



Commerce Department
Planning Division

Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting

July 12, 2011

7:00 P.M.

Board of Commissioners Chamber
Cabarrus County Governmental Center

Agenda

1. Roll Call
2. Approval May 2011 Minutes
3. Approval of Findings of Fact for Petition-RZON2011-00002 – Zoning Atlas Amendment, Conditional Use, Vulcan Materials
4. New Business – Planning Board Function:

Zoning Atlas Amendment - Petition RZON2011-00003 – Request to rezone +/- 138 acres from Limited Commercial/Countryside Residential (LC/CR) to Limited Commercial/High Density Residential (LC/HDR), located at 401 Highway 24/27 East (PIN#5535-31-6128). Applicant - Highway 24/27 LLC

5. Directors Report



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Mr. Todd Berg, Chair, called the meeting to order at 7:05 p.m. Members present, in addition to the Chair, were: Ms. Mary Blakeney, Ms. Brenda Cook, Mr. Eugene Divine, Mr. Larry Ensley, Mr. Danny Fesperman, Mr. Ted Kluttz, Ms. Emily Knudson, Mr. Richard Price and Mr. Barry Shoemaker. Attending from the Planning and Zoning Division were, Mr. Jonathan Marshall, Commerce Director, Ms. Colleen Nelson, Senior Planner, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

Roll Call

Approval of May 19, 2011 Minutes

Mr. Barry Shoemaker, **MOTIONED, SECONDED** by Mr. Ted Kluttz to **APPROVE** the May 19, 2011 meeting. The vote was unanimous.

Approval of the Findings of Fact for Petition REZON2011-00002 – Zoning Atlas Amendment, Conditional Use, Vulcan Materials

Ms. Mary Blakeney, **MOTIONED, SECONDED** by Mr. Ted Kluttz to **APPROVE** the Findings of Fact for Petition REZON2011-00002 – Zoning Atlas Amendment, Conditional Use, Vulcan Materials. The vote was unanimous.

New Business – Planning Board Function

The Chair introduced Petition RZON2011-00003, Zoning Atlas Amendment – request to rezone property located at 401 Highway 24/27 East (PIN#5535-31-6128) from Limited Commercial/Countryside Residential (LC/CR) to Limited Commercial/High Density Residential (LC/HDR).

Ms. Colleen Nelson, Senior Planner, introduced Zoning Atlas Amendment Petition RZON2011-00003. The applicant is Highway 24/27, PIN# 5535-31-6128, Michael Bergner, Hartsell and Williams (as Agent). The property is located at 401 Highway 24/27 East; it is a 138 acre property. The existing zoning is Limited Commercial/Countryside Residential (LC/CR). The proposed zoning is Limited Commercial/High Density Residential (LC/HDR). The site is currently wooded and vacant. The property is surrounded by residential and wooded properties. The property to the west is zoned General Industrial/Special Use (GI-SU) and is currently approved for an industrial plant; west of that particular parcel is the location of the Midland Fire Department.



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The subject property is located in the Town of Midland Utility Service Area, provided by the City of Concord. Prior to the development, the applicant must provide us with an Intent to Serve Letter from the City of Concord to ensure that water and sewer is available and will be provided for the development. She said the applicant is aware of this provision and was sent a letter from the County to that effect. She said water is available to the site, currently there is no sewer. The Town of Midland does not support the proposed rezoning based on the Midland Land Use Plan 2030. That is the land use plan that was adopted by the Town of Midland in May 2010, and it calls for property to remain rural agricultural.

She said in regard to the schools, any proposed residential developments are subject to the Cabarrus County Adequate Public Facilities Ordinance. She said NCDOT and the Fire Marshal expressed concerns about access to the property and those comments have been addressed in the comments in the Board packet.

She said the intent of the Zoning Districts; limited commercial will not expand, but it is intended to accommodate relatively small scale commercial and office development complementary to residential.

Ms. Nelson said the property is currently zoned countryside residential, densities permitted in this district range from 1 unit per two acres for a Conventional Subdivision and 1 unit per acre if the Open Space design option is used. The minimum lots size is one acre and public water and sewer are not permitted.

She said densities permitted in the High Density Residential (HDR) district range from 4.5 units per acre using the Open Space Option to 6 units per acre using the amenity option. Public water and sewer are required and a density bonus of 2 units per acres is allowed for projects that can successfully demonstrate the concept of a mixed use development as defined in the Zoning Ordinance.

She said the property is located in the Midland Area Land Use Plan. The plan was adopted by both the Town of Midland and Cabarrus County in September 2004. It designates this property as Medium Density Residential (MDR), which is intended to permit development with moderately high density community character. This is a zoning district primarily designed for existing and future conventional subdivision type development. Residential development options for this zone include single family detached residence, duplex, and townhomes. These zones are located where public utilities either are available or are envisioned available within ten years.

Ms. Nelson said the rezoning, as proposed, is not consistent with the Midland Area Land Use Plan. The rezoning is a conventional rezoning request. Therefore, no conditions may be attached to the rezoning request. All uses permitted in the Limited Commercial (LC) and High Density Residential (HDR) districts would be permitted on the subject property.

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She said the Planning and Zoning Commission should consider the information provided and determine if the proposed rezoning meets the Commissions' vision for this area of Cabarrus County.

The Chair said there was a letter sent regarding utilities, was there any response?

Ms. Nelsons said no.

The Chair asked if there was anyone present representing the applicant. There was no one present.

Ms. Kathryn Kuppers, 729 Honeysuckle Lane, Midland, NC, addressed the Board stating that she has petitions from some of the other people that live on Honeysuckle Lane. She may have worded the petition incorrectly because she thought they would be speaking to the Board of Commissioners.

She would like the rezoning request to be denied. She said some of the reasons they think it should be denied are: locating a High Density Residential (HDR) parcel right next to Countryside Residential (CR) parcels is poor planning.

She does not know if you normally have some kind of buffer in that situation. But, it really changes the nature of the Countryside Residential quite a bit. She said it would benefit the property owner who would be granted this rezoning much more, and it would be to the detriment of the residents of Honeysuckle Lane. The rezoning would benefit a few real estate investors, which mainly live in Charlotte, and it would harm 20 or so of us individual property owners whose homes and residences account for a large part of their personal wealth.

She would consider that the county government is here for our benefit more than for the benefit of real estate investors; she would hope. She said there is no unmet need for multi-family housing in this part of the county. There are apartments just down the road a few miles west in Mecklenburg County and she is not sure how this rezoning would benefit anybody in Midland.

Unfortunately, we did not get as many signatures as we wanted because some people are on vacation and since this is the only hearing we are going to have that is all she has, which is about 12 names.

Mr. William F. Bass, 11387 Calisto Court, Midland, NC, addressed the Board. He is not here for or against the rezoning. The last couple of rezoning's he has seen in his neighborhood, the rezoning signs have been parallel to the street and are so far back from the street that you cannot see them.

He thought that the reasoning behind the signage is to inform people of a pending rezoning, and if that is the intent, this falls short of that intent. He understands that the signage is single sided and to move those from parallel to perpendicular to the road

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would require additional monies and expenditures to bring these up to what he would consider acceptable standards, and that would be double sided signage similar to what other counties currently do. These signs are back into the trees, and he does not know if there is some type of ordinance that requires them to be a certain number of feet off the street or within the street right of way, but some of these signs in some cases are in the trees and cannot see them.

He is a late comer to this because he just found out about it today. Someone told him and he went by to see the sign. He had never seen the sign on 24/27, it is 55 miles per hour down that street and the only inference is off that street that is now 55 miles per hour.

He asked the Board to seriously consider changing the rezoning signage to something that would allow more input into these meetings. He thinks that is what this is all about, is to get input and he thinks that detracts from the overall goal, if that is indeed the overall goal.

The Chair asked if there was anyone else to speak in favor or in opposition to the application. There being no more comments the Chair opened the floor for discussion.

He said we did not hear from the applicant so we did not hear that side of the case. We have the option to table the rezoning or we can act on it based on the information that we have.

Mr. Richard Price said, it is his opinion that if the applicant does not deem it necessary to be here, that we move forward with a decision one way or the other.

The Chair pointed out that at the end of the Board packet there was a letter regarding the utility situation, which for him is a big deal. He said High Density Residential (HDR) clearly requires public utilities, which this site does not have. It only has half, water is available but sewer is not. It would be difficult for him to support approval of this application for that reason.

Mr. Barry Shoemaker would not support this at this time. He said the Land Use Plan clearly does not have a high density residential component to it. We are trying to be faithful to these plans that we have put forth over the years. The Town of Midland is against it, and eventually, one day, this could be annexed into the Town of Midland, and we would want to be consistent with that town and their wishes, in how they are doing things. He said it is in the public interest to go against what we have already set out; what we have scoped out as our map for growth.

Mr. Larry Ensley said there are negative comments from the Fire Marshal, and negative comments from NCDOT. There is very little supportive evidence, especially with no applicant, to state their case as to why we should approve this rezoning request.

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There being no further discussion Ms. Mary Blakeney **MOTIONED, SECONDED** by Mr. Richard Price to **Deny** Petition RZON2011-00003, Request to rezone property located at 401 Highway 24/27 East (PIN#5535-31-6128) from Limited Commercial/Countryside Residential (LC/CR) to Limited Commercial/High Density Residential (LC/HDR). The vote was unanimous.

Lack of Consistency Statement – The proposed rezoning is not consistent with the Midland Area Land Use Plan and is not reasonable and is not in the public interest. There being no further discussion, it was the Consensus of the Board to **APPROVE** the Lack of Consistency Statement.

Mr. Jonathan Marshall, Planning Director, addressed Mr. Bass's comment about the rezoning signs. He appreciates him coming and making those comments. We will address that and talk with our sign shop about making two sided signs, and getting them closer to the road. We do try to avoid the right of way, but if it is back in to the trees and not visible, it is not achieving the purpose. We will get that corrected.

Mr. Richard Koch, Attorney addressed the Board stating that the Supreme Court granted the County's petitions for discretionary review in the Landvale, Martin and Craft APFO cases. What that simply means is that they have agreed to hear the cases on their merits. It doesn't mean they have decided, and you cannot infer that they are predisposed to reverse the Court of Appeals, but they have at least agreed to hear it, and that is a significant event from the County's perspective, in terms of those appeals.

He said the brief for the County is due on Friday. He said the other side gets an opportunity to file a brief and then there will be oral arguments to the Supreme Court sometime in the fall.

These are the first APFO cases that the Supreme Court has picked up for review. So, we are hopeful that one of our issues that have been raised, concerning the way that they were decided in the Court of Appeals and at Trial Court level, is of sufficient interest to the Supreme Court, that they will see it differently. They have three different issues that are being raised.

He thinks the one conclusion you can draw is that there is something in not just our case, but maybe in the overall decisions of the Court of Appeals in a variety of different facts situations that has caused the Supreme Court to determine that they need to finally weigh in on this whole issue. They have identified a couple of issues that they wanted us to brief, which concerns the statute of limitations for zoning ordinance appeals. We have our special local legislation, which is a unique issue to our case; and then also the more general issue about the validity of an adequate public facilities ordinance in the context of the general enabling zoning statutes that are in 153A.

Mr. Koch said the court also granted a petition in the Amward verses Cary case, which is a different fact situation. The Town of Cary, for some reason, even though they don't have the statutory obligation to fund schools, decided they would enact an APFO and

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collect voluntary mitigation payments and then transfer those to Wake County for distribution to the schools. Why they would decide to take that responsibility upon themselves is a local issue there, but none the less, that is what they did and had an ordinance to that affect. Their ordinance is very different from the ordinance in our county, but in that particular situation, when it was struck down by the Court of Appeals, they paid all the money back that they collected. He said not only that, they got hit for a \$250,000 attorneys' fee under 29CFR1983 Equal Protection violation that was an alleged complaint in that case.

We did not have that allegation in our three cases. Since that decision came down from the Court of Appeals, some other litigation has been filed against the County on some other developments. He said that litigation is all stayed at the moment, but that allegation has been made so they could try to get their foot in the door to try to get attorney's fees in those cases.

He does not know why the Supreme Court picked up the Amward case in addition to ours. It does have some similar issues, but that one is going to be briefed and argued this fall as well.

We have to wait and see what happens. The fact that they were even willing to do it was a positive development, from our perspective.

Mr. Shoemaker asked how the APFO works with Kannapolis schools.

Mr. Jonathan Marshall said we fund Kannapolis schools also. In the depositions we found out that the attorney suing us did not know that. He said Rowan and Cabarrus Counties fund those schools, so where they had developments that affected Kannapolis schools we applied the APFO just as we do in Cabarrus, except to their schools with capacity and projected enrollment. What we had found in each case that it was tested, is they had adequate space so those developments we recommended approval without any mitigation to move forward.

There being no further discussion, Mr. Ted Kluttz, **MOTIONED, SECONDED** by Mr. Barry Shoemaker to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 7:30 p.m.

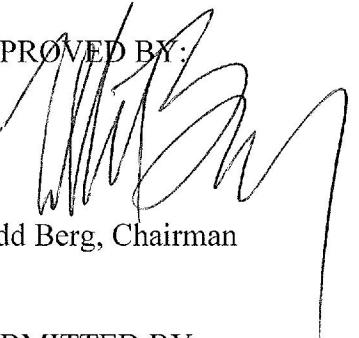
FINDINGS OF FACT
CONDITIONAL USE PERMIT APPLICATION
APPLICANT: VULCAN MATERIALS COMPANY
GOODMAN ROAD
RZON 2011-00002

FINDINGS OF FACT

1. The use as proposed is not detrimental to the public health, safety or general welfare.
 - a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*
 - b) *The proposed use adds no new additional burden to the property that would affect the public adversely.*
2. The use as proposed is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.
 - a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*
 - b) *All such facilities, which are not specifically required for this additional use, are located nearby.*
3. The use as proposed will not violate neighborhood character nor adversely affect surrounding land uses.
 - a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*
 - b) *The proposed use consistent with the uses immediately adjacent to the property.*
4. The use as proposed will comply with the general plans for the physical development of the County as embodied in the Zoning Ordinance or in the area development plans that have been adopted.
 - a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*
 - b) *The proposed use is consistent with the uses immediately adjacent to the property.*

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APPROVED BY:


Todd Berg, Chairman

SUBMITTED BY:


Arlena B. Roberts

ATTEST BY:

Susie Morris
Planning and Zoning Manager

FINDINGS OF FACT
CONDITIONAL USE PERMIT APPLICATION
APPLICANT: VULCAN MATERIALS COMPANY
GOODMAN ROAD
RZON 2011-00002

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2. The use as proposed is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.

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4. The use as proposed will comply with the general plans for the physical development of the County as embodied in the Zoning Ordinance or in the area development plans that have been adopted.

a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*

b) *The proposed use is consistent with the uses immediately adjacent to the property.*

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CABARRUS COUNTY PLANNING AND ZONING COMMISSION
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Petition: RZON2011-00003 Rezoning

Applicant Information: Michael R. Burgner, Hartsell, & Williams (As Agent)
P.O. Box 368
Concord, NC 28026

Owner Information: Highway 24/27 LLC
4521 Sharon Road, Suite 170
Charlotte, NC 28211

Existing Zoning: LC (Limited Commercial)/CR (Countryside Residential)

Proposed Zoning: LC (Limited Commercial)/HDR (High Density Residential)

Permitted Uses: All uses permitted in the LC/HDR zoning district (see attached)

PIN#: 5535-31-6128

Area in Acres: 138.094

Site Description: The subject property is currently wooded and vacant.

Adjacent Land Use: The subject property is surrounded by residential and wooded properties on most sides. Property to the west is zoned General Industrial-Special Use and is approved for an industrial park. The Midland Volunteer Fire Department is located along 24/27 west of the subject property.

Surrounding Zoning: North: CR (Countryside Residential)
East: LC (Limited Commercial)/CR (Countryside Residential)
South: Town of Midland LC (Limited Commercial)/Town of Midland LDR (Low Density Residential)/CR (Countryside Residential)/LC (Limited Commercial)
West: GI-SU (General Industrial-Special Use) / CR (Countryside Residential)

Utility Service Provider: The subject property is located within the Town of Midland (provided by City of Concord) Utility Service Area. Prior to development, the applicant must receive an Intent to Serve Letter from the City of Concord to ensure that water and sewer is available and will be provided for the development.

Exhibits

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1. Zoning Map – Submitted by Staff
2. Land Use Map – Submitted by Staff
3. Aerial Map – Submitted by Staff
4. Town of Midland ‘Town Plan 2030’ Map- Submitted by Town of Midland
5. Soil & Water Conservation Comments – Submitted by Dennis Testerman
6. List of Permitted Uses in CR (Countryside Residential) – Submitted by Staff
7. List of Permitted Uses in LC (Limited Commercial) – Submitted by Staff
8. List of Permitted Uses in HDR (High Density Residential) – Submitted by Staff
9. List of Adjacent Property Owners – Submitted by Staff
10. Letter to Applicant- Submitted by Staff

Intent of Zoning Districts

Existing Zoning:

Countryside Residential-

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 district range from 1 unit per 2 acres if the Conventional Subdivision option is used to 1 unit per acre if the Open Space design option is used. The minimum lot size is one acre. The minimum lot size for minor subdivisions is one acre. Public water and sewer are not permitted in this zoning district.

Limited Commercial-

This district is intended to accommodate relatively small scale commercial and office development at intensity complementary to residential land use

Proposed Zoning:

High Density Residential-

This district is intended to allow for a wide range of residential uses and will be the primary location for multifamily development. This district allows open space and amenity subdivisions. Both water and sewer are available and transportation networks are capable of supporting high density development. The district is also designed to accommodate office and commercial uses that are compatible with a high density setting. High density residential/mixed use zones will develop typically near municipal boundary lines but should always be located near major thoroughfare level roads. Densities permitted in the HDR district range from 4.5 units per acre using the Open Space option to 6 units per acre if the Amenity Subdivision design option is used. Minimum lot size for minor subdivisions is

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one acre. Public water and sewer are required for the HDR Open Space and Amenity option subdivisions. A density bonus of two (2) units per acre is allowed for projects which can successfully demonstrate the concept of a mixed use development as defined in Chapter 2, Rules of Construction and Definitions in the Cabarrus County Zoning Ordinance.

Limited Commercial-

This district is intended to accommodate relatively small scale commercial and office development at intensity complementary to residential land use

Agency Review Comments

Planning Review : Comments, by Planning Staff

Current zoning of Countryside Residential allows for a maximum density of 1 unit/acre, with 40% required open space for an Open Space subdivision, and public water and sewer are not permitted.

Proposed zoning of High Density Residential allows for a maximum density of 6 units/acre with 50% required open space for an Amenity subdivision and water and sewer are required.

Proposed Zoning of High Density Residential allows for multi-family and townhomes that are eligible for a Density Bonus outlined in the Cabarrus County Zoning Ordinance Permitted Based on Standards. (Chapter 7)

Density Bonus- *A density bonus of two (2) dwelling units per acre will be allowed for projects which can successfully demonstrate the concept of a mixed use development as defined in Chapter 2, Rules of Construction and Definitions. This can generally be accomplished through the submission of a site plan and appropriate architectural drawings.*

Health Alliance Review : Comments, by David Troutman

If municipal water and wastewater disposal is not available, then there must be a site specific evaluation to determine the adequacy of each site for some type of wastewater disposal system, and on site water supply.

Erosion Review : Comments, By Tamera Eplin (NC DENR)

If the total disturbed area is greater than one acre, an erosion and sediment control plan must be submitted prior to commencement of land disturbing activities.

Schools Review : Comments, by Planning Staff

The subject property is currently served by Bethel Elementary School, C.C. Griffin Middle School is split by the Central Cabarrus and Hickory Ridge High School districts. Any proposed residential development is subject to the Cabarrus County Adequate Public Facilities Ordinance.

NCDOT Review : Comments, By Leah Wagner (NCDOT)

1. No crossover on NC 24/27 will be granted to this property given the proximity to Hartwood Road. Any access will be right in/right out only.

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Use _____
Approved: _____
Deferred: _____
Rejected: _____

2. *A shared access with the adjacent property is encouraged*
3. *Driveway permit is required*
4. *A TIA will have to be performed for any development; from which roadway improvements will be determined.*
5. *NCDOT reserves the right to modify improvements pending review of proposed development layout.*

Utility Review : Comments, By Sue Hyde (City of Concord)

There is water available to this site, but currently there is no sewer. City of Concord is currently working with the Town of Midland with sewer issues and will not approve water and sewer extensions unless approved first by the Town of Midland. (City of Concord)

Soil and Water Conservation Review : Comments, by Dennis Testerman
(See Attached Comments)

Town of Midland Review: Comments, by Richard Flowe

The Town of Midland does not support the proposed rezoning of PIN 5535-31-6128 . The basis for our position is as follows:

1. *In May 2010 the Town Council adopted "Midland Land Use Plan 2030". The adopted plan called for general land use patterns to concentrate around nodes or activity centers and identifies the priority activity center to be in the vicinity of Highways NC 24/27 at US Highway 601. The plan called for the annual update of the plan as more detailed planning is performed; therefore, the first annual update to the plan is slated for this September. The Town Council will be acting upon "Town Plan 2030 – Land Use & Comprehensive Master Plan – Revision 1" that includes the recommendations of the adopted plan (May 2010 first edition) and "Midland Development Ordinance" on September 13, 2011. Both the current "Midland Land Use Plan" (May 2010) and the draft "Town Plan 2030 – Land Use & Comprehensive Master Plan – Revision 1" show the subject area as remaining rural/agricultural. See excerpt from plan adopted May 2010 below:*
 - a. *"The Northwest planning quadrant shall be designated for preservation, where future development is kept to a minimum. This area will essentially maintain its current dominance of rural residential development, with commercial and light industrial development concentrated in the destination centers. Future policy efforts will be directed towards the prevention of urban sprawl and protection of open space and natural resource areas..."*
2. *The current "Midland Land Use Plan 2030" (May 2010) and the draft "Town Plan 2030 – Land Use & Comprehensive Master Plan – Revision 1" do not anticipate sufficient infrastructure during the planning period.*
3. *The current "Midland Land Use Plan 2030" (May 2010) and the draft "Town Plan 2030 – Land Use & Comprehensive Master Plan – Revision 1" aim to protect the level of service along our major thoroughfares; furthermore, the "Midland Development Ordinance" establishes development standards requiring access in accordance with*

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sound growth principles that allow NC 24/27 to remain a free flowing highway with carefully planned points of access for higher density development.

4. *The current "Midland Land Use Plan 2030" (May 2010) and the draft "Town Plan 2030 – Land Use & Comprehensive Master Plan – Revision 1" identify locations where this level of intense development can be supported by infrastructure and services in the near term (see attached map).*

Fire Marshal Review : Comments, by Steven Langer

No issue with the rezoning, however rezoning to HDR will allow more homes per acre. If property is developed into a subdivision and has over 30 homes, it will require two access points that are remote from each other to meet the requirements of the subdivision ordinance and appendix D of the Fire Code. (Fire Marshal)

EMS Review : No Comments

Sheriff Review : No Comments

Stormwater Review: Comments, by Planning Staff

Stormwater permits will be required if the project includes a total disturbed area of more than one acre.

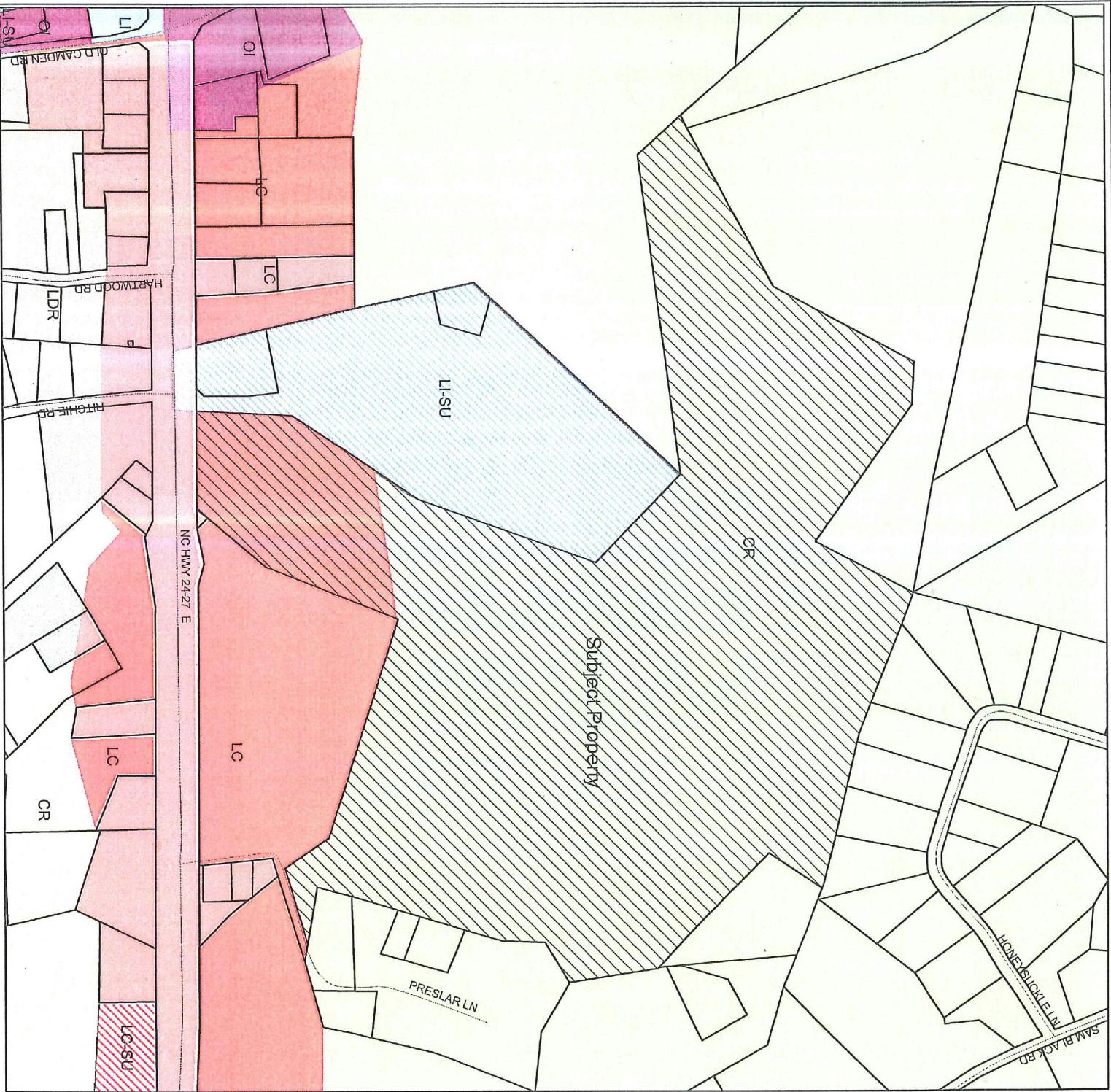
Land Use Plan Analysis

The Midland Area Land Use Plan, adopted in September 2004, designates this property, as well as adjacent properties, as Medium Density Residential and Limited Commercial. The plan states that Medium Density Residential is intended to permit development with a moderately high-density community character. This is the zoning district primarily designed for both existing and future conventional subdivision type development. Residential development options for this zone include single family detached residence, duplex, and townhomes. These zones are located where public utilities either are available or are envisioned available within the next ten years. The plan also states that Limited Commercial districts are reflective of the existing commercial uses in Midland. These areas shall be of a variety of commercial uses ranging in intensity and will not incorporate residential areas. Large-scale commercial development in these areas should be considered carefully on a case by case basis.

Conclusions

The rezoning, as proposed is not consistent with the Midland Area Land Use Plan. The rezoning is a conventional rezoning request. Therefore, no conditions may be attached to the rezoning request. All uses permitted in the LC and HDR districts would be permitted on the subject property.

The Planning and Zoning Commission should consider the information provided and determine if the proposed rezoning meets the Commissions vision for this area of Cabarrus County.



Zoning Map

Petitioner: Michael Burgner as Agent for
Highway 24/27 LLC.

Petition : RZON2011-00003

Existing Zoning: LC (Limited Commercial)
& CR (Countryside Residential)

Proposed Zoning: LC (Limited Commercial)
& HDR (High Density Residential)

Parcel ID# 5535-31-6128

Legend

	Subject Property
	Tax Parcel
	Streets
	Town of Midland
	CR- COUNTRYSIDE RESIDENTIAL
	LC- LIMITED COMMERCIAL
	LI- LIMITED INDUSTRIAL
	OI- OFFICE / INSTITUTIONAL
	LDR- LOW DENSITY RESIDENTIAL



0
345
690
1,350
Feet

Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services,
2011.



Land Use Map

Petitioner: Michael Burgner as Agent for
Highway 24/27 LLC.

Petition : RZON2011-00003

Existing Zoning: LC (Limited Commercial)
& CR (Countryside Residential)

Proposed Zoning: LC (Limited Commercial)
& HDR (High Density Residential)

Parcel ID# 5535-31-6128

Legend

	Subject Property
	Tax Parcel
	Streams
	Town Of Midland
	Midland Future Land use

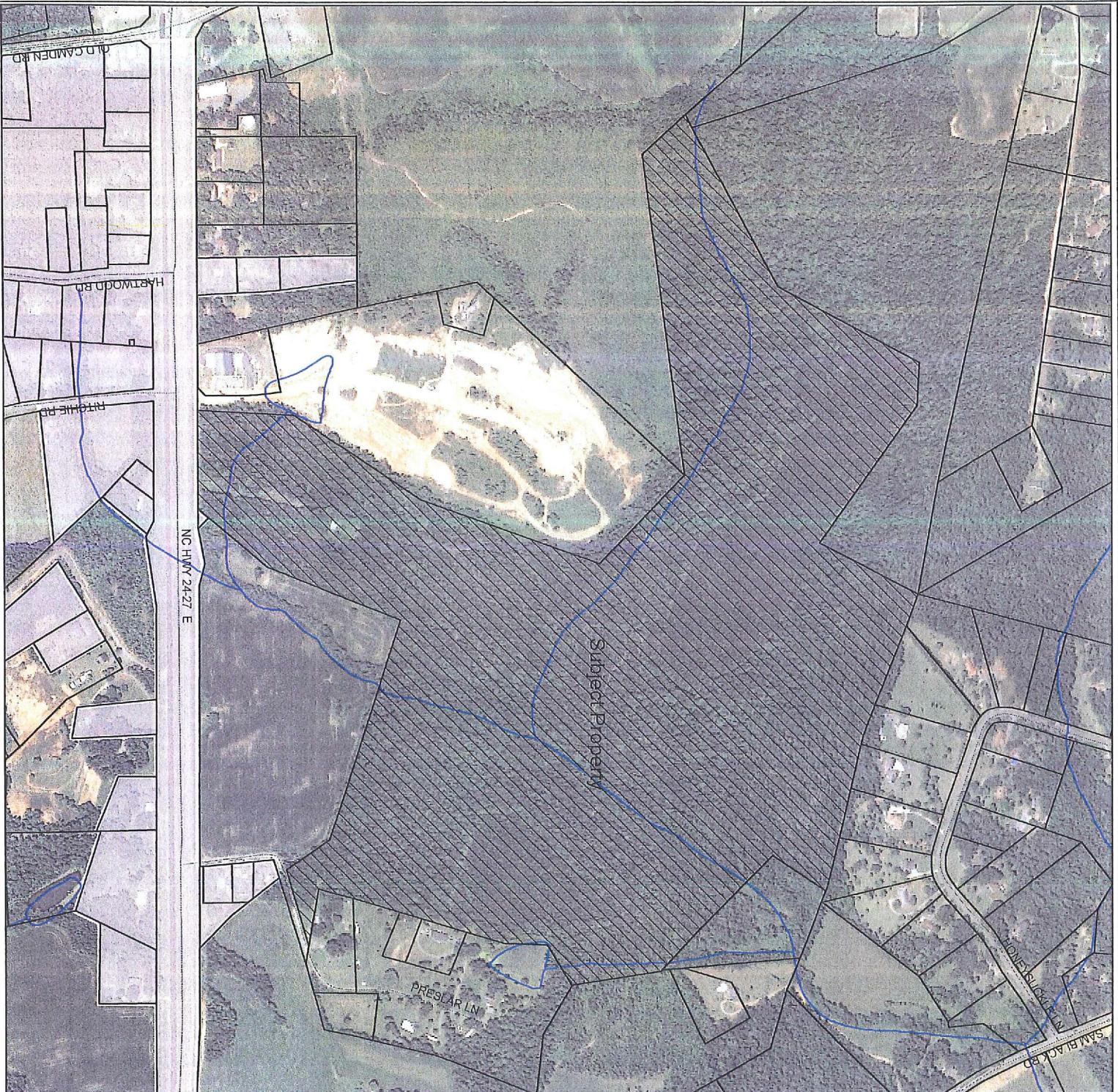


0
300
600
1,200
Feet

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These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services, June 2011.



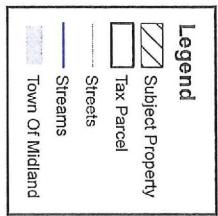
Aerial Map

Petitioner: Michael Burgner as Agent for
Highway 24/27 LLC.

Petition : RZON2011-00003

Existing Zoning: LC (Limited Commercial)
& CR (Countryside Residential)

Proposed Zoning: LC (Limited Commercial)
& HDR (High Density Residential)
Parcel ID# 5535-31-6128

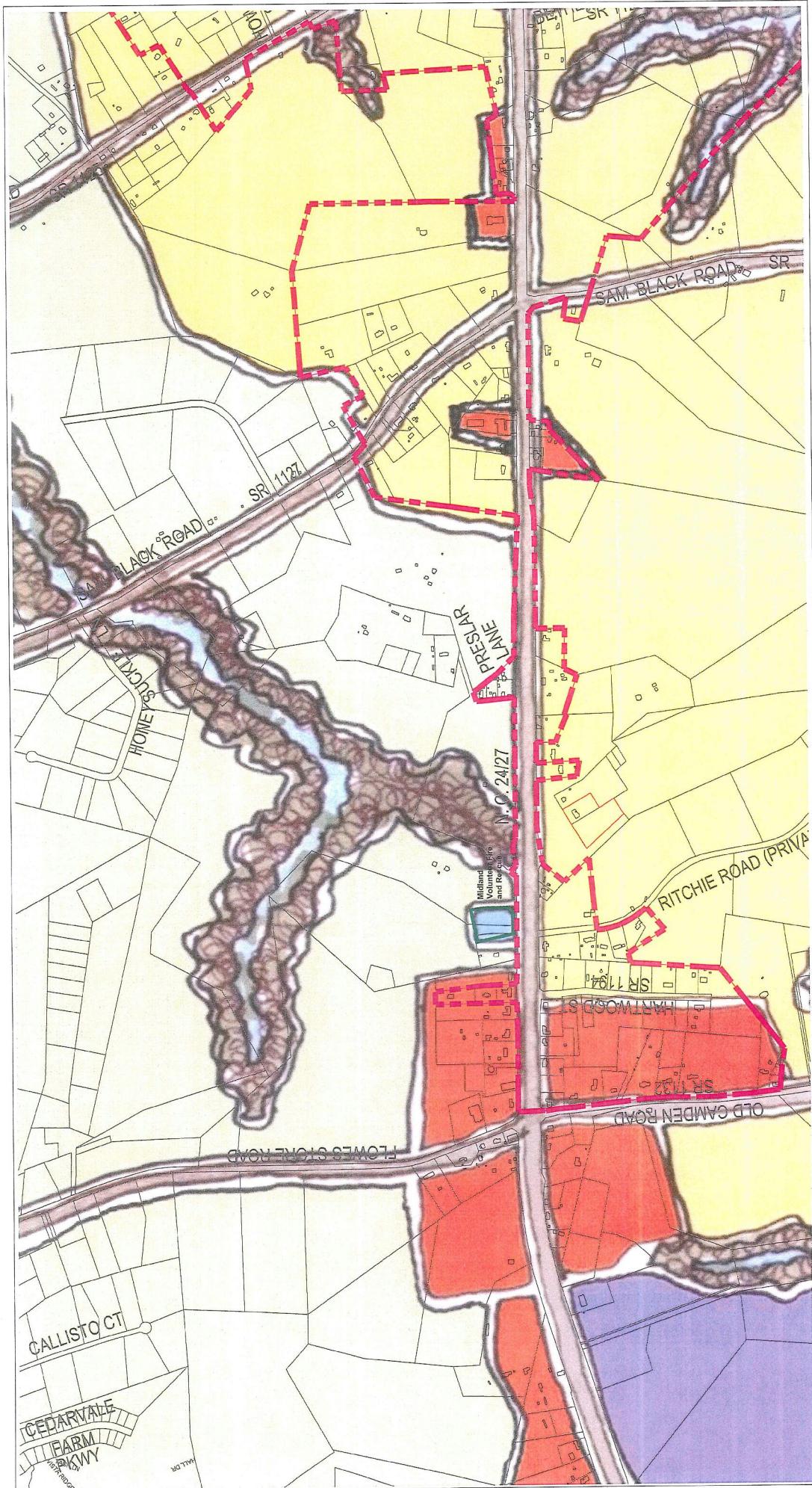


0 300 600 1,200
Feet



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services
June 2011



Town of Midland, North Carolina
Planning Services Department
4293-B Hwy 24-27 East
PO Box 589
Midland, NC 28107

Land Use - NC 24 / 27 at Flowe Store Road

June 7, 2011

4000'
2400'
800'
0



TOWN OF MIDLAND





RZON2011-00003 Highway 24/27 LLC

Feasibility of future development under the requested rezoning should take into account natural resources considerations addressed in the following comments.

The 2008 Yadkin-Pee Dee River Basinwide Water Quality Plan includes the following guidelines for the Rocky River sub-basin which includes the headwaters of Horton Branch on the subject property: "All reasonable efforts to reduce or eliminate human source of erosion should be implemented immediately. Local commitment from town and county leaders to require low impact development for all new construction will also help to prevent further degradation in this watershed." This plan includes a section on the planning considerations for headwaters streams such as those that exist on the subject site.

This plan contains the following specific recommendations:

Basin Scale (Implemented by Town, County, and State Governments)

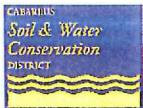
1. Characterize the watersheds within a basin as developed or undeveloped, identifying the watersheds that are currently less than 10 percent impervious and those that are more than ten percent impervious.
2. Focus new construction projects to the already developed watersheds first. Then assign any construction that cannot be accommodated in developed watersheds to a limited number of undeveloped watersheds. The watersheds to be developed should be determined by their ecological importance and by other regional growth considerations, such as the value of terrestrial ecosystems, the economic development potential as determined by proximity to roads and rail lines, and the disposition of landowners in the area toward land preservation and development.
3. Adopt policies that maintain impervious surfaces in undeveloped watersheds at less than ten percent. These can include private conservation easements, purchase of development rights, infrastructure planning, urban service boundaries, rural zoning (20-200 acres per unit, depending on the area), and urban growth boundaries.
4. Ensure that local governments develop land use plans to provide adequate land for future development within developed or developing watersheds.

Neighborhood Scale (Implemented by Town and County Governments)

1. Allow residential densities that support transit, reduce vehicle trips per household and minimize land consumption. The minimum density for new development should be seven to ten net units per acre.
2. Require block densities that support walking and reduce the length of vehicle trips. Cities that support walking and transit often have more than 100 blocks per square mile.
3. Connect the street network by requiring subdivision road systems to link to adjacent subdivisions.
4. Integrate houses with stores, civic buildings, neighborhood recreational facilities, and other daily or weekly destinations.
5. Incorporate pedestrian and bike facilities (greenways) into new development and ensure these systems provide for inter-neighborhood travel.
6. Encourage and require other design features and public facilities that accommodate and support walking by creating neighborhoods with a pleasing scale and appearance. (e.g., short front-yard setbacks, neighborhood parks, alleys, and architectural and material quality)

Site Scale (Implemented by Individual Property Owners, Developers, and Town and County Governments)

1. Require application of the most effective structural stormwater practices, especially focusing on hot spots such as high-volume streets, gas stations, and parking lots.
2. Establish buffers and setbacks that are appropriate for the area to be developed – more extensive in undeveloped watersheds than in developed watersheds. In developed watersheds, buffers and setbacks should be reconciled to other urban design needs such as density and a connected street network.



A Waterbody Buffer Zone will be required on Horton Branch and its tributaries required by the county Zoning Ordinance and permit CESAW-CO88-N-013-0061 issued under Section 404 of the U. S. Clean Water Act (33 U.S.C. 1413) by the US Army Corps of Engineers. The developer should check with Cabarrus County Commerce Department—Planning & Zoning.

Future development will require prior authorization from appropriate federal and state authorities to impact jurisdictional waters or wetlands, or the proposed project will be in violation federal and/or state law. Permits for disturbance of streams and other wetlands must be requested from N. C. Division of Water Quality and U. S. Army Corps of Engineers prior to any impacts. Please submit documentation to county planners and Cabarrus Soil and Water Conservation District.

Development of site will remove existing forestland from production, result in loss of environmental services from forest land cover, and accelerate the rate of loss of green infrastructure in the county.

Cities of Concord and Kannapolis have received an interbasin transfer of water certificate from the NC Div. of Water Resources. As a condition of this permit, other jurisdictions receiving water from these municipalities are bound by the conditions of IBT certificate. Under this certificate, streams will be classified by a qualified professional to ensure proper application of stream buffer rules.

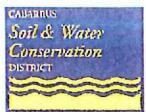
Cumulative and secondary impacts associated with future development are not known and should be assessed prior to final plan approval.

Badin, Chewacla, Enon, and Kirksey are rated as “very limited” for one or more of the following uses: buildings with or without basements, local roads and streets, and septic systems. The soil types commonly found along streams flowing within these soil complexes are Chewacla sandy loam and Kirksey silt loam. Hydric inclusions or wet spots are also associated with the following soil types on both lowland and upland locations: Chewacla sandy loam. This soil tends to be very limited for most types of development as well. Wetlands associated with these soils are often regulated by state and federal laws that mandate permits prior to any soil disturbances. These and other soils often are rated “very limited” for buildings, roads, and septic systems due to flooding, depth to the saturated zone and related problems.

Depth to soft or hard rock also presents limitations for foundations, roads, and septic on Badin and Kirksey soils. Expansive clay soils with high shrink-swell potential include Badin, Cullen, Enon, Mecklenburg and Tarrus. Foundations, sidewalks, and driveways usually require extra reinforcement on expansive clay soils to compensate for this characteristic and to prevent cracks developing in concrete, asphalt, bricks, blocks, etc. Erosion is a hazard on many of the soils in the Midland Area Plan focal area. Sediment and related turbidity, the leading form of water pollution in North Carolina waterways, has been identified as problem in stream within this planning area. Conservation and or restoration of vegetative land cover is the most cost effective means of reducing this form of non-point source pollution from surface runoff.

Large-scale planning for appropriate commercial and residential development on these soils, like site-specific planning, must incorporate other landscape considerations, including topography, vegetation, and water features. Special attention needs to be given to open space protection. Agrarian residents of Cabarrus County, in the majority until the 20th century, largely avoided clearing and/or building on the problematical soils within the Midland Area Plan.

Conversely, farmers have for the most part reserved their best, most productive soils for food and tree crops. Soils best suited to producing food, feed, forage, fiber and oilseed crops are important to food security and are therefore designated as “prime farmland soils” by the U. S. Department of Agriculture.



The following prime farmland soils will be removed from production: Chewacla clay loam (ChA), Cullen clay loam (CuB2), Enon sandy loam (EnB), Kirksey silt loam (KkB), Mecklenburg loam (MeB) and Tarrus silt loam (TaB). Farmland Conversion Impact Rating form (AD-1006) must be filed if federal funds are involved. Design of any future development plans to provide for more open space protection of these soils is encouraged.

The following soils are classified as important state farmland soils and will be removed from production: Badin channery silt loam (BaB), Enon sandy loam (EnD) and Mecklenburg loam (MeD).

The many of the above considerations are best addressed by area-wide planning and zoning processes. Cabarrus SWCD staff do not support the proposed rezoning until these considerations are adequately addressed.

Zoning Districts

Countryside Residential

Intent: 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 district range from 1 unit per 2 acres if the Conventional Subdivision option is used to 1 unit per acre if the Open Space design option is used. The minimum lot size is one acre. The minimum lot size for minor subdivisions is one acre. Public water and sewer are not permitted in this zoning district.

Rationale: This is a land use district created as a direct result of the County's systematic area planning process. As a reaction to the growth of the past decade (as much as 80% in some townships) many residents are anxious to see their areas retain the appeal that inspired the resident to make his/her original investment. This district helps implement a growth management philosophy before the fact rather than after. Even when the area has access to public utilities, the overall density will remain relatively low. In summary, the principle purpose of this district is to provide some land area in the County for a permanent country/rural residential life style.

Permitted

Uses: Agriculture excluding livestock
Agriculture including livestock
Dairy processing
Family care home
Group care facility
Livestock sales
Nursery/greenhouse
Single family detached residential

Permitted

based on

Standards:

- Accessory apartment
- Auction house
- Bed & breakfast
- Cemetery
- Civic organization facility
- Convenience store with petroleum sales
- Convenience store without petroleum sales
- Ethanol Fuel Production (Residential, Private Use Only)
- Gas station
- Home occupation
- Home occupation, rural
- Kennel, private
- Landfill, demolition (one acre or less)
- Mobile home class I
- Mobile office, temporary
- Nursery/daycare
- Public cultural facility
- Religious institution (total seating capacity 350 or less)
- Rest/convalescent home with 10 or fewer beds
- Restaurant excluding drive-thru
- Sawmill
- Stables, commercial

Conditional

Uses:

- Colleges & universities
- Communications tower
- Elementary & secondary schools
- Multimedia distribution & production complex
- Public service facility
- Public use facility
- Reception Facilities
- Recreational facility, outdoor
- Recreational Therapy Facility (Rural Setting)
- Religious institution (total seating capacity 351 or more)
- Religious institution with school
- Rest/convalescent home with more than 10 beds
- Slaughter house/meat packing
- Veterinarian/animal hospital/commercial kennel

Zoning Districts

Office/Limited commercial

Intent: This district is intended to accommodate relatively small scale commercial and office development at intensity complementary to residential land use

Rationale:

This district is used to provide both convenience oriented goods and services and for the permanent protection of adjacent or intermixed residential areas by permitting only a limited range of commercial activities. The district should be located near municipal boundary lines or areas of commercial growth and may border general commercial zones, light industrial, or high density residential mixed use zones. When bordering residential zones, care should be taken to assure natural or manmade buffering so that the nonresidential activities are not a nuisance to residential use.

Permitted

Uses:

- Automobile supplies
- Bank/financial institution/ATM
- Barber & beauty shops
- Car wash
- Civic organization facility
- Colleges & universities
- Convenience store with petroleum sales
- Convenience store without petroleum sales
- Drug store
- Dry cleaning/pick up station
- Family care home
- Funeral home
- Group care facility
- Hospitals/medical facilities
- Hotels, motels, inns
- Laundromat
- Locksmith/gunsmith
- Mobile home retail sales
- Movie Theater
- Nursery/Greenhouse
- Office, professional
- Parking lot, commercial or private
- Pet shop/grooming (enclosed)
- Photographic studio
- Public cultural facility
- Public use facility

Religious institution (with a total seating capacity of 350 or less)
Religious institution (with a total seating capacity of 351 or more)
Restaurant, excluding drive-thru

Retail sales - shopping centers 10,000 - 50,000 square feet

Retail sales - shopping centers 10,000 square feet and less
Single family residential detached
Tattoo Studio
Taxi stand

Permitted

based on

Standards: Accessory apartment
Automobile rental
Automobile sales/new, used
Bed & breakfast
Catering service
Contractor and trade shops
Home occupation
Landfill, demolition (one acre or less)
Mobile office, temporary
Multifamily residential
Nursery/daycare center
Printing & reprographic facility
Recreational facility, indoor
Recyclable materials drop-off
Repair garage, auto
Repair shop, small engine
Restaurant with drive-thru facility
Self-service storage facilities
Townhouses

Conditional

Uses: Public service facility
Recreational facility, outdoor
Trade & vocational schools
Veterinarian/animal hospital/commercial kennel

Zoning Districts

High density residential/Mixed use

Intent:

This district is intended to allow for a wide range of residential uses and will be the primary location for multifamily development. This district allows open space and amenity subdivisions. Both water and sewer are available and transportation networks are capable of supporting high density development. The district is also designed to accommodate office and commercial uses that are compatible with a high density setting. High density residential/mixed use zones will develop typically near municipal boundary lines but should always be located near major thoroughfare level roads. Densities permitted in the HDR district range from 4.5 units per acre using the Open Space option to 6 units per acre if the Amenity Subdivision design option is used. Minimum lot size for minor subdivisions is one acre. Public water and sewer are required for the HDR Open Space and Amenity option subdivisions.

Rationale:

This district is designed to provide permanent protection to those who want to live in a more densely settled residential setting with conveniently sited low intensity nonresidential uses.

Permitted

Uses:

- Agriculture, excluding livestock
- Bank/financial institution/ATM
- Beauty & barber shops
- Drug store
- Family care home
- Group care facility
- Laundromat
- Mobile home park
- Movie theater
- Pet shop/grooming (enclosed)
- Retail sales - shopping centers 10,000 square feet and less
- Semi-attached house
- Single family detached residential

Permitted based on

Standards:

- Accessory apartment
- Bank/financial institution/ATM
- Bed & breakfast

Convenience store without petroleum sales
Home occupation
Landfill, demolition (one acre or less)
Mobile home class I
Mobile home class II
Mobile office, temporary
Multifamily residential
Nursery/Daycare
Public cultural facility
Recreational facility, indoor

Religious institution (with a total seating capacity of 350 or less)
Rest/convalescent home with 10 beds or less
Restaurant, excluding drive-thru
Self-service storage facilities
Townhouses

Conditional

Uses: Colleges & universities
Elementary & secondary schools
Public service facility
Public use facility
Recreational facility, outdoor

Religious institution (with a total seating capacity of 351 or more)
Religious institution including school
Rest/convalescent home with more than 10 beds
Restaurant with drive-thru facility

OWNER	MAILADDR1	MAILADDR2	CITY	STATE	ZIPCODE
ABERNATHY MARY LEE C		125 HWY 24-27 EAST	MIDLAND	NC	281070000
BETHEL MILLING CO INC		1801 HWY 27	MIDLAND	NC	281070000
BRUBAKER DEBORAH & SONIA MATHERNE	COWPERTHWAITE RAYMOND	1755 ASTOR FARMS PLACE	SANFORD	FL	327710000
CARTER MICHAEL F & WIFE	SYLVIA B	710 HONEYSUCKLE LANE	MIDLAND	NC	281070000
CLAY MARVIN S FAMILY FARM LLC		910 HONEYSUCKLE LANE	MIDLAND	NC	281070000
CORZINE LILLIAN A		11500 SAM BLACK ROAD	MIDLAND	NC	281070000
DORTON ROBERT L & WIFE SADIE L		568 HIGHWAY 24-27 EAST	MIDLAND	NC	281070000
HIGGINS WILLIAM KENNETH	HIGGINS YVONNE PHILLIPS/WIFE	730 HONEYSUCKLE LANE	MIDLAND	NC	281070000
JONES HOWARD LEE	JONES MILDRED MARIE /WIFE	318 HWY 24/27 EAST	MIDLAND	NC	281070000
KIKER TAMARA J		824 HONEYSUCKLE LANE	MIDLAND	NC	281070000
LYONS KEVIN F & WIFE	SHARON D LYON	812 HONEYSUCKLE LN	MIDLAND	NC	281070000
MIDLAND VOLUNTR FIRE & RESCUE INC	INC	PO BOX 226	MIDLAND	NC	281070000
MISENHEIMER DONALD E		20283 RIDGECREST ROAD	OAKBORO	NC	281290000
MULLIS JAMES BRYON	MULLIS DEBORAH ELAINE/WIFE	11850 PRESLAR LANE	MIDLAND	NC	281070000
N C DEPT OF TRANSPORTATION		206 CHARTER STREET	ALBEMARLE	NC	280010000
PARKER JAMES M	PARKER BETTY M/WIFE	818 HONEYSUCKLE LANE	MIDLAND	NC	281070000
PRESLAR DONALD R		12075 PRESLAR LANE	MIDLAND	NC	281070000
PRESLAR W R		901 HWY 27	MIDLAND	NC	281070000
REID ROBERT	ELLIOTT GLORIA/WIFE	800 HONEYSUCKLE LANE	MIDLAND	NC	281070000
RITCHIE CALVIN R & WIFE MARY F	12201 RITCHIE ROAD		MIDLAND	NC	281076405
STIKELEATHER ANGELINA R	11830 PRESLAR LANE	PO BOX 11	MIDLAND	NC	281070000
SZPARA MICHAEL WAYNE	SZPARA MARY C/WIFE	714 HONEYSUCKLE LANE	MIDLAND	NC	281070000
T & A INVESTMENTS PROP. LLC		3505 KEITHCASTLE COURT	CHARLOTTE	NC	282100000
TITCOMB GORDON N	KOVEL KEVIN P	C/O 14260 CABARRUS STATION RD	MIDLAND	NC	281070000
UNITED LOVE BAPTIST CHURCH		11487 FLOWES STORE ROAD	MIDLAND	NC	281070000
VICKERS WILLIAM T JR & LISA C		11520 SAM BLACK ROAD	MIDLAND	NC	281070000



Cabarrus County Government

June 17, 2011

Mr. Michael Burger, Attorney
Hartsell & Williams, P.A.
PO Box 368
Concord NC 28026

RE: Zoning Application for PIN 5535-31-6128

Dear Mr. Burgner:

The purpose of this letter is to inform you that the application for rezoning for PIN 5535-31-6128 from LC/CR to LC/HDR has been received. The application materials, however, do not include the Intent to Serve Letter for utilities.

Pursuant to your request, the application, as submitted and in its current form, is being processed for the July 12, 2011 Planning and Zoning Commission meeting. The meeting is at 7:00 PM in the Board of Commissioners meeting room.

Sincerely,

A handwritten signature in black ink that reads "Susie Morris".

Susie Morris, AICP, CZO
Planning and Zoning Manager

Cc: File
Mr. Rich Koch, County Attorney