

## Cabarrus County Government

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Cabarrus County Planning and Zoning Commission Meeting  
April 16, 2009  
7:00 P.M.

Board of Commissioners Chamber  
Cabarrus County Governmental Center

### Agenda

1. Roll Call
2. Approval of Minutes
3. New Business – Planning Board Function:
  - A. **Petition C2009-02 (R)** - Petitioner - James Mann - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR).
  - B. **Petition C2009-03 (R)** - Petitioner - Pauline Whitley Drye - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR).
  - C. **Petition C2009-04 (R)** - Petitioners - Farrell & Amy Whitley - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR).
  - D. **Petition C2009-05 (R)** - Petitioners - Jennifer Price & Ronda York - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR)
  - E. **Petition C2009-06 (R)** - Petitioner Patsy Whitley - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside CR.
  - F. **Petition C2009-07 (R)** - Petitioner - John Lentz - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Low Density Residential (LDR)
  - G. **Petition C2009-08 (R)** - Petitioners - Gerald & Lela Newton - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR)

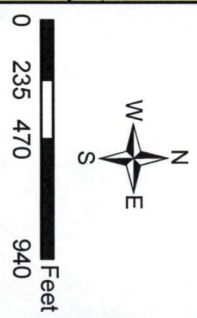
- H. **Petition C2009-09 (R)** - Petitioners - Mitchell & Mary Hartsell  
Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to Office Institutional (OI) and Low Density Residential (LDR)
- I. **Petition C2009-10 (R)** - Petitioner - George Troutman - Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to Low Density Residential (LDR)
- J. **Petition C2009-11 (R)** - Petitioner - Darrell Furr - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR)
- K. **Petition C2009-12 (R)** - Petitioner - Kenneth Furr - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR)
- L. **Petition C2009-13 (R)** - Petitioner Kenneth Furr - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR)
- M. **Petition C2009-14 (R)** - Petitioner - Kenneth Furr - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR)
- N. **Petition C2009-15 (R)** - Petitioner - Scott Robertson - Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to Low Density Residential (LDR)
- O. **Petition C2009-16 (R)** - Petitioner - Davisco Incorporated - Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to Office Institutional (OI)
- P. **Petition C2009-17 (R)** - Petitioner - Samuel Davis Jr. - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR)
- Q. **Petition C2009-18 (R)** - Petitioner S.F. Davis - Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR)
4. Directors Report
5. Adjournment



# Central Area Land Use Plan:

## James Mann Rezoning

PIN: 5643-02-4800  
 Owner: James Mann  
 Total Acreage: 140  
 Current Zoning: AO  
 Proposed Zoning: CR  
 Petition #: C2009-02(R)

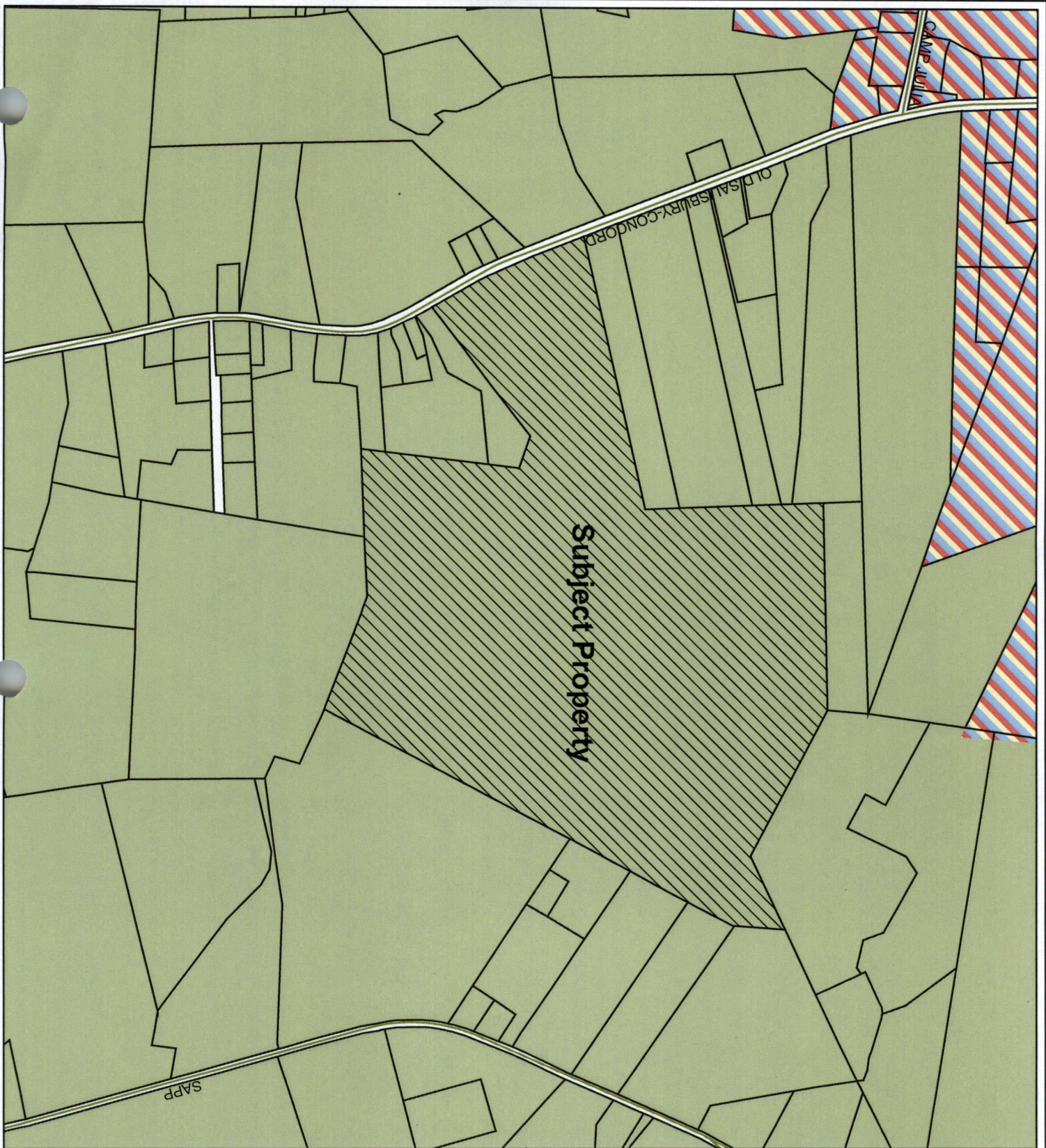


Subject Property

Streets

Rural Residential

Mixed Use



**CabarrusCounty**  
 The Center of American Motorsports  
 NORTH CAROLINA

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Map Prepared by Cabarrus County Planning Services, April 2009.



# Current Zoning: Mann

## Rezoning

PIN: 5643-02-4800  
Owner: James Mann  
Total Acreage: 140  
Current Zoning: AO  
Proposed Zoning: CR  
Petition #: C2009-02(R)



0 162.5 325 650 Feet

### Legend

Streets

County Zoning

ZONING CODE

Agricultural Open (AO)

Low Density Residential (LDR)



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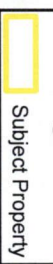
# Aerial: Mann Rezoning

PIN: 5643-02-4800  
Owner: James Mann  
Total Acreage: 140  
Current Zoning: AO  
Proposed Zoning: CR  
Petition #: C2009-02(R)



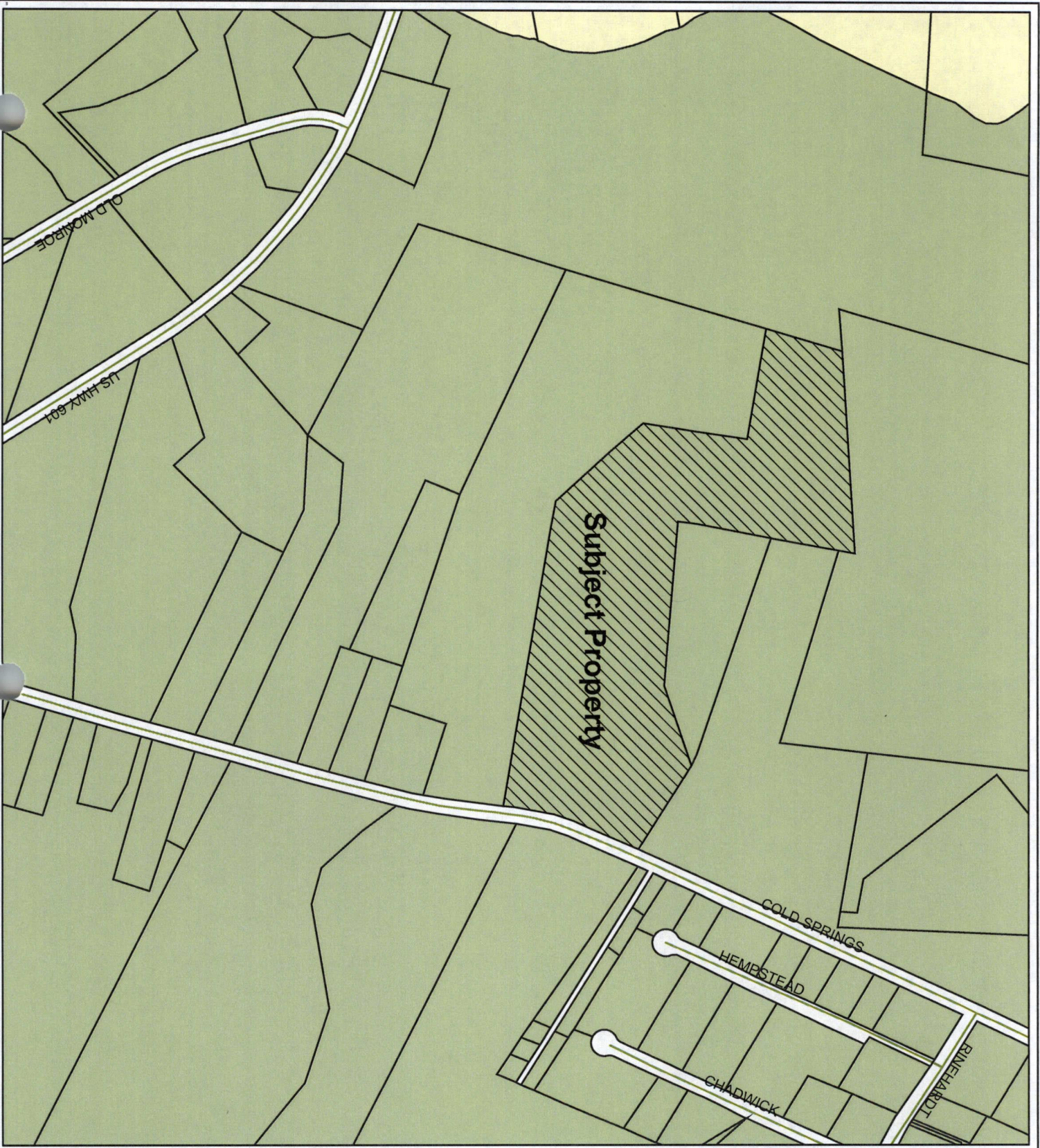
0 162.5 325 650 Feet

## Legend



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# Central Area Land Use Plan:

## Drye Rezoning

PIN: 5548-74-0620  
 Owner: Drye  
 Total Acreage: 25.74  
 Current Zoning: AO  
 Proposed Zoning: CR  
 Petition #: C2009-03(R)



**Legend**

- Subject Property
- Streets
- Central Area Land Use Plan
- Rural Residential
- Very Low Density Residential



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 Map Prepared by Cabarrus County Planning Services, April 2009.



# Current Zoning: Drye

## Rezoning

PIN: 5548-74-0620  
 Owner: Pauline Drye  
 Total Acreage: 25.74  
 Current Zoning: AO  
 Proposed Zoning: CR  
 Petition #: C2009-03(R)



**Legend**

— Streets

**County Zoning ZONING CODE**

AO

LDR



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Map Prepared by Cabarrus County Planning Services, April 2009.

Subject Property






# Aerial: Drye Rezoning

PIN: 5548-74-0620  
Owner: Pauline Drye  
Total Acreage: 25.74  
Current Zoning: AO  
Proposed Zoning: CR  
Petition #: C2009-03(R)



0 155 310 620 Feet

## Legend

 Subject Property



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Map Prepared by Cabarrus County Planning Services, April 2009.



LDR



**Current Zoning: Whitley Rezoning**  
PIN: 5548-64-4502  
Owner: Whitley  
Total Acreage: 23.15  
Current Zoning: AO  
Proposed Zoning: CR  
Petition #: C2009-04(R)



**Legend**

Streets

County Zoning

ZONING CODE

- Agricultural Open (AO)
- Low Density Residential (LDR)



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# Aerial: Whitley Rezoning

PIN: 5548-64-4502  
Owner: Whitley  
Total Acreage: 23.15  
Current Zoning: AO  
Proposed Zoning: CR  
Petition #: C2009-04(R)



0 125 250 500 Feet



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Map Prepared by Cabarrus County Planning Services, April 2009







C2009-05 (R)

# Zoning Atlas Amendment RZON2009-00009

Jennifer Price & Ronda York

PINs 5553-23-6499

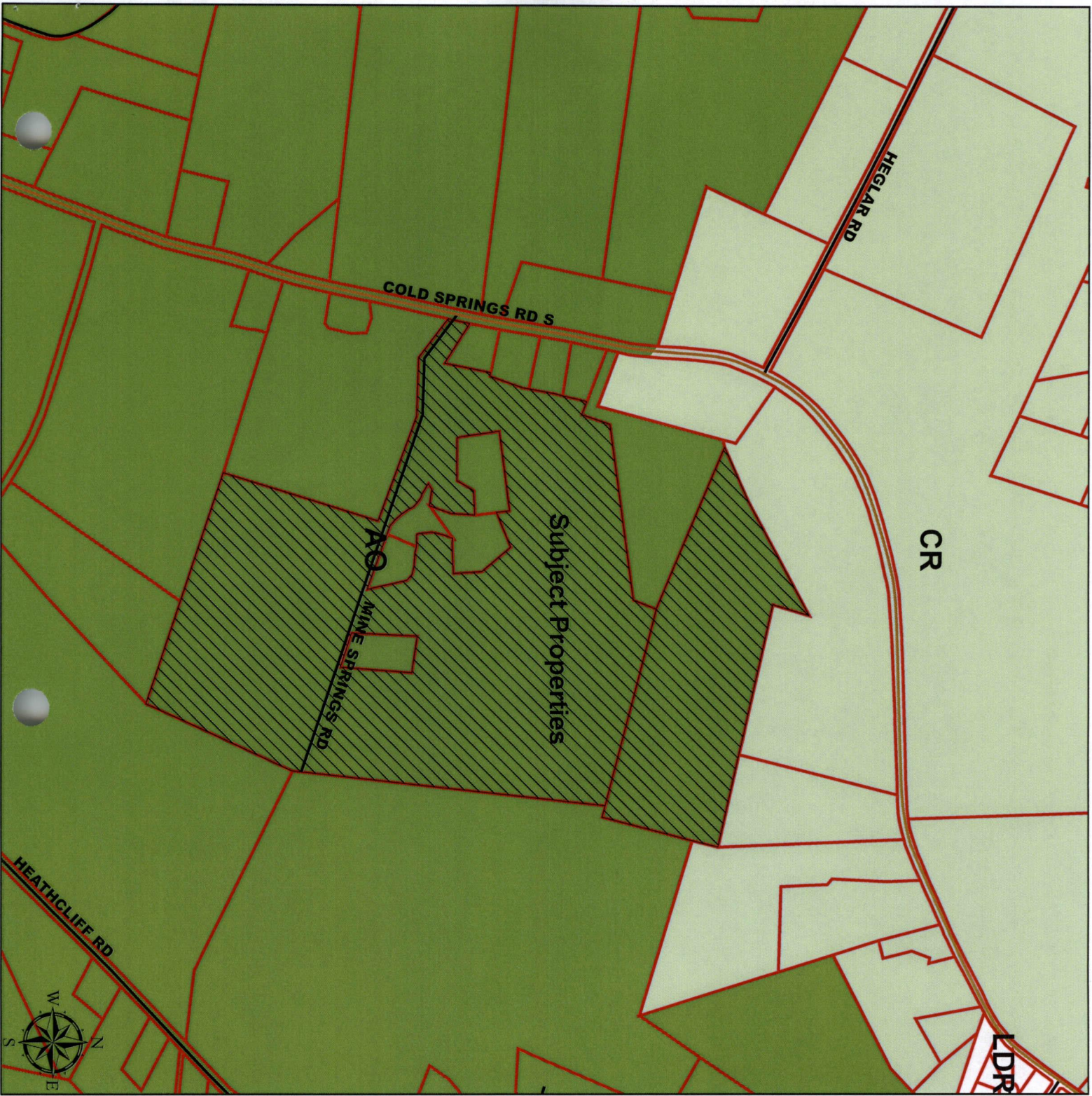
5559-22-7117

Total Acreage: 107.68

Current Zoning: AO

Proposed Zoning: CR

## Current Zoning Map



**Legend**

Roads

Tax Parcels

Special Corridor

**County Zoning**

AO

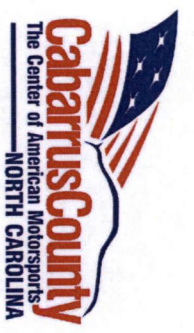
CR



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Map Prepared by Cabarrus Planning Services, April 2009.





C2009-05 (R)

## Zoning Atlas Amendment RZON2009-00009

Jennifer Price & Ronda York

PIN: 5559-23-6499

5559-22-7117

Total Acreage: 107.68

Current Zoning: AO

Proposed Zoning: CR

## Aerial Map



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Map Prepared by Cabarrus County Planning Services,  
April 2009.





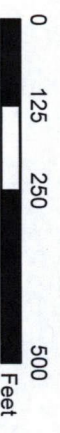


**C2009-06 (R)**

## **Zoning Atlas Amendment RZON2009-00010**

Patsy B. Whitley  
PIN: 5548-63-3875  
Total Acreage: 19.51  
Current Zoning: AO  
Proposed Zoning: CR

### **Current Zoning Map**



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Map Prepared by Cabarrus Planning Services,  
April 2009.





C2009-06 (R)

# Zoning Atlas Amendment RZON2009-00010

Patsy B. Whitley  
PIN: 5548-63-3875  
Total Acreage: 19.51  
Current Zoning: AO  
Proposed Zoning: CR

## Aerial Map



**Legend**

Roads

TaxParcels



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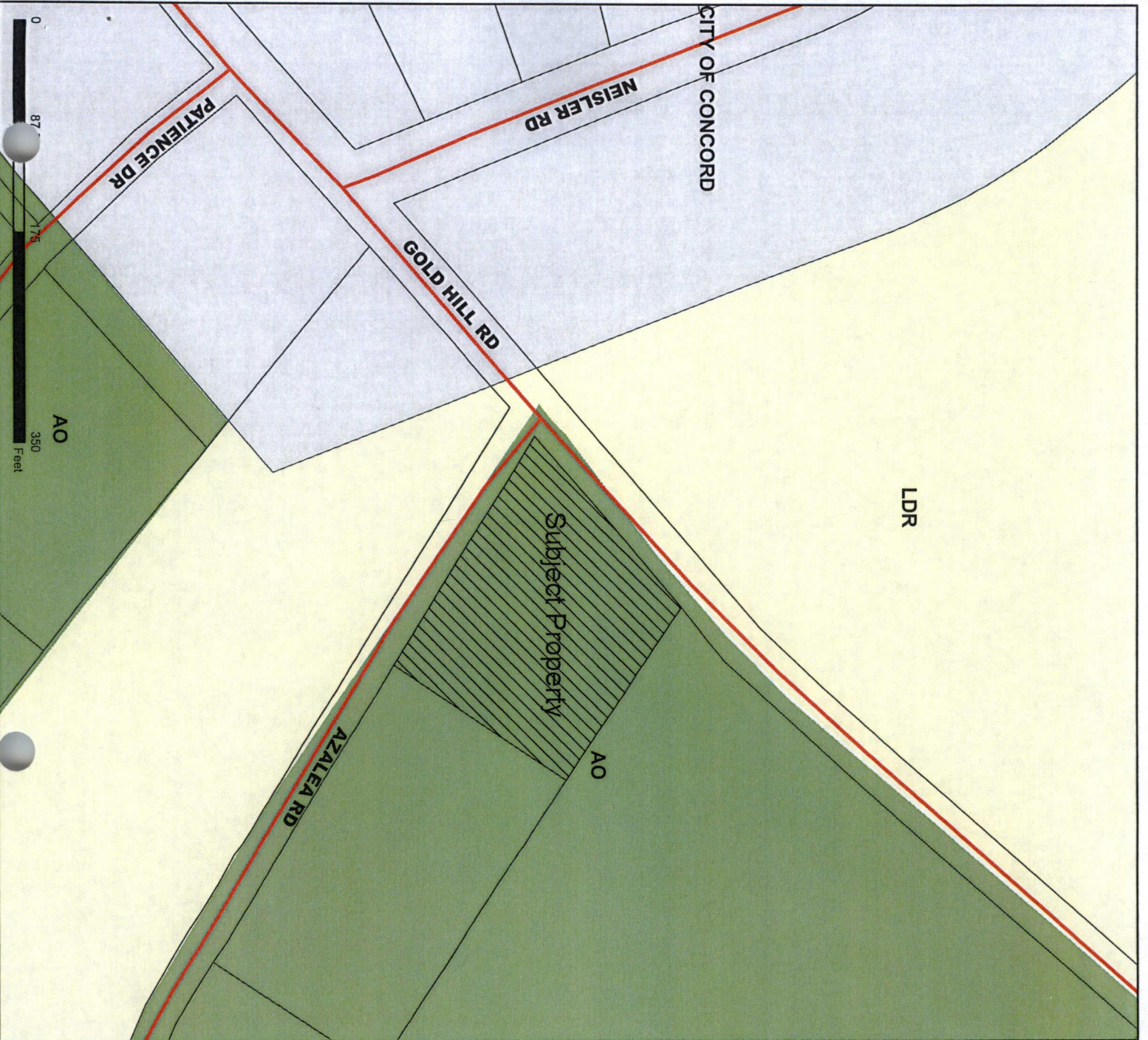
Map Prepared by Cabarrus County Planning Services, April 2009.





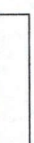



## Zoning

Applicant: John Lentz  
 Petition#: C2009-07 (R)  
 Zoning Map Amendment  
 Parcel ID#: 5631-92-9107  
 Existing Zoning: AO: Agricultural Open Space  
 Proposed Zoning: LDR: Low Density Residential



### Legend

-  Subject Property
-  Roads
-  Tax Parcels
-  Concord ETJ



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Map Prepared by Cabarrus County Planning Services, April 2009.





## Aerial

Applicant: John Lentz  
Petition#: C2009-07 (R)  
Zoning Map Amendment  
Parcel ID#: 5631-92-9107  
Existing Zoning: AO: Agricultural Open Space  
Proposed Zoning: LDR: Low Density Residential



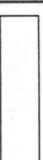
### Legend



Subject Property



Roads



Tax Parcels



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Map Prepared by Cabarrus County Planning Services, April 2009.





C2009-08 (R)

## Zoning Atlas Amendment RZON2009-00012

Gerald A. Newton  
PIN: 5651-09-3101  
Total Acreage: 7.04  
Current Zoning: AO  
Proposed Zoning: CR

## Current Zoning Map



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Map Prepared by Cabarrus County Planning Services, April 2009.



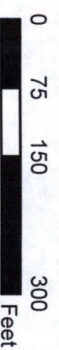


C2009-08 (R)

## Zoning Atlas Amendment RZON2009-00012

Gerald & Lela Newton  
PIN: 5651-09-3101  
Total Acreage: 7.04  
Current Zoning: AO  
Proposed Zoning: CR

### Aerial Map



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Map Prepared by Cabarrus Co. Planning Services, April 2009.





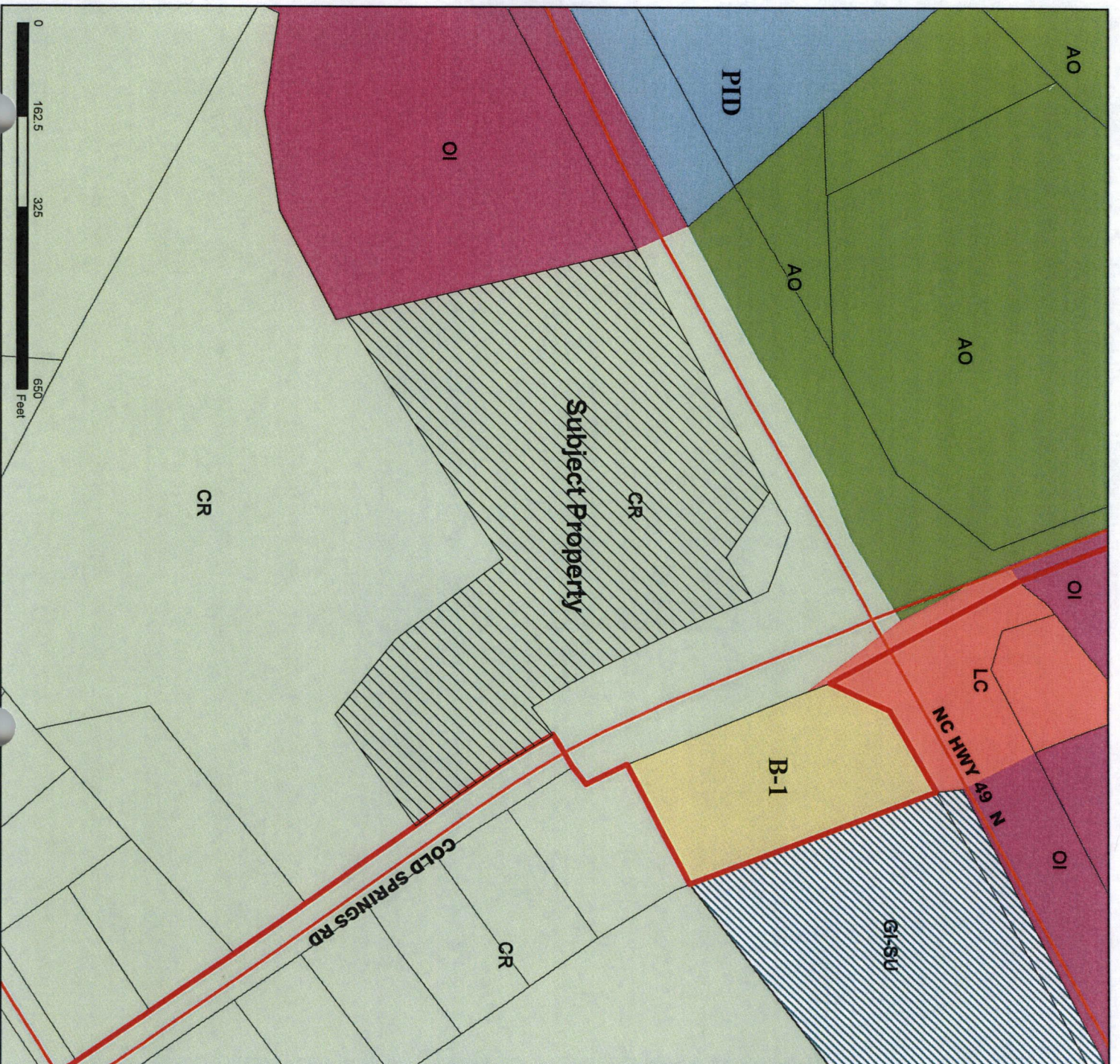


Applicant: Mitchell & Mary Hartsell  
 Petition#: C2009-09 (R)  
 Zoning Map Amendment  
 Parcel ID#: 5559-49-6266  
 Existing Zoning: CR - Countryside Residential  
 Proposed Zoning: OI - Office Institutional &  
 LDR - Low Density Residential

### Current Zoning Map

#### Legend

-  Subject Property
-  Roads
-  Tax Parcels



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Map Prepared by Cabarrus County Planning Services, April 2009.





Applicant: Mitchell & Mary Hartsell  
 Petition#: C2009-09 (R)  
 Zoning Map Amendment  
 Parcel ID#: 5559-49-6266  
 Existing Zoning: CR-Countryside Residential  
 Proposed Zoning: OI-Office Institutional &  
 LDR-Low Density Residential

## Aerial Map

### Legend

- Subject Property
- Roads
- TaxParcels
- Municipal Boundary



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Map Prepared by Cabarrus County Planning Services, April 2009.



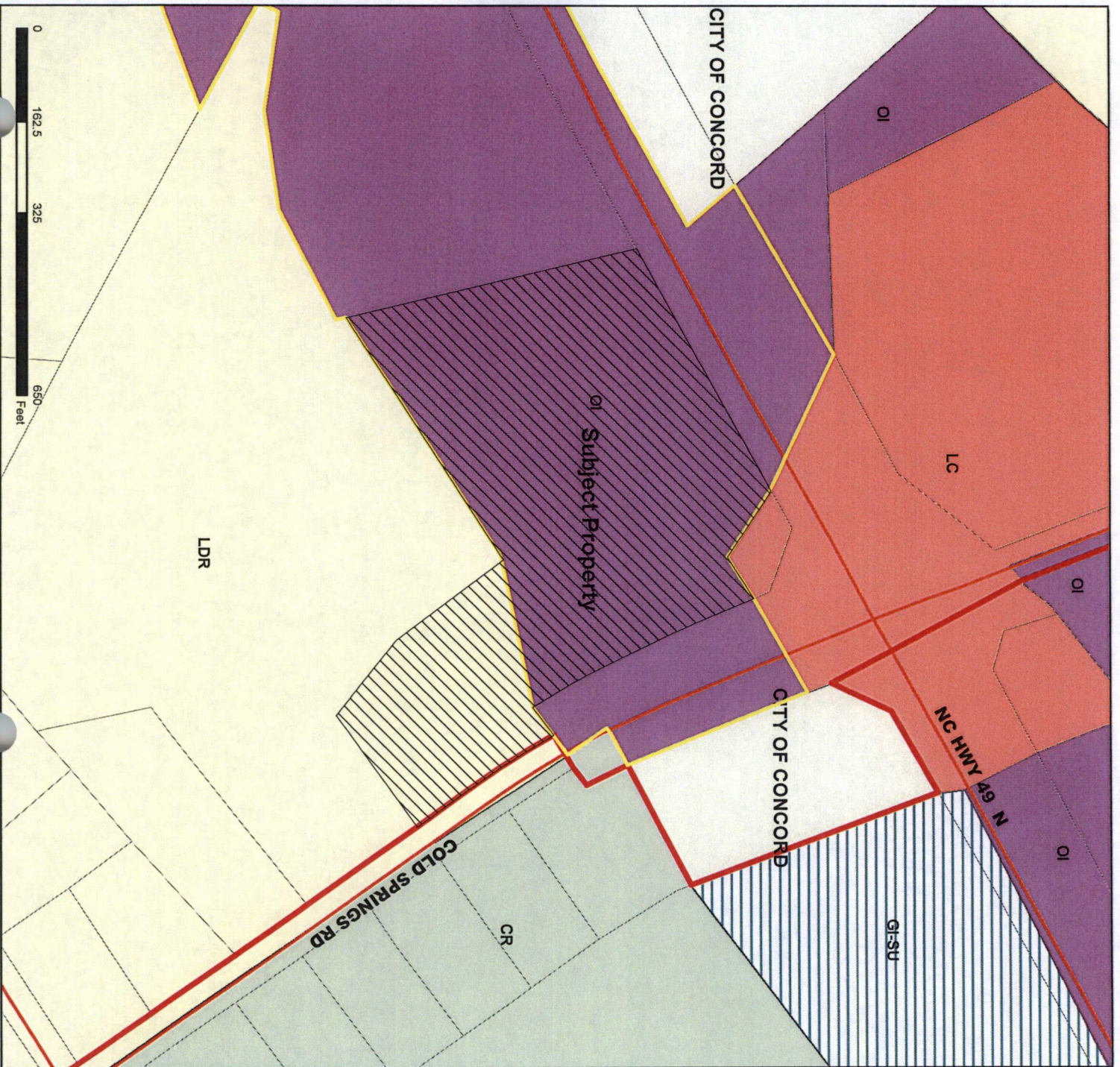


Applicant: Mitchell & Mary Hartsell  
 Petition#: C2009-09 (R)  
 Zoning Map Amendment  
 Parcel ID#: 5559-49-6266  
 Existing Zoning: CR-Countryside Residential  
 Proposed Zoning: OI-Office Institutional &  
 LDR-Low Density Residential

## Zoning Map Prior to January BOC Action

### Legend

-  Subject Property
-  Roads
-  TaxParcels
-  Municipal Boundary



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Map Prepared by Cabarrus County Planning Services, April 2009.





## Zoning

Applicant: George Troutman  
Petition#: C2009-10 (R)  
Zoning Map Amendment  
Parcel ID#: 5559-48-6689  
Existing Zoning: CR-Countryside Residential  
Proposed Zoning: LDR-Low Density Residential

### Legend

-  Subject Property
-  Roads
-  Tax Parcels
-  Municipal Boundary



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Map Prepared by Cabarrus County Planning Services,  
April 2009.









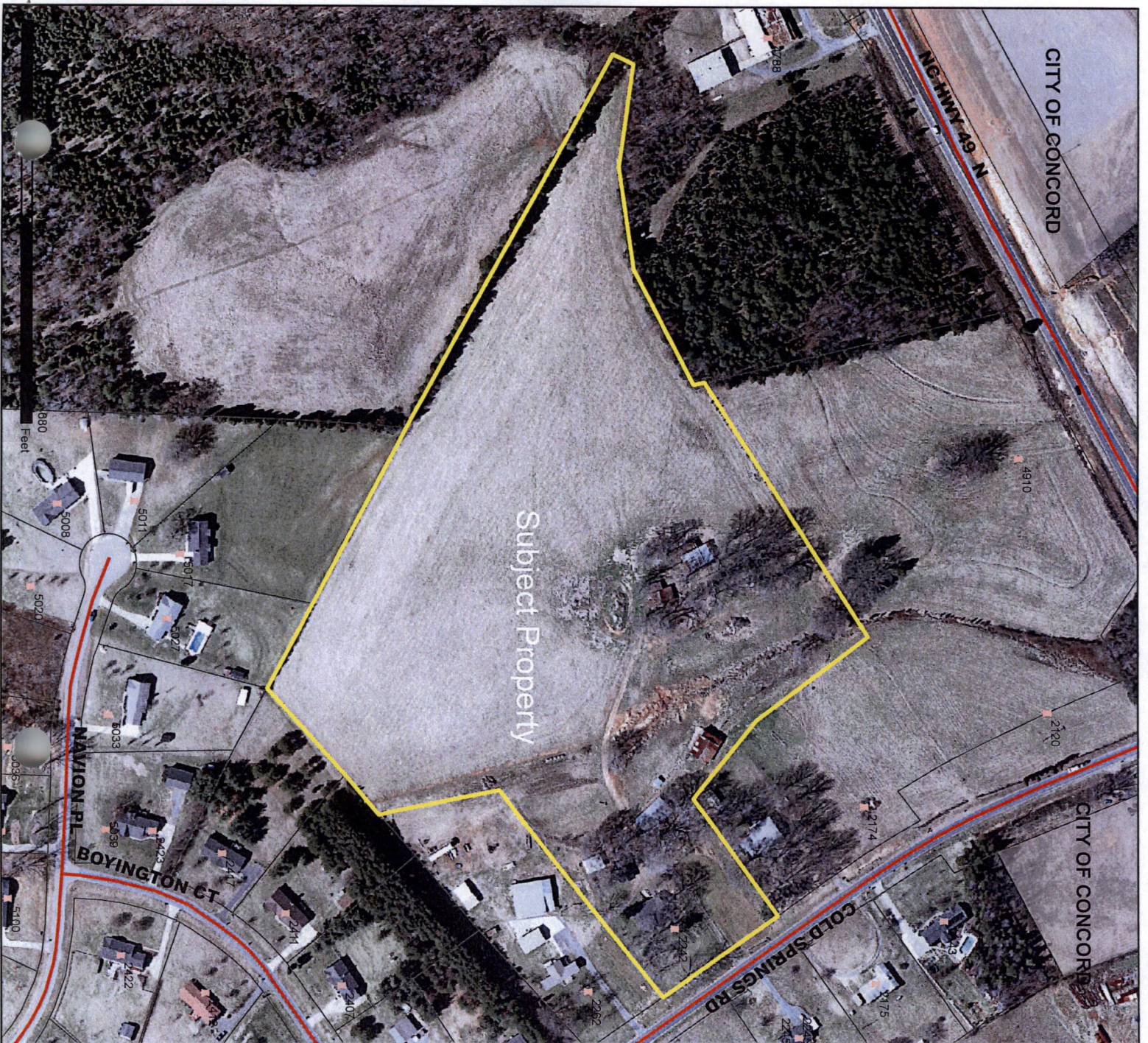


## Aerial

Applicant: George Troutman  
Petition#: C2009-10 (R)  
Zoning Map Amendment  
Parcel ID#: 5559-48-6689  
Existing Zoning: CR-Countryside Residential  
Proposed Zoning: LDR-Low Density Residential

**Legend**

-  Subject Property
-  Roads
-  Tax Parcels
-  Municipal Boundary



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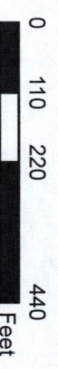
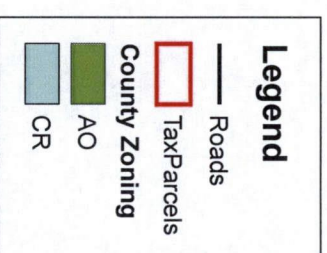


**C2009-11 (R)**

## Zoning Atlas Amendment RZON2009-00015

Darrell K. Furr  
PIN: 5559-11-3582  
Total Acreage: 20.21  
Current Zoning: AO  
Proposed Zoning: CR

### Current Zoning Map



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Map Prepared by Cabarrus Planning Services, April 2009.





**C2009-11 (R)**  
**Zoning Atlas Amendment**  
**RZON2009-00015**

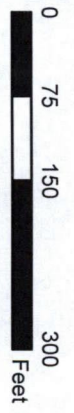
Darrell K. Furr  
PIN: 5559-11-3582  
Total Acreage: 20.21  
Current Zoning: AO  
Proposed Zoning: CR

**Aerial Map**

**Legend**

— Roads

□ TaxParcels



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Map Prepared by Cabarrus County Planning Services, April 2009.

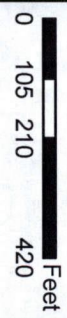
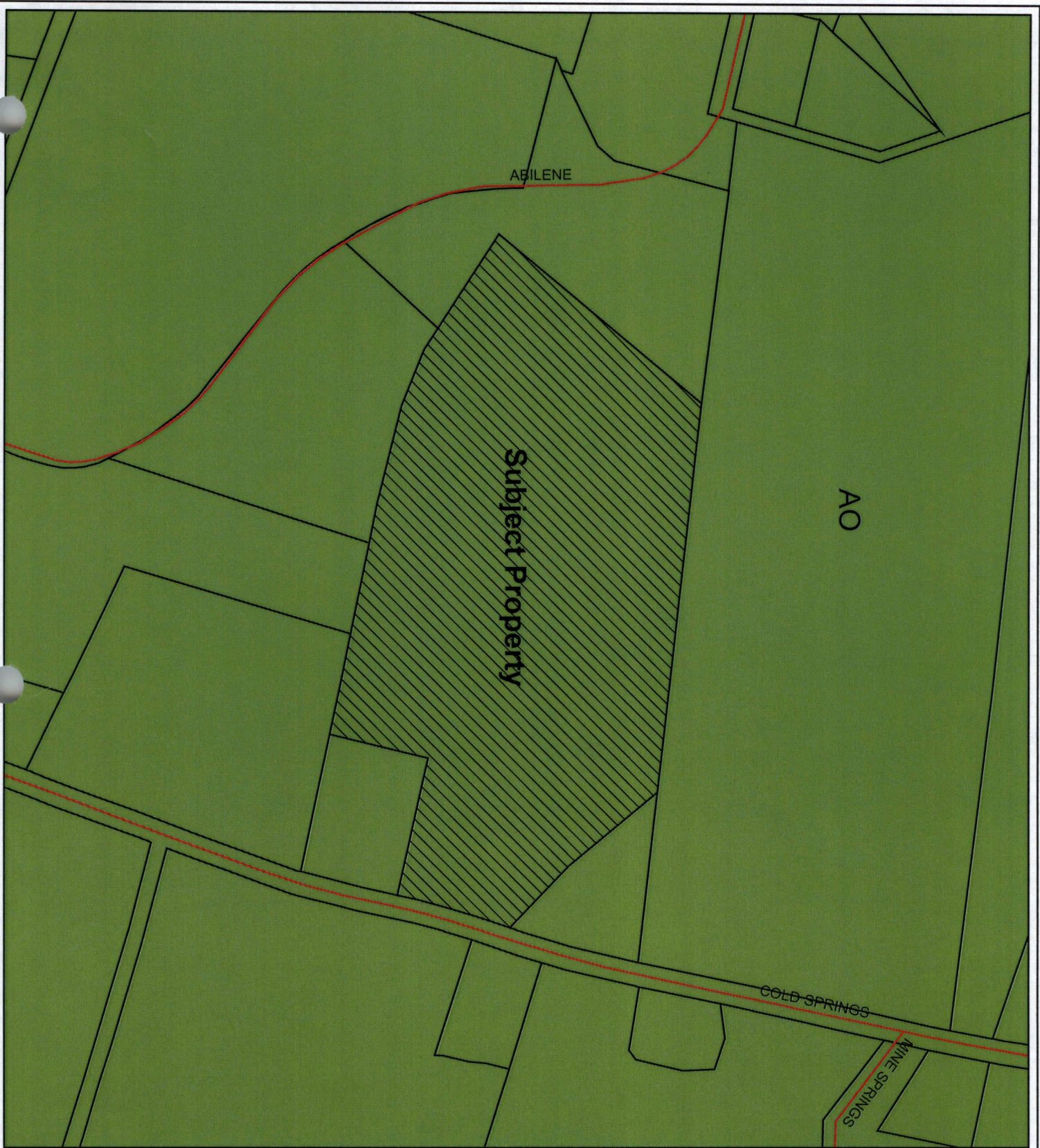




**Current  
Zoning:  
Furr**

**Rezoning**

PIN: 5549-91-4268  
Owner: Furr  
Total Acreage: 24.97  
Current Zoning: AO  
Proposed Zoning: CR  
Petition #: C2009-12(R)



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Map Prepared by Cabarrus County Planning Services, April 2009.





## Aerial:

**Furr**

## Rezoning

PIN: 5549-91-4268  
Owner: Kenneth Furr  
Total Acreage: 24.97  
Current Zoning: AO  
Proposed Zoning: CR  
Petition #: C2009-12(R)



0 70 140 280 Feet

### Legend



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Map Prepared by Cabarrus County Planning Services, April 2009.





## Zoning

Applicant: Kenneth Furr  
Petition: C2009-13 (R)  
Zoning Map Amendment  
PIN#: 5548-83-7609  
Existing Zoning: AO-Agricultural Open Space  
Proposed Zoning: CR-Countryside Residential

Legend	
	Subject Property
	Roads
	Tax Parcels



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Map Prepared by Cabarrus County Planning Services, April 2009.

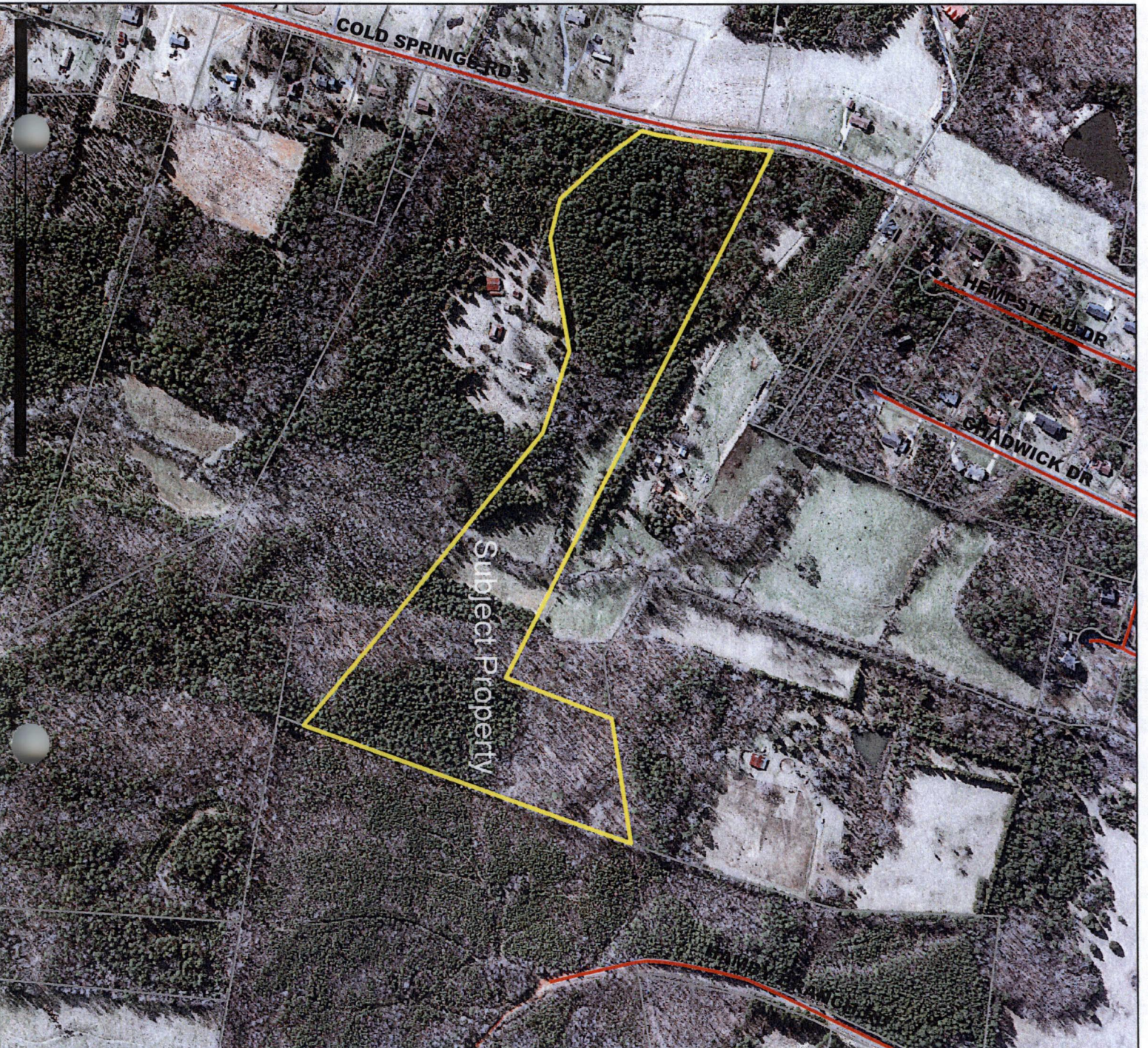









## Aerial

Applicant: Kenneth Furr  
Petition: C2009-13 (R)  
Zoning Map Amendment  
PIN#: 5548-83-7609  
Existing Zoning: AO-Agricultural Open Space  
Proposed Zoning: CR-Countryside Residential



Legend	
	Tax Parcels
	Roads
	Subject Property



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Map Prepared by Cabarrus County Planning Services,  
April 2009.





Applicant: Kenneth P. Furr & Wife  
Petition#: C2009-14 (R)  
Zoning Map Amendment  
Parcel ID#: 5548-67-0967  
Existing Zoning: AO-Agriculture Open  
Proposed Zoning: CR-Countryside Residential

### Current Zoning Map Legend

- TaxParcels
- Subject Property
- Roads



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Map Prepared by Cabarrus County Planning Services, April 2009.









Applicant: Kenneth P. Furr & Wife  
Petition#: C2009-14 (R)  
Zoning Map Amendment  
Parcel ID#: 5548-67-0967  
Existing Zoning: AO-Agriculture Open  
Proposed Zoning: CR-Countryside Residential

## Aerial Map

### Legend

-  Tax Parcels
-  Railroad
-  Roads
-  Subject Property



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Map Prepared by Cabarrus County Planning Services, April 2008.







Applicant: Scott C. Robertson  
Petition#: C2009-15 (R)  
Zoning Map Amendment  
Parcel ID#: 5549-88-8214, 5549-88-5136,  
5549-87-7714, 5549-88-2354  
Existing Zoning: CR-Countryside Residential  
Proposed Zoning: LDR-Low Density Residential

### Current Zoning Map Legend

- TaxParcels
- Subject Properties
- Roads



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Map Prepared by Cabarrus County Planning Services, April 2009.







Applicant: Scott C. Robertson  
Petition#: C2009-15 (R)  
Zoning Map Amendment  
Parcel ID#: 5549-88-8214, 5549-88-5136,  
5549-87-7714, 5549-88-2354  
Existing Zoning: CR-Countryside Residential  
Proposed Zoning: LDR-Low Density Residential



### Aerial Map Legend

- Tax Parcels
- Subject Properties
- Roads



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Map Prepared by Cabarrus County Planning Services, April 2009.





Applicant: Davisco, Inc.  
 Petition#: C2009-16 (R)  
 Zoning Map Amendment  
 Parcel ID#: 5559-47-0237  
 Existing Zoning: CR-Countryside Residential  
 Proposed Zoning: OI-Office Institutional &  
 LDR-Low Density Residential

## Current Zoning Map

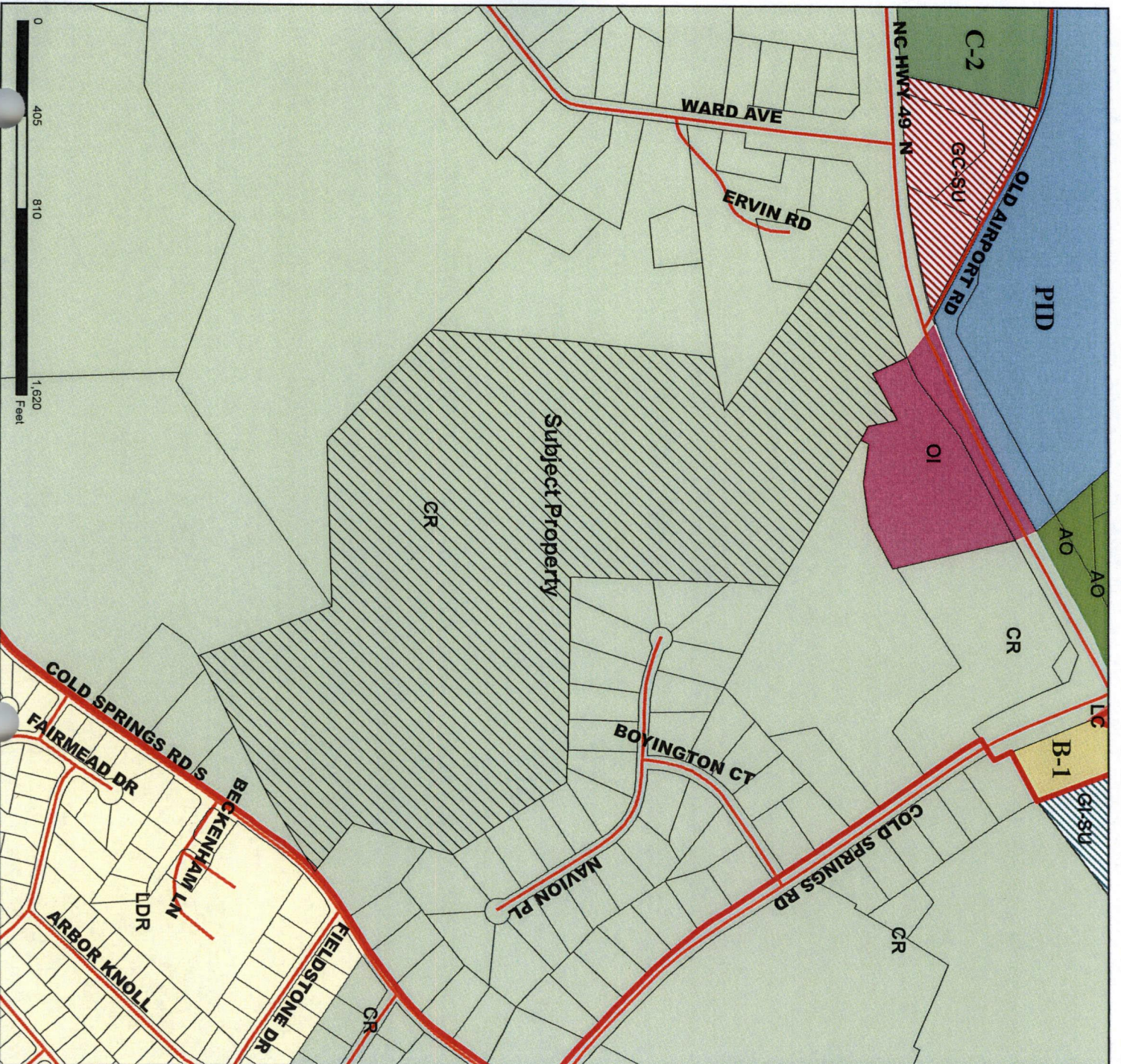
### Legend

-  TaxParcels
-  Subject Property
-  Roads



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Map Prepared by Cabarrus County Planning Services, April 2009.








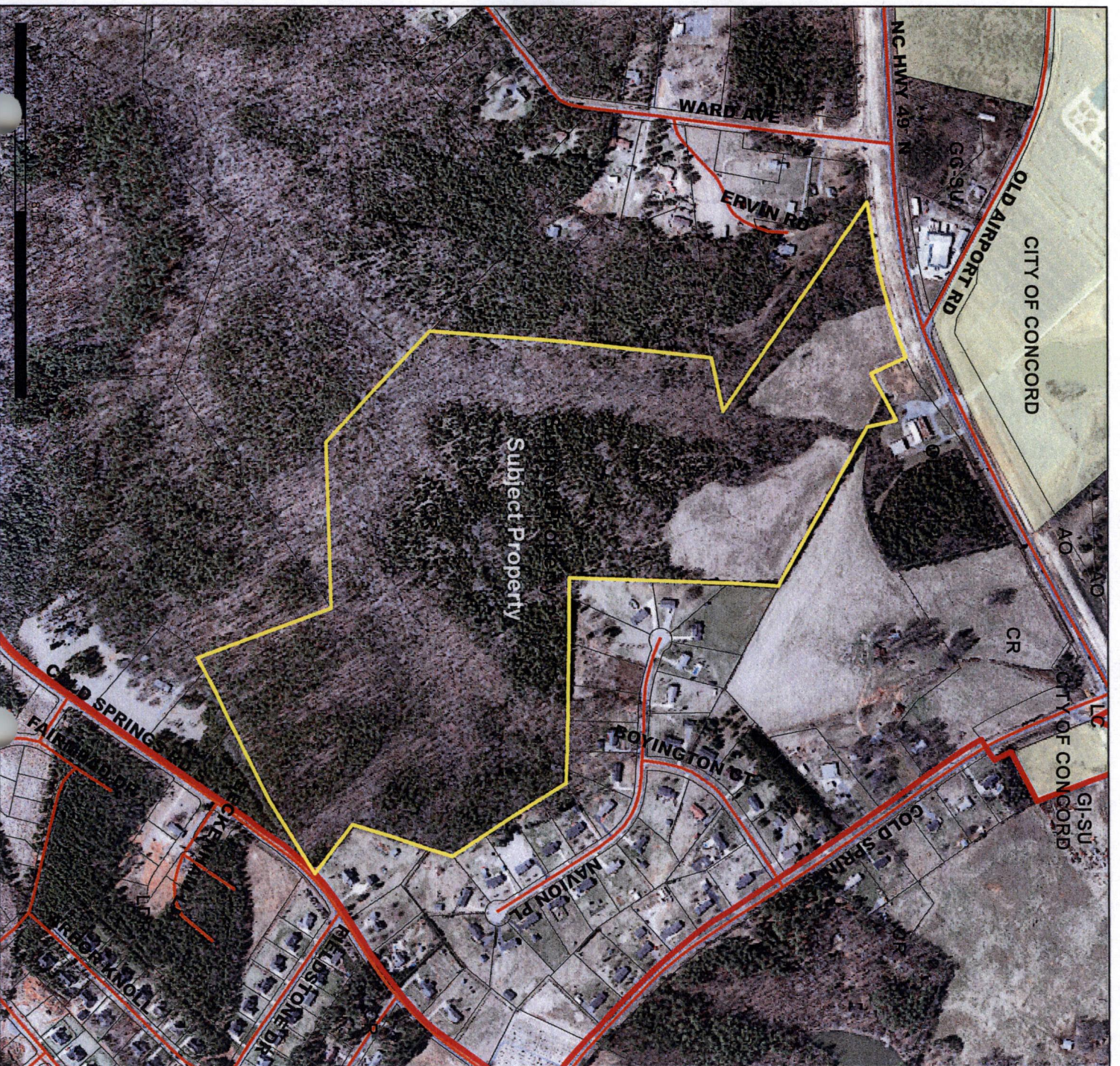


Applicant: Davisco, Inc.  
 Petition#: C2009-16 (R)  
 Zoning Map Amendment  
 Parcel ID#: 5559-47-0237  
 Existing Zoning: CR-Countryside Residential  
 Proposed Zoning: OI-Office Institutional &  
 LDR-Low Density Residential

## Aerial Map

### Legend

-  TaxParcels
-  Subject Property
-  Roads
-  Municipal Boundary



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 Zoning Map Amendment  
 Parcel ID#: 5559-47-0237  
 Existing Zoning: CR-Countryside Residential  
 Proposed Zoning: OI-Office Institutional &  
 LDR-Low Density Residential

## Zoning Map Prior to January BOC Action

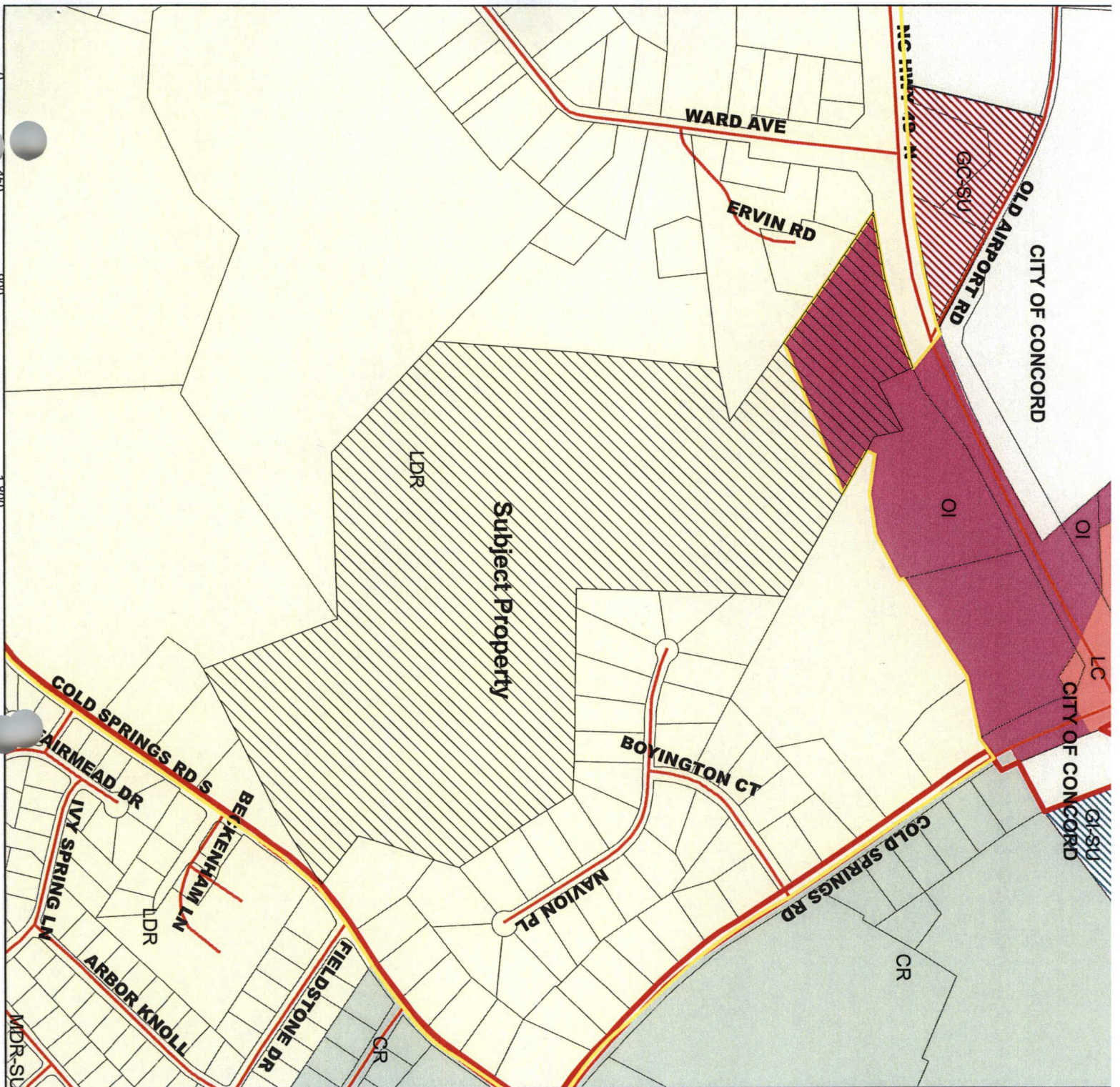
### Legend

- TaxParcels
- Subject Property
- Roads
- Municipal Boundary



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Map Prepared by Cabarrus County Planning Services, April 2009.







## Zoning

Applicant: Samuel Davis Jr.

Petition#: C2009-17 (R)

Zoning Map Amendment

Parcel ID#: 5651-19-4883, 5651-19-3749,  
5651-19-6846 & 5652-10-0091

Existing Zoning: AO – Agricultural Open Space

Proposed Zoning: CR - Countryside Residential

### Legend



Subject Properties



Roads



Tax Parcels



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Map Prepared by Cabarrus County Planning Services,  
April 2009.

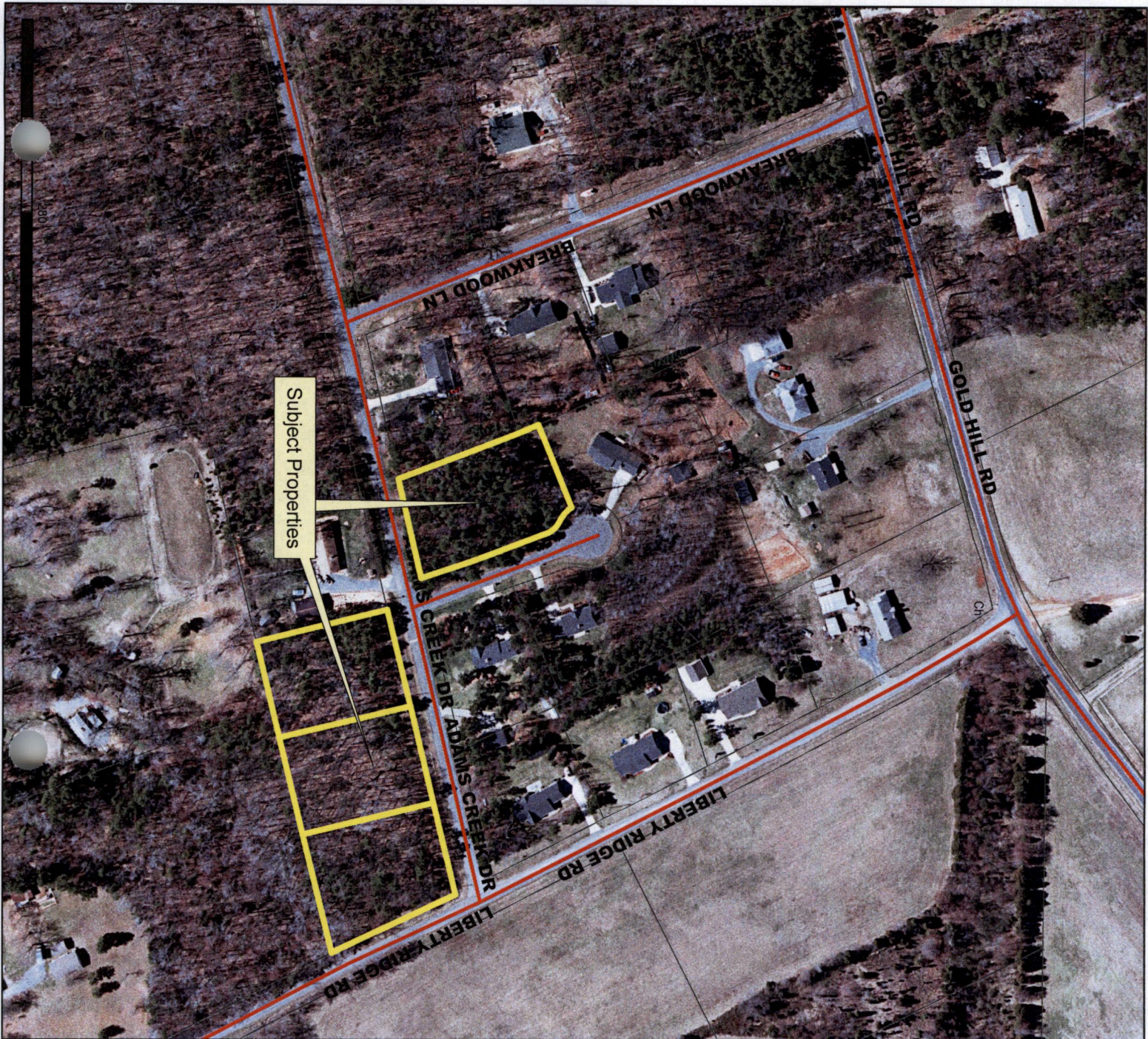






## Aerial

Applicant: Samuel Davis Jr.  
Petition#: C2009-17 (R)  
Zoning Map Amendment  
Parcel ID#: 5651-19-4883, 5651-19-3749,  
5651-19-6846 & 5652-10-0091  
Existing Zoning: AO – Agricultural Open Space  
Proposed Zoning: CR- Countryside Residential



### Legend

- Roads
- TaxParcels
- Subject Properties



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Map Prepared by Cabarrus County Planning Services,  
April 2009.





## Zoning

Applicant: S.F. Davis

Petition#: C2009-18 (R)

Zoning Map Amendment

Parcel ID#: 5652-00-6562, 5652-00-7339, 5652-00-4463, 5652-00-5236, 5652-00-3319, 5652-00-3261, 5652-00-1335, 5652-00-1176, 5651-09-2906, 5651-09-2739, 5651-09-4813, 5651-09-5857, 5651-09-6990, 5651-09-2565, 5651-09-4558, 5651-09-5692, 5651-09-7635, 5651-09-8688 & 5651-19-0731

Existing Zoning: AO-Agricultural Open Space  
Proposed Zoning: CR-Countryside Residential



### Legend

-  Subject Properties
-  Roads
-  Tax Parcels



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Map Prepared by Cabarrus County Planning Services, April 2009.





## Aerial

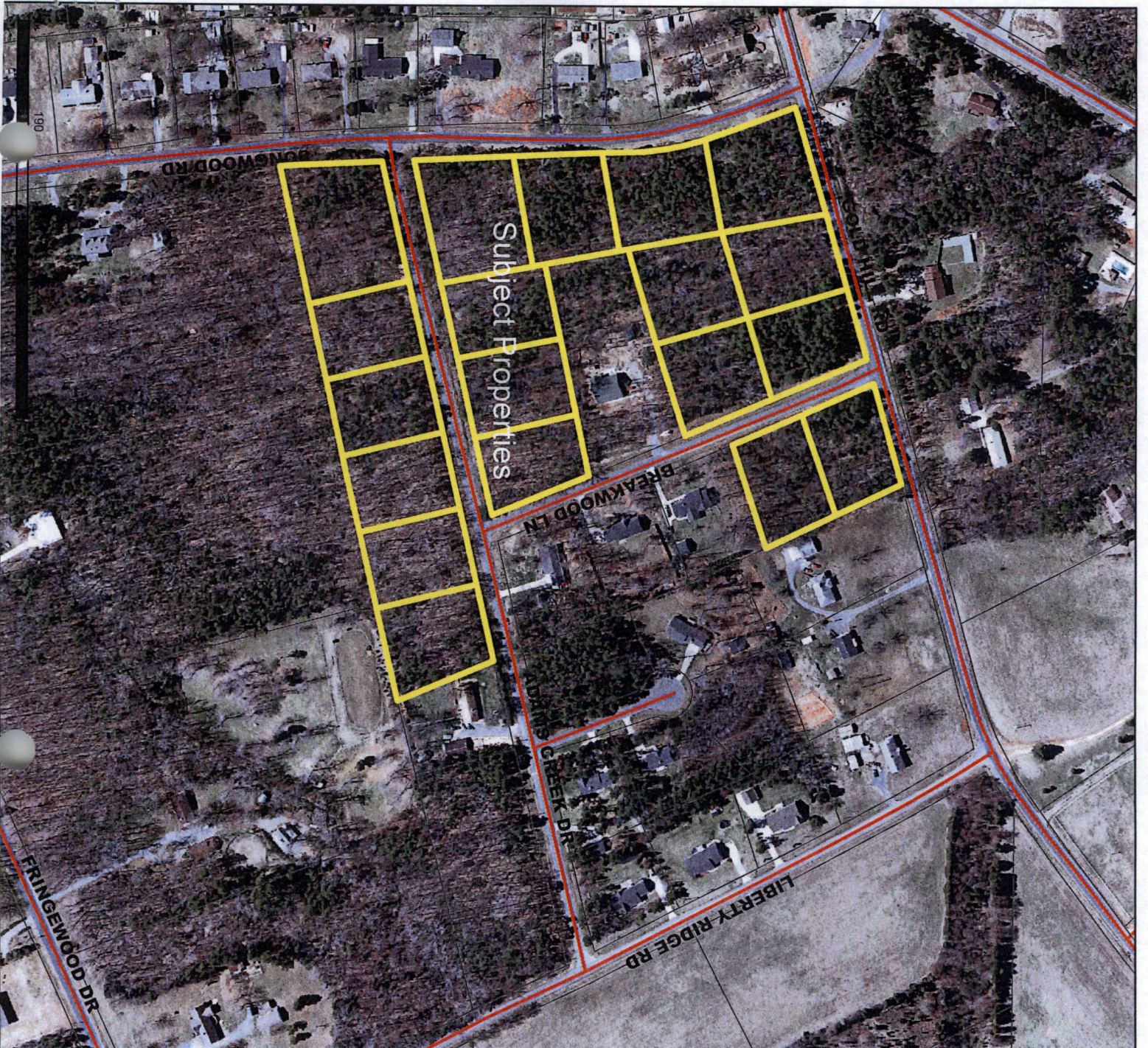
Applicant: S.F. Davis

Petition#: C2009-18 (R)

Zoning Map Amendment

Parcel ID#: 5652-00-6562, 5652-00-7339, 5652-00-4463, 5652-00-5236, 5652-00-3319, 5652-00-3261, 5652-00-1335, 5652-00-1176, 5651-09-2906, 5651-09-2739, 5651-09-4813, 5651-09-5857, 5651-09-6990, 5651-09-2565, 5651-09-4558, 5651-09-5692, 5651-09-7635, 5651-09-8688 & 5651-19-0731

Existing Zoning: AO-Agricultural Open Space  
Proposed Zoning: CR-Countryside Residential



### Legend

- Roads
- TaxParcels
- Subject Properties



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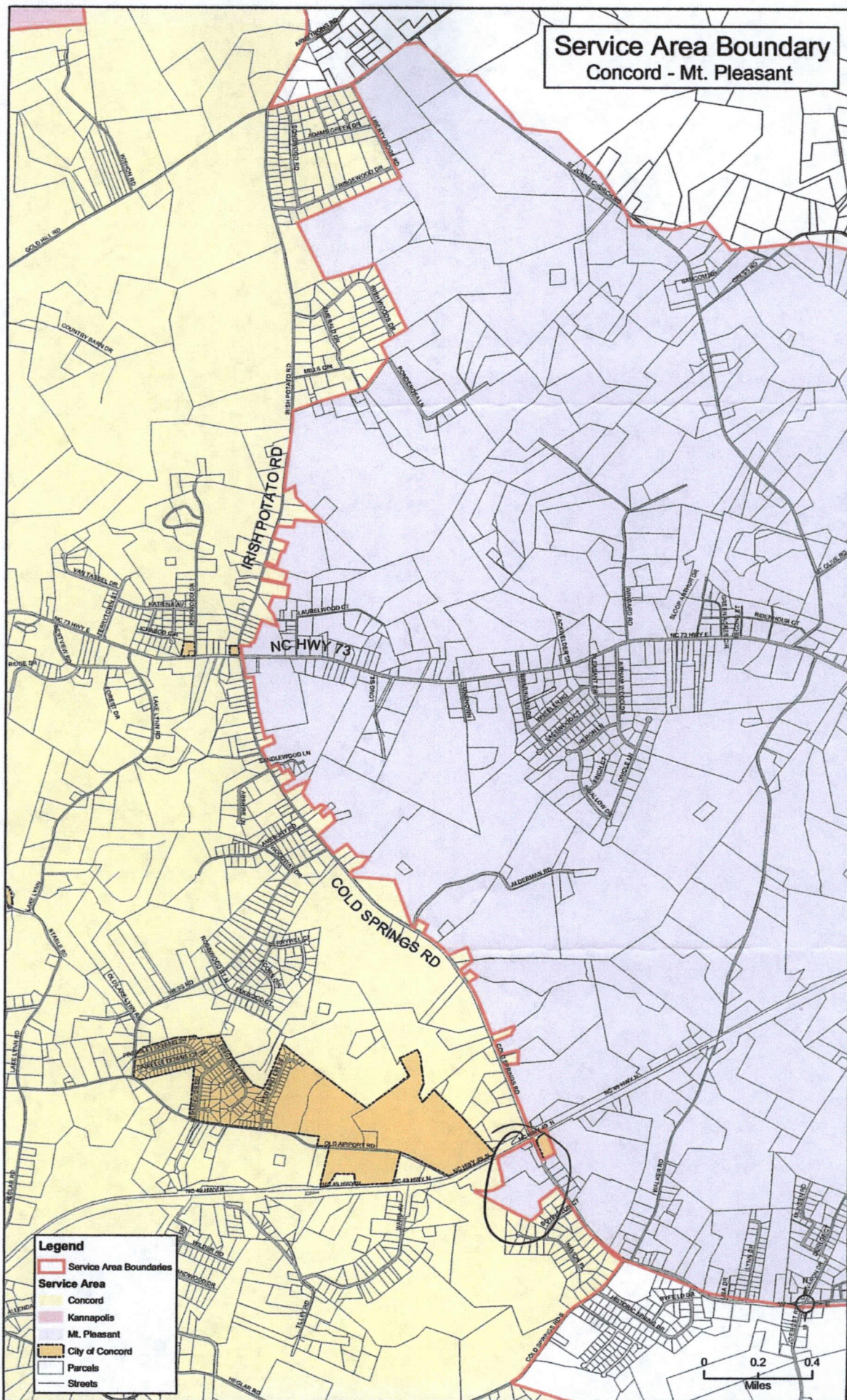




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**Service Area Boundary**  
Concord - Mt. Pleasant







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Planning and Zoning Commission Minutes  
April 16, 2009  
7:00 P.M.

Todd Berg, Chair, called the meeting to order at 7:00 p.m. Members present, in addition to the Chair were, Mr. Larry Ensley, Mr. Danny Fesperman, Mr. Larry Griffin, Mr. Tommy Porter, Mr. Ian Prince and Mr. Eugene Divine. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Ms. Kassie Watts, Planner, Ms. Arlena Roberts, Clerk to the Board, and Mr. Richard Koch, County Attorney.

### Roll Call

### Approval of Minutes

Mr. Larry Ensley, **MOTIONED, SECONDED** by Mr. Larry Griffin to **APPROVE** the March 19, 2009, meeting minutes with the correction that Larry Ensley was present at the February meeting. The vote was unanimous.

### New Business – Planning Board Function:

The Chair said there are a number of items on the agenda and in order to streamline things we are going to deviate from the agenda. He said the staff reports are essentially identical on similar cases; therefore, we will group like cases together, so that we do not have to repeat the staff report each time.

The Chair said we are a couple of members short and he asked Mr. Koch to outline the voting rules.

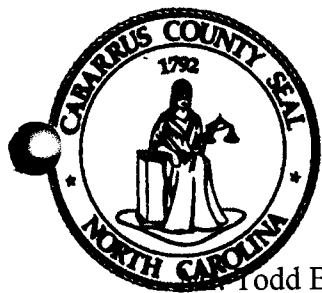
Mr. Koch said these are all legislative matters and are all straight rezonings. As such, under our special legislation that we have for Cabarrus County, the voting will be as follows:

If the decision to rezone or not to rezone is by a majority of 75% of the Board or greater, then the matter is decided at this level unless the applicant or an aggrieved party appeals that decision. That appeal needs to be filed within 15 days and it would go before the Board of Commissioners.

If the decision is by less than 75%, then it automatically goes to the Board of Commissioners.

Mr. Koch said we have 7 members present, which means the vote, would need to be 6 of 7 voting to rezone or not to rezone. He said if Mr. Shoemaker comes in and becomes the 8<sup>th</sup> member, it would still be 6 but it would be 6 of 8 which is exactly the 75%. He said anything less than 6 of 7 or 6 of 8, whichever the case maybe, would automatically go to the Board of Commissioners.





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Planning and Zoning Commission Minutes  
April 16, 2009  
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The Chair said we will start with the cases that are requesting Agriculture Open (AO) to Countryside Residential (CR), these staff reports are identical:

Petition C2009-02(R), Petition C2009-03(R), Petition C2009-04(R), Petition C2009-05(R), Petition C2009-06 (R), Petition C2009-08 (R), Petition C2009-11(R), Petition C2009-12(R), Petition C2009-13(R), Petition C2009-14(R), Petition C2009-17(R), and Petition C2009-18(R).

Ms. Kassie Watts addressed the Board stating that this request is for the existing zoning of Agriculture Open (AO) to be rezoned to Countryside Residential (CR). This zoning designation is in place as a result of the Central Area Plan implementation rezoning case that was approved by the Cabarrus County Board of Commissioners on January 20, 2009.

Ms. Watts said the Agriculture Open Space district is comprised mostly of lands usually found on the eastern side of the County which, due to physical characteristics such as soil type, topography, etc., should remain agrarian or very low density. To a lesser degree, these are also those lands which are conducive to providing recreationally oriented open space. These land areas should remain the farmland and undeveloped/forested land of the County. Public utilities will not be planned for these areas. Consequently, residential uses that support those working and/or owning the land, home occupations allied with existing residences, and very limited business endeavor are envisioned as complementary to the area. In sum, the primary activity of these lands is agricultural housing and business typically related to and supportive of the practice of modern day agriculture. It is not, however, improbable that a small hamlet type settlement might evolve in this zoning district. As to those areas constituting open space, manmade uses must take care to enhance and not detract from the essential character of the area. Densities permitted in the AO Zoning District are 1 unit per 3 acres or up to 1 unit per 2 acres if the open space design option is used for the subdivision. Minor subdivisions are permitted in the AO zoning district. Public water and sewer are not permitted in the AO zoning district.

Ms. Watts said the intent of the proposed rezoning to Countryside Residential (CR) - Lands in this district have a strong rural, pastoral feel. Natural environmental elements such as tree lines, small ponds, rock formations, and manmade elements such as pasture fencing are to be retained, if at all possible. Although the area is capable of handling higher densities of development, development is kept at very low overall densities. Development includes only the standard single family detached dwelling. The site sensitive design concept is carried out through performance based standards on residential development with the technique of "clustering". In general, clustering is an arrangement of physical structures on land with an emphasis on retaining natural areas as open space. It is the primary way in which development can be successfully blended into the rural landscape. Densities permitted in the CR zoning district are 1 unit per 2 acres or up to 1 unit per acre if the open space design option is used for the subdivision. Minor subdivisions are permitted in the CR zoning district. Public water and sewer are not permitted in the CR zoning district. She said public water and sewer are not allowed in either of these zoning districts, existing or under the proposed rezoning.



Ms. Watts said the Central Area Land Use Plan says that the subject properties are designated as Rural Residential in the adopted Central Area Plan. It also states that this area is comprised mostly of lands determined to remain agrarian in the future. Residential uses may be allowed but only to support agrarian purposes and are not the predominant use. Therefore, residential uses are provided only at the very lowest densities. Predominant uses are agricultural and single-family residential. Densities for this land use designation are 1 unit per 3 acres or up to 1 unit per 2 acres provided additional development standards are met.

Ms. Watts said NCDOT did not have any comments at this time. Upon development or a change in use of the site, a site plan and/or a preliminary plat review will be required by NCDOT, including but not limited to, access points, traffic generated and required improvements. She said the Fire Marshall reviewed the rezoning request and did not have any comments at this time. Upon development of the site, a site plan or preliminary plat review by the Fire Marshal's office will be required.

She said prior to any major development of any site the Adequate Public Facilities (APFO) review will be required for school adequacy. Prior to site development, any applicant would be required to procure intent to serve letter from the appropriate utility provider.

She said this is a conventional rezoning request. All uses permitted in the Countryside Residential (CR) zoning designation would be permitted on the property if the request to rezone is approved. Based on the land use designation assigned by the Central Area Plan, (Rural Residential) the proposed rezoning from AO to CR is not consistent with the densities discussed in the plan. Therefore, the Planning and Zoning Commission should review the information and facts presented to determine if the proposed zoning map amendment is consistent with the Commission's goals and vision for this area of Cabarrus County.

The Chair said there will be a public hearing to hear from the applicants and anyone else who would like to speak on each of these cases. Each applicant will be allowed 5 minutes to speak and then anyone else who would like to speak in favor of or in opposition to will have 3 minutes on each of these cases, after that we will close the public hearing and vote on each case individually.

The Chair introduced Petition C2009-02(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Mr. James Mann.

The Chair asked Mr. Mann if he wanted to comment.

Mr. Mann had no additional comments.

Mr. Jim Long 4405 Old Salisbury/Concord Road, Concord, NC addressed the board. He does not know why they want to rezone, but he has a good idea; more houses per acre if



it's zoned the other way. He said water has been a big issue in Cabarrus County. If you put more houses, and drill more wells; he won't know whether Cabarrus County or Kannapolis is going to furnish water if there are more houses built. He does not want to see houses, but he cannot do anything about it, he does not own it. He thinks the main issue is water.

The Chair closed the public hearing on Petition C2009-02 (R).

Mr. Griffin questions what we are doing here. We are talking specifically about this case and later the board is going to have a discussion about all of these cases in total.

The Chair said we are going to take them individually; talk about each one and then vote on each one.

Mr. Griffin voted against this rezoning; in his personal opinion it does practically nothing for the county in terms of density; but it does hurt a number of property owners in this county in terms of their property rights. It's just like the county or state taking eminent domain away from them. Two and a half or three years ago, he supported a mass rezoning in this county. We were in a situation where the cost of schools and the rate of development in this county were absolutely killing us. He supported that rezoning effort, recognizing that we needed to do something about it. Hardly anybody in this county understands what that rezoning effort did. He said by the county's own estimates, which were never published, a land outside the city limits in this county on average, the densities allowed reduced 75%. Meaning that the densities which could be developed were 25% of what they had been in the past. He said that was a combination of the down zoning that occurred from all LDR (Low Density Residential) and most of the MDR (Medium Density Residential) going to CR (Countryside Residential) or AO (Agriculture Open), and the changes in those rezoning which reduced the number of houses that were allowed in all those areas. Here, just a few years later, we are taking that down another third, almost in ill effect, because CR and AO both ban county water and county sewer. He said the sole difference between AO & CR deals in the uses of which land can be put, and a simple reduction from one house in two acres to one house in one acre at the very minimum. But, there are folks that that does affect and it won't have much affect on the development of this county. He disagrees with stepping on a lot of folk's toes to do that without adding any significant effect on the development in this county.

Mr. Griffin said since we passed that rezoning two and half, almost three years ago; development in this County has gone into an absolute nose dive. He does not agree that all residential development in Cabarrus County is bad. The developments that have been approved since then are developments that will absolutely more than pay their way. There has been study after study done in this state; in particular in Union and other counties surrounding us, that shows that a house that is built that cost more than \$250,000 or \$260,000, will more than pay taxes for the services that they get. He understands there are a lot of folks that do not want any more development in this county. But at the same time, if they are stepping on their neighbors' toes, he has a hard time splitting that too. He thinks tonight we need to seriously consider within the limits of the law, these



petitions to go back from AO to CR. He said in reality it is not going to make a whole lot of difference, but he has a problem with the County taking away what he considers to be the rights of those folks who own this property.

The Chair asked if there were any other comments or discussion.

Mr. Koch said before you entertain a motion or immediately after, he would like to make a few comments concerning the concept of spot zoning for the Board's consideration.

The Chair told Mr. Koch to proceed.

Mr. Koch said, if you look at the map in this particular case, because of the mass rezoning, it appears that all of the property immediately surrounding the subject property in the Mann case here has been rezoned to AO (Agriculture Open). He said spot zoning is basically the situation in which you zone a relatively small area differently from the majority of the surrounding area. This could potentially be considered spot zoning because if you rezone this parcel it would be different than everything around it. He said spot zoning is not necessarily illegal; spot zoning can be perfectly legal. When you do rezone property and it is a spot zoning type situation, you have to establish a pretty clear basis for having treated the property differently from the way everything else is. The reason you have to do that is because if you are challenged, any reviewing court will want to be satisfied that the considerations or factors that go into a spot rezoning have been considered and complied with. He said there are four of those:

1. The size of the tract relative to the size of the tract surrounding the property to be rezoned.
2. The compatibility of that rezoning with the existing comprehensive plan. (In this case would be the recently enacted Central Area Land Use Plan).
3. The benefits or detriments for the owners, his neighbors, and the surrounding community, as you weigh whether you are actually granting a clear advantage to this particular property owner as compared to that property owners neighbors.
4. The relationship of the uses of the existing zoning compared with the proposed rezoning. (In this case you are talking about a change from AO to CR, which is basically the next step from AO)

Mr. Koch said there is not much of a change there; the main consideration that the Board would want to weigh, and probably the most important one, would be whether it would appear that you are giving a clear advantage to this particular property owner, compared to his neighbors, by actually rezoning the property. He thinks that is the one the courts look at the closest. The idea being that you do not want to use rezoning to basically give someone a clear advantage. Before the vote he wanted the Board to be mindful of that, because we are going to have a number of situations tonight, because of the mass rezoning that occurred, where if you consider rezoning these properties back to what they



were before, it is going to be a spot zoning situation. Again, that does not necessarily make it illegal, but you just need to consider those factors and articulate those either before or after your voting so that we know what the reasons are.

Mr. Griffin said you can make an argument that folks who are not asking for a rezoning from AO to CR, considering the minimal difference, have an advantage over the folks who would like to rezone their property back to CR; which certainly the advantages as far as he is concerned is negligible.

Mr. Koch said by making his comments he was not suggesting a course of action, but he would say that the inquiry is not that way. He said it is actually the other way around. He would agree that when you rezone, in this case from AO to CR, it is not the kind of large change that it would be if you were to rezone it from AO to some sort of industrial designation.

Mr. Prince asked for clarification from Mr. Griffin on his comments. If it makes little to no difference, or is negligible, then how is it detrimentally affecting the property owner.

Mr. Griffin said it does have an effect in terms of folks who for example would own 3 acres and would like to build 2 homes on their property for their kids or sell those 2 lots instead of one. We are not talking about 3 or 4 houses or 5 houses per acre here.

Mr. Prince agrees; we are talking about 140 acre tracts.

Mr. Griffin said in general you are still talking about 2 houses instead of 3 on 3 acres of land. You are not talking about building houses within 20 feet of one another or 10 feet of one another, but you are talking about what could amount to a considerable, in this case 140 acres; a considerable sum of money to folks who bought that land and who had a reasonable expectation that they could develop it.

Mr. Griffin is not sure of what this land was zoned before the original mass rezoning. If it was LDR, these folks have already taken a massive hit.

The Chair said that may be a question for staff.

Ms. Morris said to address Mr. Griffin's concerns; minor subdivisions are permitted in any of the zoning districts. They can do up to the 5 lots, exempt from the APF and they have to be 1 acre lots at a minimum.

Mr. Griffin said they have to be a minimum of 1 acre lots; the question really was, was this land zoned CR before the previous mass rezoning or was it LDR.

Mr. Morris said the applications in front of you are to return the property to its original status.

Mr. Griffin asked what the zoning was before the mass rezoning 2 ½ years ago.



Ms. Morris said that is not a consideration tonight.

Mr. Griffin said it is to him because these people have already accepted a rezoning from LDR to CR. He said the potential value of their land has gone down substantially already, and all they are asking is that we don't do it little bit more.

Ms. Morris said for clarification you can do a minor subdivision in any zoning district.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Larry Ensley, to **Deny, Petition C2009-02(R)**, as it is incompatible with the surrounding property and inconsistent with the Central Area Plan. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

**Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.

Mr. Tommy Porter **MOTIONED, SECONDED**, by Mr. Larry Ensley to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

The Chair introduced Petition C2009-03(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Ms. Pauline Whitley Drye.

Mr. Darrell Furr, 3800 Cold Springs Road South, Concord, addressed the Board stating that Mr. Dryes' property does not allow them to divide it evenly. He has more grandkids than he does acreage. He said two of the acres he would be allowed to divide equally but three of the acres he won't. The land has been in the family over one hundred years and it has been passed down. He said then the County decides to tell us what we can do with our land. He said Mr. Drye is just trying to make it useful for his grandkids in the future.

The Chair asked if there were anyone else present to speak in favor of or in opposition of this case.

The Chair closed the public hearing on Petition C2009-03 (R).

Mr. Porter asked staff to explain about family developing, or not developing the property to build homes on family land.

Mr. Morris said there is a provision in the Zoning Ordinance that allows in any zoning district what is considered a minor subdivision. A minor subdivision is a subdivision where you are allowed up to 5 lots, and it goes through a somewhat abbreviated review process. She said the Planning and Zoning Commission does not see all of those



subdivisions that have less than 5 lots. It is considered a minor subdivision as long as they meet the minimum standards of the ordinance; which would be a 1 acre lot and it can show that it can perk, and that they have water. She said in AO and CR it would be on site and with LDR and the other zoning districts you would have an on site well and septic or you will have utilities provided from another jurisdiction. She said a subdivision could happen for that property up to 5 lots; anything over that is considered a major subdivision and there is a different process. She said those are the ones that this Board sees. She said it does allow for that with the understanding that those situation do come up.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Larry Ensley, to **Deny, Petition C2009-03(R)** as it is incompatible with the surrounding property and inconsistent with the Central Area Plan. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

**Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.

Mr. Larry Ensley **MOTIONED, SECONDED**, by Mr. Tommy Porter to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-04(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioners Farrell and Amy Whitley.

The Chair asked if the applicant or anyone else would like to speak in favor of or in opposition to this case. There being no comments the Chair closed the public hearing.

Mr. Prince does not profess to see into the future, but if he was a betting man, he would say that the subsequent AO to CR's will probably end up with the same result. He asked Mr. Koch if there was a way to group these cases together without denying everybody the opportunity.

Mr. Koch said practically speaking no. He thinks we will have to work our way through each one individually. He does not know if there will be any way to do it in mass.

Mr. Prince said fair enough.

The Chair said we will continue with them individually and asked if there was any discussion.



There being no further discussion, Mr. Larry Ensley, **MOTIONED, SECONDED** by Mr. Ian Prince, to **Deny, Petition C2009-04(R)** as it inconsistent with the Central Area Plan. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

**Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.

Mr. Larry Ensley **MOTIONED, SECONDED**, by Mr. Tommy Porter to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-05(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioners Jennifer Price and Ronda York.

The Chair asked the applicant if they would like to speak.

The applicant asked that her letter be read.

Ms. Kassie Watts, Planner read the letter from Jennifer Price and Ronda York. (See attached letter).

The Chair asked if anyone else would like to speak in favor of, or in opposition to, this case.

There being no comments, the Chair closed the public hearing.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Eugene Divine, to **Deny, Petition C2009-05(R)** as it is incompatible with the Central Area Plan and adjoining properties. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

**Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.

Mr. Griffin asked Mr. Prince to explain why it is not in the public interest.

Mr. Prince said as you opened the conversation with “since there is absolutely no difference between the two zonings and that there would be very little or negligible difference” that going back and forth, there’s no value to the public.



Mr. Griffin does not think that this hurts the public at all.

Mr. Prince agrees that AO does not hurt the public, nor does CR hurt the public.

Mr. Griffin thinks the CR would certainly benefit these folks who own lower than 5 acres.

The Chair asked if Mr. Griffin thought it was consistent with the Land Use Plan.

Mr. Griffin said he is not saying that. He said it is consistent with the land use plan, and since you brought that up; the whole process that we go through for a land use plan, he guarantees that there is less than 1 person in 500 in this county that understands the significance of a land use plan.

The Chair said we can argue all night about how the land use plan was developed, but none the less, it what we have been given to work with.

Mr. Griffin said in his opinion the land use plan is a result of a flawed process.

The Chair said we have a consistency statement and we need a motion to adopt it.

Mr. Tommy Porter **MOTIONED, SECONDED**, by Mr. Eugene Divine to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-06(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Patsy Whitley.

The Chair asked if the applicant or if anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Eugene Divine, to **Deny, Petition C2009-06(R)** as it is incompatible with the Central Area Land Use Plan and adjoining properties. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

#### **Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.



Mr. Tommy Porter **MOTIONED, SECONDED**, by Mr. Larry Ensley to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-08(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioners Gerry and Lela Newton.

Mr. Gerry Newton 1776 Songwood Road, Concord, NC, addressed the Board stating that the Board seemed to be on a roll and that he is hoping to break that roll with his presentation on his property. He is glad to have an individual opportunity and not grouped in with the others.

Mr. Newton and his wife purchased the subject property in the early 1990's; it is 7 acres. The lots that are across the street on Songwood Road were divided out in 30,000 square foot parcels. Those lots are not consistent with the Central Area Plan. He said in fact this whole neighborhood is not consistent; if you are only following it being consistent with the area plan, is the intensity of density of the subdivision and its lots. What he outlined and is in front of the Board is a little history of when he purchased the land.

He grew up on a farm, his wife grew up in a city, and this is a piece of property that worked for both of them. He has his tractor in his area that he takes care of in the back, and she has houses on the other side and it has worked well for them to raise their 4 children. His intention when he bought the property was that they would be able to divide this land and give an acre to each of their four children.

He left it alone four years ago, when the LDR which allowed 1 acre lots, or with public water and sewer, or if you are doing a couple of other things, half acre lots. It went to two acre lots; at that point his oldest son had already indicated he was moving to another place, where he lives still in North Carolina; it did not matter a whole lot, we could work through it. He said this last time though, taking the 7 acres and making him have to pick which one of his children does he want to then use to comply with the ordinance. He said in the minor plat process, you are allowed to do that one time, and in that one time to do that you have to get your health inspection to create your septic tank. He said notably different in this subdivision, this neighborhood, there is public water; all of us are on public water. When the zoning was put in place, there was public water; when it was LDR. When it changed, obviously, that still is in place. We have and are on public water. At some point in time, and he is not sure when, there was a text change made that said that if you lived in the AO or the CR that there is no public utilities; but it is already there. He said to be told now that we cannot tie into public water, is not in the public interest. The intent of the AO zoning district and the intent of CR zoning district were not to take neighborhoods and put them into an agricultural zoning. He doesn't speak that because he is just a planner trained for 25 years. He speaks that because he was the author of the AO and CR zoning, as the Planning Director, when we put this in place. We put it in place with Mr. Porter and with other people from the eastern part of Cabarrus County that did not want to see any of the pressure that was occurring on the western



part. We put the CR zoning on the southern part of Concord because that was an area that did have pressure; but the people in a large mass were saying, we don't want to see happen here to us in the southern part, what is happening on the western part. So we created an artificial type of zoning that is Countryside Residential. He said the narrations that you have heard are the exact narrations that Sue Russell, who was a Senior Planner with him in 1993, put together, that they worked in to create the AO and CO zoning district. It is hard for him to except the idea that we have a zoning district now of agricultural in neighborhoods where it is clearly not compatible, and to suggest that for us to come back to you because the Board of Commissioners told those of us who were here in January that we had 60 days to reapply, to come back to the former zoning.

Frankly, he does not think the CR zoning is a very good district either, not just for him but for the people who have been put into a nonconforming status unnecessarily; it is not good, it is not sound zoning. To put it into these zoning districts it furthers no cause, it is not benefitting the community, and it is not helping his neighbors. In his particular case, it really does not make a big difference whether or not his seven acres has one house, two houses, or three homes on it.

When his father-in-law died last year, they thought they were going to move his mother-in-law down. It turns out she decided that she did not want to move down. But if it came that she now did, that would mean that none of the kids could come in. Also, on the final plat, this can also be done in conveyance, but only once, or has a similar setting. All of what you have been talking about or has been said that you can use that minor plat process presupposes that there is not going to be another text change that takes and sweeps that out. He would also have to go ahead and pay for each of those lots to have a septic tank system approved, platted, and then he pays as if they are individual lots; that is a higher tax value in that zoning. There is approximately \$12,000 to \$18,000 per acre roughly in tax assessment now, per acre, and it would go up to a minimum of \$25,000 and most are setting at \$30,000; all conditions being equal. He said you can only do this minor plat process one time, it is not like I can carve it out for one son and then come back and give it to another son; it has to happen one time an event. He thinks the idea of it not being consistent with the Central Area Plan; it absolutely is consistent with the Central Area Plan, the densities that he would create on his parcel even if he fully develops it under the CR zoning district, is consistent because that Central Area Plan gave a range.

Mr. Newton said the Board is familiar with that plan and knows it did not say that it could only be greater than 3 acres; it gave a range for the low density residential that would be consistent. He said what is not consistent are the other people who are not here sitting on  $\frac{3}{4}$  acre lots or less.

As he was cleaning out his garage, he found the second page of an article that talk about the new zoning that is coming in place. It was written November 14, 1993, in which many of these principles that you are talking about now, trying to put in place, was the same things that were put in place now. He said Mr. Griffin is correct in what he's talked about, how land has gone from LDR to CR to AO; further taking away.



Mr. Newton bought the land with rights, and to have it just taken away from them and not being given an opportunity; or to be viewed as being doled out and that the government can hand you something that was yours in the beginning and now we are having to come back and beg for something that belonged to us, is rough to take. He would encourage each Board member to seriously look at and not just go through the motions of what you have been doing, but to seriously look at this piece and perhaps reconsider some of the others. He would be more than happy to answer any questions. He asks the Board to spend a minute looking at the material that he quickly summarized.

He said another big difference that has not yet come up; the Agriculture Open zoning district allows junk cars. He said you have a table of uses that it's not in, but you do have another whole section in your ordinance that deals with junk cars. When you put the 20 plus thousand acres into the Agricultural Open, you have permitted junk cars in that zoning district. He does not think that is bettering the community. In fact, his application on going back to the CR was so that he would not be able to have junk cars on his property.

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

Mr. Porter's understanding is that the seven acres Mr. Newton owns, he is given the right within the minor subdivision to divide it into five, 1 acre parcels.

Ms. Morris said you get up to five lots total on that parcel. If they wanted to keep a lot for the house, they could create a new lot; you get up to 5 lots. They do not have to happen at the same time. They can do up to 4 with the remainder until it becomes a major subdivision and then those other standards come into play.

Mr. Porter said one child could come back this year, one could come back two years from now, and you don't have to do it all at one time?

Ms. Morris said that is correct. We track it and you are allowed up to 5 out of that lot; so you get 4 plus your remainder, but they do not have to happen all at one time.

Mr. Porter asked about the issue where water is available; there's nothing that says if it is already available that you are restricted from tying on to it, is there?

Ms. Morris said the Zoning Ordinance does restrict, it does not allow additional ones in the AO or CR, and LDR is optional and that has been in place since 2005, with the changes to the Ordinance when the mass rezoning was done.

Mr. Porter said there is no difference from CR to AO?

Ms. Morris said no, they both do not permit utilities.



Mr. Newton clarifies that the minor plat process of conveyance for the one acre parcels is dependent upon getting your septic tank approval. So, each one of those has to go through that process too; whereas, prior, you did not have to do that. The minor plat process requires that, as well as road frontage. He said in one of the cases earlier, it was not able to do that because of the lack of road frontage; this one has enough road frontage to do it. But the issue of the septic tank having to be approved; there is no guarantee on that. Over time systems change and you only have so many years that they are good; he believes it is three years you have to build on it. He said that is also dependent upon the text not changing; which is how it came in; it says you cannot have public water in CR or AO, it was not there before.

Mr. Griffin asked if Mr. Newton had seven acres.

Mr. Newton said that is correct; they are  $\frac{3}{4}$  acre lots across from him, except for one where they bought two lots and built a house in the middle. He thinks there is a case later where a property owner, the developer of it, put in some public lines and is now being told they cannot tie into it.

Mr. Prince thinks Mr. Newton made some good arguments against the Central Area Plan but nothing that convinced him that CR to AO was going to be detrimental.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Larry Ensley, to **Deny, Petition C2009-08(R)**. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

#### **Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.

Mr. Griffin said when something does not accomplish anything for the greater good in the county, but it harms individuals, why would you do it?

Mr. Ian Prince **MOTIONED, SECONDED**, by Mr. Tommy Porter to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-11(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Mr. Darrell Furr.

Mr. Darrell Furr, 3800 Cold Springs Road, S., Concord, NC, addressed the Board. He thought it was suspicious when the Commissioners went ahead and rezoned that area, because it started out here (showed picture) when they rezoned that area, the zoning signs in the sub development all of a sudden they are going to make them reduce the number of



houses they put in. Instead, this benefits the ones that are there because they have multiple houses on less than an acre lots, but yet he is required to go with three acres now; which is totally unfair. It is kind of funny; what if everybody who actually got their land rezoned applied for it; would that not be more of a mass area mentioned. Maybe several hundred would have come up.

He is thankful for staff helping him fill out the paper work on this; it is a lot of work just to fill out the paper work for this. He said if you are going to rezone as a mass type, just switch over and say okay, we are going to help out these who already has theirs done but if you already have land you don't matter here any more, because you are going to take that right away from us and make it be less zoning. It is farm land, and he is going to keep it farmland. Maybe he would let somebody do an acre or something like that; that is different; you can choose your neighbors that way, subdivisions you don't get to choose your neighbors.

Mr. Furr said it is kind of funny how the County went along with Concord getting this rezoning. He was at the meeting when Concord rezoned land for the Charlotte Motor Speedway for the drag strip, we could not figure out what they were doing. He said Concord spent a bunch of money on that and the County is tied into that. He said the County went along with Concord's doing of this rezoning, Concord wanted it zoned down. How does it help Concord? We are the ones who own the land. It is kind of funny; we are going to get a school built in our backyard, they did that right before they rezoned the land down for us. They said we are going to have a school there, it is a bad choice for a school, but nobody will listen. It is his responsibility to say why they should not put a school there, it did not matter; they did it anyway.

He said the Board is kind of going along with the County Commissioners and saying; go back to the way it was. That's what they say, but the Board says no, we want to have it the way everybody else wants it. He said neighbors joined together and said go back; why wouldn't I go back to the way it was?

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

There being no further discussion, Mr. Todd Berg, **MOTIONED, SECONDED** by Mr. Eugene Divine, to **Deny, Petition C2009-11(R)**. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

#### **Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.



Mr. Ian Prince **MOTIONED, SECONDED**, by Mr. Larry Ensley to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-12(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Mr. Kenneth Furr.

Mr. Darrell Furr, 3800 Cold Springs Road, S., Concord, NC, addressed the Board. His sister already had a house there; for other family members, there is a possibility they would be heirs. He showed Tract 2, the school site. He said we are going to have to put up with the school and we have to deal with an 18 foot line. He said the county wants to go back and arbitrarily stick schools out in the area; and we can't have any more than 3 acres per house. He said it is kind of interesting the school came up late; it's like this meeting, it is useless because the board members have made their decisions.

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Larry Ensley, to **Deny, Petition C2009-12(R)**, as it is incompatible with the surrounding property and incompatible with the Central Area Plan. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

**Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.

Mr. Larry Ensley **MOTIONED, SECONDED**, by Mr. Tommy Porter to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-13(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Mr. Kenneth Furr.

Mr. Darrell Furr, 3800 Cold Springs Road, S., Concord, NC, addressed the Board. He said this has actually been a part of his great grandpa's land for over 100 years. Some of the family members still own the land around it and some of the family members decided they try to put their grandchildren on the other side, but you have already denied that case. He said it is not consistent with what they want to do with it; right now they are paying full tax value on it, because it is partially wooded; they are paying so much money



on it. He said it is on Cold Springs Road, the other side was actually originally Concord on the west side of Cold Springs Road; which was going to be on the 10 year plan of actually being in Concord but the County backed off that recently. He said when they actually did the review for the Central Land Plan, Concord actually said that they wanted to go up to that, which was on the other side of the road. He said it is kind of funny; who is going to be running the board, Concord or the County Commissioners?

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

Mr. Ensley asked Mr. Porter if the applicant could receive some tax advantages for the timber from the organization that Mr. Porter is with.

Mr. Porter's understanding is that they should qualify for it.

Mr. Furr said a lot of it is hard wood and has never cut; poplars and things like that. He said to meet forestry, we would have to cut it all down and plant out pines; which is ridiculous; is that fair?

Mr. Griffin said you have to cut it down and plant crops or raise animals on it.

Mr. Porter said if it is a wooded area, 20 acres or more, you have to have a forestry management plan, that is what Mr. Furr was referring too. Mr. Porter is not familiar with all the different types of plans or why that would not qualify. He knows you have to follow best management practices on a forestry management plan.

Mr. Ensley said 31 ½ acres, he would qualify on the acreage.

Mr. Porter said that would definitely qualify on the acreage.

Mr. Griffin said he is not an expert on this, but it has to be a forestry management plan, which means you have to have a plan to cut and replant.

There being no further discussion, Mr. Larry Ensley, **MOTIONED, SECONDED** by Mr. Ian Prince, to **Deny, Petition C2009-13(R)**, as it is inconsistent with the surrounding property and with the Central Area Land Use Plan. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

**Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.



Mr. Ian Prince **MOTIONED, SECONDED**, by Mr. Larry Ensley to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-14(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Mr. Kenneth Furr.

Mr. Darrell Furr, 3800 Cold Springs Road, S., Concord, NC, addressed the Board. He said this property is on Miami Church Road; his father bought it in the early 1960's. His sister wanted to put a house there about 20 years ago, but it did not perk. He said you could probably get land toward the back to perk but you have to deal with a whole lot more running a road into that. He said that is on Miami Church Road, which the county will be running water and sewer to the school which is on down Miami Church Road from there. He understands they are going to be requiring right of ways, but then deny me rights to use water and sewer; but you want the right away across the property? It is very close to Concord, but with just one sweep of a pen, they made it rural agriculture again. They cut some hay off of it and there is timber in the back; but it is not enough to qualify for agriculture as far as cutting hay and, timbers. He said there is some mixed pines and hard wood but he imagines that the neighbors would not want to have a barren landscape there if we cut it all down to set it all back up in pines for about 10 years or so.

He said it is kind of interesting; if he could have gotten the tax value of this property in that area, he would have probably bid on some land down in Albemarle or down in Stanley County this pass weekend; what they have this 18 acres valued at, he could have bought 55 acres of farm land. It is interesting what the value of the land is. The reason it has gone so high, people have come in, buy it, cut timber, donate houses to the fire department and get tax credit there and then turn around and resell it to somebody else and flip it. Why can't his be zoned to have more houses on it where he can sell it for a better price?

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

There being no further discussion, Mr. Todd Berg, **MOTIONED, SECONDED** by Mr. Ian Prince, to **Deny, Petition C2009-14(R)**, as it is inconsistent with the surrounding property and with the Central Area Land Use Plan. The vote was 5-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed. (The petition will be forwarded to the Board of Commissioners).

#### **Consistency Statement:**

The proposed rezoning is not consistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.



Mr. Larry Ensley **MOTIONED, SECONDED**, by Mr. Tommy Porter to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair introduced Petition C2009-17(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Mr. Samuel Davis, Jr.

Mr. Tommy Porter asked to be recused from Petition C2009-16 (R), C2009-17(R), and C2009-18(R), due to a conflict of interest.

Mr. Danny Fesperman **MOTIONED, SECONDED** by Mr. Larry Ensley to allow Mr. Porter to be recused. The vote was unanimous.

Mr. Sam Davis, Jr., 446 Winfield Boulevard, Concord, NC, addressed the Board. He owns this property and these are the lots remaining in a little subdivision that he did in 1978. His dad owned some lots to the west of these lots and to the northwest. This property is in the area that adjoins Mr. Newton's property. He said maybe it is consistent with the current land use plan, but what land use plan are we talking about? In 1970, or there about, Cabarrus County made the decision that they were going to extend public water out Gold Hill Road, they did that and in relying on that, they bought this land, subdivided it, put in paved roads, and put in county water. His dad was not really anxious to sell all the lots at one time and neither was he, so they just held on to them. He said perk requirements have changed and it turns out now that a number of the lots are not suitable for perk. He paid a soil scientist group to go out there and start evaluating it with the idea of recombining some of the properties to be able to have something that would be marketable.

He appealed the evaluation again this year. He has lots in the average range of 7/10 of an acre, and even though they will not perk and he has proved that they will not perk, they are worth \$15,000. He has water that he thought until tonight he could use; maybe we can't, based on what Ms. Morris says; even though we paid to put the lines into these lots. He would find that a little bit incredible, but, if that is the case, that is where we are. We have another onslaught at this point of government action. He was not really sure of why he filed this petition, except that he had an uneasy feeling. He knew that he would probably want to re-subdivide it and he wanted to know how going from CR to AO was going to affect that. He was not aware and thought they were grandfathered when they went before. He even had a conversation with Mr. Koch about that. What Mr. Davis really wanted to do is make sure that they could re-subdivide without having to conform to AO and that he could keep it as a subdivision; that they would continue to be able to connect through water on those properties that they were able to get.

Here we have lots the county thinks is worth \$15,000, and it was suggested tonight that he cannot even hook to the water that he paid for and put streets in and paid for; so here we are. He said it was a subdivision in 1978 and this is 2008; 30 years later, and now he is being told he is a farm. He is just a little bit confused about the whole process, the



whole land use plan. He said it was done in a hurry and he thought there was going to be some flexibility with the land use plan, but it does not appear to be. You need to look at what is there; it is a subdivision, nothing more, nothing less. He relied on county policy 30 years ago, and now we are suffering from county policy 30 years later.

He thinks it is more compatible with CR then it is AO. It should at least go back to that so that if he re-subdivides, and he is not grandfathered in, he could go to two acre lots instead of three acre lots; which would be somewhat difficult. They have three lots there which are 7/10 each, and that gets him up to 2.1. He really thinks as long as they have lots of record, they could increase them. As long as you are increasing a lot size by re-subdividing, it ought to be permitted; but he is not sure about that anymore and that is really the reason he is here. He said we are kind of on a down hill slope and he does not know where it is going to end.

Mr. Griffin asked if staff would like to respond to Mr. Davis's concerns about not being able to re-subdivide in any reasonable way.

Ms. Morris said for the subdivision, if he wanted to reconfigure lots and things like that, they would have to meet those minimum standards for the zoning district, depending on what it is. If he has a recorded plat, he can develop based on those lot lines that were established a long time ago; we do allow people to do that. There also provisions in the ordinance that would allow set backs to be adjusted if they have changed; to be more consistent with the development there. It is correct that you do have to show that a lot can perk; those lots that cannot perk, the lot would have to be reconfigured to show that it would perk.

Mr. Ian Prince asked if there were any difference in re-subdividing under AO or CR.

Ms. Morris said if he is combining and let's say he started with three lots, and he ended up with three lots, but he just shifted the lot lines; that would be considered an exemption and he would just have to meet the minimum standards. The AO district allows the 1 unit per 3 acres or 1 unit per 2 acres and additional standards, but the ordinance does have a provision in it for lots that are nonconforming that are less than 20,000 square feet and those that are above square feet, 20,000 where again we can make certain adjustments based on the MDR zoning designation. That is something that occurs frequently. She said as of right now he already has nonconforming lots.

Mr. Prince said currently they are nonconforming lots and two years ago they were nonconforming lots?

Ms. Morris said that is correct. If he wanted to start shifting lot lines, the current ordinance would apply. She said he would have the minor subdivision option which would be that minimum of an acre, as long as he could show that it perked and had water.

Mr. Prince said what is this other one Ms. Morris is talking about is; as far as nonconforming lots, 20,000 square feet; what is that?



Ms. Morris said there is a provision in the ordinance that says, if it is a lot of record, a nonconforming lot of 10,000 square feet or more, it could be viewed as conforming and they can use the MDR zoning standards in order to develop that lot. Any lot of record is entitled to a building permit as long as they can show that it perks and that they have water; even if it does not necessarily meet the standards. She said that allows that to happen.

(Ms. Morris read the following from the ordinance) When lots become under sized as a result of the passage of this ordinance, in zones where the minimum is 10,000 square feet or more and the lot contains less than 10,000 square feet, any lot in common ownership with continuance lot frontage with another under sized lot will be considered a single zoning lot, furthermore before a zoning compliance permit authorizing the use can be issued, that area and width requirements for the district in which the lots are located must be satisfied.

Ms. Morris said if he is combining lots together, it would be to his benefit. If he is trying to make smaller lots, then he would not be able to that; but he is decreasing the nonconformity.

Mr. Prince does not anticipate that he is going to absorb all of that right now; but the fundamental premise is that there is no discernable difference in re-subdividing nonconforming lots in AO or CR.

Ms. Morris said you cannot create a nonconforming lot. What you are looking at right now is the zoning. He has existing lots; what she hears Mr. Davis saying is that he has existing lots; however some of them will not perk. If he can combined them and get a perk site, then he is creating a less conforming lot. He could not go smaller, but as long as he expands it and he can have well and septic, then he can. She said the issue at hand is the rezoning.

Mr. Griffin said Mr. Davis has more than 5 lots.

Ms. Morris said they are existing lots.

Mr. Griffin understands they are existing lots but with AO the question keeps coming up is, it would make no difference whatsoever whether that property was zoned CR or AO if he wanted to combine a few lots.

Mr. Morris said because he is decreasing the nonconformity; but he still has to have a legal lot which would get to the acre. She said that is a discussion she can have with Mr. Davis, we have not had that to this point and this is an older subdivision; he has existing legal nonconforming lots. If he waited and 20 years from now the land use plan changed, the zoning changed, and utilities were extended; he could develop a lot. It sounds to her that the issue is that the lots do not perk.



Mr. Griffin said at least as far as the water is concern it does not matter if it is CR or AO, right?

Ms. Morris said no, because it is not permitted.

Mr. Griffin said he still cannot hook up to the water?

Ms. Morris said that is correct.

Mr. Griffin said there are some differences in terms of the 1 lot per 3 acres verses the 1 lot per 2 acres; if he is trying to combine lots.

Ms. Morris said he still has the minor subdivision option.

Mr. Griffin said he can only use that once for 5 acres.

Ms. Morris said that is not how it works.

Mr. Griffin said maybe you would like to tell us how it works; apparently there is no one in this room who understands it but you.

Mr. Davis said, say there are 3 lots, say we divide that middle lot into 2 and have 2 lots with an area that could perk for each lot; would that be permitted under AO and CR.

Ms. Morris said if you could meet the acreage for the minor subdivision standards.

Mr. Davis said right now these lots are 750, are you telling me I couldn't build on those anyway? He thought it was a nonconforming lot.

Ms. Morris said it is a nonconforming lot.

Mr. Davis said he only has 5 conforming lots and it is a major subdivision already.

Mr. Griffin thinks what you have been told is it would not matter if it was CR or AO; you still have the same problem.

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

Mr. Lance Miller, 4215 Fringewood Drive, Concord, NC addressed the Board. He said this land backs up to his. He is an engineer by training and a contractor by trade and he is against the rezoning. To him this is a stepping stone to getting public utilities put out here and annexation into the city. He said the problem with the land that is out there now; the soil conditions are not conducive to perking. We already have problems now; he has a storm sewer ditch that runs across his property now and during heavy rain storms you can smell the sewer from houses that are there now. Putting more houses out there is not going to benefit anybody. He said Mr. Davis does not live out there and all he is doing is



looking to make money off the property he has. He said it backs up to him and he has livestock on that land; if it is a subdivision, building houses behind him would only lead to people calling and complaining.

Mr. Gerry Newton, 1776 Songwood Road, Concord, NC addressed the Board stating that he lives in this neighborhood, part of which the petitioner, who is back in front of you because the county took away the zoning that he had when he put it in according to the county ordinances. He put in the streets, he put in the water and your role as Planning and Zoning Commission and the role of the Planners is one of police powers. You crossed that line when you get into this water issue and you are dealing with proprietary functions. You do not have a role of proprietary functions. He has a right, as a nonconforming lot, to actually develop this as if he were in the Medium Density Residential zoning. He said Medium Residential zoning certainly is not an agricultural use. Again, he finds it folly to think that a neighborhood is being called an Agricultural Openspace. If you had a pan out, and you saw all the lots, you have seen a part, the next one you will see another part and in his you saw a part; these are lots that are on  $\frac{3}{4}$  of an acre except for a few of us that have larger acres inside.

Mr. Newton asked that the consistency statement not be so abbreviated and that it actually says how it is compatible or incompatible on each of those points. He said to broadly say it did not have any justification for it, he does not think serves our county very well. He understands that each of the planning board members is doing this as a voluntary service and we appreciate that; but he thinks the county has over stepped its reaches in the way that they are doing this. He said a guy that developed a subdivision is now being told that he cannot tie into the water that he had. You ought to take it, as a Planning Board, the initiative to look at this neighborhood and any others that you have broad brushed and repainted the whole area, Mr. Prince; painted the whole area as if it did not exist, and in your intent ordinance look at the AO zoning that says it is for agricultural and any related residences supposed to be tied to the agricultural. You as a Planning Board should initiate a zoning action to put it back to what is consistent with that subdivision and take people out of the idea that they have to all be treated as nonconformities.

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

Mr. Davis requested that this petition and the next one be consolidated for consideration because it is on the same subject.

The Chair asked if that could be done.

Mr. Koch, County Attorney thinks there needs to be separate hearings. He does think that Mr. Davis is suggesting that you use the same consideration; and would like to have the same argument be considered when you vote on the next one, so he would not have to restate it.



Mr. Davis asked that when the Board considers this motion, that they look at the lots that are the subject of the next item; just because they are on the same subject and you can see where they are.

Mr. Prince asked Ms. Morris to help clarify the question we did not conclude. He said since it is a straight rezoning case going from AO to CR, he wants to make sure that Mr. Davis' rights to develop this are not going to be affected whether it's in AO or CR. He is not quite content with that yet.

Ms. Morris said as existing nonconforming lots, if Mr. Davis wants to start combining those lots, he could do a minor subdivision. He would need to come up with at least one acre for the lots that he combines together, regardless of how he combines them back together, and show that it could perk. If he can do that, then he can move forward. However, based on the fact that he is in the AO, he would also need to be able to support water on that particular site too. The issue of the utilities; potentially, he may have a common law vested right depending on the money that he spent, the permit that he has, things like that. She said that is not something that would be considered as a part of this meeting and is not something that this Board determines. She said this Board only considers vested rights in relation to the Zoning Ordinance, not common law vested rights.

Ms. Morris said Mr. Davis has the ability to combine the lots to get a lot that would perk that he could sell. He would have to at least meet the minimum of 1 acre to be considered a minor subdivision. She cannot speak to how he can combine those lots or how that would work out for him; but when you combine lots together you decrease the nonconformity. He couldn't increase it but he could decrease it, if some how he can figure out how to get those existing lots to perk and have water, he could build on those using the MDR standards because the Ordinance does allow for that.

Mr. Prince said Mr. Davis can re-divide, but the minimum lot size would then be 1 acre of which none of these are currently 1 acre.

Ms. Morris believes that is what Mr. Davis is saying; that right now some of them do not perk, so he would be looking at combining lots together to try and find a perk sight. Ms. Morris asked Mr. Davis if that was correct.

Mr. Davis said that is correct, but the issue really becomes, is he limited to 5 lots if he starts re-combining. Which if she uses the minor subdivision standards it is not a subdivision if its 5 lots.

Ms. Morris said if he is just combining lots it becomes an exemption

Mr. Prince said the 5 lots are irrelevant.

Ms. Morris said that is correct; it would be based on a State Statute and not our Zoning Ordinance.



Mr. Koch and Mr. Davis had some discussions about his potential vested rights concerning water. We actually had some staff do research on it. Mr. Koch and Mr. Davis have not talked in sometime because they hadn't finished going back into the history of it. What they have found so far is that it did not indicate that you all had put it in. Mr. Koch said that is still an open issue.

Mr. Prince asked if there were any potential differences in the outcome to the way Mr. Davis would re-subdivide now versus two years ago.

Ms. Morris said no.

Mr. Prince is now comfortable that there would not be any difference between AO and CR in this particular case and to go through and make any modifications to this one different from any others would be inconsistent.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Eugene Divine, to **Deny, Petition C2009-17(R)**. The vote was 4-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed and Mr. Tommy Porter recused. (The petition will be forwarded to the Board of Commissioners).

#### **Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.

Mr. Koch said to answer Mr. Newton, there really is no reason at this stage, given the vote, to go into a long detail consistency statement because it is going to be considered anew by the Board of Commissioners.

Mr. Larry Ensley **MOTIONED, SECONDED**, by Mr. Eugene Divine to **APPROVE** the Consistency Statement. The vote was 4 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed and Mr. Tommy Porter recused.

The Chair introduced Petition C2009-18(R) – Zoning Atlas Amendment to rezone property from Agriculture Open (AO) to Countryside Residential (CR) – Petitioner Mr. S. F. Davis, Jr.

Mr. Davis had no comment.

Mr. Gerry Newton addressed the Board. He said the Board has heard him before but he would like to enter a suggestion that if the Board denies this that the Board also considers, and he thinks the Davis family would probably be in agreement with this; that the Board recommends to the County that they in fact purchase their land. They have already taken away 75% of all of our use; put it into a county park and they can do whatever they want. He would be willing to throw his house in, and his land, and its tax value, let the county have his land because they have essentially been taking, and taking,



and taking, and taxing, as if you have been taking. He publicly wants to make that offer into the record; that the County can purchase his land and his house and they will find another county to live in.

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

There being no further discussion, Mr. Larry Ensley, **MOTIONED, SECONDED** by Mr. Eugene Divine, to **Deny, Petition C2009-18(R)**, as it is inconsistent with the surrounding property and with the Central Area Land Use Plan. The vote was 4-2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed and Mr. Tommy Porter Recused. (The petition will be forwarded to the Board of Commissioners).

**Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is not reasonable and not in the public interest.

Mr. Larry Ensley **MOTIONED, SECONDED**, by Mr. Eugene Divine to **APPROVE** the Consistency Statement. The vote was 4 to 2, with Mr. Larry Griffin and Mr. Danny Fesperman opposed.

The Chair said the next case is an individual case proposing a change from AO to LDR, Petition C2009-07(R) and the petitioner is Mr. John Lentz.

The Chair asked Mr. Porter to return to the Board for the next few items and Mr. Porter will be recused for the last item.

Ms. Kassie Watts addressed the Board stating that this is the staff report for a request from Agriculture Open (AO) to Low Density Residential (LDR). This zoning designation is in place as a result of the Central Area Plan implementation rezoning case that was approved by the Cabarrus County Board of Commissioners on January 20, 2009. She said the densities permitted in the AO Zoning District are 1 unit per 3 acres, or up to 1 unit per 2 acres, if the open space design option is used. Minor subdivisions are permitted in the AO zoning district. Public water and sewer are not permitted in the AO zoning district.

She said Low Density Residential (LDR) allows 1 unit per 2 acres or up to 2 units per acre if the amenity design option is used. Minor subdivisions are permitted in the LDR zoning district. Governmental water and sewer is optional in the LDR zoning district.

She said the subject property is designated as rural Residential by the Central Area Land Use Plan. The Land Use Plan states that this area is comprised mostly of lands determined to remain agrarian in the future. Residential uses may be allowed but only to



support agrarian purposes and are not the predominant use. Therefore, residential uses are provided only at the very lowest densities. Predominant uses are agricultural and single-family residential. Densities are 1 unit per 3 acres, or up to 1 unit per 2 acres provided additional development standards are met.

Ms. Watts said the comments were the same as they were in the first staff report. She said basically, if any plans were submitted, they would have to be reviewed by all of the service providers. This is a conditional rezoning request, all uses that are permitted in the LDR zoning district would be permitted on the subject property if the request is approved. She said based on the land use designation assigned by the Central Land Use Plan, which is rural residential, the proposed zoning from AO to LDR is not consistent with the densities discussed in the plan. Therefore, the Planning and Zoning Commission should review the information and facts presented to determine if the proposed zoning map amendment is consistent with the Commission's goals and vision for this area of Cabarrus County.

She said there are two cases that will be requesting this AO to LDR. The first case is Mr. John Lentz Petition C2009-18(R).

The Chair asked if there were any questions concerning the staff report. There being no questions the Chair opened the public hearing.

Mr. John Lentz, 1945 Gold Hill Road, addressed the Board. He said Commissioner Liz Poole asked him at the Board of Commissioners meeting if he would be happy if his zoning was left alone, because of the split joint zoning. She said this would be all of your property. From that he took it to mean all of his property, because all of his property has the same corners and his family never thought about it being but one piece. When Liz Poole asked if I would accept this, he said yes, because that is basically what we wanted. He assumed that is what would happen. He went by the Planning Office because if you assume things sometime, things happen. He noticed that the property that is across the road was designated as AO. He asked Ms. Morris about it and she said we would have to appeal it. He said it is another number and our family never perceived that its different numbers, however, it is one piece of property. You can see by looking at his map the corners are the same corners; there's water there, and the commissioners did ask if I would you be happy with that, and the answer is yes. When he went to see about it, the last minute or the last hour it is not that way. He thinks the commissioners' words were proper, and you can look at the tapes and the minutes. That is what they said to him and that is what they agreed on. This is a situation where he never thought he would be before the Board. He said Ms. Morris said he needed to appeal and he did that.

Mr. Griffin does not understand what Mr. Lentz is saying. His assumption is and he could be wrong too; is that part of that land was LDR.

Mr. Lentz said all of it was LDR. The entire plot use to be, it was in the city jurisdiction and it had another acronym. It was all to be AO; he appealed that because of the joint jurisdiction.



Mr. Griffin asked if Mr. Lentz was saying that part of it is actually in the Concord city limits.

Mr. Lentz said no, in their jurisdiction.

The Chair said the ETJ.

Mr. Lentz said this is the information he gave the Board when we first started this months ago.

Mr. Divine asked if there were two PIN numbers on it.

Mr. Lentz said yes it has two pin numbers on it. He said what the Commissioners said; he assumed that they would be as good as their word.

Mr. Griffins said you assumed they were saying that if it was okay with you they leave it LDR?

Mr. Lentz said, they said Mr. Lentz, if we leave all of your property as it is will you be happy with that and he said yes, and you can go back and look at it.

Mr. Griffin asked if this was prior to the vote to adopt the rezoning.

Mr. Lentz said that is correct.

The Chair said if you go back and look at the minutes, they basically pulled it out by saying the property divided by the ETJ would retain its current zoning.

Mr. Newton addressed the Board stating that Mr. Lentz was asking for this area which is already parceled out in the former subdivision. He is only asking for this spot which already has a fire hydrant on it, to be able to use that and put it back into the LDR. If it stays in the AO, he will not be able to use the public water that is already sitting on his land. It just seems pretty easy to recommend that this go back to LDR.

Mr. Newton was at that meeting and he thinks everyone in the audience who heard what was being said understood it was his property and did not realize that they were talking about the piece that is on one pin because it is separated by Gold Hill Road. He thinks everybody thought it was that, and is surprised too that he had to come back. Mr. Lentz does have existing lots; the old design of lots and it is that spot that has public water on it that if it retains the zoning now that requires 3 acres and he is sitting on  $\frac{3}{4}$  of an acre.

Mr. Griffin said if the lots have already been platted; his understanding is this could astound an issue of if he can use public water or not.

Mr. Newton said in this case, unlike anything you have heard up to this point this is LDR. He said zoning is not supposed to get into proprietary points; it is supposed to be police



power issues. He said in this case if you put it to LDR, Mr. Lentz will have access to public water and he will be able to develop on. Otherwise, you are rendering it useless. Mr. Newton encourages the Board to approve this petition.

Mr. Griffin asked if he had sewer on the lot.

Mr. Newton said Mr. Lentz would have to put in a septic tank, but he would be able to use public water. If you leave it in the AO he would have to drill a well right next to the fire line. Usually, if you have to drill a well and you have less than an acre you run into an issue on your repair on your septic tank; because the requirements on septic tank you not only have to have for your leach line but you have to have an equal size for repair. That is why usually 1 acre is about the minimum that that would occur in, and that would then make it very difficult for them to find a spot.

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

The Chair said it seems like this kind of hinges around us trying to interpret what the Commissioners meant when they made that statement.

Mr. Prince said this is the one case that the County Commissioners actually deserve to get back. He asked if that could be done with voting.

Mr. Koch said you have to make a decision on it here in order for it to get back to them.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Danny Fesperman, to **Approve, Petition C2009-18(R)**, as it is inconsistent with the surrounding property and with the Central Area Land Use Plan. The vote was 5-2, with Mr. Todd Berg and Mr. Ian Prince opposed. (The petition will be forwarded to the Board of Commissioners).

#### **Consistency Statement:**

The proposed rezoning is inconsistent with the Central Area Land Use Plan and is reasonable and in the public interest and consistent with statements made at the Board of Commissioners meeting.

Mr. Larry Griffin **MOTIONED, SECONDED**, by Mr. Danny Fesperman to **APPROVE** the Consistency Statement. The vote was 5 to 2, with Mr. Todd Berg and Mr. Ian Prince opposed.

The Chair said the next two cases (C2009-10R and C2009-15R) are requesting Countryside Residential (CR) to Low Density Residential (LDR), and the staff reports are identical.



The Chair introduced Petition C2009-10(R) – Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to Low Density Residential (LDR) Petitioner Mr. George Troutman

Ms. Susie Morris, Planning and Zoning Manager addressed the Board. She will go over the general consistencies between these two rezoning; but there is a difference when it comes to the utility provider and how that would happen. She said the request would be from Countryside Residential (CR) to Low Density Residential (LDR) for both of the subject properties. These zoning designations are in place because of the January 2009, mass rezoning. The Countryside Residential densities allow from 1 unit per 2 acres to 1 unit per acre if the open space design option is used for that subdivision. She said minor subdivisions are permitted in CR; governmental water and sewer are not permitted in the CR zoning district. Low Density Residential densities are 1 unit to 2 units per acre, or up to 2 units per acre if the amenity design option is used for the subdivision. She said minor subdivisions are permitted; government water and sewer are optional in the LDR zoning district.

Ms. Morris said for both of these pieces, the area plan does designate them as very low density residential. That particular area is scheduled to remain predominately rural in character, while allowing residential uses to occur at very low to low densities. The densities that would be permitted in that area of the land use plan is up to 1 unit per 2 acres, or up to 2 units per acre provided that additional development standards are met. She said NCDOT did not have any comments at this time, however, if the property develops, the applicant will be subject to site plan review and permitting. The Fire Marshall's office did not have any comments at this time, but the applicant would be subject to site plan or preliminary plat review if and when the property develops. Prior to any major residential development of the site, Cabarrus County APFO review will be required for school adequacy. Prior to site development, the applicant shall be required to procure intent to serve letter from the appropriate utility provider. She said typically at these densities they would end up being annexed into the municipality providing the utilities any how.

She said if you look at the C2009-10(R), Mitchell Hartstell as the applicant for Mr. Troutman; that property is in the Mt. Pleasant utility service area. However, the City of Concord is the utility provider that is closest to that parcel; but that property is located in Area A, as defined in the Inter-local Agreement with the City of Concord regarding the Central Area Plan. In that agreement it does say that utilities would not be extended past that utility service boundary line.

She said the second case, C2009-15 (R); the City of Concord would be the provider in that particular case. But in that particular case, they are also outside of that utility service boundary line.

The Chair asked if there were any questions for staff regarding the staff report.



The Chair introduced Petition C2009-10 (R) – Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to Low Density Residential (LDR) – Petitioner Mr. George Troutman.

Mr. Mitchell Hartsell, 4166 Amarillo Drive, Concord, NC, addressed the Board. He would like to speak because it is going to be repetitious on C2009-09 (R) also. He is going to make the same points and he knows that the Board will have to vote on them separately. Mr. Hartsell's family land is at the corner of Cold Springs Road and Highway 49 across from the events center. Simply put, we feel like these properties should not have been included in the Central Area Land Use Plan. The reason the land use plan was crafted was to control the land use challenges in the City of Concord's extraterritorial jurisdiction and land in Cabarrus County that may one day be annexed within the city limits of Concord, and also has to deal with the extension of utility lines. His land clearly lies outside Concord's jurisdiction. It is his understanding that the Central Area Plan was suppose to follow the service area boundary between the City of Concord and Mt. Pleasant; and it did, with the exception of his property. He provided two letters and a map and as you can see by the map, these parcels are clearly in the Mt. Pleasant service area district and there is no dispute between Mt. Pleasant and Concord on this matter.

He said if and when, at some future date these properties were to be developed, he would have to deal directly with Mt. Pleasant for the utilities, annexation, and therefore zoning. As far as utilities are concerned, Mt. Pleasant says sewer is available now, and that they would work with us to provide the water from the city of Mt. Pleasant; not necessarily an extension of Concord's water.

He read the following from a letter from Mr. Troy Barnhardt (Mayor, Mt. Pleasant). "This parcel was mistakenly included in the Cabarrus County's Central Area Land Use Plan. This letter is to confirm this parcel is in the agreement signed by the City of Concord and the Town of Mt. Pleasant as being in the Mt. Pleasant service and annexation area. Due to this oversight we request these and any other parcels mistakenly included in the Central Area Land Use Plan, that resides in the Mt. Pleasant service and annexation area be removed".

Mr. Hartsell said a big concern for them is the Highway 49 property being zoned residential. This property sits at a signaled intersection of a four lane highway and is surrounded on three sides by commercial property. He said there is a chemical company on one side, a service station on the other side, and the Events Center across the street. They simply request that these parcels be removed from the Central Area Plan and that the original zoning of OI and LDR be reinstated. He appreciates the Board consideration and is happy to answer any questions.

The Chair asked if there were any questions for the applicant.

Mr. Fesperman asked Mr. Hartsell when he discovered he had been improperly zoned.



Mr. Hartsell said we would not be having this conversation if he had known this a couple of months ago. He did not discover this, and he has no one to blame but himself. He thinks it could have been handled a little bit differently; it is clearly in the Mt. Pleasant district. He said Concord and Mt. Pleasant both agree; there is no question whatsoever. He said utilities seem to be a big issue as far as the Central Area Plan; and Mt. Pleasant says sewer is available. He is not saying they are ready to develop the property; they are just trying to do the right thing, because he does not think it should have been included in the Central Area Plan to start with. Since he is going to have to deal with Mt. Pleasant on the zoning, it makes no common sense to him to be in the Central Area Plan. If we are going to have utilities, we are going to have to be annexed by Mt. Pleasant; therefore, we will deal directly with them with the zoning.

The Chair asked if anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

Mr. Berg said it would appear, based on what has been presented that a mistake was made; he asked staff to address this.

Ms. Morris said a mistake was not made for this particular plan. She said if the Board remembers, when you were presented the land use maps; there was a very large Kannapolis service area. She said in this particular area, these two Mt. Pleasant parcels happened to be in that particular area. When the plan was done the original outline of the Central Area Plan was used, and then it was refined to show some of the jogs that are related to Concord's plan. But when those two were combined, these two parcels were originally a part of the Central Area Plan as defined. If you remember, this was a plan that we didn't have a plan for because some of those areas were combined together and it was part of that original area and was carried through onto this plan.

Mr. Griffin asked what the effect of the Concord/Mt. Pleasant agreement is; that this is not in the Concord area; that the inter-local agreement does not apply.

Ms. Morris said as it says in the staff report, if they would need utilities, with Concord being the closest utility provider, the inter-local agreement applies.

Mr. Griffin said even if there is an agreement between Mt. Pleasant and Concord that says this is in the Mt. Pleasant area.

Mr. Morris said it is in the Mt. Pleasant annexation area and service area, but the reality of it is, if they need utilities anytime soon, Concord is the closest utility provider. She said Mt. Pleasant would need to work that out with Concord, and Concord has agreed as part of that agreement not to go past that area. She said unless Mt. Pleasant directly provided them utilities from the Town, it will be coming from Concord.

Mr. Griffin said they could do that.



Ms. Morris said they could.

Mr. Hartsell had that discussion with Mt. Pleasant, and they are going to do that. He specifically said it would not come from Concord. He said they are willing to do that.

Mr. Porter said with the comments Mr. Hartsell made towards the zoning; you would have to go back to Mt. Pleasant if you were going to develop it.

Mr. Hartsell said yes, it would have to be annexed in order for him to get utilities, basically.

Mr. Porter said they would have to annex it and then it would become their jurisdiction and that is why you are here tonight because it is still in the county.

Mr. Hartsell said that is correct.

Mr. Griffin said if Mt. Pleasant does agree to annex it, since they do not have an inter-local agreement with the County, they can zone it how ever they choose. He asked Mr. Hartsell what he gains by the Board rezoning it tonight.

In Mr. Hartsell's opinion it should not have been in there to start with. What he is trying to do is get it taken out, and get the zoning reinstated to what it was previously; before it when in.

Mr. Griffin said we do not have the authority to take it out of the Central Area Plan. We could vote to rezone it but we cannot take it out.

Mr. Koch said that is correct.

Mr. Griffin said the County Commissioners approved the plan and we cannot over ride the County Commissioners.

Mr. Koch said that is correct.

Mr. Hartsell spoke with the folks in Mt. Pleasant and it is there understanding that the County was going to try to get it taken out, and he would not have to go through the process.

Mr. Koch said that is the first he has heard of that and he looked back at staff and they are shaking their heads no. He's heard nothing about that at all.

Mr. Hartsell said that is what they told him, they were talking about emails and maybe had talked with Jonathan or someone; he does not remember exactly. We felt that this is the only parcel that it clipped; everything else followed specifically, even the smallest jogs.



Mr. Griffin said as Ms. Morris pointed out, there is a very large area that fell in the Kannapolis area that Kannapolis did not agree too and the zoning was changed. If Mt. Pleasant had raised the issue with this, he is sure that would have been considered as well.

Mr. Hartsell does not want to get into a tug of war between the two. They definitely feel like we should not have been included. He said based on his conversations with them, they were told basically, that they did not need to be a part of this process because it was going to follow this line and based on that assumption he thinks is where the problem lies.

Mr. Koch said Ms. Morris tells him that apparently there were some emails that went to Jonathan Marshall and then went to John Day, and apparently he made the decision there was going to be no change to boundaries of the Central Area.

Mr. Griffin said the County Manager made the decision that there would be no changes to the Central Area Plan? He thought the County Commissioners had the authority to that.

Mr. Koch said the County Commissioners do; but consistent with what had already been approved by the County Commissioners.

Mr. Griffin said we are going to send this back to the County Commissioners for their consideration as well.

Mr. Berg said for clarification we are not voting on whether we can or cannot remove it from the Central Area Land Use Plan.

Mr. Hartsell was not quite sure how it was going to work or what was going to be involved in taking it back out.

Mr. Ensley asked if Mr. Hartsell had talked with Mt. Pleasant about voluntary annexation.

Mr. Hartsell said they are willing to do that. He said the people he talked with said it shouldn't be included to start with, and that was his premise along with the fact that they have utilities available. He thought he could get it rezoned and thought it would be simpler than what it was.

Mr. Hartsell said one of their biggest problems is that the property adjacent to Highway 49 is surrounded by commercial property. He said there is no way that is a residential piece of property; in his view. He said the Events Center is across the street and a service station on one corner and a chemical plant on the other; he is surrounded by commercial property. He said it makes no sense for that to be residential.

The Chair said the public hearing has already been closed but he would allow Mr. Davis to comment.



Mr. Sam Davis addressed the Board stating that just on general zoning principles applying the very language of the land use plan describing country residential; the land use plan does not require that this property be rezoned to CR. He said LDR is permitted in very low residential under the land use plan; so if it is permitted, why not look at the land itself and see what is around it and what the use ought to be. It is on Highway 49, it is four lanes, and stop light; there's the Events Center, a service station and a chemical plant. The country residential as it is defined in the zoning ordinance says it is predominately for a country lifestyle. If you read in there further, it says rural two lane roads without curb and gutter, without sidewalks; that is what the ordinance says. He said it is not mandated and it is permitted for this to remain low density residential. There is sewer right next to this property; Mt. Pleasant has a line that goes down Cold Springs Road, takes a left and goes down Highway 49 to Albemarle. He said the city has sewer and water right across the road.

Mr. Hartsell said Concord has it and he is not banking on that. He is trying to make that perfectly clear.

Mr. Davis and Mr. Hartsell own an adjoining piece of property and he thinks what will be done on Mr. Hartsell's will be done on his, so he wanted to be heard on this one. He said the Land Use Plan does not require it, and if you look at what is permitted. Our property is not in the Mt. Pleasant utility district, they are in the Concord utility district and it is held up for now, but there is nothing here that requires that this property go to Country Residential because it is not Country Residential.

Mr. Griffin said it was proposed as Country Residential in the Land Use Plan that was submitted to this organization here, and the county commissioners, and it was approved. So it is in the land use plan the way it is. It is like old John Fox says, it is what it is and at this point in time you are saying that the criteria that was presented to people when the Land Use Plan was being developed did not require it; you are right. But it was proposed that way and it was approved by this Commission and it was approved by the County.

Mr. Berg would verify that the Land Use Plan does say that this area is very low density residential and even in the staff report it says it is consistent with the Land Use Plan.

Mr. Davis said the Land Use Plan does not have the word Country Residential in it, it says very low density residential and it says for predominate use is residential; it permits other uses.

Mr. Griffin said the County does not have a classification very low density residential.

Mr. Davis said no, but that is the classification under the land use plan.

Mr. Griffin went to a lot of these meetings and that was explained at the meetings he attended; that the County would adopt the closest, in terms of the densities, consistent with County's definitions of Countryside Residential and Agricultural Open. So, the County has no designation as very low residential. It has Low Density Residential as one



density and it has Countryside Residential. It is his understanding that this was put in Countryside Residential because that was the closest classification that the County had to the densities recommended for that particular area.

Ms. Morris said in this particular area it was a combination of densities plus utilities.

Mr. Griffin said Countryside Residential does not allow water and sewer.

Ms. Morris said right, because he is outside of that line.

Mr. Griffin said now you have a government, Mt. Pleasant, saying they will provide that without going to Concord.

Ms. Morris said not on Mr. Davis's property. You are confusing the different cases here, so you may want to go back and look at them on their individual merits.

Mr. Davis would like to make the distinction about utilities. He said the way it is zoned does not require that the utilities be furnished; it just says if they are furnished, they can be. As far as the other properties concerned the inter-local agreement prevents the utilities from being furnished. He said very low density residential permits development with or without utilities.

Mr. Griffin said there is a relationship between densities and provision of utilities that the County has worked particularly hard to establish, as a means of controlling. If you control the densities, you control the growth in the County. He agreed with the mass rezoning 2 ½ to 3 years ago because the county was growing in a way, residentially, that could not be sustained at any where near the current tax rate. He thinks this last move in the Central Area Plan is using a sledge hammer to swat a gnat and he thinks it is hurting a lot of people in the County in terms of their investments and he does not think it is in the benefit of the County at all as a whole. He thought long and hard about this before he voted against the Central Area Plan, and he looked at these things in detail and it is hard for him to see anybody that it really helps, but it does hurt a lot of individuals in his personal opinion. We ought to think about the old law of medicine; first do no harm. He said the other thing about this is country is, it was built on individual freedom that exists no where else in this world. Every time we do something like this we hurt somebody, you would hope that the public good would out way that. He said that is the kind of balance we are suppose to be making; he does not see that in this case and he has said that before.

The Chair asked if there were any further discussion on C2009-10 (R).

Mr. Hartsell asked if C2009-10 (R) the Highway 49 property.

Ms. Morris said it is the Troutman property.

Mr. Hartsell wants to draw some differences there; making sure that we contemplate the Highway 49 property differently than the other property. He has the same reasons for



wanting to do what they are doing, but he wants to make sure they were voted on separately.

Mr. Berg thinks this is complicated a little bit by the letter from Mt. Pleasant, in his opinion. He has always had difficulty with these parcels along Highway 49 being CR.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Danny Fesperman, to **Approve, Petition C2009-10(R)**, the vote was 4-3, with Mr. Larry Ensley and Mr. Eugene Divine, and Mr. Tommy Porter opposed. (The petition will be forwarded to the Board of Commissioners).

**Consistency Statement:**

The proposed rezoning is consistent with the Central Area Land Use Plan and is reasonable and in the public interest.

Mr. Koch said the abstention here had to do with the utility service boundary being to the west of where this property is. But that may be a different issue because of these letters.

Mr. Griffin said Mt. Pleasant has recognized this in an annexation area and they have agreed that sometime in the future they would deal with the utilities problem; however you would like to word it.

Mr. Koch said it is not clear how the Inter-local Agreement affects this particular piece of property.

Mr. Griffin thought Ms Morris made it pretty plain; Concord is not going to work with Mt. Pleasant to do that, so Mt. Pleasant will have to do it some other way.

Mr. Ian Prince **MOTIONED, SECONDED**, by Mr. Larry Griffin to **APPROVE** the Consistency Statement. The vote was 4 to 3, with Mr. Larry Ensley and Mr. Eugene Divine and Mr. Tommy Porter opposed.

The Chair introduced Petition C2009-15(R) – Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to Low Density Residential (LDR) – Petitioner Mr. Scott Robertson.

Mr. Scott Robertson, 113 Cabarrus Avenue E. Concord, NC, addressed the Board. He said the map shows approximately 13 acres on the corner of Buffalo Hills Drive and Highway 49 outside of the city limits. It was Medium Density Residential when he was working on acquiring it in 2005. It became Low Density Residential near the end of 2005, and that is why it is the intended rezoning under his petition. His biggest concern with the Countryside Residential (CR) designation is one that is implied in some places, depending on who you check with. He said along the process of going through this change, it has been implied that is what people wanted at the county meetings; the ones at the fair grounds, the workshops, etc. He attended those and apparently some of the Board



attended those as well. The reason he is concerned with people implying that is because that is not the case with these tracts. These are on the four lane divided Highway 49. It is designated Option A, but it is actually options A, B and C, which are color maps and show the results of the community meetings and the workshops. They let people vote, he does not know which one got the most votes but it was interesting to him that none of them had his property suggested to be Countryside Residential; that came along after community involvement with the meetings and the workshops.

Mr. Robertson showed the tracts that he was talking about on the map. He showed the map with Option A which is one of three that could be voted on at the public meetings. He showed Buffalo Hills Drive and Highway 49 on the map; it is on the south side and Buffalo Hills Drive does not run to the other side. He said that was not suggested to be Countryside Residential, and you would see the same tract on Option B; again not suggested to be Countryside Residential

Mr. Berg asked what it is suggested to be, he cannot read the color code.

Mr. Robertson said they are yellow, which means either low density or very low density; it depends on the option you pick. He believes two of the three suggest low density which would have left it the same and one of them that appear to be darker; but none of them Countryside Residential, that is the green color. He has the fear that some day that when it is appropriate to change this, someone will look back and say wait a minute the community wanted this to be countryside and not developed and that is not the case.

Mr. Robertson's other concern is that there are five addressed residences on the thirteen acres. Whether you look at it by tract or as one large tract, because there are four PIN numbers out there; at least two of the tracts are less than four acres, one is approximately four and one is less and have two residences on them, or you can look at it as thirteen acres as a whole with five residences on them. In the process of going from Medium Density to Low Density, and Low Density to Countryside Residential or specifically from Low Density to Countryside Residential without making a plan to develop anything, without applying to build anything, without making any changes whatsoever. He said given the configuration out there, he thinks the governmental action has thrown it into a situation of noncompliance.

Mr. Robertson is not an expert in these things and knows that this has been his opportunity to be heard these various evenings at the meetings; the day at the workshop and the various Commissioners meetings and Planning Board meetings. He has very serious concerns about what noncompliance means. He has not done anything; these are in the same configurations they were, the same five buildings that were there under Medium Density Residential and he does not know when the zoning began out there but it has been that way for some time.

Mr. Roberson said as to Mr. Koch's suggestions of what to consider, and considering one of these changes, the map that was put up there by Ms. Morris shows what is around his tract. He said Mr. Koch spoke of the size of the tract compared to the tracts around it; he



contends it is relevant. He said you see Tilley Road, Wilder Road and Buffalo Hills Road; there is nothing else that would need to be treated the same way. He said you see tracts around there that are much less than three acres. He said why the zoning may now be Countryside Residential, making those nonconforming as well, changing his back to Low Density Residential or if it were ever changed to match Low Density Residential, actually is the loop that makes it similar to those that surround it. He said leaving it Countryside Residential makes it different; most of those tracts he contends are less than three acres a piece.

Mr. Griffin asked if the other lots around it have water and sewer.

Mr. Roberson does not believe that anything on his side has publicly provided water and sewer. His tract does appear to have very good perking and very good water.

Mr. Griffin said Mr. Roberson has four pieces of property out there with PIN numbers; could he develop minor subdivisions on each one of those pieces of property?

Ms. Morris said he could, but if it is in contiguous ownership, it becomes a major subdivision and the APF would apply; there is a provision in the ordinance for that.

The Chair asked if there was anyone else who would like to speak in favor of or in opposition to this application.

Mr. Darrell Furr, 3800 Cold Springs Road South, Concord, addressed the Board stating that he was looking back over his notes of when the land use was planned over a year ago. He read the following from a questionnaire of the Land Use Plan for the Central Planning Area Community Meeting 2: Can't all or portions of the area just stay the way it is? Yes, if that is the pattern of development the community prefers. However, the adopted plans, land use policies and zoning presently in place are in conflict and therefore, do not guaranteed this possible future. Only through your participation in the planning process can a plan be developed that reflects the desires of the community. Based on this plan, zoning changes can then be made that will guide development in a manner that helps to realize the vision.

Mr. Furr said the citizens of Cabarrus County were misled by this rezoning.

There being no comments, the Chair closed the public hearing.

There being no further discussion, Mr. Larry Ensley, **MOTIONED, SECONDED** by Mr. Eugene Divine, to **Deny, Petition C2009-15(R)**, the vote was 4-3, with Mr. Larry Griffin, MR. Danny Fesperman and Mr. Todd Berg opposed. (The petition will be forwarded to the Board of Commissioners).



**Consistency Statement:**

Although the proposed rezoning is consistent with the Central Area Land Use Plan, based on the inter-local agreement with the City of Concord, utilities are not available to the property which would be otherwise allowable in the LDR zoning but is not allowed in the CR zoning; therefore it is not reasonable and not in the public interest.

Mr. Larry Ensley **MOTIONED, SECONDED**, by Mr. Eugene Divine to **APPROVE** the Consistency Statement. The vote was 4 to 3, with Mr. Larry Griffin and Mr. Danny Feserman and Mr. Todd Berg opposed. (The petition will be forwarded to the Board of Commissioners).

The Chair said the next two petitions are similar in that the rezoning request is from CR to OI and LDR.

The Chair introduced Petition C2009-09(R) – Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to Office Institutional (OI) and Low Density Residential (LDR) Petitioners Mitchell and Mary Hartsell.

Ms. Susie Morris, Planning and Zoning Manager addressed the Board stating that these two cases are similar to the other ones in that one will be served by the City of Concord and one of them the Mt. Pleasant district. The applicants are asking for the property to be rezoned from CR to OI and LDR. The Board packet contained a map of the previous zoning designation prior to the change; the properties had split zoning and are what the Board will be considering; to put it back to what it was when that meeting started that night. She said you can see the delineations; those delineations are not based on property lines, they are simply delineations that were put in place. These properties in 2005, the front portions were changed to OI; so you have the split zoning designation. These designations are in place based on the mass rezoning case that was approved January 20, 2009.

She said the Hartsell property C2009-09 (R) is the one that is actually in the Mt. Pleasant service district, but the City of Concord is the closest provider. They are in that area where Concord said they would not provide utilities. Based on the Countryside Residential zoning designation, densities are 1 unit per 2 acres to 1 unit per acre, if the open space design option is used. Minor subdivisions are permitted; government water and sewer are not permitted. Office Institutional (OI) district is the transitional district between residential and commercial, suitable for churches, light office and institutional uses, schools and things of that nature. Low Density Residential (LDR), the densities in the zoning ordinance for that are 1 unit per 2 acres or up to 2 units per acre, if the amenity design option is used. Minor subdivisions are permitted; government water and sewer are optional in the LDR district.

Ms. Morris said these parcels are designated as very low density residential by the Central Area Plan and the uses that are anticipated will be residential uses to occur at very low to low densities. Predominate uses would be single family and the densities



called for in the Land Use Plan are up to 1 unit per 2 acres or up to 2 units per acre provided the additional development standards are met.

Ms. Morris said like Mr. Robertson's case, these cases, the LDR portion will be consistent with the densities set forth in the Land Use Plan, but the issue becomes the utilities; to receive higher densities. She said those are the similarities between these two particular cases, but again the Davisco property will be served by the City of Concord, but they are outside the utility service boundary line. She said the Hartsell property would be served by Mt. Pleasant, but again they are also out of that district if the utilities would actually be coming from Concord or some type of agreement.

Ms. Morris said the area in B1, on the east side of Cold Springs Road is actually in the City of Concord; so that area of the arena where it's the PID, that is the City of Concord. Then it jumps across Cold Springs to the City of Concord and then you still have some County properties in that area; but they are currently under the County's planning and zoning jurisdiction.

Mr. Mitchell Hartsell, 4166 Amarillo Drive, Concord, NC, addressed the Board stating that the same thing applies as the previous parcel; it is definitely in the Mt. Pleasant district and utilities would be provided by Mt. Pleasant, not through the City of Concord. He definitely wants to make that distinction, because they made that distinction to him. This particular property, as he has said before, is surrounded by commercial property and it is definitely in the Mt. Pleasant district. He said the same principles apply.

The Chair asked if anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

There being no further discussion, Mr. Ian Prince, **MOTIONED, SECONDED** by Mr. Larry Griffin, to **Approve Petition C2009-09(R)**, the vote was 6 to 1, with Mr. Larry Ensley opposed.

**Consistency Statement:**

The proposed rezoning to OI is inconsistent with the Central Area Land Use Plan; the proposed part of the rezoning to LDR is consistent with the Central Areal Land Use Plan; the proposed rezoning is reasonable and in the public interest.

Mr. Ian Prince **MOTIONED, SECONDED**, by Mr. Larry Griffin to **APPROVE** the Consistency Statement. The vote was unanimous.

The Chair introduced Petition C2009-16(R) – Zoning Atlas Amendment to rezone property from Countryside Residential (CR) to OI and LDR – Petitioner Davisco Incorporated.



Mr. Larry Griffin **MOTIONED, SECONDED** by Danny Fesperman to recuse Mr. Tommy Porter from Petition 2009-16(R) due to a conflict of interest. The vote was unanimous.

Mr. Sam Davis, Jr., 446 Winfield Boulevard, Concord, NC, addressed the Board. He has said a lot of what he wanted to say, and it did not do any good. He would like to make the observation that the fact that this is in the Concord utility district, as opposed to the Mt. Pleasant utility district, should not make any difference to this Board. He said unless utilities are furnished, it is not going to develop to the higher density. It would be at the lower density without the utilities; even with the utilities it is consistent with the land use plan. The fact that it does not presently have utilities, and the inter-local agreement does not permit utilities at the present time, really does not make any difference as to whether this ought to be zoned CR or LDR. What does make the difference is this is not CR property; it is LDR property. He said the very low residential designation in the land use plan just says single family residential is the predominate use; there are permitted uses, it does not mean it is the only use. He said even LDR permits some things other than just single family residential; even CR and AO permit things that are other than single family residential. He said churches, institutions and things like that are certainly consistent with the land use plan. He made this presentation before, and he has had long discussions with Mr. Hartsell and his family and Mr. Troutman; that our property has direct access to Highway 49 right at Old Airport Road across from the Events Center. We have a tentative agreement, we have not worked out anything and neither one of us has any development plans; that we would work out a joint transportation system, where we would have a street that would go from the Old Airport Road intersection at Highway 49 through Cold Springs Road. It would be an advantage to the Events Center. He said on the issue of do no harm, what needs to happen at that intersection and will happen eventually is that there is a mass of critical development that will benefit the Event Center. That is going to happen sometime in the future, it's in the interest of the County and the interest of everybody else. We do not have any plans right now, but in general long range planning, it does not make any sense to call this residential property when it is not.

The Chair asked if any one else present to speak in favor of or in opposition of this case.

Mr. Tony Deal, 2668 Cold Springs Road, Concord, NC, addressed the Board. He lives adjacent to the property and his concern is it was zoned for industrial or office and he will end up with an office park in his back yard. He does not feel that it benefits him or any of his neighbors. He is hearing that a road is going to be cut through and that will increase traffic across his property. He is asking that the Board reject this proposal.

Mr. Erick Bollenbecker, 5136 Navion Place, Concord, NC, addressed the Board. He probably speaks for a lot of people, some are actually here that live in his neighborhood. We would like to keep it countryside residential. He thinks that Mr. Davis has a lot of commercial property. He has heard and understands the business of commercial development on Highway 49, and he thinks that is a good idea. He would like some clarification of what the petition is about.



The Chair said Mr. Davis is going to OI along Highway 49 and LDR would be the part that goes back toward the neighborhoods.

Mr. Bollenbecker said what he received in the mail said it was all going to OI and that was his concern. If it is going back to what it is, then he is in favor of that; he just needed to clarify that. He thinks that would be a good plan for the whole use of the property. He always figured something was going to happen at Old Airport Road and Highway 49, at the Events Center; that is about the only way you can get to use that property in some ways and he understands that.

The Chair asked if anyone else who would like to speak in favor of or in opposition to this case.

There being no comments, the Chair closed the public hearing.

Mr. Griffin said as he recalls if you look at the description of Office Institutional (OI), it is a transition area between residential and commercial or residential and industrial or whatever. His personal perception is that is an appropriate use for that area right across from Airport Road and the Events Center, and there would be a buffer for folks who lived there in residential.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Ian Prince, to **Approve Petition C2009-16 (R)**, the vote was unanimous.

#### **Consistency Statement:**

The proposed part of the rezoning to change from CR to LDR is inconsistent with the Central Area Land Use Plan; the proposed part to rezone from CR to OI is not consistent with the Central Areal Land Use Plan, but it is reasonable and in the public interest.

Mr. Larry Griffin **MOTIONED, SECONDED**, by Mr. Larry Ensley to **APPROVE** the Consistency Statement. The vote was unanimous.

The Chair said since many of these are going to the Board of Commissioners, is there a time table for that.

Ms. Morris said letters will be sent and because of advertising and reposting of the signs, we will have to determine if it will be the main meeting or if it would be pushed out to June.

#### **Directors Report**

Ms. Susie Morris, Planning and Zoning Manger addressed the Board reminding them to notify staff in advance if they will not be attending a meeting so that an alternate member can be notified in advance. She said it is to the applicants benefit to have a full board



seated, especially with the higher voting requirements on conditional use permits or even on a rezoning case.

Ms. Morris said last Thursday night (April 9th), some of you attended the training session that Bill Dunston put on. She will send a copy of the presentation to the board.

We are still moving forward with trying to work with Harrisburg, hopefully, we will have that started before the fiscal year ends. We are looking for this Board to participate. She said in this particular land use plan, we may try to have a little bit different composition of the advisory committee. If you know any one who lives in that planning area that you think may be interested in the Harrisburg ETJ area you may want to mention this to them. She believes the advisory committee composition this time will have at least one planning and zoning board member participating on that committee. She said it will be appointed by the Board of Commissioners.

She said Bill Dunston, presenter, had a pretty good discussion on *ex parte* communication, and also on recusing yourself; it is a formality that we do need to be taking care of. She said we are still looking for the third alternate member and to let her know if the Board knows of anyone who might be interested.

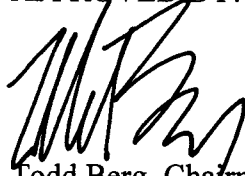
Ms. Arlena Roberts, Clerk to the Board, reminded the alternate members to attend all meetings.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Larry Ensley to **Adjourn** the meeting. The vote was unanimous. The meeting ended at 10:15 p.m.



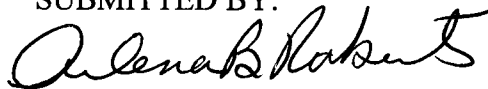
Planning and Zoning Commission Minutes  
April 16, 2009

APPROVED BY:



Todd Berg, Chairman

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:

Susie Morris  
Planning and Zoning Manager



Rolling Hills Farm  
3637 Cold Springs Road South  
Concord, N. C. 28025

Pin# 5559 23 6499 0000

Pin# 5559 22 7117 0000

This is a request to have our property zoning return to the zoning that existed prior to the January 29, 2009 downzoning. We have no plans to change the property but want to be able to continue to use and sell parcels under the former zoning. When the Cabarrus Board of Commissioners downzoned all of the property they afforded individual property owners the right to petition for the prior zoning to be returned. This is simply that request.

Our property has and remains in an agricultural use with several one acre lots carved off for houses that were sold to family and others. During our ownership the zoning has changed from LDR to CR and presently AO. When we purchased the property it was with the knowledge that it was zoned to allow low density residential housing. We do not plan on the property remaining agricultural perpetually. Financially, it will be very difficult to remain in agricultural production long term. Selling lots off has been able to supplement agricultural income. The downzoning harms us. We simply request that our property ownership rights be returned to LDR.

Much of the property is currently in the agricultural present use valuation program which allows actual taxes paid to be reflective of the agricultural production. Our farm produces 500,000 turkeys per year for resale. However, being zoned AO adversely affects the value of our 'development rights' and reduces the property's marketability and lowers future sales value. If our property is not returned to the former zoning, we also will have less potential future lots and all of this in turn affects our valuation when examined by our lender for future collateral of the property.

We simply are asking that the property be returned to its former zoning. Unlike traditional zoning requests that come before the county where there is a plan to do something new on the property, we are here because our property zoning designation was changed by others and we would like it returned to its former zoning. We have no plans to do anything new on the property.

We believe that we are in agreement with the Central Area Plan in that we existed prior to it, we have a strong agricultural business on the property (in part due to zoning that permitted one acre lots), we utilize septic tanks and wells, and nothing that we are doing or will do on our property adversely affects the purpose of the plan.

Regards,

Jennifer L. Price and Ronda S. York

