Council expressed a desire that the conditions be more aligned with the recommendation of the Growth and Natural Resources committee. They deferred the case to the June 5 meeting to allow additional time for the applicant to revise conditions. No subsequent conditions were received prior to the deadline of May 17. As 30 days have passed since the public hearing was closed, the applicant may not revise the conditions further.

Z-27-17 1317 E. Lenoir Street, on its north side, east of Bart Street, being Wake County PINs 1713363771. Approx. 10.14 acres are requested by Poplar Guy LLC to be rezoned from Residential-4-Conditional Use (R-4-CU) and Residential-10-Conditional Use (R-10-CU) to Residential-10-Conditional Use (R-10-CU). Conditions limit development to single family detached houses, limit development to 55 dwelling units, require the Conservation Development option if more than 50 dwelling units are constructed, and increase the requirement for capture of stormwater volume.

The Planning Commission recommends approval of this request (6-1).

The South Central CAC voted to recommend approval of this case (Y-14, N-0).

Attached are the Planning Commission Certified Recommendation (including Staff Report and Traffic Study Worksheet), the Petition for Rezoning, and the Neighborhood Meeting Report.



To: Ruffin L. Hall, City Manager

From: John Anagnost, Planner II
Ken Bowers AICP, Director, Department of Planning & Development

Copy: City Clerk

Date: April 4, 2018

Re: City Council agenda item for April 17, 2018 – Z-27-17

The City Council authorized the following case for Public Hearing on March 6, 2018.

Z-27-17 1317 E. Lenoir Street, on its north side, east of Bart Street, being Wake County PINs 1713363771. Approx. 10.14 acres are requested by Poplar Guy LLC to be rezoned from Residential-4-Conditional Use (R-4-CU) and Residential-10-Conditional Use (R-10-CU) to Residential-10-Conditional Use (R-10-CU). Conditions limit development to single family detached houses, limit development to 55 dwelling units, require the Conservation Development option if more than 50 dwelling units are constructed, and increase the requirement for capture of stormwater volume.

The Planning Commission recommends approval of this request (6-1). The public hearing was opened at the March 6 City Council meeting and left open. The case was referred to the Growth and Natural Resources committee for additional discussion with direction that it return to City Council at the second meeting in April. Revisions to the case may be made after the public hearing is closed so long as they are more restrictive than the current request. The case was heard at the CAC on March 26. The CAC voted 21-0 to recommend denial of the case. Attached are the Planning Commission Certified Recommendation (including Staff Report and Traffic Study Worksheet), the Petition for Rezoning, and the Neighborhood Meeting Report.

Several questions and concerns have been raised by members of the community affected by this rezoning request:

- What is the effect of the easement on the subject property that protects access to buried radials on the property for the adjacent radio station, WPJL?
- What is the history of the site in terms of the City's involvement in previous developments and rezonings?
- Would the request allow more or fewer dwelling units on the site?
- What are the possibilities of using the Conservation Development option under the existing zoning and the proposed zoning?

A summary of the answers to these questions is as follows:

- The radio easement occupies approximately 4 acres of the western half of the rezoning site and prohibits development
- The City forgave \$170,000 of debt to the previous owner of the rezoning site, Shaw Development Corporation, in 2002; sale of the site to the current owner was contingent upon rezoning to require single-family development of the site
- The request is potentially an upzoning of 10-15 units if the radio easement is retained; it is a downzoning of about 15 units if the radio easement is abandoned
- The main effect of the conservation Development option on the site is that it allows smaller lot sizes and would allow relocation of the required open space if the rezoning is approved; Conservation Development is possible in the existing R-10 portion of the site

A more detailed review is provided below.

Radio Easement

Adjacent to the site on its western boundary is an operating AM radio station with the call letters WPJL. WPJL is the grantee of an easement dating back to at least 1955 and previously held by G. L. & N. Corporation and Capitol Broadcasting that grants them access to buried radials on the rezoning site. The original easement does not define the location of the radials. It states that the grantee of the easement “shall have the right and privilege of maintaining ground system of wire under surface of said property, with right of ingress and egress to and from, over, upon and under.” A plat recorded in 1999 shows the easement as having a radius of 395 feet from the base of the vertical antenna of the radio station. At its farthest extent, the recorded easement reaches almost halfway across the rezoning site. The recorded easement accounts for about 4 acres of the rezoning site. A previously approved subdivision on the property was conditioned on abandonment of the easement.

Site History

The rezoning site is part of an area of land known as the Gatling Tract. The Gatling Tract is named after John Gatling and includes the rezoning site and the development to the east on Sherrywood Drive, known as Tupper Place. John Gatling bequeathed the tract to N.C. State University in 1962. In 1998, Shaw Development Corporation (SDC) and Kimley-Horn received approval to subdivide the entire Gatling Tract with four intended phases of development (S-70-1998). Phases 1 and 2 became Tupper Place. Phases 3 and 4 were to be located on the rezoning site. A plat was recorded dedicating the rights-of-way currently present on the rezoning site. However, the home lots were never recorded for Phases 3 and 4, and the subdivision was allowed to sunset (expire) by the developers. SDC purchased the rezoning site from N.C. State University for \$1 in 2001. Homes in Tupper Place were constructed between 2000 and 2007.

Public meeting records from the time indicate that SDC was unable to successfully manage the subdivision of Phases 3 and 4. The City of Raleigh lent SDC \$300,000 to fund infrastructure in the final two phases. At some point around 2001, SDC apparently decided that proceeding with Phases 3 and 4 was not feasible and decided to sell the rezoning site. At that time, the property could not be sold because there was a lien on the property related to the debt owed to the City of Raleigh. SDC requested that the City forgive \$170,000 of outstanding debt so that they could sell the property to the current owner and rezoning applicant, Cliff Zinner.

Public meeting records show that much of the conversation surrounding the debt forgiveness and sale of the property revolved around the single-family character of any future development on the site. The City Council clearly expressed a desire that the site be developed for single family houses. They instructed Mr. Zinner that he should rezone the property to apply a zoning condition

that would require single-family development. Mr. Zinner filed a rezoning case to this effect, Z-66-2002, which was approved in March of 2003. The rezoning site was split zoned between R-4 and R-10 prior to that case, and that case retained the split zoning.

At the time of the rezoning in 2002, the City Council discussed offering a second mortgage fund totaling \$240,000 to prospective home buyers in Phases 3 and 4. A similar program had been offered to home buyers in Phases 1 and 2 through the City's Community Development department. The Council decided not to make this offer as the program was also available citywide by application. As part of the 2002 rezoning, the City Council offered Mr. Zinner \$28,000 in CDBG funds contingent upon the development of Phases 3 and 4 being single family.

In 2006, Mr. Zinner received approval for a subdivision of the rezoning site for 40 home lots (S-58-2006). That subdivision was conditioned on the abandonment of the radio easement. It was allowed to sunset before any home lots were recorded.

Upzoning vs. Downzoning and Conservation Development Option

[Note: Entitlement analysis contained in this section is based on land area and does not take into account the irregular shapes of the site boundary and riparian buffer or the layout of streets, lots, and infrastructure that may influence the development potential.]

It is unclear whether the request is an upzoning or a downzoning. For the purposes of this analysis, it will be assumed that the radio easement remains in place. There is a Neuse Riparian Buffer on the site that covers approximately 1.4 acres. This buffer cannot be developed and is split between the R-4 portion of the site and the R-10 portion of the site. It also overlaps with the radio easement area. The number of possible dwelling units would likely be maximized under both the existing zoning and the proposed zoning by utilizing the Conservation Development option, so it will be assumed that that option is chosen in both instances.

The Conservation Development option is a by-right option available in residential zoning districts. It requires the developer to set aside 40% of the site as open space. The option allows the developer to increase density beyond what is allowed in the zoning district. For R-10, density may be as high as 15 units per acre in Conservation Development. It also allows a certain percentage of dwelling units to be in building types that would not otherwise be allowed (townhouse or apartment). For R-10 districts, the building type allowance is more restrictive because it sets a maximum percentage of dwelling units in apartment and townhouse building types whereas Conventional Development in R-10 may have 100% apartment or townhouse building types.

Finally, the Conservation Development option allows smaller minimum lot sizes than the district standard. In R-10, lot sizes may be as small as 3,000 square feet in a Conservation Development, compared to 4,000 square feet under the Conventional Development option. It is important to note that the existing R-10 portion of the site is large enough (minimum 5 acres) to develop using the Conservation Development option without rezoning.

Standard	R-10 Conventional	R-10 Conservation
<i>Open Space</i>	10%	40%
<i>Density</i>	10 du/a	15 du/a
<i>Dwelling units allowed in building types</i>	Townhouse: 100%, Apartment: 100%	Townhouse: 40% (maximum), Apartment: 35% (maximum)
<i>Minimum lot size</i>	4,000 square feet	3,000 square feet

In this case, the building type allowance is irrelevant because the existing and proposed zoning districts include conditions requiring only single-family development. The density bonus is also not applicable because the constraints on the site combined with the single-family requirement make it impossible to achieve more than 10 units per acre (more than 101 total units). Therefore, the effect of the Conservation Development option is that it allows smaller lots. If the rezoning is approved, that would also allow the 40% open space requirement to be partially met by the Neuse Riparian Buffer in the R-4 portion. This opens up additional, developable land in the unrestricted area for home lots and allows smaller lots in the portion that would be rezoned from R-4 to R-10.

Considering that the radio easement, in addition to the riparian buffer, would likely be used to meet the open space set aside, it is not clear that the development entitlement in the existing R-10 portion would change if the rezoning was approved. The most likely entitlement increase would be the conversion of the R-4 portion to R-10, which could allow for an additional 5-10 lots. If the radio easement is retained, it is unlikely that development of the site could exceed 55 units under the existing zoning. If the radio easement is abandoned, the rezoning would likely be a downzoning of around 15 units.



CERTIFIED RECOMMENDATION

Raleigh Planning Commission

CR# 11821

CASE INFORMATION Z-27-17 1317 E. LENOIR STREET

Location	E. Lenoir Street, north side, east of Bart Street Address: 1317 E. Lenoir Street PIN: 1713363771
Request	Rezone property from R-4-CU and R-10-CU to R-10-CU
Area of Request	10.14 acres
Corporate Limits	The rezoning site is inside of Raleigh's corporate limits.
Property Owner	Poplar Guy LLC
Applicant	Kimberly J. Wicker, RLA 537 E. Martin Street Raleigh, NC 27601
Citizens Advisory Council (CAC)	South Central CAC Danny Coleman dancoleman1@hotmail.com
PC Recommendation Deadline	March 12, 2018

COMPREHENSIVE PLAN CONSISTENCY

The rezoning case is ☒ **Consistent** ☐ **Inconsistent** with the 2030 Comprehensive Plan.

FUTURE LAND USE MAP CONSISTENCY

The rezoning case is ☒ **Consistent** ☐ **Inconsistent** with the Future Land Use Map.

COMPREHENSIVE PLAN GUIDANCE

<i>FUTURE LAND USE</i>	Low Density Residential (LDR)
<i>URBAN FORM</i>	None
<i>CONSISTENT Policies</i>	Policy LU 1.2—Future Land Use Map and Zoning Consistency Policy LU 1.3—Conditional Use District Consistency Policy LU 2.5—Healthy Communities Policy LU 4.5—Connectivity Policy LU 8.3—Conserving, Enhancing, and Revitalizing Neighborhoods Policy LU 8.5—Conservation of Single-Family Neighborhoods Policy LU 8.9—Open Space in New Development Policy LU 8.10—Infill Development Policy LU 8.12—Infill Compatibility Policy EP 2.5—Protection of Water Features
<i>INCONSISTENT Policies</i>	Policy T 2.6—Preserving the Grid Policy H 1.8—Zoning for Housing

SUMMARY OF PROPOSED CONDITIONS

- | |
|--|
| 1. Limits development to single family detached units. |
| 2. Limits development to 55 dwelling units. |
| 3. Requires the Conservation Development option if total dwelling units exceed 50. |
| 4. Requires stormwater management for a 15-year storm event. |

PUBLIC MEETINGS

<i>Neighborhood Meeting</i>	<i>CAC</i>	<i>Planning Commission</i>	<i>City Council</i>
10/16/17	11/27/17 (Y-14, N-0)	12/12/17, 1/9/18	1/16/18

PLANNING COMMISSION RECOMMENDATION

[Select one of the following and fill in details specific to the case.]

☒ The rezoning case is **Consistent** with the relevant policies in the Comprehensive Plan, and **Approval** of the rezoning request is reasonable and in the public interest.

☐ The rezoning case is **Consistent** with the relevant policies in the Comprehensive Plan, but **Denial** of the rezoning request is reasonable and in the public interest.

☐ The rezoning is **Inconsistent** with the relevant policies in the Comprehensive Plan, and **Denial** of the rezoning request is reasonable and in the public interest.

☐ The rezoning case is **Inconsistent** with the relevant policies in the Comprehensive Plan, but **Approval** of the rezoning request is reasonable and in the public interest due to changed circumstances as explained below. Approval of the rezoning request constitutes an amendment to the Comprehensive Plan to the extent described below.

<i>Reasonableness and Public Interest</i>	The request is consistent with a number of relevant policies in the Comprehensive Plan and is in the public interest due to additional stormwater controls and possibility for conservation of open space.
<i>Recommendation</i>	Approve. City Council may now schedule this proposal for Public Hearing or refer it to committee for further study and discussion.
<i>Motion and Vote</i>	Motion: Tomasulo Second: Swink In Favor: Braun, Hicks, Novak, Queen, Swink and Tomasulo Opposed: Jeffreys

ATTACHMENTS

1. Staff report

This document is a true and accurate statement of the findings and recommendations of the Planning Commission. Approval of this document incorporates all of the findings of the attached Staff Report and Comprehensive Plan Amendment Analysis.

_____	_____	_____	_____
Planning Director	Date	Planning Commission Chairperson	Date

Staff Coordinator: John Anagnost: (919) 996-2638; John.Anagnost@raleighnc.gov



ZONING STAFF REPORT – Z-27-17

CONDITIONAL USE DISTRICT

OVERVIEW

The rezoning site is a single parcel composing approximately 10 acres and lying 700 feet west of S. Raleigh Boulevard and just north of E. Lenoir Street. The parcel does not front directly on E. Lenoir Street and is surrounded by smaller parcels, most of which are developed with detached houses. Rights-of-way for three streets have been dedicated within the parcel. These three “paper” streets were the result of subdivision S-70-1998 that was to be developed in two phases. The rezoning site was the second phase and was never developed under that subdivision approval. In 2002, the site was rezoned to add a single zoning condition to restrict development to single family (Z-66-2002). Subsequent to that case, another subdivision was filed (S-58-2006). That subdivision was not acted upon prior to the sunset date in 2012.

The site is heavily wooded and mostly undeveloped except for one single family house. A stream runs from west to east along the northern portion of the site. This stream is a tributary of Gatling Creek, which in turn is a tributary of Walnut Creek. Previous development approvals have identified this stream as subject to Riparian Buffer regulations. The area surrounding the rezoning site is largely low density residential in the form of detached houses. Roberts Park is across E. Davie Street to the north. The Raleigh National Cemetery (a federal burial site for Union soldiers) is to the west across Bart Street with Hunter Elementary School just beyond the cemetery across Rock Quarry Road.

Zoning on the site is split between Residential-4 on the northern fifth and Residential-10 on the southern four-fifths. Residential-4 is the predominant zoning for the area to the north of the site. Residential-10 zoning extends south from the site. There is commercial zoning (NX and CX) along Rock Quarry Road, north of Martin Luther King Jr. Boulevard. The Future Land Use Map is Low Density Residential for the site and much of the surrounding area.

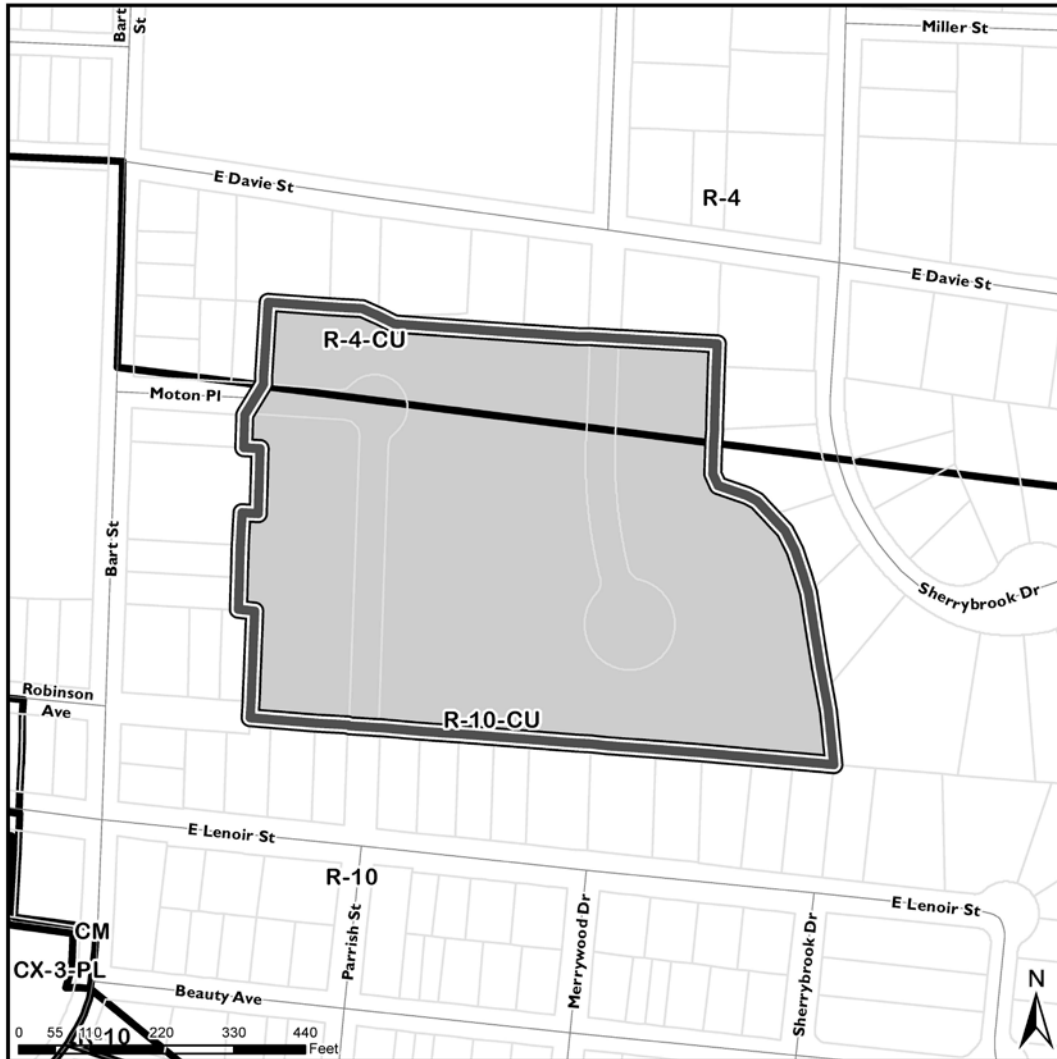
The rezoning request is to apply Residential-10 zoning to the entirety of the site, removing the Residential-4 zoning district. Conditions offered limit development to single family detached housing (matching the one existing zoning condition), limit development to 55 dwelling units, require the Conservation Development option if total dwelling units exceed 50, and increase stormwater control requirements. The request would decrease development entitlement from an estimated 84 dwelling units to 55 dwelling units.

OUTSTANDING ISSUES

Outstanding Issues	1. None.	Suggested Mitigation	1. N/A
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Existing Zoning

Z-27-2017



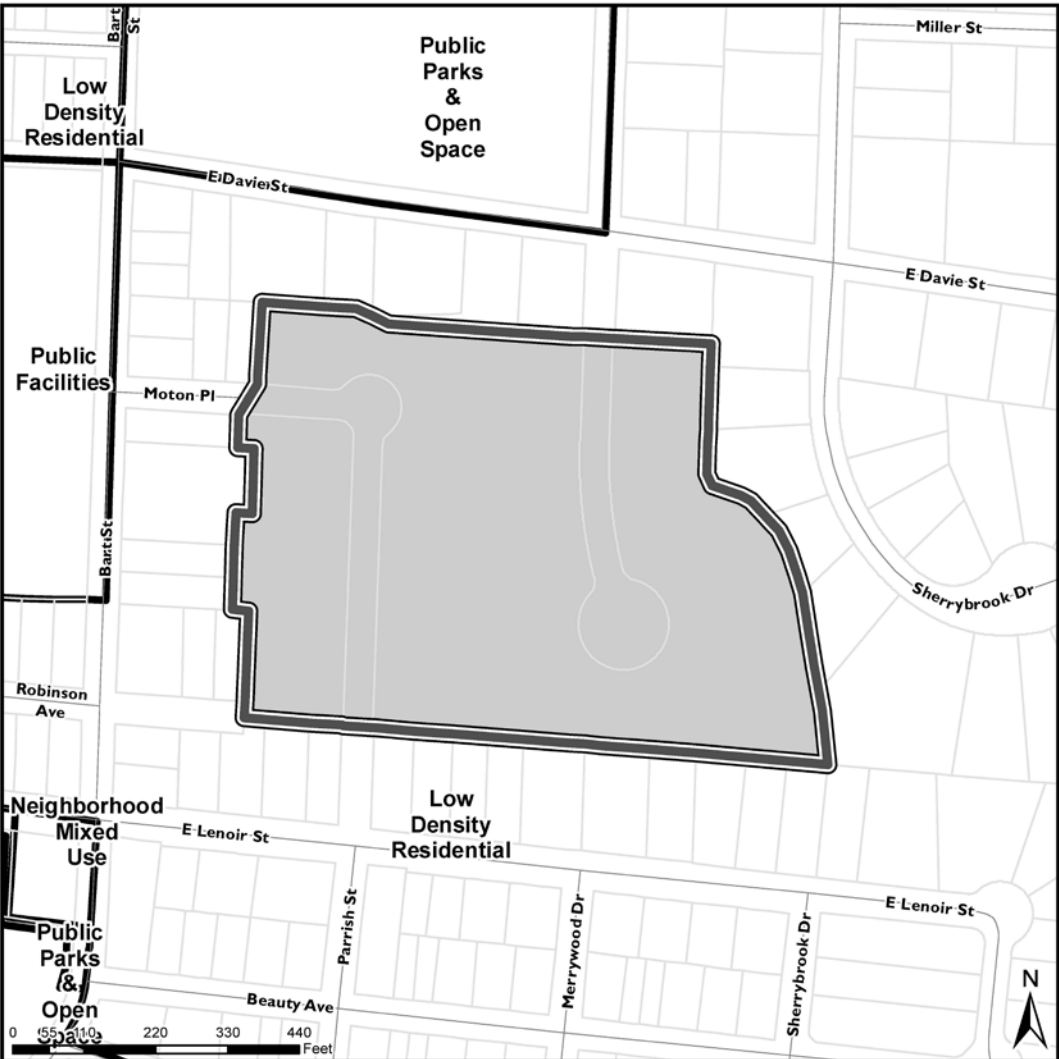
Request:

10.14 acres from
R-4-CU & R-10-CU
to R-10-CU



Future Land Use	Z-27-2017
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Future Land Use	Z-27-2017
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**Submittal
Date**

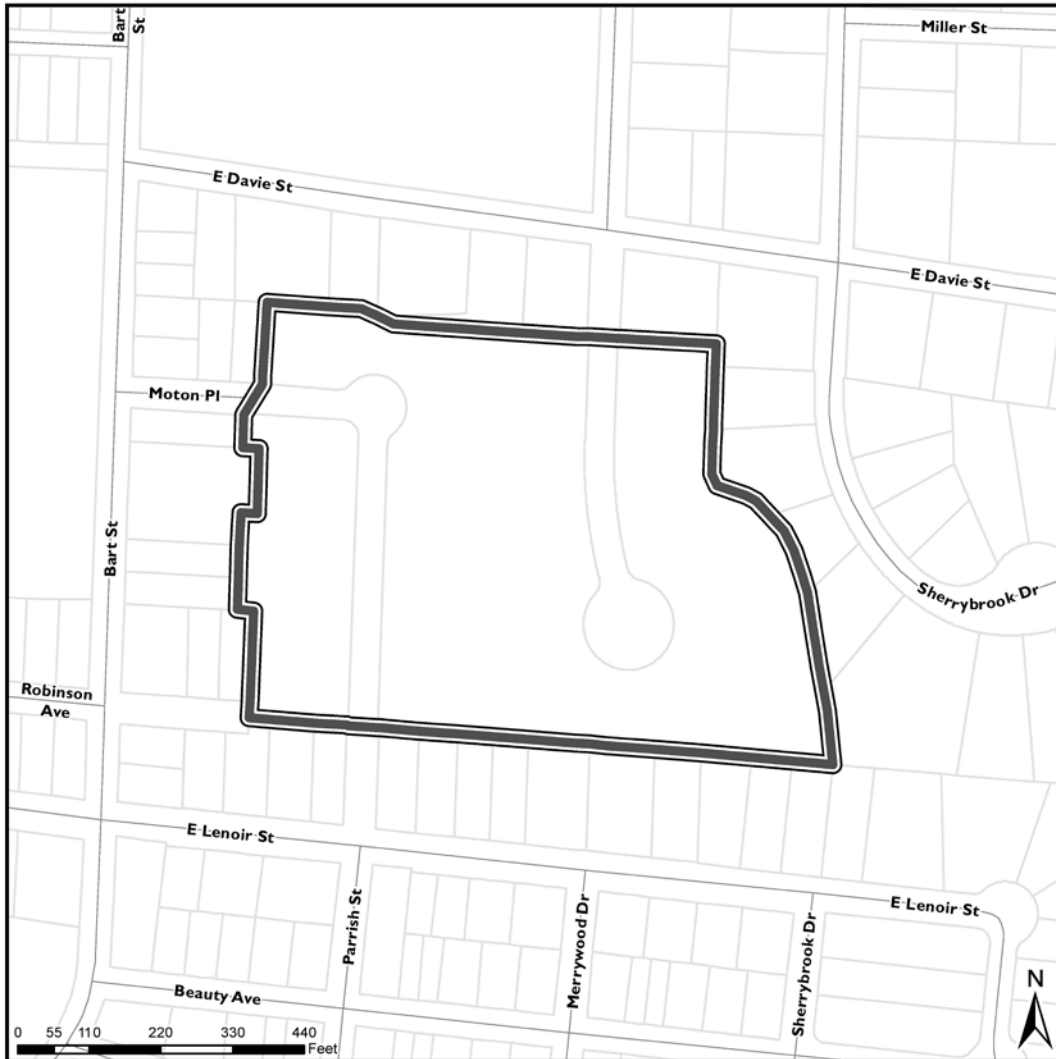
10/24/2017

Request:

**10.14 acres from
R-4-CU & R-10-CU
to R-10-CU**



Map Date: 10/24/2017



Request:
10.14 acres from
R-4-CU & R-10-CU
to R-10-CU



Comprehensive Plan

Determination of the conformance of a proposed use or zone with the Comprehensive Plan includes consideration of the following questions:

- A. Is the proposal consistent with the vision, themes, and policies contained in the Comprehensive Plan?

Yes, the request is consistent with the Future Land Use Map as well as policies relating to protecting natural features and promoting careful infill. The Vision Theme of Growing Successful Neighborhoods and Communities is served by the conditions requiring single family housing and limiting density.

- B. Is the use being considered specifically designated on the Future Land Use Map in the area where its location is proposed?

Yes, the request would limit development to single family detached houses and density to less than six units per acre, which is the recommended development pattern in this Future Land Use Map designation.

- C. If the use is not specifically designated on the Future Land Use Map in the area where its location is proposed, is it needed to service such a planned use, or could it be established without adversely altering the recommended land use and character of the area?

Not applicable. The use proposed is the use designated on the Future Land Use Map.

- D. Will community facilities and streets be available at City standards to serve the use proposed for the property?

Yes, the rezoning site is in an urbanized area near Downtown. Existing City facilities and streets are sufficient to serve the use proposed.

Future Land Use

Future Land Use designation:

The rezoning request is:

☒ **Consistent** with the Future Land Use Map.

☐ **Inconsistent**

Analysis of Inconsistency: The Future Land Use Map designation of Low Density Residential calls for a maximum density of six dwelling units per acre. Smaller lots and more intense building types are appropriate when significant open space is set aside. The condition requiring single family housing matches the building type

recommendation of the Future Land Use Map. Density is limited to less than six dwelling units per acre by an offered condition. The Conservation Development option is required by condition if more than 50 units are built. This offers the potential of mitigating smaller lot sizes in R-10.

Urban Form

Urban Form designation:

The rezoning request is:

☒ **Not applicable** (no Urban Form designation)

☐ **Consistent** with the Urban Form Map.

☐ **Inconsistent**

Compatiblility

The proposed rezoning is:

☒ **Compatible** with the property and surrounding area.

☐ **Incompatible.**

Analysis of Incompatibility: A condition is offered which limits development to single family housing. The area surrounding the rezoning site is predominantly single family. Lot sizes in the immediate vicinity tend to be larger than one-tenth of an acre, but the larger surrounding area contains a large proportion of R-10 sized, single-family lots.

Public Benefits of the Proposed Rezoning

The request would increase stormwater control requirements and potentially preserve open space. The request would reduce potential vehicle trips on nearby streets.

Detriments of the Proposed Rezoning

None identified.

Policy Guidance

The rezoning request is **consistent** with the following policies:

Policy LU 1.2—Future Land Use Map and Zoning Consistency

The Future Land Use Map shall be used in conjunction with the Comprehensive Plan policies to evaluate zoning consistency including proposed zoning map amendments and zoning text changes.

The requested zoning allows for density that is recommended by the Future Land Use Map. Smaller lot sizes would be allowed, however the Conservation Development option will be triggered if sufficient units are proposed at time of subdivision.

Policy LU 1.3—Conditional Use District Consistency

All conditions proposed as part of a conditional use district (CUD) should be consistent with the Comprehensive Plan.

The conditions offered are consistent with the Future Land Use Map as well as multiple policies that relate to neighborhood conservation and infill development.

Policy LU 8.3—Conserving, Enhancing, and Revitalizing Neighborhoods

Recognize the importance of balancing the need to increase the housing supply and expand neighborhood commerce with the parallel need to protect neighborhood character, preserve historic resources, and restore the environment.

Single family housing is compatible with the character of the surrounding neighborhood and may also be less detrimental to natural features on the site than higher-density housing types.

Policy LU 8.5—Conservation of Single-Family Neighborhoods

Protect and conserve the City's single-family neighborhoods and ensure that their zoning reflects their established low density character. Carefully manage the development of vacant land and the alteration of existing structures in and adjacent to single-family neighborhoods to protect low density character, preserve open space, and maintain neighborhood scale.

Single family housing is compatible with the character of the surrounding neighborhood and may also be less detrimental to natural features on the site than higher-density housing types.

Policy LU 8.9—Open Space in New Development

New residential development should be developed with common and usable open space that preserves the natural landscape and the highest quality ecological resources on the site.

The request would reduce density in close proximity to sensitive natural features on the site. Conditions have been offered to require preservation of additional open space if sufficient density is proposed.

Policy LU 8.10—Infill Development

Encourage infill development on vacant land within the City, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern.

The proposal requires that development be limited to single family housing. Single family housing is the development pattern of the surrounding area.

Policy LU 8.12—Infill Compatibility

Vacant lots and infill sites within existing neighborhoods should be developed consistently with the design elements of adjacent structures, including height, setbacks, and massing through the use of zoning tools including Neighborhood Conservation Overlay Districts.

The request requires that development be for single family housing. Height, setback, and lot dimensions required in the proposed zoning district are the same or similar to those found in surrounding neighborhoods.

Policy EP 2.5—Protection of Water Features

Lakes, ponds, rivers, streams, and wetlands should be protected and preserved. These water bodies provide valuable stormwater management and ecological, visual, and recreational benefits.

The request would reduce density in close proximity to sensitive natural features on the site.

Conditions have been offered to require preservation of additional open space if sufficient density is proposed.

The rezoning request is **inconsistent** with the following policies:

Policy T 2.6—Preserving the Grid

Existing street grid networks should be preserved and extended where feasible and appropriate to increase overall connectivity.

Additional street connections are likely to be required during any future subdivision review. The request does not require that new streets be constructed to continue the existing street grid in the area surrounding the rezoning site.

Policy H 1.8—Zoning for Housing

Ensure that zoning policy continues to provide ample opportunity for developers to build a variety of housing types, ranging from single-family to dense multi-family. Keeping the market well supplied with housing will moderate the costs of owning and renting, lessening affordability problems, and lowering the level of subsidy necessary to produce affordable housing.

The request limits the variety of housing types by including a condition that limits development to single family housing.

Area Plan Policy Guidance

There is no area plan guidance for the rezoning site.

Impact Analysis

Transportation

The Z-27-2017 site is located to the north of Lenoir Street, east of Bart Street and south of Davie Street. All three streets are maintained by the City. There are no sidewalks or exclusive bike lanes along Lenoir Street or Davie Street in the vicinity of Z-27-2017. A public sidewalk exists along the west side of Bart Street, but there is no sidewalk on the east side. The nearest transit stop is at the corner of Lenoir Street and Tarboro/Rock Quarry, 0.20 miles to the west.

There are no City of Raleigh CIP projects planned for Lenoir Street, Bart Street or Davie Street in the vicinity of the Z-27-2017 site. The BikeRaleigh Long Term Plan has identified Davie Street as a potential neighborhood bikeway, which can include traffic calming and wayfinding.

In accordance with UDO section 8.3.2, the maximum block perimeter for R-10 zoning is 2,500 feet. Due to the construction of Raleigh Boulevard (circa 1990) and the existing pattern of residential development, the current block perimeter applicable to Z-27-2017 cannot be determined.

Rights of way for streets within the Z-27-2017 site have been platted/recorded but none of these streets have been built. Since the proposed zoning conditions limits development of Z-27-2017 to single family residential, a public street network will be necessary for access to individual lots. The existing rights of way do not meet current City standards. A revised public street network would be a requirement of subdivision plan approval.

The existing land is a vacant and generates no traffic. Approval of case Z-27-2017 would increase the average trip volume by 40 veh/day. A traffic study is not required for case Z-27-2017.

Z-27-2017 Existing Land Use (Vacant)	Daily Trips (vpd)	AM peak trips (vph)	PM peak trips (vph)
	0	0	0
Z-27-2017 Current Zoning Entitlements (SF Residential)	Daily Trips (vpd)	AM peak trips (vph)	PM peak trips (vph)
	796	62	80
Z-27-2017 Proposed Zoning Maximums (SF Residential)	Daily Trips (vpd)	AM peak trips (vph)	PM peak trips (vph)
	836	64	84
Z-27-2017 Trip Volume Change (Proposed Maximums minus Current Entitlements)	Daily Trips (vpd)	AM peak trips (vph)	PM peak trips (vph)
	40	2	4

Impact Identified: Merrywood Drive cul-de-sac exceeds UDO dead-end street length.

Transit

1. The rezoning site has no transit service directly adjacent.
2. The nearest transit service to the rezoning site is provided by Route 5 Biltmore Hills, which is one-quarter mile west on Rock Quarry Road, and Route 18 Worthdale, which is 1,800 feet northwest on East Martin Street.
3. No new service is planned through the rezoning site.
4. Due to the lack of current or planned connectivity of the local street grid with South Raleigh Boulevard to the east, it is unlikely that transit service will pass through the rezoning site in the future.

Impact Identified: None.

Hydrology

<i>Floodplain</i>	None
<i>Drainage Basin</i>	Walnut
<i>Stormwater Management</i>	Article 9.2 of the UDO
<i>Overlay District</i>	none

Impact Identified: Neuse River Buffers may be present on site.

Public Utilities

	<i>Maximum Demand (current use)</i>	<i>Maximum Demand (current zoning)</i>	<i>Maximum Demand (proposed zoning)</i>
<i>Water</i>	113 gpd	46,250 gpd	48,750 gpd
<i>Waste Water</i>	113 gpd	46,250 gpd	48,750 gpd

Impact Identified:

1. The proposed rezoning would add approximately 48,637 gpd to the wastewater collection and water distribution systems of the City.
2. There are existing sanitary sewer and water mains adjacent to the proposed rezoning area.
3. At the time of development plan submittal, a Downstream Sewer Capacity Study may be required to determine adequate capacity to support the proposed development. Any improvements identified by the study would be required to be permitted prior to the issuance of Building Permit & constructed prior to release of a Certificate of Occupancy.
4. Verification of water available for fire flow is required as part of the Building Permit process. Any water system improvements recommended by the analysis to meet fire flow requirements will also be required of the Developer.

Parks and Recreation

1. This site is not impacted by any existing or proposed greenway trails or greenway corridors.
2. Nearest existing park access is provided by Roberts Park (0.1 mile).
3. Nearest existing greenway access is provided by the Little Rock Trail (1.0 mile) and Walnut Creek Trail (1.2 miles).
4. Park access level of service in this vicinity is considered above average.
5. This area is not considered a high priority for park land acquisition.
6. This site is nearly adjacent to Roberts Park. Efforts should be made to provide for adequate bike & pedestrian access to the nearby park, through integration with the site's internal pedestrian network.

Impact Identified: None.

Urban Forestry

1. The subject parcel is larger than two acres in size and will be subject to UDO Article 9.1. Tree Conservation when the site is developed. No tree conservation area currently exists on this site.
2. The proposed rezoning to R10 will have no impact on application of UDO Article 9.1. to this site.

Impact Identified: None.

Designated Historic Resources

The site is not located within or adjacent to a National Register Historic District or Raleigh Historic Overlay District. It does not include any National Register individually-listed properties or Raleigh Historic Landmarks.

Impact Identified: None.

Impacts Summary

No significant impacts of the rezoning have been identified.

Mitigation of Impacts

No mitigation of impacts is recommended.

Conclusion

The site of this rezoning request is a wooded, 10-acre parcel currently split-zoned between R-4-CU and R-10-CU. There is a single condition on both existing zoning districts that requires single family houses. The proposal would apply R-10 zoning to the entire site with conditions limiting density to below what is currently allowed, providing additional stormwater control, and potentially requiring the Conservation Development option. The effect of the rezoning would be to reduce overall density, marginally reduce downstream stormwater impacts, and possibly set aside significant open space.

Case Timeline

<i>Date</i>	<i>Revision [change to requested district, revised conditions, etc.]</i>	<i>Notes</i>
10/24/2017	Case submitted	
12/1/2017	Revised, signed conditions submitted	

Appendix

Surrounding Area Land Use/ Zoning Summary

	<i>SUBJECT PROPERTY</i>	<i>NORTH</i>	<i>SOUTH</i>	<i>EAST</i>	<i>WEST</i>
Existing Zoning	Residential-4 and Residential-10	Residential-4	Residential-10	Residential-4 and Residential-10	Residential-4 and Residential-10
Additional Overlay	None	None	None	None	None
Future Land Use	Low Density Residential	Public Parks & Open Space, Low Density Residential	Low Density Residential	Low Density Residential	Public Facilities, Low Density Residential
Current Land Use	Open space	Single unit living, Park	Single unit living	Single unit living	Single unit living, School
Urban Form (if applicable)	None	None	None	None	Transit Emphasis Corridor

Current vs. Proposed Zoning Summary

	Existing Zoning ¹		Proposed Zoning
Zoning	R-4-CU	R-10-CU	R-10-CU
Total Acreage	1.92	8.21	10.14
Setbacks:			
Front:	20'	10'	10'
Side:	10'	5'	5'
Rear:	30'	20'	20'
<i>Residential Density:</i>	1 dua. (2 units)	8.8 dua. (72 units)	8.1 dua. (82 units)
<i>Max. # of Residential Units</i>	2	72	82
<i>Max. Gross Building SF (if applicable)</i>	N/A	N/A	N/A
<i>Max. Gross Office SF</i>	Not permitted	Not permitted	Not permitted
<i>Max. Gross Retail SF</i>	Not permitted	Not permitted	Not permitted

<i>Max. Gross Industrial SF</i>	Not permitted	Not permitted	Not permitted
<i>Potential F.A.R</i>	N/A	N/A	N/A

*The development intensities for existing and proposed zoning districts were estimated using an impact analysis tool. The estimates presented are only to provide guidance for analysis.

1. Overall residential density: 7.3 dua.

Z-27-2017 Existing Land Use (Vacant)	Daily Trips (vpd)	AM peak trips (vph)	PM peak trips (vph)
	0	0	0
Z-27-2017 Current Zoning Entitlements (SF Residential)	Daily Trips (vpd)	AM peak trips (vph)	PM peak trips (vph)
	796	62	80
Z-27-2017 Proposed Zoning Maximums (SF Residential)	Daily Trips (vpd)	AM peak trips (vph)	PM peak trips (vph)
	836	64	84
Z-27-2017 Trip Volume Change (Proposed Maximums minus Current Entitlements)	Daily Trips (vpd)	AM peak trips (vph)	PM peak trips (vph)
	40	2	4
Z-27-2017 Traffic Study Worksheet			
6.23.4	Trip Generation	Meets TIA Conditions? (Y/N)	
A	Peak Hour Trips \geq 150 veh/hr	No	
B	Peak Hour Trips \geq 100 veh/hr if primary access is on a 2-lane street	No	
C	More than 100 veh/hr trips in the peak direction	No	
D	Daily Trips \geq 3,000 veh/day	No	
E	Enrollment increases at public or private schools	Not Applicable	
6.23.5	Site Context	Meets TIA Conditions? (Y/N)	
A	Affects a location with a high crash history [Severity Index \geq 8.4 or a fatal crash within the past three years]	No	
B	Takes place at a highly congested location [volume-to-capacity ratio \geq 1.0 on both major street approaches]	No	
C	Creates a fourth leg at an existing signalized intersection	No	
D	Exacerbates an already difficult situation such as a RR Crossing, Fire Station Access, School Access, etc.	No	
E	Access is to/from a Major Street as defined by the City's Street Plan Map	No	
F	Proposed access is within 1,000 feet of an interchange	No	
G	Involves an existing or proposed median crossover	No	
H	Involves an active roadway construction project	No	
I	Involves a break in controlled access along a corridor	No	
6.23.6	Miscellaneous Applications	Meets TIA Conditions? (Y/N)	
A	Planned Development Districts	No	
B	In response to Raleigh Planning Commission or Raleigh City Council resolutions	None noted as of Oct. 25, 2017	

Rezoning Application



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

REZONING REQUEST

☐ General Use ☒ Conditional Use ☐ Master Plan

Existing Zoning Base District R-4/R-10 Height N/A Frontage N/A Overlay(s) _____

Proposed Zoning Base District R-10 Height N/A Frontage N/A Overlay(s) _____

Click [here](#) to view the Zoning Map. Search for the address to be rezoned, then turn on the 'Zoning' and 'Overlay' layers.

OFFICE
USE ONLY

Transaction #

Rezoning Case #

If the property has been previously rezoned, provide the rezoning case number:

Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions, or Pre-Submittal Conferences:

521771

506261

GENERAL INFORMATION

Date **11.29.17**

Date Amended (1) **11.29.17**

Date Amended (2) **11.29.17**

Property Address **1317 E. Lenoir Street**

Property PIN **1713363771**

Deed Reference (book/page) **9509/463**

Nearest Intersection **E Davie and Bart Street**

Property Size (acres) **10.14**

(For PD Applications Only) Total Units

Total Square Feet

Property Owner/Address
Poplar Guy LLC
106 S East Street
Raleigh, NC 27601

Phone **919.821.9355**

Fax **919.821.3155**

Email **ty.j.armstrong@gmail.com**

Project Contact Person/Address
Kimberly J Wicker, RLA
537 E. Martin Street
Raleigh, NC 27601

Phone **919.539.0012**

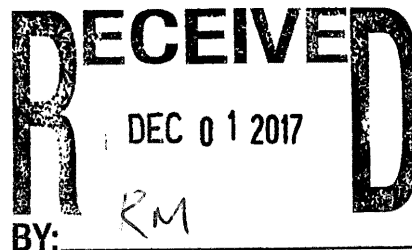
Fax

Email **kimberly@coalydesign.com**

Owner/Agent Signature

Email **cliff.rdcc@gmail.com**

A rezoning application will not be considered complete until all required submittal components listed on the Rezoning Checklist have been received and approved.



REZONING APPLICATION ADDENDUM #1**Comprehensive Plan Analysis****OFFICE USE ONLY**

The applicant is asked to analyze the impact of the rezoning request. State Statutes require that the rezoning either be consistent with the adopted Comprehensive Plan, or that the request be reasonable and in the public interest.

Transaction #

521771

Rezoning Case #

2-27-17

STATEMENT OF CONSISTENCY

Provide brief statements regarding whether the rezoning request is consistent with the future land use designation, the urban form map, and any applicable policies contained within the 2030 Comprehensive Plan.

1. This site is not indicated on the Urban Form Map.

2. Future land designation is for low density residential (1-6 u/a). The request of the R10 zoning for the portion of the property that is currently zoned R4, would be classified as moderate density (6-14 u/a). We are proposing a condition of this rezoning that the density not exceed 6 u/a, which is consistent with the future land use designation.

3. Applicable policies consistent with the 2030 Comprehensive Plan: LU 5.6 Buffering Requirements, LU 8.9 Open Space in New Development, LU 8.10 Infill Development, LU 8.12 Infill Compatibility, T 2.4 Road Connectivity, T 2.6 Preserving the Grid, T 3.4 Pedestrian Friendly Road Design, EP 2.3 Open Space Preservation, H1.8 Zoning for Housing, PR 3.5 Stream Open Space Networks.

4.

PUBLIC BENEFITS

Provide brief statements regarding the public benefits derived as a result of the rezoning request.

1. The public will benefit by a neighborhood infill development which provides connected open space and proposed streets connecting to existing streets. Residents will be able to walk to a public park, schools, and public facilities.

2.

3.

4.

REZONING APPLICATION ADDENDUM #2**Impact on Historic Resources****OFFICE USE ONLY**

The applicant is asked to analyze the impact of the rezoning request on historic resources. For the purposes of this section, a historic resource is defined as any site, structure, sign, or other feature of the property to be rezoned that is listed in the National Register of Historic Places or designated by the City of Raleigh as a landmark or contributing to a Historic Overlay District.

Transaction #

521771

Rezoning Case #

Z-27-17

INVENTORY OF HISTORIC RESOURCES

List in the space below all historic resources located on the property to be rezoned. For each resource, indicate how the proposed zoning would impact the resource.

N/A

PROPOSED MITIGATION

Provide brief statements describing actions that will be taken to mitigate all negative impacts listed above.

N/A

CONDITIONAL USE DISTRICT ZONING CONDITIONS

Zoning Case Number **Z-27-17**

Date Submitted 4.30.18

Existing Zoning R4-CU and R10-CL Proposed Zoning R10-CU

OFFICE USE ONLY

Transaction #

Rezoning Case #

Narrative Of Zoning Conditions Offered

1. Development of the property shall be limited to single family, detached housing
2. Development of the property shall be limited to 55 dwelling units
3. The conservation development option (Article 2.4 of the UDO) shall be utilized if total number of dwelling units exceeds 50
4. The stormwater runoff leaving the site for a 15-year storm shall be no greater at every point of discharge for post-development conditions than pre-development conditions, if total dwelling units are equal to or less than 50.
5. The stormwater runoff leaving the site for a 25-year storm shall be no greater at every point of discharge for post-development conditions than pre-development conditions, if total dwelling units exceed 50.
- 6.
- 7.
- 8.
- 9.
- 10.

These zoning conditions have been voluntarily offered by the property owner. All property owners must sign each condition page. This page may be photocopied if additional space is needed.

Owner/Agent Signature

Print Name

[illegible]

Re: Neighbor meeting summary for Rezoning at 1317 E Lenoir Street
From: Kimberly Wicker, RLA, Owner, Coaly Design
Date: October 17, 2017

We held a neighbor meeting on October 16th, 2017. The meeting was held at Roberts Park, located at 1300 E. Martin Street and began at 6:30 pm.

All property owners within 100 feet of the rezoning request were notified. There were 3 property owners in attendance, owning property on Moton Place, Pettigrew Street, and E. Lenoir Street.

We described the rezoning request and the property owners in attendance had a general interest in the request and general questions regarding the terminology of the proposed and existing zoning classifications.

A few questions were asked about the type of development (single family homes vs apartments or townhomes), the buffers that are being provided / required, and the location of the open space being conserved.

There was no opposition to the request and the property owners were notified that we will attend the CAC meeting on October 23rd, to present the request.

Thank you,



Coaly Design, PC

Good evening. My name is Daniel Coleman, 517 Rock Quarry Rd. Tonight I want to communicate the vote of the South Central CAC in the affirmative. I did not vote.

Now subsequent to that vote I found the minutes that reflected that in 2002 this property was the subject of a request to waive the \$300, 000 the city had invested in Shaw Development Corporation, the original developers of Tupper Place, this site. At that time it was agreed that the R-4 would remain R-4 to protect the existing community that had R-4 and separated this site from E. Davie St. Another condition was that the R-10 would be rezoned to R-10 with single family detached housing as a Condition. I submit that had that information been available from Council's brokered work on dealing with this property to staff and the community a different result would have occurred.

Finally, and the question that I put forth before the CAC and now I direct it to all of you, some of you were in attendance at this CAC meeting so please excuse the redundancy and I especially want my dear friend, Mr. Thompson to consider

Staff has determined that without any zoning changes the developer can develop approximately 72 lots. In today's market where lots surrounding this property are being sold for \$118,000 or

Potential	Giving up
72 x \$118,000 = \$8,496,000	-17 x \$118,000 = -\$2,006,000
	Filing fee of = - 1,500
	Extra Storm water = - 200,000
	Total -\$2,207,500

yet the applicant wants to cap the number of lots at 55 lots or 17 fewer lots.

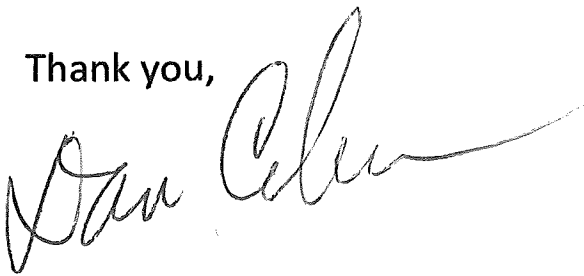
What, Mr. Thompson, is the business model that justifies this rezoning case - that supports leaving \$2,207,500 on the table? I have yet to hear a plausible answer to this question and that gives me great pause.

Does it mean that the subdivision developed by Kimberly Horne with only 34 lots reflected things not currently known by staff or the residents? I just don't know.

But in light of the minutes from the 2002 and 2003 City Council minutes that dealt with the forgiveness of the \$170,000 with the stipulation that the R-4 remained and the R-10 be restricted to single family detached, and that the SC CAC did vote in the affirmative for the zoning provided the storm water retention was scaled for the 15 year occurrence I would like the following resolution be entertained.

The applicant exclude the R-4 from the application, otherwise the application be approved. This keeps in mind the intent of the 2002 brokered deal on this property for the forgiveness of tax payer money and hard work of the SC CAC in negotiating the storm water improvements.

Thank you,

A handwritten signature in black ink, appearing to read "Dan Cohen". The signature is fluid and cursive, with the first name "Dan" written in a larger, more prominent script than the last name "Cohen".



RADIO FOR THE CHRISTIAN COMMUNITY OF RALEIGH SINCE 1974

February 28, 2018

Mr. Bowers,

We received a notice regarding a rezoning application (Z-27-17 1317 E. Lenoir Street). Our property is located at 515 Bart Street. The tract involved backs up to and borders our property.

I just wanted to make sure that the city is aware that we have an *easement* that extends into that property. This easement has been in effect dating back to when this property was originally deeded by John Gatling (property called "The Gatling Track") and has continued to be essential to the operation of the radio station that has been functioning in this location since 1947 to the present time.

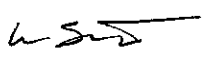
The easement regards our radial ground system which runs underground under a portion of the adjacent property which is included in the tract in question. The easement gives us the right to go on that property to "repair, replace, or extend" these radial wires which are essential to the operation of our radio station as authorized by the Federal Communications Commission, Washington, DC.

We have been in discussions with Cliff Zinner at RD Construction concerning this issue, but to date have not reached an agreement.

I want to be sure that if Mr. Zinner's intention is to deem the portion of this property in question as a designated *City Conservation Area* that the rights of our easement will remain in effect so that we can do anything necessary in order to maintain the performance of our ground system in keeping with our FCC license.

This will be crucial to us going forward.

Thank you for your help.


Dr. William Suttles
President
WPJL INC (WPJL Radio)
515 Bart Street
P.O. Box 27946
Raleigh, NC 27611
(919) 834-6401
(919) 247-4405
WmSuttles@gmail.com

From: William Suttles
To: [Anagnost, John](#)
Subject: Concerning Rezoning Application Z-27-17 1317 E. Lenoir Street
Date: Wednesday, February 28, 2018 6:31:39 PM

John,

We received a notice regarding a rezoning application (Z-27-17 1317 E. Lenoir Street). Our property is located at 515 Bart Street. The tract involved backs up to and borders our property.

I just wanted to make sure that the city is aware that we have an *easement* that extends into that property. This easement has been in effect dating back to when this property was originally deeded by John Gatling (property called "The Gatling Track") and has continued to be essential to the operation of the radio station that has been functioning in this location since 1947.to the present time.

The easement regards our radial ground system which runs underground under a portion of the adjacent property which is included in the tract in question. The easement gives us the right to go on that property to "repair, replace, or extend" these radial wires which are essential to the operation of our radio station as authorized by the Federal Communications Commission, Washington, DC.

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I want to be sure that if Mr. Zinner's intention is to deem the portion of this property in question as a designated *City Conservation Area* that the rights of our easement will remain in effect so that we can do anything necessary in order to maintain the performance of our ground system in keeping with the FCC license.
This will be crucial to us going forward.

Thank you for your help.

Dr. William Suttles
President
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P.O. Box 27946
Raleigh, NC 27611
(919) 834-6401
(919) 247-4405
WmSuttles@gmail.com

NORTH CAROLINA

BOOK 1196 PAGE 579

WAKE COUNTY

THIS DEED, Made this 20th day of June, 1955, by G. L. & N. Corporation of Wake County, State of North Carolina, Party of the First Part, to John Gatling, of Wake County, State of North Carolina, Party of the Second Part:

WITNESSETH, That said G. L. & N. Corporation, Party of the First Part, in consideration of ONE HUNDRED DOLLARS AND OTHER VALUABLE CONSIDERATIONS to it paid by John Gatling, Party of the Second Part, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does grant, bargain, sell, and convey to said John Gatling, Party of the Second Part, his heirs and assigns, certain tracts or parcels of land in Wake County, State of North Carolina, described as follows:

Lots Nos. 12, 14, 20, 67, 68, 69, 70, 71, and 72 of Washington Heights, Raleigh, North Carolina, as shown on map of same made by C. L. Barnhardt, C. E., said map being recorded in office of Register of Deeds for Wake County, in Book 1947, Page 52, reference to which map is hereby made for further description.

This deed is made upon the further condition that G. L. & N. Corporation and Capitol Broadcasting Company, Inc., their successors or assigns, shall have the right and privilege of maintaining ground system of wire under surface of said property, with right of ingress and egress to and from, over, upon and under said property, for the purpose of maintaining, extending and removing the same.

TO HAVE AND TO HOLD the aforesaid tracts or parcels of land, and all privileges and appurtenances thereto belonging, to the said John Gatling, his heirs and assigns, to his only use and behoof forever.

And the said G. L. & N. Corporation, for itself and its successors and assigns, covenants with said John Gatling, his heirs and assigns, that it is seized of said premises in fee and has the right to convey in fee simple; that the same are free and clear from all encumbrances, and that it does hereby forever warrant and will forever defend the said title to the same against the claims of all persons whomsoever.

BOOK 1196 PAGE 580

IN TESTIMONY WHEREOF, the said G. L. & N. Corporation has caused its corporate name to be hereto signed by its President, and its corporate seal to be hereunto affixed, duly attested by its Secretary, pursuant to authority, duly conferred by resolution of its Board of Directors, the day and year first hereinabove written.



Louise S. Stephenson
Secretary

G. L. & N. CORPORATION

By [Signature]
President

NORTH CAROLINA

WAKE COUNTY

This is to certify that on the 20 day of June, 1955, before me, Elizabeth Overby, a Notary Public in and for the State and County aforesaid, personally appeared A. J. Fletcher, with whom I am personally acquainted, who being by me duly sworn, says that he is the President and that Louise S. Stephenson is the Secretary of G. L. & N. Corporation, the corporation described in and which executed the foregoing instrument; that he knows the common seal of the said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said President and that the said President and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of the said corporation.

Witness my hand and notarial seal, this 20 day of June, 1955.



Elizabeth Overby
Notary Public

STATE OF NORTH CAROLINA

Wake County

The foregoing certificate of Elizabeth Overby
A Notary Public of Wake County, State of North Carolina
is adjudged to be correct. Let the instrument
with the certificates, be registered.

WITNESS my hand this the 21 day of

June 1955.

Esther S. Callahan
Clerk Superior Court



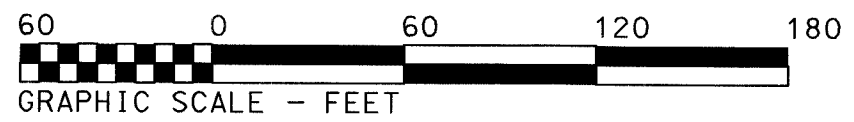
Filed for Registration at 1:15 o'clock
June 21 1955 and
Registered in the Office of the Register of
Deeds of Wake County, North Carolina,
in Book 1196 Page 579

[Signature] 1955
Register of Deeds

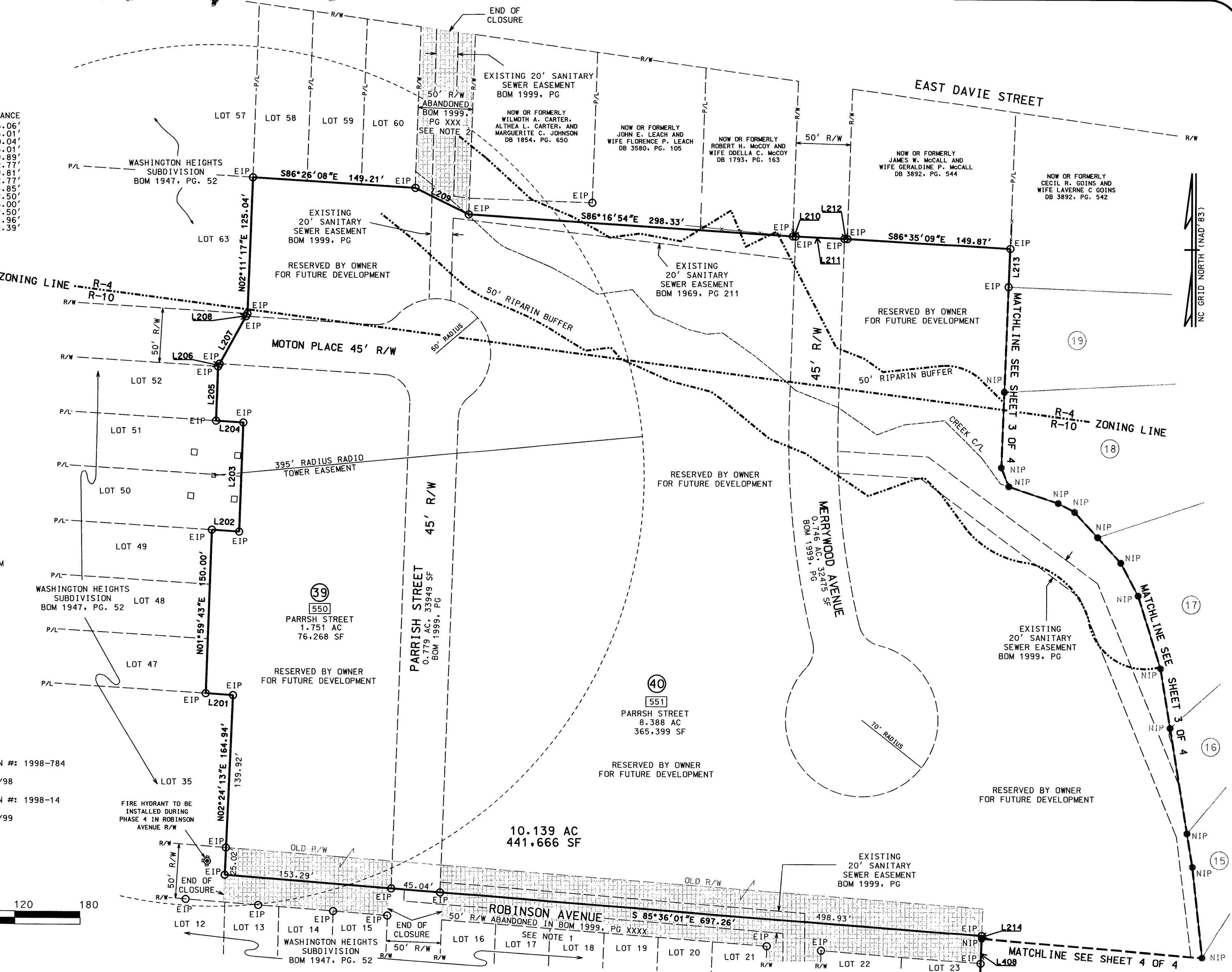
LINE TABLE		
COURSE	BEARING	DISTANCE
L201	N 86°25'36"W	25.06'
L202	S 86°20'23"E	25.01'
L203	N 01°59'43"E	100.04'
L204	N 86°26'08"W	25.01'
L205	N 01°59'43"E	49.89'
L206	S 28°56'41"W	2.77'
L207	N 28°56'41"E	49.81'
L208	S 28°56'41"W	2.77'
L209	S 63°43'38"E	54.85'
L210	N 87°16'27"W	2.50'
L211	N 87°16'27"W	45.00'
L212	N 87°16'27"W	2.50'
L213	S 02°11'29"W	34.96'
L214	N 02°11'29"E	2.39'

LEGEND:	
AC	ACRES
R/W	RIGHT-OF-WAY
P/L	PROPERTY LINE
EIP	EXISTING IRON PIPE
NIP	NEW IRON PIPE
BOM	BOOK OF MAPS
DB	DEED BOOK
PG	PAGE
NAD	NORTH AMERICAN DATUM
SF	SQUARE FEET

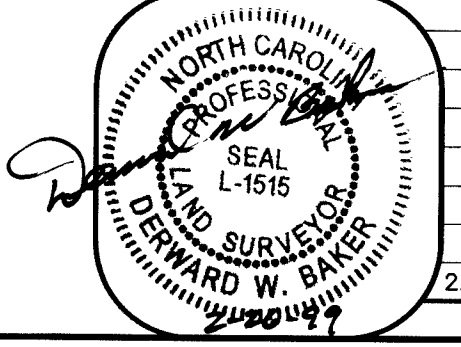
- NOTES:
- STREET CLOSING RESOLUTION #: 1998-784
PASSED: 4/21/98
EXCHANGE AUTHORIZED: 5/5/98
 - STREET CLOSING RESOLUTION #: 1998-14
PASSED: 11/17/98
EXCHANGE AUTHORIZED: 1/5/99



FILED FOR REGISTRATION
3-8-99
DATE
LAURA M. RIDDICK
REGISTER OF DEEDS
WAKE COUNTY
BY: [Signature]
ASST / DEPUTY
TIME 2:36 pm



RECORDED IN BOOK OF MAPS 1999 , PAGE 449 , WAKE COUNTY REGISTRY



DATE	CITY OF RALEIGH REVIEW COMMENTS	MPP
2/26/99		
DATE	REVISION	BY

DERWARD W. BAKER & ASSOCIATES, P.A.
DWBA
ENGINEERING - SURVEYING
PLANNING - GPS / GIS
1500 PINEY PLAINS ROAD, SUITE 102
CARY, NC 27511 (919) 460-0075

SCALE 1" = 60'	DATE 12/21/98
FLD. BK. & PAGE 610/39-58 660/2-74	DRAWN BY MPP
FILE NO. 1008 B	CHECKED BY DWB
PROJECT NO. 971106	DESIGN FILE SUBDIV2.DGN

SURVEY FOR:
TUPPER PLACE SUBDIVISION
CITY OF RALEIGH, WAKE COUNTY
NORTH CAROLINA
SUBDIVISION MAP

SHEET
2
OF
4

Good morning Members of the Planning Commission, my name is Daniel Coleman, 517 Rock Quarry Rd. This morning I rise to first say that during the November meeting of the South Central Citizens Advisory Council (SC CAC) we endorsed this rezoning as the written report will state. I do however ask the very same question of you as I asked of the body. Doesn't it bother you that the applicant, through this zoning case **Z-27-17**, chooses to spend a whole bunch of money -to --in effect- 'downzone' this property? John Anagnost from the Planning Department has reported to the members of the SC CAC that the applicant has a 'by-right' density of 72 houses yet the applicant is fighting like hell to build 55 houses plus increasing the storm water runoff treatment standard from a 10 year to a 15 year flood occurrence through this application **Z-27-17**.

That the average lot in Tupper Place I and II is around 11,000 sq ft, 2 stories in height while the professed lot size in Tupper Place III, aka **Z-27-17 will be 3,000 sq ft means nothing or that they will be 3 stories.**

With lots selling for \$118k adjacent to the site the applicant is **leaving approx. \$2,000,600 on the table** while spending over \$250,000 in additional expenses when all he has to do is submit a **Site Plan** for 72 or 55 houses without this rezoning effort. If he wants to add the 15 year standard to the storm water requirement I am certain no one will object. Certainly he does not need the **Density Bonus** that the Conservation District will provide considering he is **giving up 13%** of his 'by-right' density by agreeing to build 55 houses vs the 72 houses he is entitled to without the approval of this rezoning application.

In closing the applicant does not need this rezoning to build 55 houses. The applicant does not need the **Conservation Density Bonus** accompanying this rezoning to build 55 houses on this site. In the alternative if he needs the **Density Bonus** then please put this case into the appropriate committee to find out **WHY?**

Finally this property is of particular interest to everyone who grew up in East Raleigh. When Mr. Galting, who assembled this property, who's family's home was the original Roberts Community Center died he bequeath this property to NCSU with the stipulation that the proceeds from the sale of the property would be for scholarship(s) "... to be limited to persons of the "Caucasian (white) race

bearing, at birth, the name of Gatling or Gatlin..." NCSU had this limitation ruled unenforceable. But everything about this property has earned our heightened level of scrutiny and you all know more than us, you are our lay professionals. **Can Z-27-17 have your heightened level of scrutiny?**

Thank you,

Dan Coleman

Attachment:

it shall have the right to sell in its sole discretion and convey in its sole discretion any portion or all of the real estate and give good and absolute title to same in fee simple, the proceeds of sale to be reinvested in such investments as it may select and the said investments may be changed from time to time by sale and reinvestment in its sole discretion, keeping in mind the preservation of the Fund as well as income for the same uses and purposes.

(c) From the income received, insofar as the same may extend, I direct and require North Carolina State College of Agriculture and Engineering unit of The University of North Carolina to make disposition thereof in the following manner:

(1) Provide funds for the reasonable support of my friend, Mary Davis Lassiter, in the event she needs assistance to enable her to maintain a moderate standard of living after retirement, by reason of disability or age. The North Carolina State College of Agriculture and Engineering unit of The University of North Carolina shall be the sole judge of this need and the amount, if any, necessary to be expended for this purpose.

(2) Provide annually, one full scholarship for an athlete at North Carolina State College of Agriculture and Engineering unit of The University of North Carolina in Raleigh, North Carolina, preferably one for football as long as football scholarships are needed.

(3) So far as the remaining income may extend, provide a scholarship or scholarships from the annual income in an amount sufficient in its discretion to defray and pay all reasonable expense necessary for the recipient to attend North Carolina State College of Agriculture and Engineering unit of The University of North Carolina at Raleigh or such College or University herein authorized. The recipients of such scholarship or scholarships are to be limited to persons of the Caucasian (white) race bearing, at birth, the name of Gatling or Gatlin, preference being given to North Carolina residents and to persons who are unable to provide, or have

John Gatling

C O D I C I L

8

Raleigh, North Carolina

September 18th, 1962.

I, JOHN GATLING of the City of Raleigh, Wake County, North Carolina, do hereby make, publish and declare this Codicil to my last Will and heretofore executed on January 14, 1959, consisting of seven pages, and hereto attached.

1. I direct that no lot of my property 50 feet in width, in the Development known as Battery Heights, shall be sold for less than \$3,000.00 per lot except as herein stated. Map of Battery Heights property and to which reference is made is recorded in the office of the Register of Deeds for Wake County in Book of Maps 1935, Page 14. The following lots are excepted from this \$3,000.00 per lot because they are rough and slope off to a branch, and the lots excepted are:

Lots 252 to 257 inclusive
Lots 259 and 260
Lots 286 to 291 inclusive
Lots 283, 188 and 189
Lots 294, 295 and 296

But if Lots 286 to 291 inclusive as well as Lots 294, 295 and 296 have been filled up in the rear, as is now being done, that also shall be sold for not less than \$3,000.00 per front 50 feet in width. This filled in area may drop in elevation as much as 6 feet below the front of the lot, as many people desire a lot that will allow exit from the basement at ground level.

2. All of the land I own south of East Davie Street and facing on said Street, with the exception of a strip 150 feet in depth running along said Street from the W. A. Perry, Jr., property west to Parrish Street as shown on Map of Washington Heights recorded in the Register of Deeds office for Wake

John Gatling

County in Book of Maps 1942 at Page 26, shall be held for a period of 20 years following my death, and it is my desire that this period be extended for as much as 50 years following my death. This land includes the balance of the W. A. Upchurch property, 45.3 acres, more or less, the balance of the Washington Heights Lots and all the lots I have purchased in the development known as Joe Louis Park. This area, all that South of Davie Street, except as excluded above, and which I have directed to be held for 50 years after my death, I further direct may not be reduced in size or area for any cause whatsoever, it being my intention to keep this area intact for 50 years, if possible.

3. I make this comment with respect to the value of this property: During my life time and prior to the year 1955 I refused an offer of \$3,000.00 per acre for the Upchurch land and later there was a suggestion or offer that I could sell this Upchurch land for \$4,000.00 per acre. This was the price for which, I am informed, the Delaney land, now developed and known as Madonna Acres, sold. I once platted this property on paper and the best offer I had at that time for each 50-foot lot was \$1200.00 per lot and \$2200.00 for each 50-foot lot fronting along East Davie Street. The lots as platted on the Upchurch land were 50 feet by 125 feet, plus or minus in depth. If I had developed this Upchurch land, it would have cut up into 3.86 lots of 50 feet width per acre, or 1.93, 100-foot lots per acre. The sale price of 100-foot lots in this area with water and sewer, but no pavement, would be at least \$5500.00 per lot. It is my desire to protect the people now living in this area, and it is suggested that this be kept in mind in writing the restrictions to be included in the deeds

John Galling

for the sale of this property.

4. I give to my friend, Mary Davis Lassiter, my 1961 Buick automobile, or in the event that is disposed of whatever automobile I may own at the time of my death. I also give and bequeath to her all my furniture, with the exception of my Henry Clay desk and chair. A part of this furniture is in my room and the remainder is now stored in the Raleigh Bonded Warehouse.

Except as herein modified, I hereby ratify and approve my Will dated January 14, 1959 and renew the appointment of my trusted friends, Bart F. Moore and Mary Davis Lassiter of Raleigh, North Carolina as Executor and Executrix.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, this 18th day of September, 1962.

John Gatling

John Gatling (SEAL)
JOHN GATLING

John

Signed, sealed, published and declared by John Gatling, the Testator, to be his last Will, in our presence, who at his request, and in his presence and in the presence of each other do subscribe our names as witnesses hereto.

This 18th day of September, 1962.

W. A. Thie

Raleigh, N.C.
ADDRESS

[Signature]

Raleigh, N.C.
ADDRESS

NORTH CAROLINA
WAKE COUNTY

I, JOHN GATLING, of the City of Raleigh, Wake County, North Carolina, do hereby make, publish and declare this to be my last will, hereby revoking and declaring void all other wills by me

NORTH CAROLINA
WAKE COUNTY

I, JOHN GATLING, of the City of Raleigh, Wake County, North Carolina, do hereby make, publish and declare this to be my last will, hereby revoking and declaring void all other wills by me heretofore made.

As one comes to dispose of his earthly possessions, he must, of necessity, allow his memory to drift back to the time he was a child and follow his life to the time of writing, then, he must attempt to decipher the future, perhaps for a long time, and this is difficult for time is immortal and will continue until God wills it end. What will the world be a hundred years hence or even a thousand years away:

Having arrived at this point, I shall attempt, I trust wisely, to dispose of my earthly possessions in a way to accomplish the most according to my heart's dictates, for small are my earthly accomplishments and short will my memory live in the mind of man or woman.

John Gatling

ITEM ONE: It is my full intent that William C. Gatling and wife, Elizabeth Baker Gatling, Louie Gatling White and her husband, Ferdanand White, Bart M. Gatling, Jr., and wife, Mable Richardson Gatling, and also their child, Sally Bart Gatling, James Moore Gatling and wife, Connie Gatling, and their children, and Sara Gatling Barbee and the heirs and assigns of each of the above named persons shall not receive any benefits whatsoever under this my last will. Such of those named above as are my brothers, sisters, sisters-in-law and brothers-in-law, if they survive me, will fully understand that the treatment of my mother in the last years of her life is the cause of this action on my part toward them with respect to my estate.

ITEM TWO: I give and bequeath to Christ Church in Raleigh, North Carolina, the sum of FIVE THOUSAND DOLLARS (\$5,000.00) to be invested and the income therefrom used for whatever purpose

the Church desires, this being given as a memorial to my father, Bart M. Gatling, and Lenora Grudup Gatling, my mother, with the request that flowers be placed at their graves in Oakwood Cemetery at Christmas. This legacy to my Church is in this modest amount because I feel that the strength of any church is the opportunity of its membership to raise money sufficient to carry out its mission and purpose.

ITEM THREE: To my brother, Lawrence V. Gatling, I give and bequeath the sum of ONE DOLLAR (\$1.00).

ITEM FOUR: To my nephew, Claude B. Barbee III, I give and bequeath the sum of ONE DOLLAR (\$1.00).

ITEM FIVE: To my friend, Mary Davis Lassiter, now residing at 1311 Mordecai Drive, Raleigh, North Carolina, for her kindness in preparing food and in providing and arranging flowers for my mother while she was in Mary Elizabeth Hospital in the last year of her life, I give and bequeath the sum of FIVE THOUSAND DOLLARS (\$5,000.00). Her kind and loving attention to my mother, I could not overlook rewarding with thanks. My dogs, if there be any, shall likewise be given to Mary Davis Lassiter, and she shall be given, by my executors, whatever sum of money necessary for their care and for any other reason whatsoever in their care, even for the purchase of land upon which to erect a kennel. However, she is encouraged to dispose of the dogs by placing them in good homes where they will be well cared for and can be used for hunting as they are hunting dogs.

John Gatling

ITEM SIX: The specific legacies, hereinabove set out, shall take precedence and be paid prior to the trust estate hereinafter set up. In the event at my death there is not sufficient personal funds and property belonging to my estate to pay any just debts owing by me at my death, administration costs and the specific legacies above given, I then and in that event, direct that my

executors pay the remainder after using my personal property from income received from my real estate. Each of the said specific legacies, if not paid in full at one time, to be paid on a pro rata basis so far as my personal property may extend. I further direct my executors, hereinafter named, as executors, to hold my real estate, collecting and receiving rents therefrom, paying the taxes, insurance and reasonable repairs and to hold and administer the same until such time as the net income therefrom may be sufficient to pay and to discharge all of the specific legacies above given, the same to be paid on an equal pro rata basis and paid without interest, my estate alone providing the principal of the legacy and my estate paying such State Inheritance Tax as may be due and such Federal Estate Tax, if any, as may be assessed. My Executors are further directed to hold my real estate collecting and receiving rents therefrom, paying taxes, insurance and reasonable repairs and hold and administer the same until such time as the net income therefrom may be further sufficient to pay and discharge any and all notes secured by deeds of trust on my real property, payment of the same to be made according to the rates of payment set out in the notes and made from the rent; payment of these secured notes must be accelerated or anticipated in whatever instances the same is allowed and when the rental income permits such anticipation of payment.

John D. H. H. H.

ITEM SEVEN: During the administration of my estate in the event my friend, Mary Davis Lassiter, needs assistance to provide for herself a moderate standard of living after retirement by reason of disability or age, my executors, in their sole discretion, are authorized and empowered to provide such assistance from my estate.

ITEM EIGHT: After my Executors have administered my estate and paid each of the above-named specific legacies, provided for the care of my dogs, if I own any at my death, paid all debts, administration expenses, State Inheritance taxes and Federal Estate taxes, if any, and paid and had cancelled of record any debts

against my real property, secured by deeds of trust, all the rest and residue of my estate, including all personal property of every nature and kind, if any remains, and all of my real property which I may own at the time of my death wherever situate, but now located in and around the City of Raleigh, Wake County, North Carolina, I give, devise and bequeath to the North Carolina State College of Agriculture and Engineering unit of The University of North Carolina, its successors and assigns, in fee, for the following uses and purposes, to-wit:

(a) North Carolina State College of Agriculture and Engineering unit of The University of North Carolina upon receipt of the property constituting the Fund shall set it up in a separate Fund to be known as the "John Gatling Scholarship Fund." The Fund in its main part when set up will largely consist of real property and in my judgment, the North Carolina State College of Agriculture and Engineering unit of The University of North Carolina will do well to hold the real property and receive the income therefrom rather than make sale of the same and change the form of investment. However, this in no manner is intended to limit nor does it limit the said North Carolina State College of Agriculture and Engineering unit of The University of North Carolina in the administration of the Fund.

John Gatling

(b) North Carolina State College of Agriculture and Engineering unit of The University of North Carolina shall, in its best judgment, control, handle and manage the property making up the Fund, using in its control and management its best judgment taking care to maintain the property to the end that the best income possible may be received from the Fund. However, North Carolina State College of Agriculture and Engineering unit of The University of North Carolina is not required to continue to hold the real property though I think that would be best. In the event in its management of the Fund, the said North Carolina State College of Agriculture and Engineering unit of The University of North Carolina deems it wise to sell,

it shall have the right to sell in its sole discretion and convey in its sole discretion any portion or all of the real estate and give good and absolute title to same in fee simple, the proceeds of sale to be reinvested in such investments as it may select and the said investments may be changed from time to time by sale and reinvestment in its sole discretion, keeping in mind the preservation of the Fund as well as income for the same uses and purposes.

(c) From the income received, insofar as the same may extend, I direct and require North Carolina State College of Agriculture and Engineering unit of The University of North Carolina to make disposition thereof in the following manner:

(1) Provide funds for the reasonable support of my friend, Mary Davis Lassiter, in the event she needs assistance to enable her to maintain a moderate standard of living after retirement, by reason of disability or age. The North Carolina State College of Agriculture and Engineering unit of The University of North Carolina shall be the sole judge of this need and the amount, if any, necessary to be expended for this purpose.

(2) Provide annually, one full scholarship for an athlete at North Carolina State College of Agriculture and Engineering unit of The University of North Carolina in Raleigh, North Carolina, preferably one for football as long as football scholarships are needed.

(3) So far as the remaining income may extend, provide a scholarship or scholarships from the annual income in an amount sufficient in its discretion to defray and pay all reasonable expense necessary for the recipient to attend North Carolina State College of Agriculture and Engineering unit of The University of North Carolina at Raleigh or such College or University herein authorized. The recipients of such scholarship or scholarships are to be limited to persons of the Caucasian (white) race bearing, at birth, the name of Gatling or Gatlin, preference being given to North Carolina residents and to persons who are unable to provide, or have

John Gatling

provided for them, means for such education, it being my intent to raise the standard of those bearing the Gatling or Gatlin name. While I favor North Carolina State College of Agriculture and Engineering unit of The University of North Carolina, yet in the event any person qualified to receive the benefit of a scholarship or scholarships herein set up and such scholarship is available, desires to attend some other College or University for the purpose of studying some profession, business or calling, then the said North Carolina State College of Agriculture and Engineering unit, of The University of North Carolina is directed to make such scholarship or scholarships available at any other College or University, preferably one located in North Carolina, but not limited to North Carolina.

(4) The North Carolina State College of Agriculture and Engineering unit of The University of North Carolina shall have the sole right of choice within the limits herein defined to choose from persons eligible to receive a scholarship or scholarships from the Fund and to determine when a scholarship should be revoked and to revoke the same if in its judgment the recipient proves unworthy, acting through such person, persons, board, body or group to which it designates or assigns authority and control over the scholarships.

(5) In the event at any time there is no person of the name Gatling or Gatlin qualified as a recipient for and asking for a scholarship under the Scholarship Fund herein set up, in any particular year or years, then, and in that event, the income from the Fund for that year or years shall be added to the principal of the Scholarship Fund. In the event and in the judgment of the North Carolina State College of Agriculture and Engineering unit of The University of North Carolina there is at any time an unreasonable accumulation of principal from unexpended income by reason of the failure of anyone of the Gatling or Gatlin name to qualify and apply for the scholarship or scholarships herein provided, then, and in that event, it may grant one or more additional scholarships for athletes, preferably in football, but at no one time more than three scholarships for athletes, the three such

John Gatling

scholarships to be awarded only after due consideration has been given to possible future needs of those bearing the Gatling or Gatlin name.

ITEM TEN: It has long been my intention, and for at least thirty years, in the event I never marry, to set up a Scholarship Fund such as that established in this my last will.

I hereby nominate, constitute and appoint my trusted friends, Bart F. Moore of Raleigh, North Carolina, and Mary Davis Lassiter, of Raleigh, North Carolina, as Executor and Executrix under this my last will, to execute and carry out the same according to its true intent and meaning. I direct that they be permitted to serve without bond. In addition to power and authority conferred upon executors by law, I now further clothe my Executor and Executrix with such additional power necessary for them to execute and carry out the provisions of this my last will, according to its true intent and meaning. In the event either predecease me without my naming another co-executor, the Executor or Executrix which survives may serve alone

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal, this the ~~14~~^{14th} day of Jan - 1959, 1959.

John Gatling (SEAL)
JOHN GATLING

Signed, sealed, published and declared by John Gatling, the Testator, to be his last Will in our presence, who at his request, and in his presence and in the presence of each other do subscribe our names as witnesses hereto.

This ~~14~~^{14th} day of January, 1959.

Benjamin P. Terrell Jr 3445 Bradley Place, Raleigh,
ADDRESS
R. A. Shaw 1201 Brooks Ave Raleigh, N.C
ADDRESS
L. M. Temple 1325 Duplin Rd. Raleigh,
ADDRESS

Copy to Estates

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
77-CVS-1620

MARY DAVIS LASSITER,
EXECUTRIX of the Estate
of JOHN GATLING, Deceased

and

NORTH CAROLINA STATE
UNIVERSITY AT RALEIGH, North
Carolina,

Plaintiffs,

vs.

JUDGMENT

RUFUS L. EDMISTEN, Attorney
General of the State of North
Carolina,
LOUIE GATLING WHITE,
CLAUDE BARBEE, III,
SARAH BARBEE HANNER,
SALLIE GATLING TOMLINSON,
JAMES MOORE GATLING, and
RENEE GATLING,

Defendants.

THIS CAUSE COMING ON TO BE HEARD and being heard before
the undersigned Superior Court Judge, and the Court having
considered the pleadings, the evidence offered by the parties,
the arguments of counsel, and the memorandum of authorities
furnished by counsel, the Court finds the facts, reaches
conclusions of law, and enters its judgment as follows:

FINDINGS OF FACT

1. This is an action to reform a will pursuant to the
provisions of Section 36-23.2 (now Section 36A-53) of the
General Statutes of North Carolina instituted by the Plaintiff
on April 15, 1977.

2. The Plaintiff, Mary Davis Lassiter, is an individual
residing in Raleigh, Wake County, North Carolina, and is the
duly appointed and qualified Executrix of the estate of John
Gatling, deceased (hereinafter referred to as the "decedent").

3. The Plaintiff, North Carolina State University at Raleigh, North Carolina, is a constituent institution of the University of North Carolina and the legatee named in Item Eight of the decedent's Will (and identified therein as "North Carolina State College of Agriculture and Engineering unit of the University of North Carolina").

4. The Defendant, Rufus L. Edmisten, is the duly elected, qualified, and acting Attorney General of the State of North Carolina with an official residence in Raleigh, Wake County, North Carolina, and is by law the legal representative of the public in this matter and as such is a necessary, or proper, party to this action.

5. The other Defendants are all adults, sui juris, and the sole heirs at law and next of kin of the decedent.

6. The Defendants Rufus L. Edmisten, Claude Barbee, III, and Sarah Barbee Hanner have been properly served with process, have responded by answer to the Plaintiffs' Complaint, and have been represented by counsel before this Court.

7. The Defendants Sallie Gatling Tomlinson, James Moore ^{Levie Gatling white,} Gatling, and Renee Gatling are not inhabitants of the State of North Carolina nor are they to be found within this State. They have been properly served, pursuant to Rule 4(j)(9) of the Rules of Civil Procedure, with process by Certified Mail, Return Receipt Requested. Affidavits reflecting the circumstances warranting the use of service by Certified Mail, Return Receipt Requested and averring that service has been effected by certified mail have been filed with the Court.

8. The Defendants Sallie Gatling Tomlinson, James ^{Levie Gatling white,} Moore Gatling, and Renee Gatling have not responded in any manner to the Plaintiffs' Complaint; have not appeared before

this Court in person or by counsel; and an Entry of Default against said Defendants was entered on the 28 day of NOVEMBER, 1978.

9. The Court has jurisdiction over the subject matter of this lawsuit and the persons of all of the Defendants.

10. The decedent died on July 3, 1975, domiciled in Wake County, North Carolina, leaving a Will executed on January 14, 1959 and one Codicil thereto executed on September 18, 1962 (hereinafter referred to as the "Will" and the "Codicil," respectively) and an estate having a value of \$1,177,963.94. Said Will and Codicil were admitted to probate on July 22, 1975 in the Superior Court for Wake County, North Carolina.

11. In Item One of the Will, the decedent expressed his intent that none of his heirs at law, other than the Defendant Claude Barbee, III, to whom he bequeathed the sum of One Dollar (\$1.00), in a subsequent Article, should receive any benefits whatsoever under the Will.

12. Other items of the Will contained bequests of Five Thousand Dollars (\$5,000.00) to Christ Church, Raleigh, North Carolina; One Dollar (\$1.00) to Lawrence V. Gatling, a predeceased brother of the decedent; One Dollar (\$1.00) to the Defendant Claude B. Barbee, III, the nephew of the decedent; and Five Thousand Dollars (\$5,000.00) to the Plaintiff, Mary Davis Lassiter. In addition, Item Seven of the Will provided that the Executor named therein was authorized and empowered to provide from the estate whatever assistance the said Mary Davis Lassiter might require during the administration of the estate "to provide for herself a moderate standard of living after retirement by reason of disability or age. . . ." Paragraph 4 of the Codicil bequeathed certain items of personal property (automobile and furniture) to the said Mary Davis Lassiter.

13. Under Item Eight of the Will, the decedent devised and bequeathed the residue of his estate to the Plaintiff, North Carolina State University at Raleigh, in trust, to hold, manage, invest and reinvest the trust property and use the income therefrom: (a) to provide funds for the reasonable support of the Plaintiff, Mary Davis Lassiter, "in the event she needs assistance to enable her to maintain a moderate standard of living after retirement, by reason of disability or age," with the University to be the sole judge of such need; (b) to provide annually one full athletic scholarship at the University; (c) to provide a scholarship or scholarships, "so far as the remaining income may extend," to attend the University, "to persons of the Caucasian (white) race bearing, at birth, the name Gatling or Gatlin, preference being given to North Carolina residents and to persons who are unable to provide, or have provided for them, means for such education, it being my intent to raise the standard of those bearing the Gatling or Gatlin name;" and (d) in the event no qualified applicant bearing the surname Gatling or Gatlin applies for a scholarship, to add income to the principal of the trust fund, unless there should be, in the judgment of the University, an unreasonable accumulation of principal, in which case additional athletic scholarships may be awarded, "but at no one time more than three scholarships for athletes, the three such scholarships to be awarded only after due consideration has been given to possible future needs of those bearing the Gatling or Gatlin name." Within the limits set forth in the Will, the University was given the "sole right of choice" to select scholarship recipients.

14. The Codicil contained no provision inconsistent with the provisions of the Will described in Findings of Fact 11, 12 and 13 of this Judgment.

15. The Plaintiff, Mary Davis Lassiter, has renounced all interest in the decedent's estate under Items Seven and Eight of the Will, thereby eliminating all non-charitable interests in the trust created under the provisions of Item Eight of the Will.

16. Neither the Will nor the Codicil contains an alternative plan, in the form of a reversion or gift over or otherwise, in the event the charitable trust created by Item Eight of the Will is or becomes illegal, impossible, or impracticable of fulfillment.

17. During his lifetime, decedent maintained a long and close relationship with the University, beginning in 1915 when he enrolled as a student. After an interruption in his studies for military service, decedent graduated from the University in 1921 with a degree in civil engineering. Over the years since his graduation, decedent made regular gifts for the benefit of the University and frequently expressed his desire that at his death his property be used to establish a scholarship trust.

18. All of decedent's real property was located in a predominantly Negro neighborhood and most of such property was leased to members of the Negro race. Over the years decedent sold lots and homes to members of the Negro race which he financed at modest interest rates. On a number of occasions, decedent permitted defaults in rental payments by his tenants and, in cases where he sold property to members of the Negro race, he permitted defaults in mortgage payments and advanced monies for fire insurance and ad valorem taxes. Decedent's concern for adjoining property owners and those who purchased land

and homes from him is reflected in the language of his Codicil where he directed that lots in certain described areas were not to be sold for less than a specified price, his concern being the protection of the people in said areas to whom he had sold homes or lots.

19. The bequest to the University contained in Item Eight of the Will purports to run in perpetuity, consists of a bequest of decedent's residuary estate, and constitutes a bequest of substantially all of decedent's estate (i.e., a bequest of \$1,066,397.83 from an estate of \$1,177,963.94).

20. The restriction of scholarship benefits to members of the "Caucasian (white) race" appears in only one of the three subparagraphs (subparagraphs (2), (3) and (5) of paragraph (c) of Item Eight) describing the classes of scholarships which the University, as trustee, may award.

CONCLUSIONS OF LAW

1. The provision in decedent's Will limiting the availability of scholarships to "persons of the Caucasian (white) race" cannot legally be given effect as written because the trust is to be administered by the University, an agency of the State of North Carolina.

2. The substitution of private individuals or entities as trustees for the University will not cure the illegality.

3. Section 36-23.2 (now Section 36A-53) of the General Statutes of North Carolina provides.

"§36-23.2 Charitable Trusts Administration Act.
(a) if a trust for charity is or becomes illegal, or impossible or impracticable of fulfillment or if a devise or bequest for charity, at the time it was intended to become effective is illegal, or impossible or impracticable of fulfillment, and if the settlor, or testator, manifested a general intention to devote the property to charity, any judge of the superior court

may, on application of any trustee, executor, administrator, or any interested party, or the Attorney General, order an administration of the trust, devise or bequest as nearly as possible to fulfill the manifested general charitable intention of the settlor or testator. In every such proceeding, the Attorney General, as representative of the public interest, shall be notified and given an opportunity to be heard. This section shall not be applicable if the settlor or testator has provided, either directly or indirectly, for an alternative plan in the event the charitable trust, devise or bequest is or becomes illegal, impossible, or impracticable of fulfillment. However, if the alternative plan is also a charitable trust or devise or bequest for charity and such trust, devise, or bequest for charity fails, the intention shown in the original plan shall prevail in the application of this section.

"(b) The words 'charity' and 'charitable' as used in this section shall include, but shall not be limited to any eleemosynary, religious, benevolent, educational, scientific, or literary purpose.

"(c) The words 'impracticable of fulfillment,' as used in this section shall include, but shall not be limited to, the failure of any trust for charity, testamentary or inter vivos, (including, without limitation, trusts described in Section 509 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws and charitable remainder trusts described in Section 664 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws) to include, if required to do so by Section 508(e) or Section 4947(a) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws, the provisions relating to governing instruments set forth in Section 508(e) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws."

4. Item Eight of decedent's Will, as now written, renders the trust created thereunder illegal; and the substitution of private trustees as a means of curing such illegality is not permitted by law. After a review of the Will and the Codicil, and after consideration of the facts and circumstances set forth herein, this Court concludes as a matter of law, that a general charitable intent on the part of the decedent is manifested by the language of said instruments alone, that said conclusion is strengthened by the extrinsic facts and circumstances included in the Findings of Fact and that this Court, in the exercise of its equitable jurisdiction and pursuant to the

provisions of Section 36-23.2 (now 36A-53) of the General Statutes of North Carolina, should assist in carrying out the decedent's general charitable intent as expressed in his Will and Codicil.

5. Since the decedent did not provide, directly or indirectly, for an alternative plan in the event the charitable trust created by Item Eight of his Will is or becomes illegal, impossible, or impracticable of fulfillment, this Court concludes that there is adequate justification for reforming the Will to provide scholarships to otherwise qualified applicants on a racially non-discriminatory basis and without regard to the racial limitation contained in the Will.

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED and DECREED:

1. That subparagraph (c) (3) of Item Eight of the Will of John Gatling, deceased, dated January 14, 1959, is hereby amended and reformed by deleting from the second sentence thereof the words "of the Caucasian (white) race;"

2. That the Plaintiff, North Carolina State University at Raleigh, North Carolina as trustee of the trust created under Item Eight of the Will of John Gatling, deceased, and any successor trustee, use the trust funds, consisting of the residue of the estate of the said John Gatling, to provide scholarships to otherwise qualified applicants on a racially non-discriminatory basis and without regard to the racial limitation contained in the Will; and

3. That the costs of this action be taxed against the Plaintiff, Mary Davis Lassiter, as Executrix of the

estate of John Gatling, deceased, and be paid from the assets comprising the residuary estate of the said John Gatling.

THIS 8 day of September 1978.

Edw. R. Rupp

Mr. Wilson pointed out the construction is complete with the exception of some fencing. They have a funding shortfall of some \$15,000 and asked the City Council to give some funding to help complete the project. He stated had the City done all of the work it would have cost much, much more.

Mayor Meeker suggested the item be referred to the Budget & Economic Development Committee. Mr. West stated he is familiar with the project and commended all involved pointing out it is an excellent model. Without objection the item was referred to the Budget & Economic Development Committee.

WALNUT RIDGE APARTMENT COMPLEX - REMOVED FROM THE AGENDA

Christopher Moody had requested permission to discuss the Walnut Ridge Apartment Complex and the City's policy of accepting Section 8 vouchers. It was pointed out by the Clerk this item had been withdrawn.

BAYLEAF BAPTIST CHURCH - EFFORTS TO SAVE HOUSE - WITHDRAWN

Joe Webb, Bayleaf Baptist Church, had requested permission to connect to the city sewer system in order to help with their efforts in saving a pre-civil war house known as the William Thompson House. It was pointed out Mr. Webb had withdrawn his request.

TUPPER PLACE - COMMENTS - REFERRED TO BUDGET AND ECONOMIC DEVELOPMENT COMMITTEE

Danny Coleman presented the following prepared statement:

Before I start I would like to share this simple passage which I feel describes Father Calloway and the way he made everyone feel that he came in contact with.

A faithful friend is a sturdy shelter; he who finds one finds a treasure. A faithful friend is beyond price, no sum can balance his worth. A faithful friend is a life-saving remedy, such as he who fears God finds; for he who fears God behaves accordingly, and his friend will be like himself." SIRACH 6: 14-17

I come before you tonight to talk with you about Tupper place. I would like to preface my comments by saying that First Citizens Bank and in particular Mr. Alex McFadden and Shaw Development Corporation and in particular, Mr. Harold Webb have done an outstanding job trying to do what was needed yet not market driven at the time.

We now find ourselves, so the News & Observer says, at a crossroads as to what to do. The rumor mill has a lot running through it right now and I understand that some staff presentation is going to be made before the Budget & Economic Development Committee relating to the City's commitment of dollars to this project by way of infrastructure improvements.

I would like to present to you at this time a transparency outlining the property and some very relevant points if taken in light of our current In-fill development criteria probably would explain the failure of the project and how to set the project on a course of success.

First please note the lack of design, Second please note the R-4, R-10 zoning running through the higher end phase. Which would be phase 1. Please then note the abundance of un-conditioned R-10 locked behind all the single family detached housing. And lastly, please take into account that with the phase out of Chavis Heights Multi-Family land will be needed to relocate those affected families from Chavis Heights.

Finally, no one wants to invest in a crap shoot which this design, as it is currently laid out, is.

The Answer,

1. Get rid of the mixed zoning in Phase I
2. Develop a master plan with recorded lot layouts for phase III & IV

3. Develop restrictive covenants for Phase III & IV
4. Change the Density of Phase II to conform to the recorded lot layouts
5. Change the density of Phase III & IV to offset the cost of the buried wires but keep the homes detached.
6. And most important of all, make these binding conditions of the work out that you will consider once this is brought before Budget & Economic Development committee.

At this time I would like all of those in attendance to stand who are in support of what has been presented here tonight before this council.

Approximately 10 people stood in support of Mr. Coleman's remarks. Mayor Meeker suggested the item be referred to Budget & Economic Development Committee and let the Planning Department respond to Mr. Coleman's comments. Without objection the item was so referred.

MATTERS SCHEDULED FOR PUBLIC HEARING

BUDGET - PROPOSED 2002-2003 - HEARING - COMMENTS RECEIVED

This was a hearing to receive citizen comment on the proposed 2002-2003 Budget & Capital Improvement Program. The Mayor opened the hearing.

City Manager Allen pointed out the budget is the major policy document adopted by the Council. He explained the strategy in developing the proposed budget.

Bernadine Weddington, 4814 Brookhaven Drive, talked about the proposed stormwater utility fund. She gave a history of the Council and Committee discussions or lack of discussions on this issue pointing out it still remains in two different committees. The Manager has asked for consultant assistance for the development of a stormwater utility. No action has been taken by either the Budget & Economic Development Committee and Public Works Committee nor the Manager's recommendation. However there is a line item for a stormwater utility in the budget. In her opinion this is not a logical approach. The answer has been put first before asking the question. She stated everyone agrees there are problems with stormwater runoff and some think they know where the problems come from - almost unrestricted approval of development that has large impervious surfaces. She stated many times we see a condition in rezoning petitions that the applicant will abide by CR7107. Often the condition is ignored and questioned how the City monitors disregard of the condition. She stated there are current problems with Wakefield Plantation and Fred Anderson Toyota. She stated before the Council imposes a \$5,600,000 fund and ask the citizens to pay for it, the Council should go ahead with the consultant study and bring it to the Council and citizens and then go forward with a recommendation. Funding for this consultant is already available and need not be included in the proposed budget. Ms. Weddington stated on March 19 cost effectiveness of solid waste/recycling was referred to the Public Works Committee. It has been discussed but no recommendations have been brought to the full Council; however, there is a recommendation in the budget for increasing the residential solid waste fee. Again the answer is put first before the question is asked. She stated the proposed budget has an increase of \$342,030 or 1.8 percent over the 2001-2002 budget. Current residential solid waste fees are \$15.60 per year and the budget calls for an increase to \$60 per year which is nearly a 285 percent increase. She stated that appears excessive. Solid waste services are also paid for through property taxes and Raleigh citizens pay an annual \$20 fee to Wake County for solid waste services. The County Manager has not asked for an increase in this fee. She stated in 1997 the City negotiated a contract with Wake County for a favorable tipping fee of \$23.50 per ton as compared to \$29.50 per ton charged to other haulers. She stated if she compares the proposed new solid waste fee to the price per ton that would equal 2 tons per year per household and she doubts that most households dispose of that much in a year. She stated even though the Committee has not brought forth recommendations, there are things that can be done:

1. Change backyard pickup to curbside pickup which is an option that many Councils have been unwilling to pursue. She stated there is no reason why pilot projects could not be started in several neighborhoods pointing out there are several areas where citizens are already putting their trash at the curb. There would be no cost associated with such a pilot. She stated if we

BUDGET AND ECONOMIC DEVELOPMENT COMMITTEE

The Budget and Economic Development Committee of the City of Raleigh met in special session on Monday, June 17, 2002, at 10:00 a.m. in the City Council Chamber, Raleigh Municipal Building, Avery C. Upchurch Government Complex, 222 West Hargett Street, Raleigh, North Carolina, with the following present:

Committee

Mayor Meeker, Presiding
Ms. Cowell
Mr. Odom
Mr. West

Staff

City Manager Allen
City Attorney McCormick
Assistant City Manager Wray
Community Development Director Breazeale

Mayor Meeker called the meeting to order and following item was discussed with action taken as shown.

Item 01-25 – Tupper Place Financing. City Manager Allen pointed out Council members received the following information in their agenda packet.

First Citizens Bank, Shaw Development Corporation and David Ward, attorney for the bank, put together a proposal to sell undeveloped land in the Tupper Place Subdivision to a prospective buyer. They have struck a deal with the prospective buyer and are coming back to the Budget and Economic Development Committee asking the City of Raleigh to participate in the deal based on the \$300,000 the City put into the project for infrastructure.

First Citizens Bank and Shaw Development Corporation are asking the City of Raleigh to do the following:

1. Take \$170,768 as a full satisfaction of its \$300,000 loan to Shaw Development Corporation and as a result of taking such payment, cancel the Note and Deed of Trust to release the lots on which it now holds second liens.
2. Make available to the buyer, \$240,000 in second mortgage loans for qualified buyers with the funds to be made available in six (6) months and extend for up to two-years.
3. Agree to pay up to \$28,000 out of CDBG funds for infrastructure construction costs for Phases III and IV as identified on an unrecorded map entitled "Tupper Place Subdivision" done for Shaw, dated 9-1-98 by Kimley-Horn Associates, Inc., and further, agree that the buyer is to use these funds by the end of the Fiscal Year 2005 with the opportunity of requesting an extension of the use of the funds.

4. Ratify and confirm that the R-10 zoning on Phases III and IV of the above-referenced map will remain in place for at least five years beginning on the date of closing of the purchase of Shaw, which is scheduled for June 28, 2002 unless otherwise requested by the buyer.
5. Acknowledge that it has no interest in or requirement that it be involved in any changes to the Restrictive Covenant of any of the Tupper Place Subdivision.

The information included a budget amendment to put in place the \$240,000 for Tupper Place and a letter from Community Development Director Breazeale regarding the \$240,000 and a commitment letter to be approved by the City Council that would be issued at the appropriate time in order for a contract to be issued between the City of Raleigh and Cliff Zenner. Committee members also received a letter from the Planning Director relating to comments made at the last meeting by Danny Coleman.

Mayor Meeker questioned if the \$170,000 outlined in item 1 is the correct proportion with City Manager Allen pointing out he felt is the proper proportion.

Mayor Meeker stated the City Attorney has some concerns about item 4 with City Attorney McCormick pointing out the City could not agree to item 4. Mayor Meeker questioned if we want some language or something to say that the property will be developed as single-family rather than multi-family. Assistant City manager Wray pointed out R-10 does allow multi-family development. He stated however he thinks there is an agreement from the buyer that he will build only single-family units. Mayor Meeker questioned if the City Council would want to initiate a rezoning on the property so that we could insure that multi-family is not built on the property. Assistant City Manager Wray stated he was representing no one in his comments. He pointed out however this property has been zoned Residential-10 for a number of years. He stated the person who is interested in purchasing the property has never built multi-family developments only single-family. He believes the City could probably get an agreement from him that is what he is willing to do. He stated he feels if the City looks at rezoning the property it could cause problems.

Mayor Meeker questioned what is meant by number 5 with Assistant City Manager Wray pointing out the City has no interest in changing the restrictive covenants as the City is not involved in the restrictive covenants in any way. City Attorney McCormick stated he did not recall the City was involved in the original development of the restrictive covenants. He stated there is no partnership arrangement on this property. The City only helped out with funding.

Planning Director Chapman pointed out there was a subdivision and Phases 2, 3 and 4 of the subdivision have sunset. He stated it will be necessary for anyone who wants to develop this property to submit a new subdivision. He stated if the property is to be developed single-family or duplex it could be approved Administratively. If it is developed as group housing or multi-family housing dependent upon the size could be submitted to the Planning Commission. He stated normally unless there is a request for a variance it would not come to City Council for approval. He stated Phase 1 has been platted, recorded, etc. and that would not allow multi-

family on the remaining lots. He again stated no matter whom or how Phases 2, 3 and 4 are developed, new preliminary plans will have to be submitted as the existing plans have sunset.

Danny Coleman presented a prepared statement which read in part as follows:

Again, I come before you to talk with you about Tupper place. As I have stated before, I would like to preface my comments by saying that First Citizens Bank and in particular Mr. Alex McFadden and Shaw Development Corporation and in particular, Mr. Harold Web have done an outstanding job trying to do what was needed yet not market driven at the time.

But today we come together to try to present a view from the stakeholders whose well kept neighborhoods were the lure for this original initiative. Yet the plan and subsequent site plan were not marketable. Our being here today is a witness to that fact.

First please note the lack of design. Please note the R-4, R-10 zoning running through the higher end phase, which would be Phase 1. Please then note the abundance of un-conditioned R-10 locked behind all the single family detached housing. And lastly, please take into account that with the phase out of Chavis Heights multi-family land will be needed to relocate those affected families from Chavis Heights.

Finally, no one wants to invest in a crap shoot which this design, as it is currently laid out, is. As a part of your reviewing of the City's current commitment to this project please remember Restrictive Covenants should be supported by the underlying zoning. In other words, a restrictive covenant like the one now in place for Tupper Place Phase I permits the Declarant (Property Owner) to amend the restrictive covenant with little problem, please note the Article XIII General Provisions Sec. 3.

The suggested solution if the City of Raleigh is going to reduce the \$300,000 plus investment of taxpayer's monies in this project is to add the following terms to any loan reduction.

- 1) Stipulate consistent zoning in Phase I.
- 2) Stipulate a master plan with recorded lot layouts for Phases III & IV.
- 3) Stipulate restrictive covenants for Phase III & IV that reflect the use of the adjoining property.
- 4) Stipulate a change in the density of Phase II to conform to the recorded lot layouts.

Had these simple development guidelines been adhered to originally this project would have sold out by now.

Mr. Coleman stated the underlying zoning of the property does not make sense. He pointed out the lots that are developed in Phase I has \$300,000 housing. He talked about the differences in the setback requirements pointing out that could result in the front door of one home looking into the back door of another. He talked about the location of the radio station and the restrictive covenants. He stated the people who purchased homes in Phase I are pioneers. He stated

however he does not know how this site plan got through the City and he does not believe it would have got by the City Council.

Harold Webb, Chair of Tupper Place Development, stated he was unaware the meeting was to start at 10:00 a.m. He stated First Citizens and their lawyer should be present during these conversations. He thought the meeting was at 11:00 a.m. He pointed out it is his understanding the covenants on Phase I would protect all of Phase I. He pointed out Phases 3 & 4 do not have an approved site plan. He stated this property was zoned R-10 before Shaw Development got involved and he feels it should continue R-10. Mayor Meeker questioned if Mr. Webb feels all of the phases should be developed in single-family homes. Mr. Webb stated he thought that was the intent of everyone involved. He stated it is his understanding the potential purchaser has no intent to do anything to change what was intended from the beginning so no one would have any objection to a City Council initiated rezoning.

Mr. Odom pointed out this is not a zoning case and he thinks he was one of the votes that got this thing going. He stated he did not remember Mr. Coleman being present at that time. Mr. Coleman stated he and the neighbors are telling the Council now that they want R-4 or single-family. He talked about Council's reaction to zoning cases in the west side of town and asked that the east side be treated the same. He stated the Council is now in a bargaining position and he feels it is the time that Council can do something about the zoning. Mayor Meeker pointed out the City could request the zoning case to be filed and questioned if anyone would have objections.

Attorney David L. Ward, Jr., stated the people he represents at the moment have no future plans to develop the property. He stated there are a number of problems they have discovered such as the underground radio equipment, etc. He stated the company he is dealing with to buy the property has no immediate plans to build anything, but want the opportunity to develop it if it is viable or feasible to recap phases 3 & 4. He stated he does not feel the perspective buyer is envisioning multi-family in anyway, but he does not represent that perspective buyer. He stated he does not feel this property has lived up to the full expectation of the people who put it together and are involved. Phase 1 has very nice homes, phase 2 has potential, phases 3 & 4 are questionable, particularly phase 4 as it relates to the underground radio coils. The question is what can be put on that property. Mr. Ward stated the perspective purchaser was adamant about not wanting the property rezoned R-4.

Planning Director Chapman explained the zoning and pointed out R-4 zoning would not accommodate what is built in Phase 1 because of the size of the lots. In Phase 1 there are 4 lots that could not accommodate the homes if the property was zoned R-4. He stated phases 3 and 4 lots are much smaller. They all meet the minimum lot size of Residential-10 zoning. Some may meet Residential-6 zoning but many would not be conforming under R-4. He stated the only zoning district that limits residential development to single-family is R-2 and R-4. R-6 permits multi-family if there is enough ground involved. He stated again Phases 2, 3 and 4 have sunset. Mayor Meeker suggested pursuing the perspective buyer filing an R-10 Conditional Use case that would limit development to single-family. Mr. Odom stated he feels conditions 1, 2, and 3 are the only conditions the City could or should be involved in. Mr. Odom moved approval of

the First Citizens/Shaw University proposed items 1, 2, 3 and 5. His motion was seconded by Ms. Cowell.

Mayor Meeker stated he could support that if Mr. Odom would add a condition that the perspective buyers file an R-10 Conditional Use zoning case that would limit the property to single-family. Mr. Ward stated adding a condition to the change of ownership that the zoning be changed is not right and he would question the legality. Mayor Meeker pointed out the City is being asked to give up funds. Mr. Ward talked about the history of this project in which the City asked First Citizens to come forward to help do the project and now First Citizens is in the position of charging off some 1.6 million dollars and it would be good if we could get some of their money back or cut their losses. He talked about the conditions the perspective purchaser had requested. Mr. West stated he had heard the people today say the perspective purchaser would be willing to restrict to single-family housing. City Attorney McCormick stated all the City could do as it relates to the rezoning is request the owner to file a case. He stated as far as the restrictive covenants are concerned, he thinks there are a few where the City's consent is required to change covenants but that is not the case in this situation. He stated the covenants could be changed to ensure single-family development. Mr. Odom stated Mr. Coleman thinks the only way this property could be developed is R-4 with Mr. Odom stating his problem is we do not know that. That is just one opinion and it is just coming forth now. Mr. Coleman talked about events surrounding the original approval when he tried to insert his opinion and former Mayor Fetzer disallowed it.

Attorney Ward talked about condition 5 which relates to the City having an interest or being involved in the restrictive covenant. He stated he did not know if the City was involved in the original restrictive covenants. He stated it is felt that the City gets paid off with some more of First Citizens money he feels that the City should give up its approval of any changes in the restrictive covenants as he does not feel the City Council or City Administration would want someone running down to the City every time a change is proposed.

William Perry, 1616 E. Davie Street, stated he hopes the City would do whatever possible to honor Mr. Gatling's gift. Mr. Gatling wanted single-family development on this property and the whole area and the community wants to keep it that way. Discussion took place on what has occurred to this point, everyone agreeing the people in the community want single-family development, the fact that the proposed purchaser has not developed anything but single-family to this point and the feeling that he would work with the City and the hope is to get all of this off of the Shaw books by June 30th. In response to questioning, Mr. Odom stated he did not want to accept as a friendly amendment the requirement that a Conditional Use zoning case be filed; therefore, Mayor Meeker made a substitute motion to approve items 1, 2, 3 and 5 and that the buyer within 30 days file a Conditional Use zoning application which if approved would restrict development to single-family housing. His substitute motion was seconded by Ms. Cowell.

A gentleman from the audience questioned if this would impact Phase 1. Planning Director Chapman pointed out the lots that are recorded are restricted to single-family development, even though they are zoned R-10. He stated 4 of the lots are less than 10,000 square feet; therefore, they would be nonconforming under R-4. Which lots the restrictive covenants apply to and the

feeling that the restrictive covenants required everything in Phases 1 and 2 to be single-family development were talked about. The price of the homes in Phase I and the fear that if there is not some requirement they will end up with smaller homes in Phase I. How restrictive covenants work and the fact that usually they address minimum square footage of heated space rather than dollar value was talked about. The fear that incompatible homes would be constructed in Phase I and what has already been approved was discussed. The substitute motion was put to a vote which resulted in all members voting in the affirmative except Mr. Odom who voted in the negative. The need to talk to the perspective buyer to determine whether he is in agreement with this proposal was discussed.

ADJOURNMENT

There being no further business, Mayor Meeker announced the meeting adjourned at 10:55 a.m.

Gail G. Smith
City Clerk

gh/BED6/17/02

SURPLUS PROPERTY – 331 WEST CABARRUS STREET – NO ACTION TAKEN

Mayor Meeker reported the Budget and Economic Development Committee recommends this item be removed from the agenda with no action taken. On behalf of the Committee, the Mayor moved the recommendation be upheld. His motion was seconded by Mr. Odom and put to a roll call vote that resulted in all members voting in the affirmative – 7/0. (Shanahan absent)

FORECLOSURE SALE – 8225 WYNEWOOD – INITIATE FORECLOSURE PROCEEDINGS

Mayor Meeker reported the Budget and Economic Development Committee recommends that foreclosure proceedings be initiated and participation in the bidding process to protect the City's lien with the source of funds being housing funds and the property be marketed by the Department of Administrative Services through the City-wide Homeownership Loan Program to first time homebuyers. On behalf of the Committee, Mr. Odom moved the recommendation of the Committee be upheld. His motion was seconded by Mayor Meeker and put to a roll call vote that resulted in all members voting in the affirmative – 7/0. (Shanahan absent)

HOUSING DEVELOPMENT LOAN – HABITAT FOR HUMANITY – BILTMORE TRACE – APPROVAL OF LOAN

Mayor Meeker reported the Budget and Economic Development Committee recommends approval of a loan of \$418,623 to Habitat for Humanity to develop 28 single-family homes on Waters Drive in the Biltmore neighborhood. The properties will be sold to low-income individuals. The Committee recommends approval of the budget amendment in the agenda packet to cover the loan. On behalf of the Committee Mr. Odom moved the recommendation be upheld. His motion was seconded by Mayor Meeker and put to a roll call vote that resulted in all members voting in the affirmative – 7/0. (Shanahan absent)

TUPPER PLACE – APPROVED WITH CONDITIONS

Mr. West reported that the Budget and Economic Development Committee recommended by split vote the following:

1. Take \$170,768 as a full satisfaction of its \$300,000 to Shaw Development Corporation and as a result of taking such payment, cancel the note and deed of trust to release the lots on which the City now hold second liens.
2. Make available to the buyer \$240,000 in second mortgage loans for qualified buyers with the funds to be made available in 6 months and extend for up to 2 years.
3. Agree to pay \$28,000 out of CDBG funds for infrastructure construction cost for Phases 3 and 4 as identified on an unrecorded map entitled "Tupper Place Subdivision" done for Shaw University dated 9/1/98 by Kimly-Horn Associates, Inc. and further agree that the buyers to use these funds by the end of the fiscal year 2005 with the opportunity of requesting extension of the use of the funds.
4. The City acknowledges it has no interest in or requirement that it be involved in any changes to the restrictive covenants of Tupper Place Subdivision.
5. That the Buyer within 30 days follow conditional use zoning application which if approved would restrict development to single-family housing.

It is also recommended that the appropriate budget amendment to accomplish the transfer be approved.

On behalf of the Committee, Mr. West moved to approve the recommendations as read. His motion was seconded by Mr. Kirkman and Mayor Meeker.

Mayor Meeker pointed out most of the discussion took place regarding item #5 and the buyers intend to develop the site as single-family housing. It was felt this a way to move

forward in hopes the City will recoup some of the funds when the development is complete and the houses are sold.

Mr. Hunt questioned who was the split vote with Mr. Odom indicating he was the dissenting vote. The property has been zoned Residential-10 for years and Mr. Gatlin wanted this property to develop as single-family. That being the case he will support the motion.

Mr. Kirkman indicated he has followed this case for a long time and feels this is a very positive project. This is one of the pieces that would bring in the rest of the buyers who have had some uncertainty because of the underline zoning.

Mr. Isley stated he was disturbed about taking a bath on getting the City's money back and the potential investment and questioned should we be in this situation at all. Why is this a good deal and why should he support it.

Mayor Meeker explained the original case was approved on a 5 to 3 vote perhaps should not have been approved at all and there have been some lawsuits; however, its important to get this project in the hands of a reputable developer and get it moving. The Bank and the City will take a loss but this action will get the project moving forward. There are 2 or 3 families currently in the subdivision and they need some neighbors and thinking back he would agree that may not have been the right view.

Mr. West indicated he doesn't disagree. This is an excellent concept and a good model. The change is being made and the work that has gone into this project will help avoid mistakes like these being made in the future and he hopes to see more examples like this. The approval has built-in conditions and strategies to accommodate this crucial and critical area.

Mr. Isley pointed out there is a need to be careful of over-extending in tight times and although this may be a good investment in the neighborhood, this may not be the best financial interest of the City. Mayor Meeker pointed out the City will get \$170,000 back right away.

Mr. Hunt raised the issue of inter-connectivity in this area and that these are two isolated neighborhoods with no sense of community. He feels there is a better chance of success with the new layout.

Mr. Kirkman noted the \$240,000 is second mortgage money to the individual buyers and not being paid to the developer.

A vote was taken on the motion as stated that resulted in all members voting in the affirmative – 7/0. (Shanahan absent)

Mr. West requested the Planning Director look into issues of inter-connectivity in Phase 3.

REQUESTS AND PETITIONS OF CITIZENS

NUISANCE PROPERTY – VARIETY PIC-UP #9 – REFERRED TO CITY ATTORNEY – ABC BOARD REPRESENTATIVE INVITED TO NEXT COUNCIL MEETING

Venita Peyton, East CAC, and Octavia Rainey, North CAC, would like to request nuisance abatement proceedings against the Variety Pic-Up #9 at 1830 New Bern Avenue.

Ms. Peyton presented a prepared statement to the Council as follows: “Good afternoon Mr. Mayor and members of Raleigh City council. I’m Venita Peyton, Chair of the East Raleigh CAC joined by Ms. Octavia Rainey, Chair of the North CAC and president of the College Park/Idlwild Community Watch. We are asking that you initiate nuisance

Mr. Kirkman pointed out he had withdrawn this from the Consent Agenda questioning the impact on the park. He stated he knows it is a standard type easement agreement and he assumes the Public Utilities Department and Parks and Recreation have done everything they can to minimize the impact on the park. He stated he could not tell where the line is going through the park and the long-term impact. Parks and Recreation Director Duncan pointed out there are trees in the easement that will be impacted. He stated the easement is put as far to the side as possible. Brief discussion took place on why the easement is needed, whether it is new homes or to serve existing homes. Mr. Odom moved approval. His motion was seconded by Mr. Hunt and put to a vote which passed unanimously. The Mayor ruled the motion adopted.

REPORT AND RECOMMENDATION OF THE PLANNING COMMISSION

PLANNING COMMISSION CONSENT AGENDA – APPROVED AS AMENDED

Mayor Meeker presented the Planning Commission Consent Agenda indicating it would be handled in the same manner as the regular Consent Agenda. He stated he had received the following requests to withdraw items from the Planning Commission Consent Agenda: Z-66-02 (Hunt and West); SP-79-02 (Odom). Without objection those items were withdrawn from the Planning Commission Consent Agenda. Mr. Odom moved the Planning Commission recommendation on the remaining items on the consent agenda be upheld. His motion was seconded by Mr. Kirkman and a roll call vote resulted in all members voting in the affirmative. The Mayor ruled the motion adopted. The items on the Planning Commission Consent Agenda were as follows.

TRANSIT ORIENTED DEVELOPMENT FOR RALEIGH – ACTION PLAN - RECEIVED

This request is to provide as information the Action Plan for Transit – Oriented Development for Raleigh, dated February 11, 2003 for Council review.

CR-10522 from the Planning Commission recommends that City Council receive as information the Action Plan for Transit – Oriented Development for Raleigh, dated February 11, 2003. Planning Commission recommendation upheld on Consent Agenda Odom/Kirkman – 8 ayes.

REZONING Z-78-01 – FALLS OF NEUSE ROAD – REQUEST FOR WAIVER OF TWO-YEAR WAITING PERIOD - APPROVED

This request is for a waiver of the 2-year waiting period to allow the owner to submit a rezoning petition for the May 20, 2003 public hearing.

CR-10523 from the Planning Commission recommends that this request be approved. Planning Commission recommendation upheld on Consent Agenda Odom/Kirkman – 8 ayes.

END OF PLANNING COMMISSION CONSENT AGENDA

REZONING Z-66-02 – MERRYWOOD DRIVE/PARRISH STREET – REFERRED TO BUDGET AND ECONOMIC DEVELOPMENT COMMITTEE

This request is to rezone approximately 10.12 acres, currently zoned Residential-4 (1.79 acres) and Residential-10 (8.33 acres). The proposal is to rezone the property to Residential-4 Conditional Use (1.79 acres) and Residential-10 Conditional Use (8.33 acres).

CR-10524 from the Planning Commission recommends that this request be approved in accordance with conditions dated August 23, 2002. Planning Commission Chairman Thompson explained the case and Planning Commission discussion and the conditions which limits any development to single-family homes. Mr. Kirkman questioned if that condition would allow attached single-family homes. Planning Director Chapman spoke to the condition of the sale of this property. Mr. West stated his concern is lack of clarity on whether it is single-family detached or attached homes and asked that the Budget and Economic Development Committee take a look at the issue and the sales information. Mayor Meeker stated he thought they were

talking about detached single-family homes. Without further discussion the item was referred to Budget and Economic Development Committee.

SP-79-02 – TRINITY BAPTIST CHURCH ADDITION – APPROVED WITH AMENDED CONDITIONS

This request is to approve a 52,200 square foot building addition to an existing 62,000 square foot church facility on 9.19 acres in the Residential-4 zoning district. This 84% expansion will increase the total amount of building space on site to 114,200 square feet. The proposal includes a request to approve an increase in enrollment to 120 students for the preschool operation. Currently enrollment is 80 students. A variance from standard road widening requirements along Six Forks Road is also being requested. The church requests to dedicate necessary right-of-way for the entire property's frontage and to construct an additional travel lane for approximately 520 linear feet of the total 750 feet of frontage, thus allowing an existing parking lot south of the sanctuary to remain until later road construction by the City. City Council approval of this plan is required in accordance with Code Section 10-2132.2(c)(3)(b).1 to allow the existing parking lot to remain within the Six Forks Road right-of-way being dedicated. This site plan exceeds the criteria for administrative approval of site plans for residential institutions in residential zoning districts, Code Section 10-2072(b), and must comply with Code Section 10-2132.2(c)(1)(e).

CR-10525 from the Planning Commission recommends approval with conditions. Planning Commission Chairman Thompson explained the proposal and the Planning Commission's discussion and recommendation. He stated there is concern about protection of the trees along one of the corners of the property. Planning Director Chapman pointed out the City has received a revised condition about the protection of the trees. Mr. Odom presented Council members with the following revised conditions:

Administrative Actions:

Prior to issuance of a grading permit for the site:

(7) That revised site plans be submitted to the Planning Department showing redesign of the parking lot and preservation of two additional trees on the north side of the site (11" Maple and 30" pine), that five Maples proposed for planting adjacent to the new parking lot in this area be upsized from 2.5-3" caliper to 3.5-4" caliper, that an active tree protection plans is approved by the Site Review Specialist in the Inspections Department, and that tree protection measures are in place on site prior to grading.

At the request of the Planning Commission, the applicant agreed to save four additional trees over and above those designated on the plans to be saved. Upon site review immediately after the Planning Commission meeting, and consultation with City staff, it was determined that one of the four trees no longer existed and was presumed damaged during the December ice storm, and another was deemed too close to proposed construction. The alternate proposal to City staff was the planting of larger than previously specified trees in the same vicinity in lieu of the loss of two of the four trees requested by the Planning Commission. Measures to save the two existing trees include new planting islands and the loss of 5 proposed parking spaces. Trinity Baptist Church now proposes to save and protect from damage the following existing site trees:

Deciduous Trees:	19 ranging to 40" caliper
Evergreen Trees:	24 ranging to 30" caliper
Ornamental Trees:	5

TOTAL: 48 TREES

Mr. Odom moved approval of SP-79-02 as recommended by the Planning Commission in CR-10525 with the revised condition #7. His motion was seconded by Mr. Hunt and put to a roll call vote which resulted in all members voting in the affirmative. The Mayor ruled the motion adopted.

sympathetic to reducing the penalties and he feels Mr. Sanders should get the apartment vacated and the contract signed and get the unit closed and secured and then he could come back and talk to the City about relieving some of the penalties. Mr. Sanders stated he hopes that the last tenant will be out by the end of the month. He stated he just does not know where she will go pointing out she is a single parent with a couple of small children. It was agreed to hold the item for further discussion at the second meeting in March to see what success Mr. Sanders has had.

Item #01-57 – Rezoning Z-66-02 – Merrywood Drive/Harris Street Conditional Use. It was pointed out this item was referred to Committee to discuss the condition of the rezoning and determine whether the conditions of the sale and the condition of the rezoning relate to attached or detached single-family. Assistant City Manager Wray explained the conditions of the sale of the property indicating the property owner had followed up with the conditional use zoning case. He pointed out if this rezoning is not approved it will give the property owner more flexibility to do what he wants to do. If the rezoning is approved there would be more restrictions as to what could be built. Mayor Meeker stated he thought the City Council in selling the property wanted single-family detached homes. Mr. Wray stated as he understands it was the intent to have apartments but the purchaser agreed to single-family. This is a follow through on that agreement. The property owner has done what he said he would do. The property owner had a certain number of days to come forth with the rezoning. Mr. West pointed out it was his understanding the sale of the property was with the condition that it would be developed as single-family detached dwellings. In the minutes of the meeting there were a number of references to single-family detached dwellings. He stated he thought that was everyone's intent. He talked about the discussions that took place prior to the sale of the property.

Danny Coleman presented the following prepared statement.

Again, I come before you to talk with you about Tupper Place. I thought we had resolved this matter at the June 17th Budget & Economic Development meeting with the Council meeting on June 18th sealing this deal.

Not to prolong today's discussion, the South Central CAC voted 13 to 0 that an additional condition be added that excluded attached housing. This would be keeping in line with the Roberts Park Communities' wishes and also the suggestion by the Planning staff.

This deal represents the City offering the developer \$240,000 in Bond money for second mortgages and additionally \$28,000 in CDBG grant proceeds for infrastructure cost associated with this site.

If you read all the comments between the June 17th B&E meeting and the June 18th Council meeting, there is no doubt that the Council and Community wanted single-family development that reflected the adjacent properties. There is no single-family attached housing adjacent to this property.

Council members, it is bad enough that you have R-4 and R-10 zoning bifurcating lots in Phase I, with some houses sitting back at least 30' from the front property line with 10' and combined

20' side yard setbacks adjacent to houses that have a front yard set back of 20' and a 10'5' combined 15' side yard setback.

This incomprehensible approach to developing an upscale neighborhood adjacent to an existing upscale neighborhood would not have been permitted in any other section of this city. Yet you wonder why the project never took off. What serious buyer's agent would suggest that their client invest in a subdivision with such a "Material Defect."

I hope you can leverage the \$280,000 and the \$28,000 to persuade the applicant to add the condition suggested by staff to the bottom of page 5 of CR-10524.

I hope you understand that we think you, as a sub-committee and council, as a whole, have tried to support our wishes. We do however feel the applicant fails to realize our concern about multi-family housing being placed in a community that is bounded by single-family detached housing. I am certain, after taking into consideration the number of projects this developer has done with the City of Raleigh's Community Development Department that he has to have a record of being genuine in his efforts to help rebuild in the inner city and the importance of protecting the existing housing stock, especially the outstanding housing that surrounds this site.

Thank you again for your patience and attention in listening to me talk about Tupper Place again.

Discussion took place concerning the action that was taken when the property was sold by the City, the neighborhood's desires and the City's desires as it relates to the development on this property. It was pointed out the City had offered the developer the \$240,000 in bond money for second mortgages and \$28,000 in CDBG grant proceeds for infrastructure cost associated with the site. That was with certain understandings about how the site would be developed. The fact that everyone felt or wanted this property to be developed in single-family and the various development scenarios that would be available with and without the rezoning. The developer's efforts to cooperate and work with the Community Development Department was talked about. What action would have to be taken to make sure the property is developed in single-family detached was discussed. What developer wants to do and how a condition could be crafted was discussed. It was agreed that Mr. West and Ms. Cowell would meet with the developer and talk about what is proposed, promises and conditions of the sale of the property and the future of the property. The deadline for new conditions and the feeling that the sale could become null and void if the property is not developed according to conditions of the sale took place. It was agreed to hold the item to allow a meeting to occur with it being pointed out the deadline for new conditions would be Wednesday, March 5.

Community Development – Nonprofit Neighborhood Revitalization Program. The agenda indicated the City has received a request for \$15,000 in operational assistance from Triangle Family Services for their Emergency Housing Assistance Program. It was pointed out funds are available in CDBG for this request. The agenda information included background information on request for proposals and request that were received and the recommendation for funding of the Triangle Family Services request. Money in the Community Development Block Grant budget for this type program and the flexibility to fund this type program was discussed briefly. Mr. Odom moved staff's recommendation be upheld. His motion was seconded by Mayor

be able to hire off-duty police officers. He stated to require those companies to provide workers compensation would penalize a lot of people and not provide them with equal access to the police. He stated we are not talking about a lot of money. He talked about who may have problems providing workers comp such as road race organizers. Attorney Bryant pointed out road race are organizers providing workers compensation. Officer Miller stated he feels a small business would be hit the hardest and may not be able to provide the workers comp and many times they are the ones that need the police officers. He referred to the Variety Pic-up on New Bern Avenue and other locations that may have had problems and need to hire a police officer to work off-duty but would not be able to provide workers comp. He stated as far as keeping track of what officers are working off-duty when and where he feels that all of the officers would love to be able to call in and say I am working off-duty at such and such location as that would provide backup for them.

Rick Armstrong requested that the policy be changed back to the way it was prior to January 11, 2003. He pointed out he understands it has cost the City some \$88,000 but it would have cost the City that amount no matter which policy we were working under. He stated if a police officer is performing a law enforcement activity, they are working for the City and the Industrial Commission would require the City to pay the claim. He called on the Committee to recommend going back to the old policy. Again pointing out if a police officer is performing a law enforcement act no matter whether on-duty or off-duty the City would cover them.

Discussion followed on how the contract works, how employers contract with off-duty officers and whether we have the ability to know where each of the officers are working. Discussion took place as to how the Committee wanted to move forward as well as the policy and how the past policy worked. Mayor Meeker talked about the possibility of exempting nonprofits and small employers from having to carry workers comp but require the large employers to carry workers comp. Mr. West questioned if that would not make it very difficult to manage. Mayor Meeker pointed out when a new contract comes in it would require some administrative attention but he does not feel it would be that hard to manage. Mr. Odom questioned what would constitute a large corporation, is it large number of employees or large in profit sales or exactly what. The fact that some employers have always provided workers comp was talked about. Mayor Meeker stated he understands that some 20% to 25% of the companies will no longer employ off-duty police officers if they have to provide the workers comp. Attorney Bryant stated she does not have that information. Officer Armstrong again suggested going back to the way it was again explaining if a police officer performs a law enforcement activity then the City's workers comp covers that person. He stated if a police officer is working off-duty and in the performance of that off-duty work witnessed a crime and had to arrest someone then that off-duty officer would be performing law enforcement and should be covered if an accident occurs during the performance of that duty. Mr. Odom moved that the City go back to the previous policy relating to workers comp and off-duty police officers that is, not require companies to provide workers comp in order to employ off-duty police officers. His motion was seconded by Mr. West and put to a vote which passed unanimously.

Item #01-57 – Rezoning Z-66-02 – Marywood Drive/Harris Street Conditional Use. It was

pointed out Ms. Cowell, Mr. Odom and Mr. West and representatives of the Planning Department and the developer had a productive meeting on this issue. It was pointed out there has been a lot of skepticism relating to this rezoning, however, it is felt that the group has come to an agreement with some principles everyone thought are very important. It was excellent discussion and it is felt that everyone is on the same page with the Tupper Place development. If the development proceeds like there is a commitment to do.

Assistant City Manager Wray pointed out after some long discussions they had come up with the following consensus. The Community is in favor of the conditional use zoning as requested by Mr. Zinner of R&D Construction which would give greater protection against apartments. If detached single-family housing is not built as suggested by Mr. Zinner, he will not be eligible for a \$28,000 Community Development Block Grant for infrastructure. As Mr. Zinner presents his site plan for development of phases III and IV, he and the City staff will present those plans to the community so they may be apprised as to the type of construction proposed. It was agreed that Dr. West and Assistant City Manager Wray will continue to work with Mr. Zinner to try to get detached single-family housing but if attached single-family housing is built, they will work with Mr. Zinner to get a minimum square footage in those units similar to adjacent existing dwellings. It was pointed out discussion took place relative to the \$240,000 second mortgage which is available for Tupper Place; however, it was not necessary to include that as that money would be open to anyone all over the City. Tupper Place people would have to go through the City process to apply for those funds.

Dr. West stated he felt those were very important issues as he feels the community expects everyone to live up to their obligations when phases III and IV site plan comes in for approval. This would put a mechanism in place to get back to the community so that they can be apprised of what is occurring. Dr. West stated it is very important that the community get a chance to look at these site plans. Mayor Meeker pointed out that would be in the minutes of the meeting. Mayor Meeker moved approval of Z-66-02 Marywood Drive/Harris Street conditional use as recommended by the Planning Commission in CR-10524 with conditions dated August 23, 2002 and with the further understandings as outlined by Mr. Wray. His motion was seconded by Dr. West and put to a vote which passed unanimously. The Mayor ruled the motion adopted.

CLOSED SESSION

Mayor Meeker stated a motion is in order to enter closed session pursuant to G.S.143-318.11(a)(5) for the purpose of instructing city staff concerning negotiations for properties in the following areas: 1) Possible acquisition of 506 South Salisbury Street; 2) acquisition of downtown office space; 3) Litchford Road Park; 4) Brier Creek Neighborhood Park. Mr. Odom moved adoption of motion as read. His motion was seconded by Mayor Meeker and put to a vote which passed unanimously. The Mayor ruled the motion adopted and the Committee went into closed session at 12:15 p.m. Minutes of that section of the meeting will be covered in a separate set.

WORKERS COMPENSATION – POLICE OFFICERS – OFF-DUTY WORK – PREVIOUS POLICY REINSTATED

Mayor Meeker reported the Budget and Economic Development Committee recommends going back to the previous policy which would not require businesses to provide workers compensation for police officers working off-duty. On behalf of the Committee, Mayor Meeker moved the recommendation be upheld. His motion was seconded by Mr. Odom and put to a roll call vote which resulted in all members voting in the affirmative. The Mayor ruled the motion adopted.

REZONING Z-66-02 – MERRYWOOD DRIVE PARRISH STREET CONDITIONAL USE – APPROVED WITH CONDITIONS AND ADDITIONAL UNDERSTANDING

Mayor Meeker reported the Budget and Economic Development Committee recommends approval of rezoning Z-66-02, Merrywood Drive Conditional Use as outlined by the Planning Commission in CR-10524 which has conditions dated August 23, 2002 with the additional understandings:

1. If detached single family housing is not built as suggested by Mr. Zinner he will not be eligible for a \$28,000 Community Development Block Grant for infrastructure.
2. As Mr. Zinner presents his site plan for development of phases III and IV, he and City staff will present those plans to the community so they may be apprised as to the type of construction proposed.
3. Councilor West and Assistant City Manager Wray will continue to work with Mr. Zinner to try and get detached single-family housing, but if attached single-family housing is built they will work with Mr. Zinner to get a minimum square footage in those units similar to the adjacent, existing dwellings.

On behalf of the Committee, Mayor Meeker moved the recommendation be upheld. His motion was seconded by Mr. West. Mayor Meeker expressed appreciation to Council members who helped work through this item and bring consensus. Mr. Hunt stated he is in support of this type development in Southeast Raleigh. He questioned however what kind of response is being made to the Appearance Commission's comments regarding tree preservation. By general consensus, it was agreed that Council members would work with the developer to preserve trees. The motion as amended to include working with the developer on saving the trees was put to a vote which resulted in all members voting in the affirmative. The Mayor ruled the motion adopted. See Ordinance 403 ZC 533.

BRIER CREEK COMMUNITY PARK SITE/ELEMENTARY SCHOOL – PURCHASE – AUTHORIZED

Mr. West reported the Budget & Economic Development Committee in closed session voted to recommend that the Council approve the purchase of a 20 +/- parcel identified as Brier Creek Tract I-1 located at Brier Creek Parkway and owned by Brier Creek Associates Limited Partnership, under the described terms of the contract for purchase property dated December 17, 2002 for the purchase price of \$88,000 per acre. The cost for site acquisition would be shared equally with the City of Raleigh and Wake County Board of Education. On behalf of the Committee, Mr. West moved the recommendation be upheld. His motion was seconded by Mayor Meeker who explained the amount of work that has been put into getting to this point. The motion as stated was put to a roll call vote which resulted in all members voting in the affirmative. The Mayor ruled the motion adopted.

NEIGHBOR TO NEIGHBOR PROGRAM – RELOCATION STATUS – REMOVED FROM THE AGENDA

Mayor Meeker reported the Budget & Economic Development Committee received a report that staff assisted Neighbor to Neighbor in working with Wake County to lease space in the Crosby – Garfield Building; therefore, the item can be removed from the agenda with no further action taken. Without discussion the item was removed from the agenda.