



GUILFORD COUNTY
PLANNING AND DEVELOPMENT
PLANNING BOARD

Regular Meeting Agenda

NC Cooperative Extension – Agricultural Center
3309 Burlington Road, Greensboro NC 27405

March 13, 2024

6:00 PM

A. Roll Call

B. Agenda Amendments

C. Approval of Minutes: January 10, 2024

D. Rules and Procedures

E. Continuance Requests

F. Old Business

None

G. New Business

Non-Legislative Hearing Item(s)

None

Legislative Hearing Item(s)

**REZONING CASE #24-01-PLBD-00072: AG, AGRICULTURAL TO RS-40, RESIDENTIAL:
7603 ROYSTER ROAD**

Located at 7603 Royster Road (Guilford County Tax Parcel #138436 in Center Grove Township) approximately 2,208 feet southeast of NC Highway 150 W and comprises approximately 14.26 acres.

This is a request to rezone the property from AG, Agricultural to RS-40, Residential.

The proposed rezoning is consistent with the Northern Lakes Area Plan recommendation of AG, Rural Residential; therefore, if the request is approved, no plan amendment will be required.

Information for **REZONING CASE #24-01-PLBD-00072** can be viewed by scrolling to the March 13, 2024 Agenda Packet at <https://www.guilfordcountync.gov/our-county/planning-development/boards-commissions/planning-board>.

Evidentiary Hearing Item(s)

None

H. Other Business

School of Government Reference Information for Legislative Development Decisions

Comprehensive Plan Update

Consider the following as part of the 2040 Comprehensive Plan Process:

- May 1st or 2nd – 1pm or 3pm: Joint Steering Committee – Planning Board?
- May 15th: Special Planning Board meeting?
 - Planning Board regularly meets second Wednesday each month.
 - Inquiring about a potential work session meeting for Planning Board

I. Adjourn

Information may be obtained for any of the aforementioned cases by contacting the Guilford County Planning and Development Department at 336.641.3334 or visiting the Guilford County Planning and Development Department at 400 West Market Street, Greensboro, NC 27402.

(Insert Color Paper)

**GUILFORD COUNTY PLANNING AND DEVELOPMENT
PLANNING BOARD MEETING MINUTES
NC Cooperative Extension – Agricultural Center
3309 Burlington Road, Greensboro NC 27405**

January 10, 2024, 6:00 PM

Call to Order

Chair Donnelly called the meeting to order at 6:00 p.m.

A. Roll Call

The following members were in attendance in person for this meeting:

James Donnelly, Chair; Guy Gullick, Vice-Chair; Ryan Alston; Sam Stalder; Dr. Nho Bui; David Craft; Cara Buchanan; Rev. Gregory Drumwright; and Jason Little

The following Guilford County staff members were in attendance in-person for this meeting:

J. Leslie Bell, Planning and Development Director; Oliver Bass, Senior Planner; Brianna Christian, Planning Technician; Robert Carmon, Fire Inspections Chief; Andrea Leslie-Fite, Guilford County Attorney; and Matthew Mason, Chief Deputy County Attorney

B. Agenda Amendments

Leslie Bell stated that there were no amendments to the Agenda.

C. Approval of Minutes: December 13, 2023

There was discussion among the Board members concerning some portions of a discussion that were not included in the minutes. Rev. Drumwright pointed out that Mr. Alston had made some statements that he felt were pertinent to the discussion and asked that this be addressed.

Chair Donnelly noted that there were a few updates to the minutes that are shaded on the members' copies to indicate the changes that were made by staff. There were some more substantial additions to the minutes to make sure that they reflected the conversations during the last meeting.

Rev. Drumwright stated that on page 12, where Mr. Donnelly's input has been updated, he asked that the comments made by Mr. Alston also be expanded upon.

At this time, Mr. Alston stated the comments he made, saying that they [applicant] may have double-backed and wanted to get the plan approved first without mentioning what they were going to do in the future with the plans for the gas station. Basically, it seems as though they left the future plans out of the full agenda which would have

been within the zoned area. So, they had the shopping center zoned and approved on Spencer-Dixon Road and then later on decided to come in with the gas station idea, which he felt if they had come in with both plans at the same time, it would have gotten even more push-back than they received. Mr. Gullick added that he thought that was a really good point.

Chair Donnelly re-stated Mr. Alston's concern in that the gas station was not included in the original proposal, and had it been known then, then the original proposal would have gotten more push-back. Mr. Alston agreed with that statement.

Chair Donnelly stated that these comments would be added to the minutes. This case is going to be appealed to the County Commissioners, and as they review this, this is the record of that conversation, and it is really important that the essence of their conversation is captured to help them be prepared.

Rev. Drumwright stated that he just remembered how much Mr. Alston's comments added to the conversation. He asked how the minutes are produced. Mr. Bell responded that there is a contract with Triad Reporting and those are her recorders sitting at each member's seat. She produces the minutes and then it is sent to staff for review before they are sent out to the members for their review. Ms. Judi Decker, Court Reporter, stated that the minutes are not a verbatim transcript, it is only a summary. She does not feel comfortable making a final decision on some of the conversation, so she leaves it up to staff to make those decisions. In response to a question from Rev. Drumwright, Ms. Decker responded that the recordings are in archives for at least five (5) years and can be obtained at any time in the future. Each recorder sitting in front of the members is downloaded to her computer, in separate files, with the names of the speaker listed on the file name for each Board member. Mr. Bell stated that staff also gets a copy of the audio recordings for their records. The audio files are not available online, but if someone wanted an audio copy, they can contact staff.

Mr. Craft stated that he thought that the December case was not an unreasonable request for the area, given that it was on a busy corner and the only other gas station in the immediate area, was grandfathered in the watershed critical area; therefore, if something happened to that gas station, this could be the only gas station for about five (5) miles going in either direction. He would like the minutes to reflect his reasoning that this was not an unreasonable request.

Mr. Gullick stated that the minutes via email came late, and that was probably because of the holidays, but if any of the members have concerns about the minutes, if those concerns could be sent in to staff before the meeting, then it keeps them from getting to this point where it is being dragged out. He thinks that would be really helpful to do that.

Counsel Mason stated that he feels they can proceed as suggested by Chair Donnelly, and it will require a motion and a second to adopt the minutes with the additions that have been discussed here this evening.

Leslie Bell responded that he will be speaking to the reporter to make sure future minutes are more complete.

Chair Donnelly stated that he appreciates the Board members' comments and feels that the minutes will be more complete in the future. He asked for a motion to approve the December minutes, as verbally amended by Mr. Craft and Mr. Alston.

Mr. Craft moved to approve the minutes as amended, seconded by Mr. Alston. The Board voted unanimously, 9-0, in favor of the motion by roll call vote. (Ayes: Donnelly, Chair; Alston; Gullick; Stalder; Bui; Craft; Buchanan; Drumwright; and Little. Nays: None.)

Mr. Little asked when the County Commissioners see the minutes. Mr. Bell responded that they are not automatically sent to the Commissioners, but they are available if they want to see them, unless there is an appeal or a reason why they would see a certain case. In this instance, because the case was denied and it was appealed, staff always includes those minutes as part of the record.

Rev. Drumwright stated that he agrees with Mr. Gullick that the Board members should take advantage of reviewing the minutes beforehand in case there are questions before they get to the meeting.

Mr. Craft asked Mr. Bell when he was advised that the Spencer Dixon conditional zoning case was to be appealed. Mr. Craft stated that his point is that if something gets appealed, maybe it is a good thing to notify the Board members so they might be a little more careful about reviewing the minutes, knowing that the minutes become part of the next case. Mr. Bell stated that he tries to let everyone know at the next available meeting, but if the members would like to know before then, he would be glad to send out an e-mail to that effect. Tentatively, the case will be heard at the February 15, 2024, Commissioner's meeting, but he would have to hear from the Clerk to the Board for confirmation. Right now, it is proposed for February 15, but he will know following the pre-agenda meeting.

D. Rules and Procedures

Chair Donnelly provided information to everyone present regarding the Rules and Procedures followed by the Guilford County Planning Board.

E. Continuance Requests

Leslie Bell stated that there was no continuance request for tonight's meeting.

F. Old Business

None

G. New BusinessNon-Legislative Hearing Item(s)

None

Legislative Hearing Item(s)**REZONING CASE #23-12-PLBD-00070: AG, AGRICULTURAL to RS-40, RESIDENTIAL: 8311 & 8315 FAIRGROVE CHURCH ROAD (APPROVED)**

The subject property is located at 8311 & 8315 Fairgrove Church Road (Guilford County Tax Parcels #128636 and #128639 in Monroe Township) approximately 4,014 feet Northeast of NC Hwy 150 and comprises approximately 17.08 acres. This is a request to rezone the property from AG, Agricultural to RS-40, Residential. Mr. Bass stated that because this is a conventional zoning, any use listed under the RS-40 district could be permitted.

The AG, Agriculture district is intended to provide locations for agricultural operations, farm residences, and farm tenant housing on large tracts of land. This district is further intended to reduce conflicts between residential and agricultural uses and preserve the viability of agricultural operations. Commercial agricultural product sales - "agritourism" - may be permitted. The minimum lot size of this district is 40,000 square feet. The RS-40 district is primarily intended to accommodate single-family residential detached dwellings on lots in areas without access to public water and sewer services. The minimum lot size of this district is 40,000 square feet. Conservation subdivisions may be developed in this district.

While the subject parcels and most of the adjacent parcels are agricultural or rural residential lots, the area is comprised primarily of single-family major subdivisions at a density of less than two (2) dwelling units per acre.

Existing Land Use(s) on the Property: Single-family dwelling and agricultural.

Surrounding Uses: North: RS-30 single-family major subdivision and Agricultural and rural residential; South: Undeveloped, single-family dwelling, RS-40 single-family major subdivision; East: Low-density residential; West: RS-30 single-family major subdivision, single-family dwelling.

Historic Properties: There are no inventoried Historic Properties located on or adjacent to the subject properties.

Cemeteries: No cemeteries are shown to be located on these properties, but efforts should be made to rule out potential grave sites.

Fire Protection District: Northeast FPSD, Miles from Fire Station: Approximately 1.8 miles;

Water and Sewer Services: Private Septic Systems and Wells

Existing Conditions: Fairgrove Church Road is classified as a Collector Street with an Average Annual Daily Traffic (AADT) of 2,600 vehicles per the 2019 NCDOT traffic count.

Proposed Improvements: Major subdivisions are subject to NCDOT driveway permit approval.

Proposed Traffic Generation: Not available

Topography: Gently sloping and moderately sloping.

Regulated Floodplain/Wetlands: Wetlands exist on site per NWI. No regulated floodplain exists on the subject parcels per the effective FIRM. Mapped streams are on site per USGS and/or Soil Survey Map of Guilford County. The properties are not within a classified Water Supply Watershed.

Land Use Plan: Northern Lakes Area Plan (Updated in 2016)

Plan Recommendation: AG, Rural Residential

Consistency: The proposed zoning is consistent with the AG, Rural Residential, land use designation. This designation is intended to accommodate agricultural (AG) uses, large-lot residential development, and low-density residential subdivisions not connected to public water and sewer with densities not to exceed two (2) units per acre. Anticipated land uses include those permitted in the Agricultural (AG), RS-40 Residential Single-Family, and RS-30 Residential Single-Family districts.

Staff Recommendation: Staff recommends approval. This request is reasonable and in the public interest because it is consistent with the Northern Lakes Area Plan recommendation of AG, Rural Residential. The permitted uses and density in the RS-40 zoning district are comparable to existing development in the area. It will expand housing opportunities for future residents of Guilford County. Furthermore, the proposed rezoning is supported by the Guilford County Comprehensive Plan as follows:

1. Goal #1 of the Housing Element states: "Provide current and future residents of Guilford County with a variety of housing options and opportunities".

2. Goal #1, Objective 1.1 of the Future Land Use Element states: "Continue to use community-based area plans as the cornerstone for future land use and policy decisions".

Area Plan Amendment Recommendation: The proposed rezoning is consistent with the Northern Lakes Area Plan recommendation of AG, Rural Residential; therefore, if the request is approved, no plan amendment will be required.

Chair Donnelly opened the Public Hearing and asked the applicant and those in favor of the request to come to the speaker's table, sign in, and state their names and addresses for the record.

Tony Johnson, 3714 Alliance Drive, Suite #300, Greensboro, NC, stated that he is a general partner in TJP and a general contractor and has been doing business for about 40 years in Guilford County. They are planning to build single-family homes, and they are limited on what they can do due to the shape of the property, and there is also a petroleum gas line that is not shown on the map, but it runs through the property. No roads or anything else can cross those gas lines. The houses will be priced at about one-half million dollars but they are trying to make them as affordable as possible. This property would be in the Northern School District. They are asking for approval so that they can develop the property into lots sized between an acre and three acres. The section in the back, is very limited, so that will be an estate lot. The buyer would have a little more land back there.

Mr. Bell pointed out that because this is a conventional rezoning request, the Board should consider all of the uses in the RS-40 district.

Chair Donnelly asked if it is relevant to the conversation to point out where that petroleum line is located? Mr. Johnson responded that it basically runs right through the middle and to the north is Wellington Subdivision, which has smaller lots, and it then crosses through into Summit Lakes and possibly Pearson Farms, and they are also RS-40. So, these lots will be bigger than all the adjoining development lots. Mr. Craft asked how many houses are proposed to be built on the property. Mr. Johnson stated that they are planning on eleven (11). There was one that was built in the late 1950s or early 1960s, and they have cleaned it up and updated the electrical services, and they are currently renting it. Then there would be ten (10) additional lots that they would like to develop on the property. Rev. Drumwright asked what would be the average size of the lots? Mr. Johnson stated that the lot would have to be at least RS-40, so basically, an acre to three (3) acres.

Joseph Stutts, Stutts Surveyors, 303 E. Bessemer Avenue, Greensboro stated that they have submitted a sketch plan to the County. There are eleven (11) lots, and they have gotten comments back from staff, and there are no major concerns, and they may require NCDOT permits for the driveways. The wetlands on the property are in the extreme north corner, which is not going to affect anything as far as housing. There is also a stream buffer that attaches to it, which will be away from any house sites. He agrees with staff, and he would recommend approval of the request.

Mr. Bass wished to clarify that staff did receive a sketch plan, but that was not considered in this presentation because it is a conventional zoning rather than a conditional zoning.

Chair Donnelly asked for those who wished to speak in opposition to the request to come forward, sign in, and state their name and address.

Chad Muhlestein, 3402 Garrick Trace, stated that the road he lives on is shown on the map presented. He is not so much in opposition, but he has a general safety concern about this area. As the area continues to develop and grow, the number of cars on Fairgrove Church Road increases, and where it joins up with Highway 150 is on a curve, and it is already difficult and dangerous to go from Fairgrove Church Road onto Highway 150. As the developments continue to come into the area, there is more and more traffic. This road also serves as a feeder from Rockingham County and is a long straight shot that will allow excessive speed. He is encouraged to hear that these are going to be larger lots, but he wanted to voice his concern about the safety issues, so that as development moves forward, the Board will continue to hear from him about these safety concerns, and he wondered how it would be addressed.

Chair Donnelly asked Mr. Muhlestein if he has had any conversations with NCDOT, because the road system is in their purview. Mr. Muhlestein responded that he has, and he has gotten them to do some repairs and widen the road. These roads were not originally designed for this kind of traffic. He thinks it is important for the Board to hear these concerns as representatives of the citizens.

Rev. Drumwright asked Mr. Muhlestein what other ideas he would bring to the Planning Department? Mr. Muhlestein stated some of the conversations that he has had included if a traffic light may be appropriate there. He clarified that the S-curve in the road he is talking about is on Highway 150, and people cannot see well because of the trees. It is now getting dangerous. Mr. Muhlestein stated that he would like to see a stop light at Fairgrove Church Road and Hwy 150.

In response to a question from the Chair, Oliver Bass stated that based on his experience and discussions with NCDOT, the applicant will submit a plan to NCDOT for driveway permits, and NCDOT will study the plan and make recommendations, considering traffic safety, turn lanes, and that would require widening of the road, depending on the results of the Traffic Engineering Study.

Rev. Drumwright asked where Mr. Muhlestein should go to for an appeal for a traffic light or other solutions to the safety issues he is concerned about? Oliver Bass responded that NCDOT has a Division 7 Office on Yanceyville Road, so Mr. Muhlestein could request the traffic study to see if a traffic light is warranted in the area, and they would make a decision.

There being no other speakers, Chair Donnelly closed the Public Hearing by unanimous consent.

Board Discussion

Mr. Alston stated that he heard that in the traffic study that came in previously in 2019, there were 2,100 – 2,300 people that travel that road. He asked if there was some type of regulation or process when there is a new development such as this request requiring them to do another traffic study automatically, or is it just done by request? Oliver Bass stated that depending on the size of the project, and these are usually

large-scale projects, they would require a Traffic Impact Analysis. As of right now they will use that information from 2019 and keep the same information and just allow it to go through with this project. The 2019 study was a real-time traffic count study over a select period of time in 2019. They periodically conduct traffic counts, maybe once every few years, and that is normal for that section of roadway.

Chair Donnelly added that in his conversations with the District Engineer, the likelihood of a new traffic study for ten (10) or eleven (11) homes is not very likely. They will look at what needs to be done to provide access to Fairgrove Church Road, but he would be shocked if there would be a study for a development of this size.

Ms. Buchanan stated that it is more likely to be a traffic study as a result of the new phases in other neighborhoods than to have these ten (10) or eleven (11) houses affect anything on Fairgrove Church Road.

Chair Donnelly stated that he would entertain a motion.

Ms. Buchanan moved to approve the rezoning Case #23-12-PLBD-00070 and approve the zoning map amendment located on the Guilford County Tax Parcels #128636 and #128639 from AG to RS-40. The amendment is consistent with applicable plans because properties are surrounded by other properties with a similar nature, and it is already a residential area. The amendment is reasonable and in the public interest because it will extend housing opportunities for future residents of the County and supports the Guilford County Comprehensive Plan, seconded by Mr. Craft. The Board voted unanimously, 9-0, in favor of the motion by roll call vote. (Ayes: Donnelly, Chair; Alston; Gullick; Stalder; Bui; Craft; Buchanan; Drumwright; and Little. Nays: None.)

Evidentiary Hearing Item(s)

None

H. Election of Chair and Vice Chair

Mr. Craft nominated Mr. Donnelly to serve as Chair and Mr. Gullick to serve as Vice Chair for a one-year term, seconded by Ms. Buchanan. There being no other nominations, the Board voted unanimously, 9-0, in favor of the motion by roll call vote. (Ayes: Donnelly, Chair; Alston; Gullick; Stalder; Bui; Craft; Buchanan; Drumwright; and Little. Nays: None.)

I. Other Business

Comprehensive Plan Update

Leslie Bell stated that there was a presentation by Design Workshop and staff to the Board of County Commissioners at its December 21 Work Session. Staff received some very good comments and feedback from that, and Design Workshop will be moving forward in terms of preparation of the next presentation. There is a meeting scheduled with the City of High Point, which is concurrently doing its Comprehensive

Plan primarily applicable to the city limits for the City of High Point. Staff will be meeting with them in February. In addition to that, staff will start reviewing drafts of the Guilford County Comprehensive Plan, and staff is interested in seeing what the public input is from the City of High Point and that portion of the County. Then staff will continue to work with the Steering Committee and make those portions of the document available to the Planning Board as well for any input the members may have.

Mr. Craft stated that he thinks it is important for the members to remember that they are appointed by Commissioners, and it is good to communicate with their Commissioner periodically. Part of the reason they exist is to take part of the load off the Commissioners so they can deal with the larger issues of the County government. If things get appealed, it is good to communicate with your Commissioner your feelings about the particular project, and if it gets appealed and overturned, it is also good to communicate with the Commissioner and get feedback from them on, maybe, why they overturned it.

Chair Donnelly responded that there have certainly been cases that have both been upheld and overturned by the Commissioners. He thanked Mr. Craft for his comments.

J. Adjourn

There being no further business before the Board, the meeting adjourned at 6:57 p.m.

The next scheduled meeting is March 13, 2024.

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(Insert Color Paper)

03-1/16/24



GUILFORD COUNTY PLANNING AND DEVELOPMENT

Planning Board Rezoning Application

Date Submitted: 1/16/24Fee \$500.00 Receipt # REC-013624-2024 Case Number 24-01-PLBD-00072

Provide the required information as indicated below. Pursuant to the Unified Development Ordinance (UDO), this application will not be processed until application fees are paid; the form below is completed and signed; and all required maps, plans and documents have been submitted to the satisfaction of the Enforcement Officer. Additional sheets for tax references and signature blocks are available upon request.

Pursuant to Section 3.5.M of the Unified Development Ordinance (UDO), the undersigned hereby requests Guilford County to rezone the property described below from the AG zoning district to the RS-40 zoning district.

Said property is located at 7603 ROYSTER ROAD
in CENTER GROVE Township; Being a total of: 14.26 acres.

Further referenced by the Guilford County Tax Department as:

Tax Parcel # 138436

Tax Parcel # _____

Tax Parcel # _____

Tax Parcel # _____

Tax Parcel # _____

Tax Parcel # _____

Check One: (Required)

- ☒ The property requested for rezoning is an entire parcel or parcels as shown on the Guilford County Tax Map.
☐ The property requested for rezoning is a portion of a parcel or parcels as shown on the Guilford County Tax Map; a written legal description of the property and/or a map are attached.

Check One: (Required)

- ☒ Public services (i.e. water and sewer) are not requested or required.
☐ Public services (i.e. water and sewer) are requested or required; the approval letter is attached.

Check One: (Requires)

- ☒ The applicant is the property owner(s)
☐ The applicant is an agent representing the property owner(s); the letter of property owner permission is attached.
☐ The applicant has an option to purchase or lease the property; a copy of the offer to purchase or lease to be submitted if the owner's signature is not provided (financial figures may be deleted).
☐ The applicant has no connection to the property owner and is requesting a third-party rezoning.

I hereby agree to conform to all applicable laws of Guilford County and the State of North Carolina and certify that the information provided is complete and accurate to the best of my knowledge. I acknowledge that by filing this application, representatives from Guilford County Planning and Development may enter the subject property for the purpose of investigation and analysis of this request.

**A NEIGHBORHOOD MEETING IS STRONGLY ENCOURAGED PRIOR TO SUBMITTAL AND
YOU OR SOMEONE REPRESENTING YOU MUST BE PRESENT AT THE PUBLIC HEARING**

Submitted by

Frank C. Knight
Property Owner Signature

FRANK C. KNIGHT
Name

809 N-C HWY 150 W
Mailing Address

GREENSBORO, NC 27455
City, State and Zip Code

336-643-3679
Phone Number

Email Address

Representative/Applicant Signature (if applicable)

Name

Mailing Address

City, State and Zip Code

Phone Number

Email Address

Additional sheets for tax parcels and signatures are available upon request.

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REZONING CASE #24-01-PLBD-00072: AG, AGRICULTURAL TO RS-40, RESIDENTIAL SINGLE-FAMILY: 7603 ROYSTER ROAD

Property Information

Located at 7603 Royster Road (Guilford County Tax Parcel #138436 in Center Grove Township) approximately 2,208 feet southeast of NC Highway 150 W and comprises approximately 14.26 acres.

Zoning History of Denied Cases: There is no history of denied cases.

Nature of the Request

This is a request to rezone the subject property from AG to RS-40. Under a conventional rezoning, the Planning Board must consider all uses permitted in the RS-40 district as listed in Table 4-3-1, Permitted Use Schedule in the Guilford County Unified Development Ordinance. Uses allowed under the proposed zoning include single-family detached dwellings, major residential subdivisions (6 or more lots), and certain recreation, institutional, and utility uses.

District Descriptions

The **AG District** is intended to provide locations for agricultural operations, farm residences, and farm tenant housing on large tracts of land. This district is further intended to reduce conflicts between residential and agricultural uses and preserve the viability of agricultural operations. Commercial agricultural product sales - "agritourism" - may be permitted. The minimum lot size of this district is 40,000 square feet.

The **RS-40 District** is primarily intended to accommodate single-family residential detached dwellings on lots in areas without access to public water and sewer services. The minimum lot size of this district is 40,000 square feet. Conservation subdivisions may be developed in this district.

Character of the Area

This request is in an area of mostly low-density residential parcels and agricultural uses. Several single-family residential subdivisions have developed nearby under the RS-40 zoning standards.

Existing Land Use(s) on the Property: Undeveloped land and agricultural use.

Surrounding Uses:

North: Single-family residential

South: Low-density single-family residential

East: Three undeveloped lots subdivided out of the parent tract of the subject parcel in March of 2022.

West: Single-family residential subdivision (zoned RS-40)

Historic Properties: There are no inventoried historic resources located on or adjacent to the subject property.

Cemeteries: No cemeteries are shown to be located on or adjacent to the subject property, but efforts should be made to rule out potential grave sites.

Infrastructure and Community Facilities

Public School Facilities:

7603 Royster Rd				
Guilford County				
School Boundaries	Built Capacity 2023-24	2023-24 20th Day Enrollment	Mobile Classrooms	Estimated Additional Students
Northern ES	760	629	3	1-3
Northern MS	1152	806	0	1-3
Northern HS	1370	1304	0	1-3
Remarks: Elementary K-3 built capacity assumes maximum reduced class sizes per applicable core academic classroom. Fourth grade, fifth grade, middle and high school built capacity assumes 30 students per core academic classroom.				

Emergency Response:

Fire Protection District: Summerfield FPSD

Miles from Fire Station: Approximately 2.0 miles

Water and Sewer Services:

Provider: Private Septic Systems and Wells

Within Service Area: No

Feasibility Study or Service Commitment: No

Transportation:

Existing Conditions: Royster Road is a Collector Street under the 2005 Greensboro MPO Collector Street Plan. NCDOT Average Annual Daily Traffic Count is not available near the subject parcel.

Proposed Improvements: N/A

Projected Traffic Generation: Not available

Environmental Assessment

Topography: Gently sloping and moderately sloping

Regulated Floodplain/Wetlands: No regulated floodplain exists on the site per the Effective FIRM. No mapped wetlands exist on site per the National Wetlands Inventory.

Streams and Watershed: Mapped streams are on site per USGS and/or Soil Survey Map of Guilford County. The property is in the Greensboro WS-III Watershed.

Land Use Analysis

Land Use Plan: Northern Lakes Area Plan (Updated in 2016)

Plan Recommendation: AG, Rural Residential

Consistency:

The requested zoning is consistent with the recommendation of the Northern Lakes Area Plan. The AG Rural Residential (AGRR) is intended to accommodate agricultural (AG) uses, large-lot residential development, and low-density residential subdivisions not connected to public water and sewer with densities not to exceed two (2) units per acre. Anticipated land uses include those permitted in the RS-40 Residential Single-Family zoning districts including, but not limited to, institutional and recreational uses.

Recommendation

Staff Recommendation: Staff recommends approval.

The requested action is reasonable and in the public interest because it is consistent with the recommendation of the Northern Lakes Area Plan. It would extend housing opportunities to future residents at densities supported under the AG, Rural Residential land use designation. The development patterns in the vicinity are consistent with standards applicable to the RS-40 zoning designation.

The requested action is within the policy framework established in the adopted Comprehensive Plan as follows:

1. Goal #1, Objective 1.1, Policy 1.1.1 of the Future Land Use Element states that "Planning staff will continue to utilize the future land uses depicted on citizen-based Area Plans, in conjunction with the rezoning guidance matrix, as the basis for land use and policy recommendations." The rezoning matrix for the AGRR designation lists RS-40 as a compatible zoning district.
2. Goal #1 of the Housing Element states "Provide current and future residents of Guilford County with a variety of housing options and opportunities." The RS-40 district allows single-family residential development at low densities as supported under the AGRR designation.

Area Plan Amendment Recommendation:

The proposed rezoning is consistent with the Northern Lakes Area Plan recommendation of AG, Rural Residential; therefore, if the request is approved, no plan amendment will be required.

DRAFT

Pick-Up: Joseph G. Stutts, PLLC, 303 E. Bessemer Avenue, Greensboro, N.C. 27401, 273.3930

This plat does not require certificate of approval by the Division of Highways as provided in G. S. 138-102.6, subsection (G).
Signed: *[Signature]* Date: 3/8/22
For: Planning Director

The undersigned hereby acknowledges that the land shown on this plat is within the subdivision-regulation jurisdiction of the Board of Commissioners of Guilford County and this plat and all other documents submitted in connection with this plat are submitted to be used as a free act and deed, and hereby depose and swear that the facts stated herein are true, correct, and never all areas so shown or indicated on this plat.

Signed: *Frank C. Knight*
Signed: *Jackie H. Knight*
Attest: *[Signature]*

Approved by the Planning Department of Guilford County, N.C.:
Signed: *[Signature]* Date: 3/8/22
For: Planning Director

State of North Carolina, County of Guilford
I, *J. L. L. BELL*, Review Officer of Guilford County, certify that the copy of this plat to which this certificate is affixed meets all State requirements for recording.
Recorded: *[Signature]* Date: 3/8/22

SURVEYORS
I, Joseph G. Stutts, certify that this plat was drawn under my supervision and that I am a duly licensed Professional Surveyor (deed description recorded in Book 6609, Page 2334 etc.) (Other: that the error of closure is 1:10,000; that the boundaries not surveyed are shown as broken lines plotted from information furnished by the owner; that the plat was prepared in accordance with G. S. 47-30 as amended; that this plat creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land.) I witness my official signature, registration number and date this 7th day of March, 2022.

[Signature] PLS-3349
Seal of Joseph G. Stutts, PLLC
Seal of Guilford County, N.C.

LEGEND

- EXISTING IRON PIPE
- NEW IRON SET
- EXISTING CONCRETE
- COMPUTED POINT - NOT SET
- C/L CENTERLINE
- R/W RIGHT OF WAY
- CH CHAINED BEARING & DISTANCE
- PSSLA&ME 20 PRIVATE SANITARY SEWER LINE ACCESS & MAINTENANCE EASEMENT
- POWER POLE OR LIGHT POLE
- FIRE HYDRANT

Matthew Hayes Dallas
Deed Book 6609, Page 1013
Lot 4, Plat Book 180, Page 107
Zoning: AG, Ex House



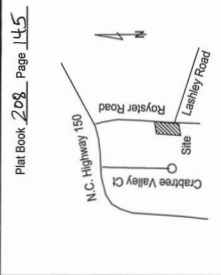
Final Plat For:
Kenneth Alan Lutz
Sherry Roseann Lutz
Deed Book 6609, Page 235
Lot 1, Plat Book 175, Page 101
Zoning: AG, Ex House

BK: P 208
PG: 145-145
NO. 2022030418
02/01/22 PM
JEFF L. TORPSON
DEPUTY CLERK

NC REC 811 80
GUILFORD COUNTY, NC
RECORDED AT 02:01:25 PM
RECORDED AT 02:01:25 PM

Knight Acres

Center Grove Township ~ Guilford County
Greensboro, North Carolina



LOCATION MAP:
SCALE: 1" = 200'

Deed Restriction-Restrictive Covenant:
Development of subject property is required to be in accordance with applicable state and federal regulations for the National Pollutant Discharge Elimination System (NPDES) Phase II permit. The owner shall be responsible for obtaining and maintaining the NPDES permit and shall ensure that future development and/or redevelopment shall maintain the site in a manner consistent with the permit. No development shall be permitted without review and approval by the local governmental office having jurisdiction for wastewater/water management protection.

General Notes

1. Tax Parcel: 0138436
2. Deed Book 6609, Page 2334
3. Total Area: 2.97 acres
4. Total number of lots: 3
5. No easements or rights of way found within 200'
6. Zoning: AG, Vacant
7. Owners: Frank C. & Jackie H. Knight
8. 809-A N.C. Highway 150 West, Greensboro, NC 27403-3579
9. Notice: This property is located within the Water Supply Watershed for Greensboro WS-III, GWA. Development restrictions may apply.

Joseph G. Stutts, PLLC
PROFESSIONAL LAND SURVEYORS
303 East Bessemer Avenue
Greensboro, North Carolina 27401
Phone: (336) 273-3930 Fax: (336) 273-1476
21-10-GCPL-00258

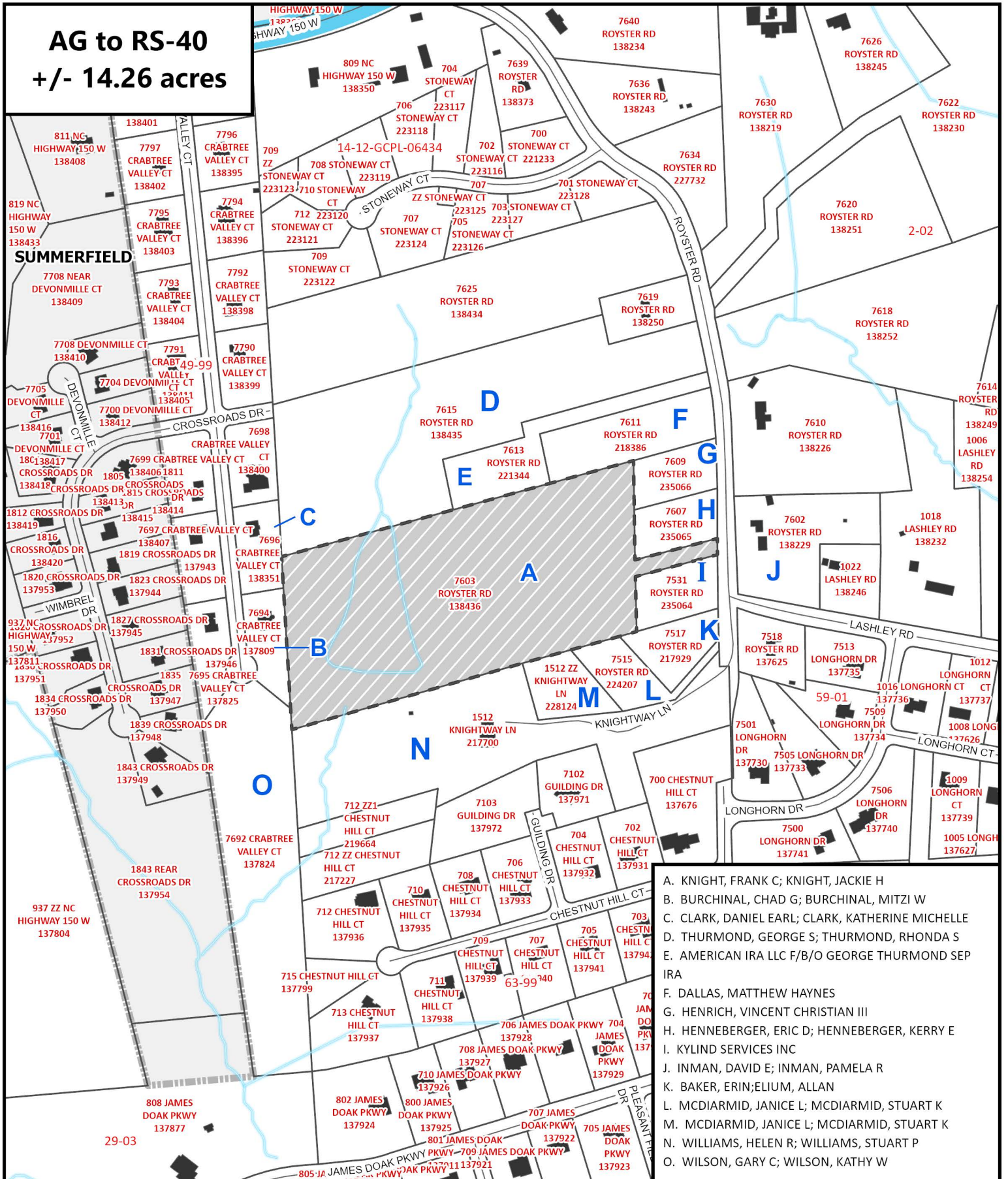
**AG to RS-40
+/- 14.26 acres**

**CASE # 24-01-PLBD-00072
7603 Royster Road
SCALE: 1" = 1,000'**

AG to RS-40
+/- 14.26 acres

CASE # 24-01-PLBD-00072
7603 Royster Road
SCALE: 1" = 1,000'

AG to RS-40 +/- 14.26 acres

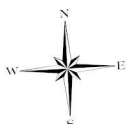


Planning & Development
Department

Jurisdiction:
GUILFORD COUNTY

Case Number:
24-01-PLBD-00072

Case Area:
Parcels - 138436
7603 Royster Rd



Scale: 1" = 400'

**AG to RS-40
+/- 14.26 acres**

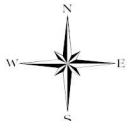


Planning & Development
Department

Jurisdiction:
GUILFORD COUNTY

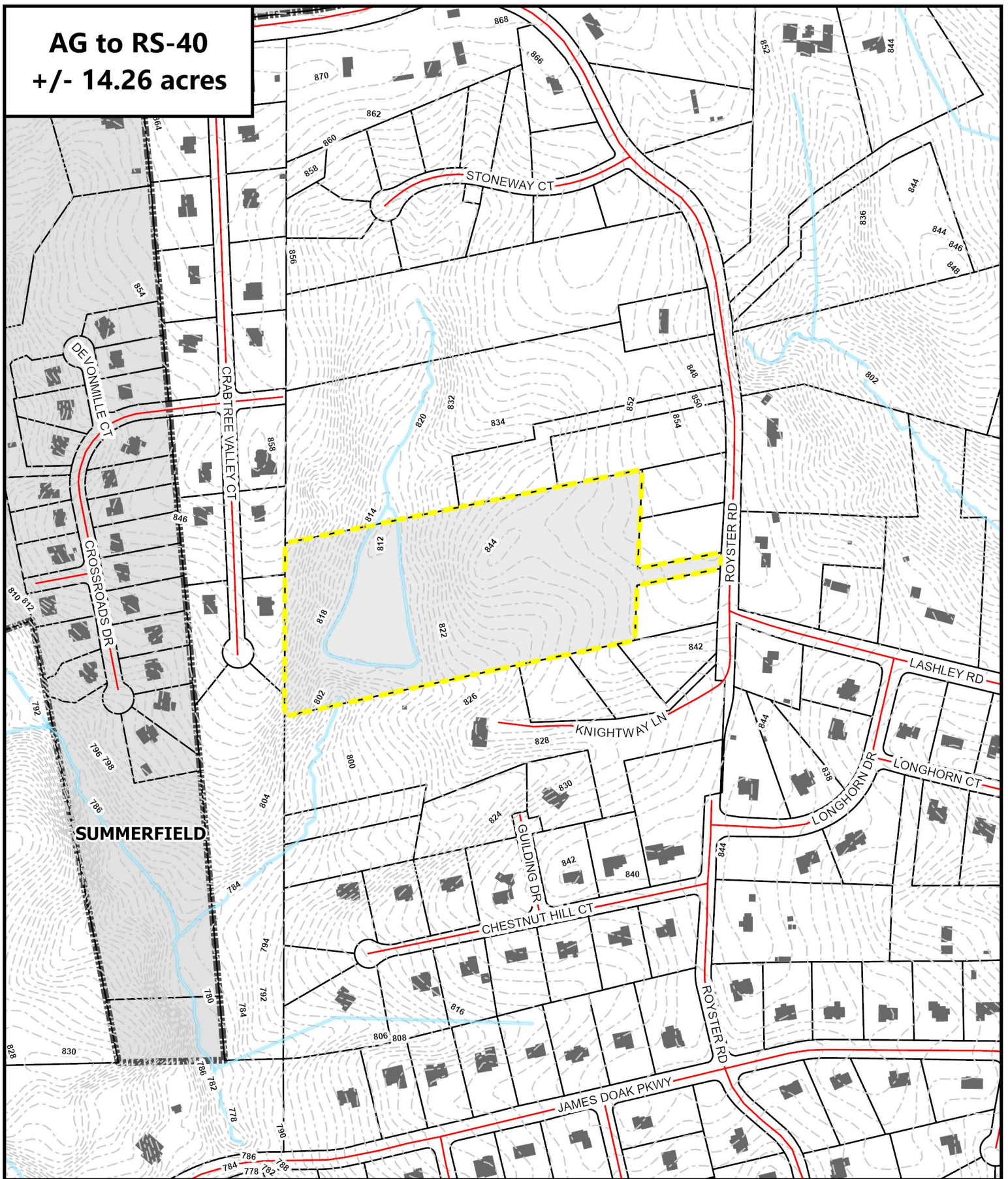
Case Number:
24-01-PLBD-00072

Case Area:
Parcels - 138436
7603 Royster Rd



Scale: 1" = 400'

AG to RS-40
+/- 14.26 acres



Planning & Development
Department

Jurisdiction:
GUILFORD COUNTY

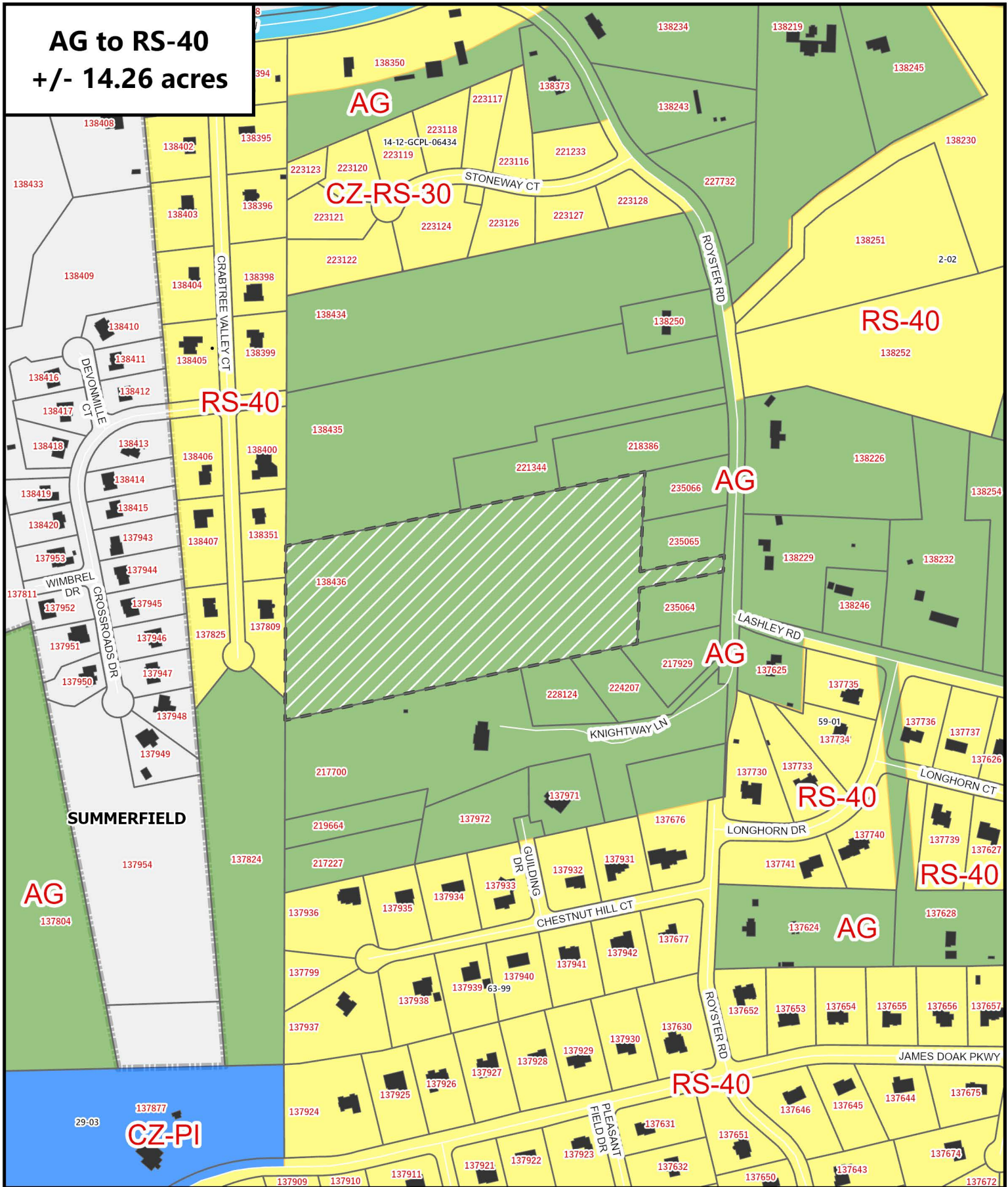
Case Number:
24-01-PLBD-00072

Case Area:
Parcels - 138436
7603 Royster Rd



Scale: 1" = 400'

AG to RS-40
+/- 14.26 acres

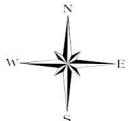


Planning & Development
Department

Jurisdiction:
GUILFORD COUNTY

Case Number:
24-01-PLBD-00072

Case Area:
Parcels - 138436
7603 Royster Rd



Scale: 1" = 400'

**REZONING CASE #24-01-PLBD-00072: AG, AGRICULTURAL TO RS-40,
RESIDENTIAL: 7603 ROYSTER ROAD**

**GUILFORD COUNTY PLANNING BOARD
ZONING AMENDMENT STATEMENT OF CONSISTENCY**

DECISION MATRIX

Zoning	Plan Consistency	Decision
Approve	Consistent	#1
Deny	Inconsistent	#2 (N/A)
Approve	Inconsistent	#3 (N/A)
Deny	Consistent	#4

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**REZONING CASE #24-01-PLBD-00072: AG, AGRICULTURAL TO RS-40,
RESIDENTIAL: 7603 ROYSTER ROAD**

**GUILFORD COUNTY PLANNING BOARD
ZONING AMENDMENT STATEMENT OF CONSISTENCY**

**DECISION #1
APPROVE-CONSISTENT
NO PLAN AMENDMENT**

I move to **Approve** this zoning amendment located on Guilford County Tax Parcel #138436,
from **AG** to **RS-40** because:

1. The amendment **is** consistent with applicable plans because:
[Describe elements of controlling land use plans and how the amendment is consistent.]

2. The amendment **is** reasonable and in the public interest because:
*[Factors may include public health and safety, character of the area and relationship of
uses, applicable plans, or balancing benefits and detriments.]*

**REZONING CASE #24-01-PLBD-00072: AG, AGRICULTURAL TO RS-40,
RESIDENTIAL: 7603 ROYSTER ROAD**

**GUILFORD COUNTY PLANNING BOARD
ZONING AMENDMENT STATEMENT OF CONSISTENCY**

**DECISION #4
DENY-CONSISTENT
NO PLAN AMENDMENT**

I move to **Deny** this zoning amendment located on Guilford County Tax Parcel #138436, from **AG to RS-40** because:

1. The amendment **is** consistent with applicable plans because:
[Describe elements of controlling land use plans and how the amendment is consistent.]

2. The amendment **is** consistent but not in the public interest because:
[Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments.]

(Insert Color Paper)

<https://canons.sog.unc.edu/2021/10/considerations-for-legislative-development-decisions/>



Coates' Canons NC Local Government Law

Considerations for Legislative Development Decisions

Published: 10/07/21

Author Name: Adam Lovelady

A property owner has requested for the local government to rezone her property to allow for significant new development. This could bring substantial new investments, business, and residents. But it could also change the character of the place, burden public infrastructure, and alter neighborhood demographics. Should the local government approve the rezoning?

In general, legislative decisions such as zoning map amendments are left to the discretion of the governing board. Local elected officials may take in public opinion, technical analysis, and political judgment about what is in the best interest of the community. Some considerations are good and even

required—planning board recommendation and comprehensive plan consistency, for example. Other considerations are off limits. Governing board members must not base decisions on the race, ethnicity, or religion of the applicant, landowner, or future tenants of the property.

This blog outlines those good and necessary considerations for legislative development decisions. A [separate blog](#) highlights the topics that are out of bounds.

Note that while some of these rules and concepts apply to other types of decisions, this discussion is focused on *legislative* development decisions. For an explanation of the types of development decisions, check out this [blog](#).

General Considerations

A proposal to rezone property or amend the zoning ordinance raises many important and appropriate issues and concerns. What are the land use impacts of this development for the individual property owner? The neighboring property owners? The broader community? The local government? If approved, what will this mean for economic development and environmental impacts, property rights and social equity, infrastructure and opportunity, and the community's vision for its future. Each of these are legitimate considerations for legislative zoning amendments.

Statutory Purposes and Considerations

General Statute 160D-701 sets forth the statutory purposes authorizing land use zoning regulation. To start, zoning regulations “shall be made in accordance with a comprehensive plan and shall be designed to promote the public health, safety, and general welfare.” The state law expands on that broad notion to set forth additional public purposes for zoning: to prevent overcrowding, to reduce congestion in the streets, to provide safety from fire and dangers and to ensure efficient and adequate public facilities and services. Under the authorizing state law, zoning regulations must be made with reasonable consideration of the following, among other things:

- “the character of the district and its peculiar suitability for particular uses”
- “a view to conserving the value of buildings”
- “and encouraging the most appropriate use of land”

Consideration of the Comprehensive Plan

A comprehensive or land use plan is a vision for the community based on careful analysis of existing conditions, robust community engagement, and strategic prioritization by the local government leaders. Under G.S. 160D-501, North Carolina local government must have a comprehensive plan or land use

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plan that is reasonably up-to-date as a condition of having and enforcing zoning. It is appropriate—even required—for the governing board to consider the applicable plans when it considers an amendment to the development regulations. If there is a request to rezone land on the edge of town for a medium-density residential development, how does that align with the policies and priorities identified by the community in the comprehensive plan? Is the site identified for infrastructure investment and residential development? Or, is the area identified to be maintained for low-density, agricultural uses? The community's adopted vision should be considered when deciding about amendments to the development regulations.

For amendments to the zoning regulations, state law requires consideration of the comprehensive or land use plan. G.S. 160D-605 requires that the governing board must approve a statement describing whether and how an action is consistent or inconsistent with the applicable plan. While the comprehensive plan or land use plan is not binding—the governing board may adopt a rezoning even if that action is inconsistent with the applicable plans. But, there is a procedural requirement to consider the applicable plans in the process. While consideration of the comprehensive plan is not required under state law for other legislative actions, such consideration is still appropriate and recommended for other legislative development matters such as adoption or amendment of the subdivision ordinance, minimum housing code, or other development regulations.

For more detail, check out this 160D Guidance Document on [Plan Consistency Statements](#).

Recommendations from Sta and Planning Board

A governing board can and should consider the recommendations of the planning board and local government staff when deciding on a rezoning or text amendment. General Statute 160D-604 specifically requires that amendments to the zoning ordinance (text or rezoning) must be referred to the planning board for review and comment. Other development ordinances (subdivision, minimum housing, etc.) *must* be submitted for planning board review for initial adoption and *may* be submitted for planning board review for subsequent amendments. When reviewing proposed legislative actions, the planning board considers plan consistency, among other things.

Typically, a local government provides for careful staff review of a proposal prior to it going to the planning board and governing board. The local government staff review may include technical analysis of the range of permitted uses and adequacy of public infrastructure and services, policy analysis of the

extent to which a proposal aligns with adopted plans and policies, and fiscal analysis of the projected financial impacts of a proposed development or ordinance amendment, and other analyses as required by the local government policies.

As with the comprehensive plan, recommendations are not binding. A governing board may take action despite the recommendations from staff and boards. But, if a community finds that the governing board frequently takes action in contrast to the plans and recommendations, that may be an indication the community needs to update the plans or reconsider the expectations of review by the planning board and staff.

Consideration of All Uses

When it comes to a conventional rezoning—shifting from one standard zoning district to another standard zoning district—the governing board must consider the full range of uses permitted in the proposed district (See *Hall v. Durham*, 323 N.C. 293 (1988)). If the rezoning is approved, then the property owner will have rights to proceed with any of the allowed uses, so the governing board must give consideration to those uses. This is true even if the developer shows illustrative plans for what they hope to build. For example, if a developer seeks rezoning to the general Highway Commercial zoning district, the developer may indicate in the application materials or hearing that they plan to build a gas station and convenience store. If the rezoning is approved, though, the developer could move forward with a truck stop, big box store, storage facility, or any other uses permitted in the district.

For a conventional rezoning, the question is this: Would this zoning district *and the full range of the allowable uses* be appropriate in this location? (Not this: Would the specific proposed use and development be appropriate in this location?) In contrast, conditional zoning and special use permits are appropriately focused on a specific proposal and the approval may be conditioned on a particular site plan.

Conditions, When Appropriate

Conditional rezoning allows for site-specific conditions to be added to the rezoning. As authorized under G.S. 160D-703, a conditional zoning district must be proposed by the property owner and any conditions must be mutually agreed to by the local government and the property owner. While there is

some flexibility for the substance of the conditions, they are limited to conditions that address the development's conformance with applicable plans and the impacts reasonably expected to be generated by the development.

Conditions may include, among other things, limits on the allowable uses at that site. So, whereas a *standard rezoning* must consider all permissible uses, a *conditional rezoning* may be conditioned to limit the allowable uses.

For more detail, check out this 160D Guidance Document on [Conditional Zoning](#).

Reasonableness for Rezoning

Courts generally defer to the judgment of elected officials to make decisions about what is in the best interest of the community. But spot zoning—when a small area is zoned in a way that is different from surrounding area—receives heightened judicial scrutiny to ensure that the decision is in the public interest. Treating one parcel differently from the surrounding property raises concerns that the zoning may unfairly benefit or harm that owner (or the neighbors) or that improper factors—such as favoritism or antagonism toward an individual—may have motivated that zoning decision.

If spot zoning is challenged in court, the court will not presume the zoning to be valid, but rather will review the zoning very carefully to ensure that it is reasonable and in the public interest. North Carolina law permits spot zoning, but only if a local government can establish that a particular spot zoning is reasonable. As set forth in *Chrismon v. Guilford County*, 322 N.C. 611 (1988), North Carolina courts apply a set of factors to determine if a spot zoning is reasonable: (i) the size and nature of the tract; (ii)

compatibility with existing plans; (iii) the impact of the zoning decision on the landowner, the immediate neighbors, and the surrounding community; and (iv) the relationship between the newly allowed uses in a spot rezoning and the previously allowed uses.

As protection against challenges of spot zoning for small scale rezonings, G.S. 160D-605 requires the governing board to adopt a statement of reasonableness along with the statement of plan consistency.

For this statement the board may consider, among other factors,

- (i) the size, physical conditions, and other attributes of the area proposed to be rezoned,
- (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community,
- (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
- (iv) why the action taken is in the public interest; and
- (v) any changed conditions warranting the amendment.

For more detail, check out this blog on [Spot Zoning](#).

Conclusion

These are some of the specific topics that the governing board definitely should consider for legislative development decisions. For a summary of the impermissible considerations—the topics that are out of bounds for legislative development decisions—check out the [companion blog](#). And check out this blog for more on the [Procedures for Legislative Decisions](#).

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<https://canons.sog.unc.edu/2021/10/impermissible-considerations-for-legislative-development-decisions/>



Coates' Canons NC Local Government Law

Impermissible Considerations for Legislative Development Decisions

Published: 10/15/21

Author Name: Adam Lovelady

“We don’t want those people to move in here!” “A church may be okay, but not a mosque!” “We need condos, not apartments!” These are a few of the many statements that raise red flags in a zoning matter. In general, legislative decisions such as zoning map amendments are left to the discretion of the governing board. There are many valid considerations for whether to approve the change: adopted plans and policies, technical analysis, judgment about what is in the best interest of the community, and more. But there are limits. Some topics are out of bounds, and zoning decisions must not be based on those factors. This blog highlights those impermissible considerations.

A separate blog outlines the considerations that are good and necessary for legislative development decisions. Note that while some of these rules and concepts apply to other types of decisions, this discussion is focused on *legislative* development decisions. For an explanation of the types of development decisions, check out this blog.

Race, Religion, Ethnicity and Other Characteristics

Land use decisions may not be based on the race, religion, ethnicity, or other protected classifications of individuals. In the early twentieth century some zoning ordinances in North Carolina were explicitly racial. Zoning districts were specified by race—some for white residents and some for black residents. The North Carolina Supreme Court struck down such racial zoning in 1940 in *Clinard v. City of Winston-Salem*, 217 N.C. 119. Even after explicit racial zoning was struck down, race continued to play

a role in zoning decisions in North Carolina. A study by urban planning scholar Andrew Whittemore of zoning decisions in mid- to late-20th century Durham found that “race historically played a role in upzonings and downzonings involving heavy commercial and industrial uses.”

State and federal law now prohibits such decision-making based on the character of the owners or residents of a development project. The North Carolina Fair Housing Act states “[i]t is an unlawful discriminatory housing practice to discriminate in land-use decisions or in the permitting of development based on race, color, religion, sex, national origin, handicapping condition, [or] familial status . . .” (G.S. 41A-4(g)). Equal Protection under the federal Constitution demands that similarly situated individuals be treated the same and demands heightened judicial review of discrimination. Federal statutory and Constitutional protections require that governmental actions not discriminate on the basis of religion. And federal and state law provides protections against housing discrimination and protections for individuals with disabilities.

The U.S. Supreme Court, in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), set forth the sources of information that may reveal impermissible considerations of race: the historical background of the decision or a clear pattern unexplainable except by race; the sequence of events leading up to the decision (such as a sudden downzoning when affordable housing was proposed); the legislative and administrative history, including reports, minutes, and statements by the decision-makers; departures from the normal procedural sequence; and departures from typical substantive decisions (given the standard considerations, would the board normally make a different decision). Discriminatory intent can be hard to prove—and was not proven in the *Village of Arlington Heights* case—but the Court outlined a wide range of sources where illegitimate intent may be revealed.

While there is a legacy of discrimination in land use zoning, state and federal law demands that land use decisions today must be based on the land use, not discrimination against a particular person or group of people.

Inclusion of Affordable Housing

In addition to the protections outlined above, the North Carolina Fair Housing Act also provides protection against a denial of a development project because it includes affordable housing. Specifically, the law states that “[i]t is an unlawful discriminatory housing practice to discriminate in land-use decisions or in the permitting of development based on . . . the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income.” Moreover, it is a violation if “the local government was

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motivated in full, or in any part at all, by the fact that a development or proposed development contains affordable housing units.” And, “[a]n intent to discriminate may be established by direct or circumstantial evidence.” There is one exception: It is not a violation of the North Carolina Fair Housing Act if the action was based on limiting high concentrations of affordable housing. ((G.S. 41A-4(g) & 41A-5).

Lack of Any Land Use Rationale

Apart from discrimination, governing boards have fairly broad discretion for making land use decisions. Courts typically defer to the local political decision by the local decision-makers. But there must be *some valid land use rationale* for a decision. A decision that is without rationale is, at a minimum, unconstitutional as arbitrary and capricious, and may indicate that an illegitimate reason (racial discrimination, for instance) underlies the supposed reasons for the decision.

As an example, in *Gregory v. County of Harnett*, 128 N.C. App. 161, 493 S.E.2d 786 (1997), the court found a rezoning to be arbitrary and capricious. The county commission approved a down-zoning submitted just three days after a nearly identical request was denied. The court’s review of the record found that the decision-makers based their decision on “complaints by various citizens of an undocumented crime problem allegedly arising from a manufactured home park.” One commissioner thought a manufactured home park was not in keeping with the neighborhood and another stated he did what he thought was best for the county. “[A]t least one Commissioner stated the alleged crime problem was the result of the type of people who live in manufactured home parks.” The court, however, found “no evidence in the record showing that the Commissioners considered the character of the land, the suitability of the land for the uses permitted in the proposed zoning district, the comprehensive plan, or the existence of changed circumstances justifying the rezoning application.” Based on the indication of invalid considerations and the lack of valid considerations reflected in the record, the court found the action to be arbitrary and capricious.

In another case, *Town of Green Level v. Alamance County*, 184 N.C. App. 665, 646 S.E.2d 851 (2007), the court reviewed action by the county to extend zoning in opposition to a proposed expansion of extraterritorial jurisdiction. The court found no evidence in the record of the commissioners reviewing the comprehensive plan nor evidence to support the claim that the ordinance was set up to protect water resources. The claim that the zoning would protect rural character was contradicted by the allowance

for significant manufacturing uses. The court found the zoning was adopted to block extraterritorial jurisdiction, not to advance legitimate health, safety, or welfare purpose. As such, it was arbitrary and capricious.

There must be a legitimate rationale for a land use decision—the appropriateness of land uses, the policies of the comprehensive plan, the availability of public infrastructure and services for example. It is helpful if that rationale is clearly seen in the governing board’s discussion and statement of rationale. In the two cases above, the courts found no legitimate rationale, the decisions were arbitrary and capricious, and there was indication that illegitimate considerations were behind the decisions.

Particular Applicant, Tenant, or Owner

“Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Chapter [160D] *attach to and run with the land*” (G.S. 160D-104). Land use decisions are decisions about the land and the rights and obligations stay with the land. Decisions are not specific to an applicant or owner. As such, when an applicant seeks a permit or rezoning, decision-makers must consider the proposal, not the person. Indeed, land changes hands all of the time. Suppose Tom obtains a rezoning for his property. He may sell the property to Samantha tomorrow. Samantha will have all of the rights and obligations for land development that Tom had. This line of thinking goes further: Land use decisions and regulations must not be based on ownership status. Land use decisions are about land use, not about the form of ownership of the development. A multi-family development has the same land use impacts whether it is owner-occupied condominiums or renter-occupied apartments. This issue was addressed in *Graham Court Associates v. Town Council of Chapel Hill*, 53 N.C. App. 543, 281 S.E.2d 418 (1981). The town ordinance required different permitting and standards for condominiums as compared to apartments. The court ruled that zoning can regulate land use, but not the form of ownership.

Additionally in *City of Wilmington v. Hill*, 189 N.C. App. 173, 657 S.E.2d 670 (2008), the court ruled against a land use regulation based on form of ownership. The city’s ordinance permitted a garage apartment as an accessory use in a single-family zoning district, but required that the property owner

must live in either the main residence or the accessory apartment. The court held the ownership requirement to be beyond the scope of delegated zoning powers and unconstitutional as an impermissible regulation of ownership rather than a permissible regulation of land use.

Private Interest over Public Interest

A legislative development decision is a decision for the community. It sets broad policy for what is allowed and not allowed within the jurisdiction. As such, elected officials must base the decision on the public interest, not private gain.

Even if a board member thinks she may approach a case fairly, there are some matters that demand the board member to recuse herself from the case. General Statute 160D-109 states that a governing board member shall not vote on a legislative matter “where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.” So, a board member may not participate in a legislative development decision where she owns the property at issue, she is financially involved with the development, or she will otherwise have a *direct, substantial, and readily identifiable* financial impact from the outcome of the case.

Additionally, a board member shall not vote on a zoning amendment “if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.” If the applicant for the rezoning or text amendment is a spouse, business partner, or close friend to a board member, that board member must recuse herself.

There is an important distinction for conflicts of interest in legislative matters as compared to conflicts in quasi-judicial matters: impartiality. In a quasi-judicial matter, the board is acting like a court and due process requirements demand that the board members must be impartial decision-makers. They must not have a fixed opinion for or against a particular proposal. In contrast, for legislative matters the board is acting as a legislative body. They can take politics into account and they may have previously stated their position on an issue or a case. Having a fixed opinion is not an automatic conflict of interest in a legislative development decision (See *Brown v. Town of Davidson*, 113 N.C. App. 553 (1994)).

Indeed, a governing board member may have run for office with a campaign platform for or against a particular project. That member could still participate in a legislative development decision, but could not participate in a quasi-judicial development decision.

Protection of Particular Uses

This blog outlines some of the considerations that are off limits for development decisions. Note that there are also particular uses that have specific constitutional or statutory protections, such as those outlined in [Article 9](#) of Chapter 160D. Manufactured homes, adult businesses, cell towers, family care homes, places of worship, billboards, and many other uses have certain procedural and substantive protections. Those issues are important, but beyond the scope of this blog.

Conclusion

These are some of the specific topics that are out of bounds for legislative development decisions. For a summary of the good considerations—the topics that the governing board definitely should consider—check out the [companion blog here](#). And check out this blog for more on the [Procedures for Legislative Development Decisions](#).

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