

Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
September 21, 2006
7:00 P.M.
County Commissioners Chamber
Cabarrus County Governmental Center

Agenda

1. Swearing in of Board Members
2. Roll Call
3. **New Business:**
 - A. Approval of Update to the Planning and Zoning Commission Rules and Procedures
 - B. Approval/Correction of August 17, 2006 Minutes
 - C. **Board of Adjustment Function:**
 1. Conditional Use Application C-748
Cabarrus County Parks & Recreation Department
P.O. Box 707
Concord, NC 28026

Request: The applicant is seeking permission to construct a public use facility (Public Park)
 - D. **Planning Board Function:**
 1. Zoning Atlas Amendment - Petition C-2006-07 (R)
Mr. Louie Thomas Looper, Jr.
11180 NC Highway 73 W
Huntersville, NC 28078

Request: (OI) Office Institutional to (CR) Countryside Residential to build two single family homes on the property.
4. **Old Business:**
 - A. **Planning Board Function:**
 1. Preliminary Subdivision Plat Approval - Petition C2006-03(S) (Tabled from August 17th meeting)
Cascades at Skybrook
Westfield Homes of the Carolina, LLC
11525 Carmel Commons Blvd. Suite 301
Charlotte, NC 28226

Director's Report

Adjournment

Memo

To: Cabarrus County Planning and Zoning Board
From: Susie Zakraisek, AICP, Planning and Zoning Manager
CC: File
Date: 08/24/2006
Re: Update to Rules and Procedures

Attached you will find a copy of the updated Planning and Zoning Commission Rules and Procedures. An update is needed as a result of the change in appointments to the Board.

The current text is based on terms expiring in December. When the new Commission was seated last year, it was in August. The latest appointments were made in August.

The text needs to be changed to reflect the month of September as the month that new members will be sworn in and the month that the Chair and Vice-Chair will be elected.

PLANNING AND ZONING COMMISSION RULES AND PROCEDURES

ORGANIZATIONAL MEETING

On the date and at the time of the first regular meeting in September of each year, the newly appointed members shall take and subscribe the oath of office as the first order of business. As the second order of business, the Commission shall elect a Chair and a Vice Chair from among the regular members. The Director of Planning and Zoning shall preside during the election process for Chair.

A simple majority of those present shall be necessary to elect the Chair or Vice Chair. The Chair's term of office shall be one year and until a successor is elected. Likewise, the Vice Chair shall be selected in the same manner and for the same term.

DUTIES OF CHAIR AND VICE CHAIR

The Chair shall in an orderly fashion preside at all meetings, which includes conducting all scheduled business and public hearings, deciding all points of order and procedure, appointing all standing and ad hoc committees, administer oaths to witnesses, and soliciting public comments at each meeting. The Chair may take part in deliberations and vote on all issues.

Additionally, the Chair is expected to present Planning and Zoning Commission recommendations to the Cabarrus County Board of Commissioners. Said presentations are to reflect the vote of the Board and the character of the decision-making process that was used by the Board. The Chair may, with the voting approval of the other members, appoint a parliamentarian.

The Vice Chair shall serve in the absence of the Chair and may serve as parliamentarian. Should both the chair and vice chair be vacant for a meeting, the Chair shall designate a regular member to preside.

DUTIES AND RESPONSIBILITIES OF MEMBERSHIP

Members shall be appointed by the Board of County Commissioners according to law. Members may be appointed to successive terms without limitations.

Regular members may be removed by the Board of County Commissioners for good cause, including but not limited to, failure to attend at least two-thirds of the regularly scheduled monthly meetings of the calendar year. Alternate

members may be removed for good cause, including but not limited to, repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures.

If a regular planning and zoning member moves outside of the area in which he or she represents or an alternate moves outside of Cabarrus County, that shall constitute a resignation from the commission, effective upon the date a replacement is appointed by the Board of County Commissioners.

Planning and Zoning Commission members shall be adequately prepared to act on a particular case in front of them at the meeting. This involves reading the meeting packet in advance, carefully listening to evidence and testimony and reports presented at the meetings, and carefully deliberating the issues.

Members are encouraged to review issues with the knowledgeable Planning, Zoning and Building Inspection Department personnel. Members are encouraged to visit all sites under review in advance. Members are cautioned not to discuss the merits or flaws of that issue with any potentially related party prior to the hearing or meeting in which the pertinent information is to be presented. Furthermore, members shall not express individual opinions on the proper judgment of any case in which the decision is quasi-judicial in nature. A member shall not intentionally attend an outside meeting (i.e., a non-Cabarrus County Planning and Zoning Commission meeting) to discuss scheduled agenda items unless all other members have been invited, or it is disclosed to the Chair or the Director of Planning and Zoning, and Building Inspection.

PRESIDING OFFICER WHEN CHAIR IS IN ACTIVE DEBATE

The Chair shall preside at meetings of the Commission unless he or she becomes actively engaged in debate on a particular proposal, In which case he or she shall designate another Commission member to preside over the debate. The Chair shall resume presiding as soon as action on the matter is concluded.

ACTION BY THE COMMISSION

The Commission shall proceed by motion. Any member may make a motion.

SECOND REQUIRED

A motion shall require a second.

ONE MOTION AT A TIME

A member may make only one motion at a time.

SUBSTANTIVE MOTIONS

A substantive motion is out of order while another substantive motion is pending.

ADOPTION BY MAJORITY VOTE

A motion shall be adopted by a majority of the votes cast, a quorum being present, unless otherwise required by these rules or the laws of North Carolina.

VOTING BY WRITTEN BALLOT

The Commission may choose by majority to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the Commission shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the Clerk immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

DEBATE

The Chair shall state the motion and then open the floor to debate on it. The Chair shall preside over the debate according to the following general principles:

- (a) The introducer (the member who makes the motion) is entitled to speak first;
- (b) A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- (c) To the extent possible, the debate shall alternate between opponents and proponents of the measure.

PROCEDURAL MOTIONS

In addition to substantive proposals, the following procedural motions, and no others, shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption.

In order of priority (if applicable), the procedural motions are:

- (1) **To Adjourn.** The motion may be made only at the conclusion of action of a pending substantive matter; it cannot interrupt deliberation of a pending matter.

- (2) **To Recess to a Time and Place Certain.** The motion shall state the time and place when the meeting shall reconvene and no further notice need be given of a recessed session of a properly called meeting.
- (3) **To Take a Brief Recess.** This motion is in order at any time. The Chair may call a brief recess without a motion or vote.
- (4) **Call to Follow the Agenda.** The motion must be made at the first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.
- (5) **To Suspend the Rules.** The motion requires for adoption a vote equal to two-thirds of the actual membership of the Commission. The Commission may not suspend provisions of the rules that State requirements impose by law on the Commission.
- (6) **To Divide a Complex Motion and Consider it by Paragraph.** This motion is debatable.
- (7) **To Defer Consideration.** A substantive motion the consideration of which is deferred expires after one hundred (100) days have elapsed following the day of deferral unless a motion to revive consideration is adopted. This motion is similar to, but differs from, a motion to lay on the table.
- (8) **Call of the Previous Question.** The motion is not in order until there have been at least twenty (20) minutes of debate, and every member has had opportunity to speak once.
- (9) **To Postpone to a Certain Time or Day.** This motion is appropriate prior to consideration of a matter when more information is necessary or more time is needed. It differs from a recess after consideration has begun and differs from a motion to defer consideration.
- (10) **To Refer to a Committee.** Sixty (60) days or more after a motion has been referred to a committee, the introducer may compel consideration of the measure by the entire Commission, whether or not the committee has reported the matter to the Commission.
- (11) **To Amend.** An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption

of the amended motion has the same effect as rejection of the original motion.

A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote.

(12)**To Revive Consideration.** The motion is in order at any time within the one hundred (100) days after the day of a vote to defer consideration. A substantive motion on which the consideration has been deferred expires after one hundred (100) days have elapsed following the deferral unless a motion to revive consideration is adopted.

(13)**To Reconsider.** The motion must be made by a member who voted with the prevailing side, and only at the meeting during which the original vote was taken, including any continuation of that meeting through a recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting. In the event a motion is reconsidered and the meeting at which the evidence is heard is recessed to a time and place certain, the Commission shall be reconvened by the same members who heard the evidence at the previous meeting.

(14)**To Rescind or Repeal.** The motion is not in order if rescission or repeal of an action is forbidden by law.

WITHDRAWAL OF MOTION

A motion may be withdrawn by the introducer at any time before a vote.

DUTY TO VOTE

Every member must vote unless excused by the remaining members. A member who wishes to be excused from voting shall so inform the Chair, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters involving the consideration of his or her own financial interests or official conduct. In all other cases, a failure to vote by a member who is physically present in the Commission chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

If, prior to a meeting, a member knows or believes that there may be a conflict of interest, bias, or prejudice, the member shall inform the Chair or the Director who shall arrange for an alternate member to attend the meeting in the member's place for the particular issue or for the entire meeting at the direction of the recused member. By timely informing the Chair or the Director of a potential conflict, prior to a meeting so that an alternate member can be present, a member may recuse (excuse because of interest or prejudice) himself or herself without a majority vote of the Commission.

If a member knows or believes that there may be a conflict of interest, bias, or prejudice, a declaration of that possible conflict shall be made and the Commission shall determine whether or not a conflict in fact exists. Any person in attendance may also issue a challenge of existence of a conflict of interest. Should this occur, the Chair shall immediately review the allegations by hearing sworn testimony and competent evidence. The Commission shall then make a final determination as to the existence of a conflict of interest, bias, or prejudice by a majority vote.

A member may be excused from voting on a particular issue by a majority vote if there is a conflict of interest, bias, or prejudice. The member shall state the conflict and refrain from any and all deliberations. At the discretion of the Chair, the member may be asked to leave the room until the issue has been voted upon. A member may be allowed to withdraw from the remainder of a meeting for any good and sufficient reason, and with the majority vote of the remaining members present. In any matter in which a member is excused or recused and an applicant is necessarily prejudiced or requests that the matter be recessed to a time and place certain, said matter shall be recessed to a time and place certain, and the excused member shall be replaced by an alternate member for that meeting.

FINALITY OF ACTIONS

Unless otherwise stated in the Cabarrus County Zoning Ordinance or according to law, all actions of the Planning and Zoning Commission become final with the approval of the minutes in which the meeting was held or through the issuance of a zoning permit obtained in good faith and reliance on a commission action.

QUORUM

Five members of the Commission shall constitute a quorum. A member who has withdrawn from a meeting without being excused by a majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

MEETINGS

Regular business meetings of the Cabarrus County Planning and Zoning Commission shall be held on the third Thursday of each month at 7:00 p.m. in the Commissioners Room of the Cabarrus County Governmental Center. In the event that this date falls on a holiday, the meeting is to be scheduled on the second Thursday of that month. On rare occasions, there may be a need to hold additional meetings. When this occurs, the meeting will be scheduled by the Chair and termed (1) an emergency meeting if an unexpected circumstance has arisen which requires immediate consideration by the Commission, (2) a special meeting, or (3) a continued meeting.

All meetings shall be conducted upon prior public notice in accordance with the requirements of the open meetings laws pursuant to N.C.G.S. 143-318.12 and in accordance with the notice and advertising requirements of the Zoning Ordinance.

By a majority vote of the Commission, the Commission may move into closed executive session to discuss any proper purpose defined by N.C.G.S. 143-318-11 including but not limited to litigation, industrial/business located or expansion, specific personnel matters, state and/or federally required confidential information, and investigations. Before entering into closed executive session, the general nature of the business to be discussed must be stated. The Commission may not discuss matters in closed executive session which were not of the nature announced to the public prior to moving into the closed executive session. An executive session shall include only Planning and Zoning Commission members, the Commission secretary, the Commission attorney, the Director of Planning, Zoning, and Building Inspection, and anyone specifically invited by the Commission who are necessary or appropriate to conduct the business of the executive session.

PUBLIC HEARINGS

The Chair may apply rules (subject to a contrary majority vote of the Commission) appropriate to the proper conduct of a public hearing. The Commission must provide a reasonable amount of time for a petitioner to introduce all the evidence required by the ordinance to approve an application. The rules may include, but are not limited to, rules (a) fixing the maximum time allotted to each speaker; (b) providing for the designation of spokespersons for groups of persons supporting or opposing the same positions; (c) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made for those

excluded from the hall to listen to the hearing); and (d) provide for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the Open Meetings Law applicable to Commission meetings shall also apply to public hearings at which a majority of the Commission is present. A public hearing for which any notices required by the Open Meetings Law or other provisions of law have been given may be continued to a time and place certain without further advertisement. The requirements of the Rule concerning Recessed Meetings shall be followed in continuing a hearing at which a majority of the Commission is present.

At the time appointed for the hearing, the Chair or his or her designee shall call the meeting to order and then preside over it. When the allotted time expires or when no one wishes to speak who has not done so, the presiding officer shall declare the hearing ended.

QUORUM AT PUBLIC HEARINGS

A quorum of the Commission shall be required at all public hearings required by state law. If a quorum is not present at such a hearing, the hearing shall be continued until the next regular Commission meeting without further advertisement.

MINUTES

Full and accurate minutes of the Commission proceedings shall be kept and shall be open to the inspection of the public, except as otherwise provided in this rule. The results of each vote shall be recorded in the minutes, and on the request of any member of the Commission, the "aye's" and "no's" upon any question shall be taken.

Full and accurate minutes shall be kept of all actions taken during executive sessions. Minutes and other records of an executive session may be withheld from public inspection so long as public inspection would frustrate the purpose of the executive session.

REFERENCE TO ROBERT'S RULES OF ORDER

To the extent not provided for in these rules, and to the extent it does not conflict with North Carolina law or with the spirit of these rules, the Commission shall refer to Robert's Rules of Order, Revised, to answer unresolved procedural questions.

AMENDMENTS

These Rules and Procedures may be amended at any time by an affirmative vote of at least seven of the members. Any amendments shall be presented in writing at a regular or special meeting before the meeting in which the vote is taken.

FINDINGS OF FACT

Final Decision

Application: C-748

Motion	To Grant	To Deny
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Applicant: Cabarrus County Parks
And Recreation Department
P.O. Box 707
Concord, N.C. 28026-0707

Vote	For	Against
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Owner: Cabarrus County
P.O. Box 707
Concord, N.C. 28026-0707

Zoning: Low Density Residential (LDR)

Granted	Denied
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Location: 1300 Cox Mill Road
Concord, N.C. 28027

Size: 62.40 acres

PIN: 4680-32-1476

Request: The applicant is seeking permission to construct a public use facility
(public park).

Advertisement Info.:

- A. Sign Requested 9-6-06
- B. Newspaper Ad Sent 9-6-06
- C. Adjacent Property Letters Mailed 9-6-06

Additional Facts:

1. The applicant has submitted a complete application form and the additional information required by the Cabarrus County Zoning Ordinance for a Conditional Use Permit.

2. The adjacent property owners have been notified by mail. The letter and a list of those contacted are included in the packet.
3. The notice of public hearing was published on September 8th and 11th of 2006, in the Charlotte Observer's Cabarrus Neighbors and September 7th and 11th of 2006, in the Independent Tribune.
4. A zoning public hearing sign has been placed on the property advertising the time and place of the public hearing.
5. As per Section 3-8 (Table of Permitted Uses) of the Cabarrus County Zoning Ordinance, **Public Use Facilities** are allowed as a Conditional Use in the LDR (Low Density Residential) zoning district.
6. The Cabarrus County Parks & Recreation Department is seeking permission to construct a public park behind the existing Cox Mill Elementary School. If granted, the park will include walking trails, ball fields and a concession building with bathrooms.
7. The applicant intends to construct the required parking area with a pervious (not gravel) material. If budget issues arise, the parking will be paved with asphalt. Either way, all standards of the ordinance will be met for parking.
8. The applicant has made an effort to maintain a 100ft. buffer in most areas. Concerning the southern property line, it appears that the buffer has been reduced in a couple areas to 75ft. However, by choosing this option, buffers will need to be planted with evergreen vegetation (opaque). Referring to the site plans, page 3 note 15, it appears that the buffering criteria has been met. Note 15 states that, "Due to the Conditional Use we will be using a Level I buffer of 100 ft. and modifying the buffer in areas of development with an opaque screening at the 50ft."



CABARRUS COUNTY
 PO BOX 707
 CONCORD, NC 28025
 704-920-2137
 www.co.cabarrus.nc.us

Application Number <u>748-C</u>
Date <u>9-21-06</u>

<u>CONDITIONAL USE APPLICATION FORM</u>			
Circle Jurisdiction That Applies:			
<u>Cabarrus County</u>	<u>Town of Midland</u>	<u>Town of Mt. Pleasant</u>	<u>Town of Harrisburg</u>

The Conditional Use Process:

A conditional use is necessary when a proposed land use may have some consequences that may warrant review by the Board of Adjustment. This review is to insure there will be no detrimental effects to surrounding properties nor will it be contrary to the public interest.

In order to apply for a conditional use a completed application along with the application fee is required to be turned in to the Zoning Office, 30 days prior to the scheduled public hearing. In order for the Board of Adjustment to grant approval of the conditional use, the applicant must provide the requested information in the following application.

If the Board finds that all approval criteria have been met, they may impose reasonable conditions upon the granting of any conditional use to insure public health, safety, and general welfare. If the application is approved the applicant then may proceed with securing all required local and state permits necessary for the endeavor. Failure to follow conditions set in the approval process would result in a violation of the Zoning Ordinance.

If there are additional questions concerning this process, please call the Zoning Office at (704) 920-2137.

TO THE BOARD OF ADJUSTMENT:

I, HEREBY PETITION THE BOARD OF ADJUSTMENT TO GRANT THE ZONING ADMINISTRATOR THE AUTHORITY TO ISSUE A CONDITIONAL USE PERMIT FOR THE USE OF THE PROPERTY AS DESCRIBED BELOW.

Applicant's Name <u>Steve Little, Cabarrus Co.</u>	Property Owner's Name <u>Cabarrus County</u>
Applicant's Address <u>Parks & Recreation</u> <u>P.O. Box 707</u>	Property Owner's Address <u>P.O. Box 707</u>
<u>Concord, NC 28026-0707</u>	<u>Concord, NC 28026-0707</u>
Applicants Telephone Number	<u>704-920-3352</u>

Parcel Information

Existing Use of Property	<u>Elementary School</u>
Proposed Use of Property	<u>Add recreational park in rear</u>
Existing Zoning	<u>LDR</u>

CASE # C-748
APPLICANT: CABARRUS COUNTY PARKS & RECREATION DEPARTMENT
DATE: September 21, 2006
EXHIBIT # 2

Property Location on Cox Mill Road
 Property Acreage 62.40
 Tax Map and Parcel Number (PIN) 4680321476

Land Use of Adjacent Properties

	(Provide Plat Map if Available)
NORTH	<u>Residential (LDR)</u>
SOUTH	<u>" (")</u>
EAST	<u>" (")</u>
WEST	<u>" (")</u>

General Requirements

1. The Zoning Ordinance imposes the following general requirements on the use requested by the applicant. Under each requirement, the applicant should explain, with reference to the attached plans, where applicable, how the proposed use satisfies these requirements.

The Board must find that the uses(s) as proposed "are not detrimental to the public health, safety or general welfare."

A public park facility would be a benefit to the health of the community.

The safety and general welfare would not be damaged, because you are not adding more population - it is just a place to go relax and have fun.

The Board must find that the use(s) as proposed "are appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc."

The facility is in a growing part of the County, and all the public support is being added to the area. The growth in this area will require a nice facility to support the increase of population. All the support in the area except public

transportation and it can be added with Cox Mill connecting to Speedway Blvd in the
 The Board must find that the use(s) as proposed "will not violate neighborhood character nor near future.
 adversely affect surrounding land uses."

The use of the open area will enhance the space with a green space use. The addition of a park will help to clean up the area. This will make the community look better and give the children at the school a place to play.

The Board must find that the use(s) as proposed "will comply with the general plans for the physical development of the County or Town, as embodied in the Zoning Ordinance or in the area development plans that have been adopted."

The use of the land as a recreation facility was a part of the original plan, but financial problems cut the ball fields out of the plan. This would be an expansion of the original plan, but the need for the facility could benefit the whole community.

An adequate amount and safe location of play areas for children and other recreational uses according to the concentration of residential property:

This is a recreation facility for public use of the community as well as the existing school.

Compliance with overlay zones including but not limited to the Thoroughfare Overlay and the River/Stream Overlay Zones:

We have the River/Stream overlay zone shown at the maximum and wetland areas are preserved.

Compliance with the Flood Damage Prevention Ordinance:

We are in compliance with the Flood Damage Prevention ordinance by providing additional flood zone in the way we graded the site.

Other requirements may be requested by the applicant or specified by the Board for protection of the public health, safety, welfare, and convenience:

We feel that there is no additional items which will effect the development of the site which will cause any problems to the health, safety, or welfare of the community.

Predefined Standards

Each individual Conditional Use listed in the Zoning Ordinance may have specific standards imposed. Refer to the Conditional Use section of the Zoning Ordinance for these requirements. Each standard should be addressed in the site plan submitted along with this application.

Required Attachments/Submittals

1. Printout of names and addresses of all immediately adjacent property owner, including any directly across the street.
2. Scaled site plan containing all requested information above on legal or ledger sized paper. Larger sized copies will be accepted if copies for each Board Member is provided for distribution.

Certification

I hereby confirm that the information contained herein and herewith is true and that this application shall not be scheduled for official consideration until all of the required contents are to the Zoning Department.

Signature of Applicant

Steve D. Pitt

Date

8/30/06

Signature of Owner

Date

8-30-06

3.5. CONDITIONAL USE PERMITS.

3.5.1. APPLICABILITY.

3.5.1.1. Conditional uses are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design, and configuration. Conditional uses ensure the appropriateness of the use at a particular location within a given zoning district.

3.5.1.2. Only those uses that are enumerated as conditional uses in a zoning district, as set forth in § 4.6, Table 4.6-1 of this Ordinance, shall be authorized by the Town Board.

3.5.2. APPROVAL PROCEDURE. (See Figure 3.5-1)

3.5.2.1. No conditional use permit shall be authorized, developed, or otherwise carried out until the applicant has secured approval of the conditional use by the Board of Adjustment and approval of a final site plan by the Administrator.

3.5.2.2. Applications for conditional use permit approvals shall be filed with the Administrator as illustrated in Figure 3.5-1. Pre-application meetings with the Administrator prior to filing are required.

3.5.2.3. Major site plan applications (see Appendix B) shall be filed concurrently with conditional use permit applications. The information shall be provided to the Board of Adjustment during their deliberations.

3.5.2.4. The Board of Adjustment shall conduct a quasi-judicial hearing in accordance with the requirements of § 3.1.7 of this Ordinance. The Board of Adjustment shall conduct a quasi-judicial hearing and shall deny the request, approve the request; or approve the request with conditions.

3.5.2.5. The Board of Adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the conditional use permit approval and shall be included in the final site plan application.

3.5.2.6. Violations of any of the conditions shall

be treated in the manner as set forth in § 1.6 of this Ordinance.

3.5.2.7. An application for a conditional use permit that has been denied may be resubmitted only if there has been a substantial change in circumstances, as determined by the Administrator, or if substantial revisions have been made to the application for development approval.

3.5.2.8. Minor field alterations or minor revisions to approved conditional uses may be approved by the Administrator if the conditional use still meets the intent of the standards established with the original approval. Minor alteration/revisions shall be limited to changes that do not increase the intensity, density, or character of the use. If the Administrator determines that the change is not minor, the applicant shall be required to apply for a revised Conditional Use Permit. The applicant may appeal the decision of the Administrator to the Board of Adjustment.

3.5.3. APPROVAL CRITERIA.

Uses permitted subject to conditional use review criteria shall be permitted only after review and approval by the Board of Adjustment only if the applicant demonstrates that:

3.5.3.1. The proposed conditional use conforms to the character of the neighborhood, considering the location, type, and height of buildings or structures and the type and extent of landscaping and screening on the site.

3.5.3.2. Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.

3.5.3.3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

3.5.3.4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

3.5.3.5. The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.

3.5.3.6. Compliance with any other applicable Sections of this Ordinance.

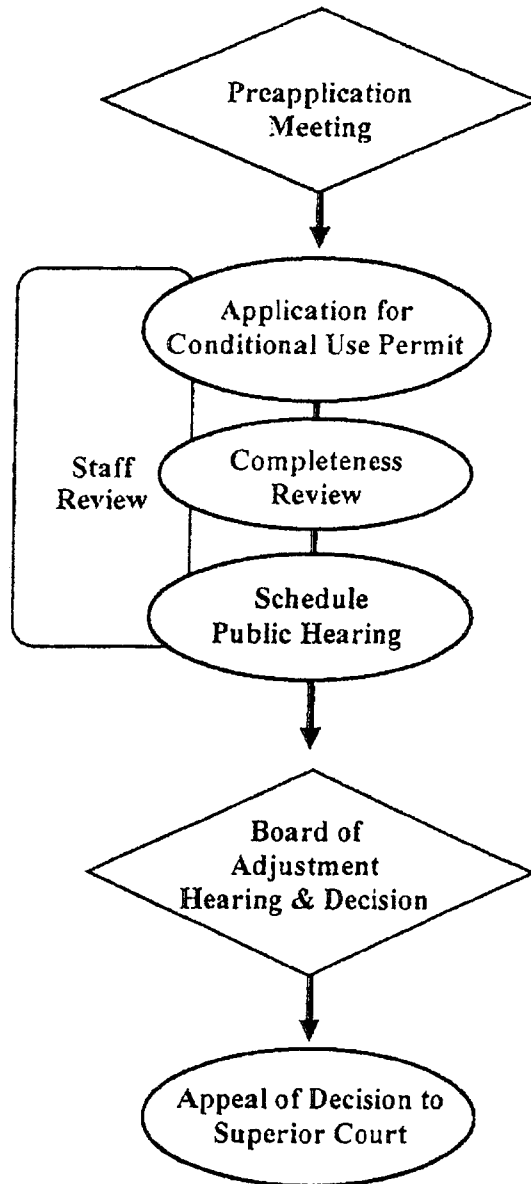
3.5.4. SCOPE OF APPROVAL.

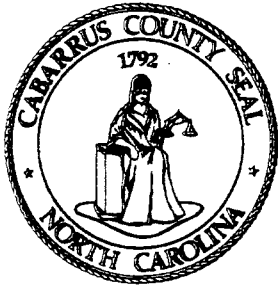
The approval of a conditional use permit shall authorize the applicant to apply for final site plan approval pursuant to § 3.6 of this Ordinance. All approvals of conditional use permits require approval of the site plan. Any conditional use permit approval shall become null and void if a required site plan is not approved within 12 months after the date of the approval. No zoning clearance permit may be issued until the final major site plan and conditional use permits are approved. Final major site plan approval may require approval of variances. Approval of a conditional use permit does not authorize any development activity.

3.5.5. SUBSEQUENT APPLICATIONS.

Subsequent applications for a conditional use permit shall be handled in the same manner as that for rezonings prescribed in § 3.3.8.

Figure 3.5-1 – CONDITIONAL USE PERMIT REVIEW PROCESS





August 31, 2006

Dear Adjacent Property Owners:

This letter is to inform you that the Cabarrus County Parks & Recreation Department has petitioned the Cabarrus County Board of Adjustment for a Conditional Use Permit. If granted, a public park would be constructed at Cox Mill Elementary School, located at 1300 Cox Mill Road, Concord, N.C. 28027 (PIN# 4680-32-1476). The park would consist of a variety of ball fields and would be located behind the existing school.

There will be a public hearing to decide this matter on September 21, 2006 at the Cabarrus County Governmental Center, located at 65 Church Street, Concord, N.C. 28026 (2nd floor). The meeting time will be at 7:00 p.m.

The Conditional Use Application is on file in the Cabarrus County Zoning Department. If you have any questions or would like to view the application, please contact our office at 704/920-2140.

Sincerely,

Jay Lowe
Senior Zoning Inspector

CASE # C-748
APPLICANT: CABARRUS COUNTY PARKS
& RECREATION DEPARTMENT
DATE: September 21, 2006
EXHIBIT # 3

CASE C-748

Adjacent Property Owner's List

Applicant:

Cabarrus County
P.O. Box 707
Concord, NC 28026
4680-32-1476

E. G. Denny
1701 Cox Mill Road
Concord, NC 28027
4680-52-5626

Eric Vonn & Kathleen M. Hefner
1252 Cox Mill Road
Concord, NC 28027
4680-23-8327
4680-43-2327

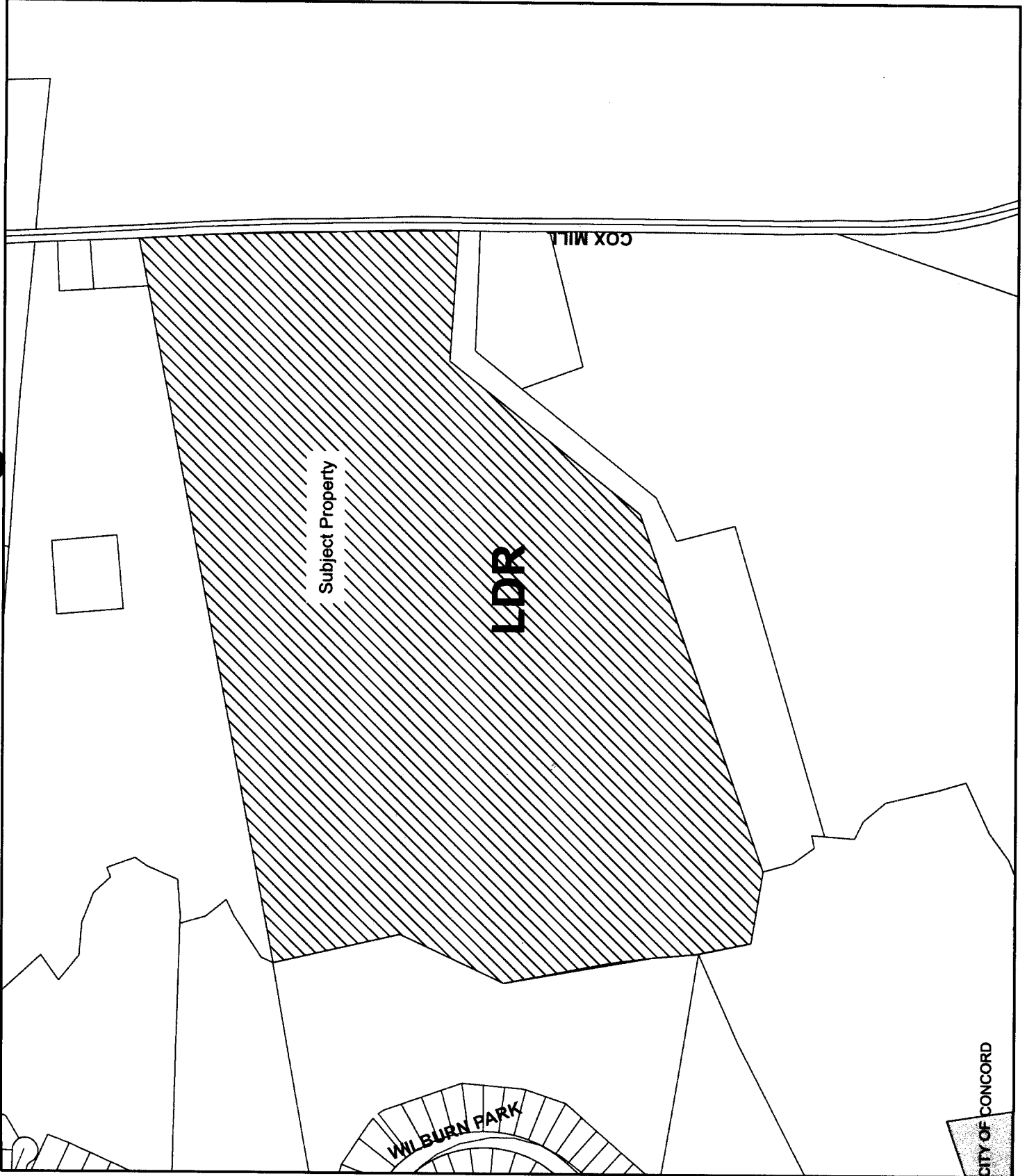
Highland Creek Community Assoc.
c/o Hawthorne Management
P.O. Box 11906
Charlotte, NC 28220
4680-03-6119
4680-12-8398
4680-11-0340
4680-10-9928

Snodgrass Kenneth R. & Charlotte V.
1400 Cox Mill Road
Concord, NC 28027
4680-21-9530



Case # 748-C
Petitioner: Cabarrus
County Parks & Rec
Department

Zoning of Subject
and Surrounding
Properties



CASE # C-748

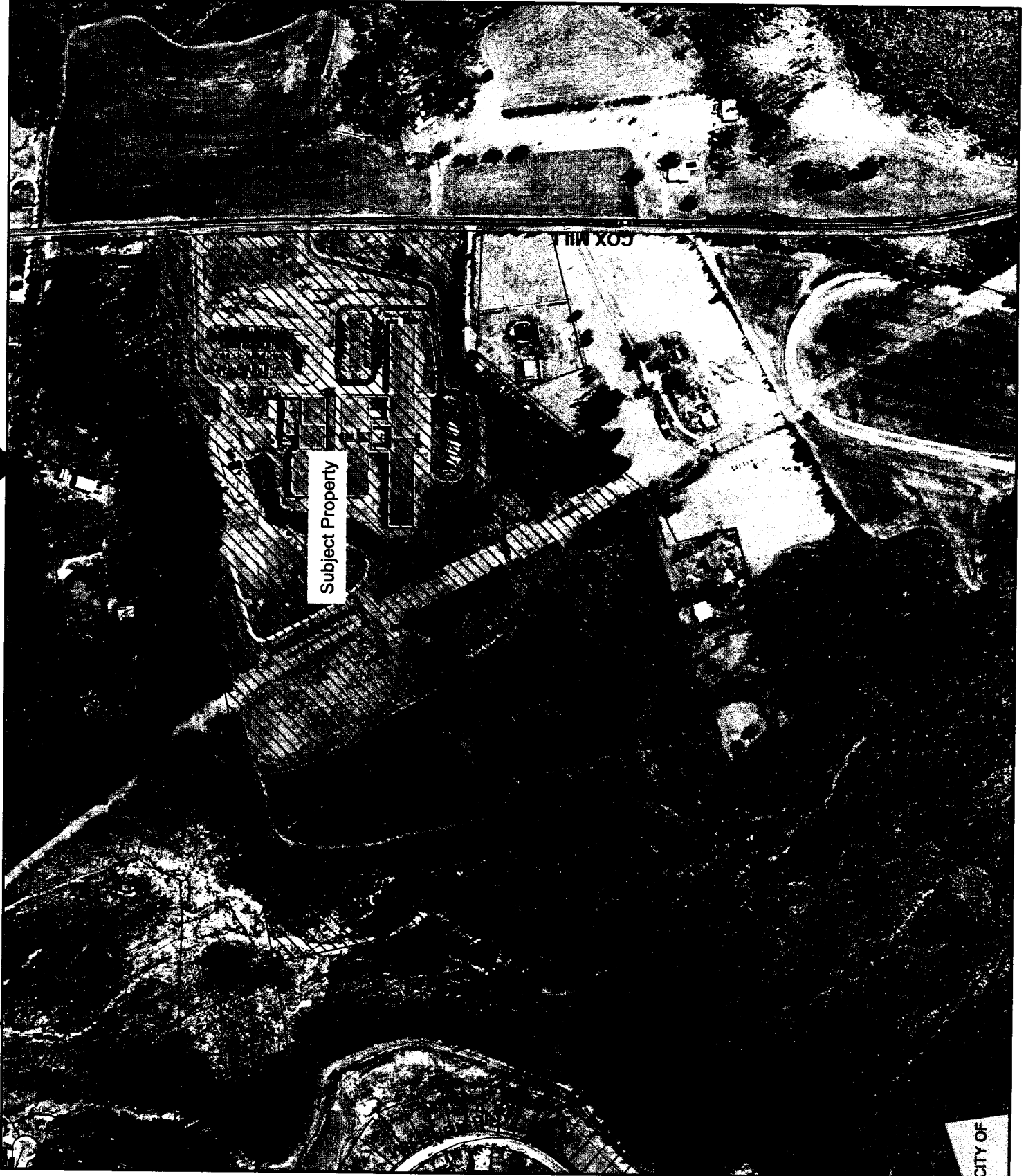
**APPLICANT: CABARRUS COUNTY PARKS
& RECREATION DEPARTMENT**

**DATE: September 21, 2006
EXHIBIT #**



Case # 748-C
Petitioner: Cabarrus
County Parks & Rec
Department

Aerial View of
Subject Property

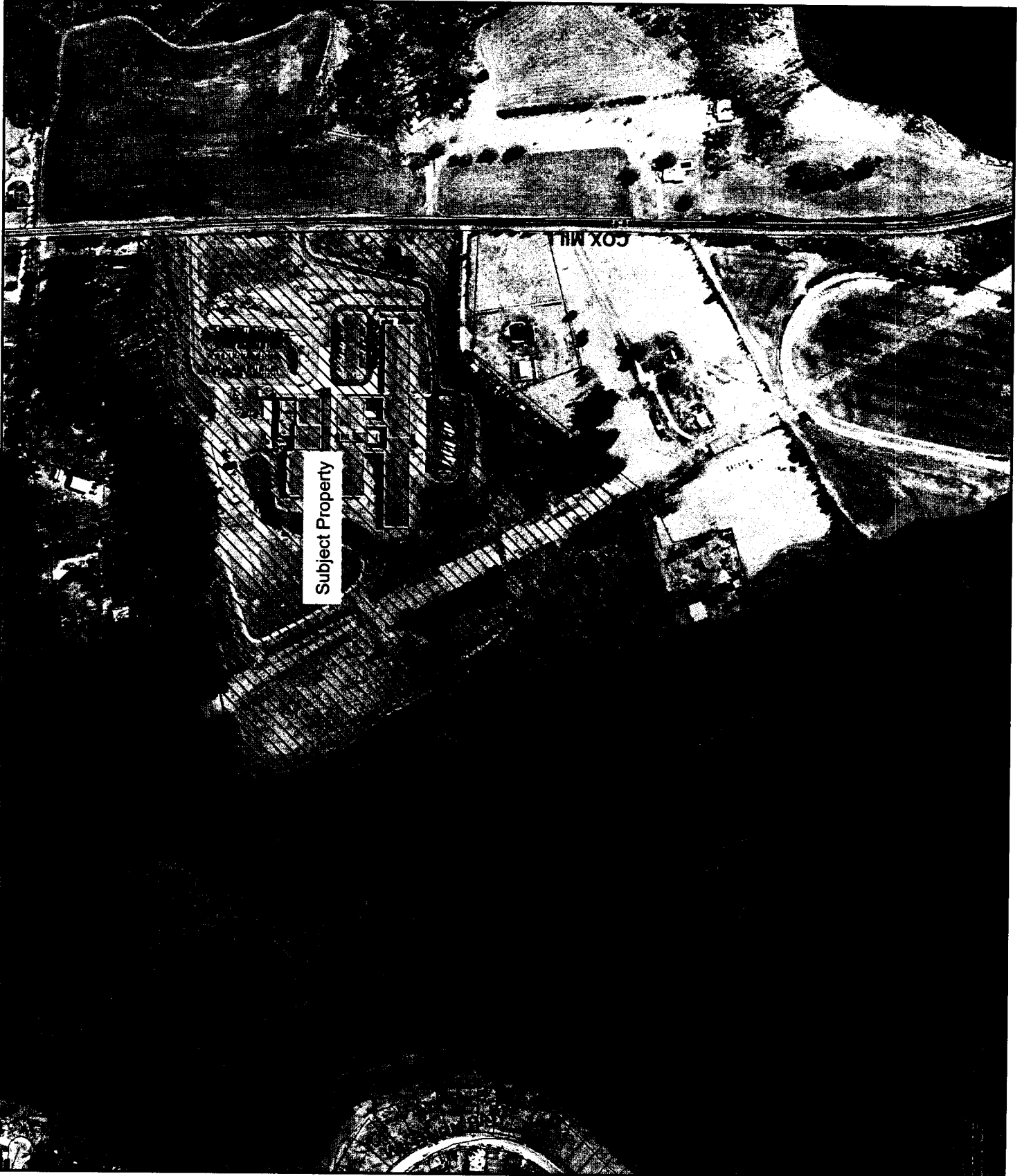




Case # 748-C
Petitioner: Cabarrus
County Parks & Rec
Department
Aerial View of
Subject Property



FloodPlain	
ZONE	
A	[Solid black box]
AE	[Solid black box]
X	[Solid black box]
X500	[Solid black box]



September 21, 2006
Planning and Zoning Commission Meeting

Conditional Use Permit C-748
Cabarrus County Parks & Recreation Department

Drawings
(See File)

Planning Staff Report
to Cabarrus County Planning and Zoning Board
September 21, 2006

Petition: C2006-07 (R) Zoning Atlas Amendment

Property Owner: Louie Thomas Looper Jr.
11180 NC Hwy 73 W.
Huntersville, NC 28078

Existing Zoning: O/I - Office Institutional

Proposed Zoning: CR - Countryside Residential

Purpose: To build two single family homes on the property.

Township: Number 3 – Odell

Property Location: Property is located on Shiloh Church Rd. in between
Stanley McElrath Rd. and NC Hwy 73

PIN#: 4672-41-2528 & 4672-41-5122

Area: +/- 12.256 acres

Site Description: The subject properties are currently vacant.

Zoning History: The property was rezoned during the June 2005 countywide
rezoning from MDR-Medium Density Residential to OI-
Office Institutional.

Area Relationships: North: CR
South: O/I
West: O/I
East: O/I

Exhibits: 1. Vicinity Map-submitted by staff
2. Adjacent Property Owners
3. List of Permitted Uses
4. Northwest Area Plan-Future Land Use Map-1990
5. Northwest Area Plan-Future Land Use Map-Draft
6. NC 73 Small Area Land Use & Economic Development
Plan segment land use map

Comments:

NCDOT- Shawn Riggs: The Department sees no issues and has no comments regarding the rezoning of the subject parcels from OI to CR.

Cabarrus County Schools- Robert Kluttz: We see no problem with this 12 acre parcel being rezoned from OI to CR since the property owner is constructing his own residential structure on it.

City of Kannapolis- Richard Smith: The plan calls for this area to be a future commercial or mixed use area. It seems more appropriate for this to be part of a larger project.

Code Considerations:

Per the Cabarrus County Zoning Ordinance, lands in the Countryside Residential 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.

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.

Other Considerations:

NC 73 Small Area Plan: The NC 73 Small Area Land Use & Economic Development Plan designates this area to be Residential in nature. It further specifies that this area should be considered as Neighborhood General, a smaller

component of what could become a Neighborhood Center. This NC 73 plan depicts a long-term build out of 20 to 30 years, "To address the unforeseen possibility of development occurring in a way that is not identical to the Master Plan, a Framework provides a guide to long-term growth so that the initial goals of the Master Plan are met."

The framework for the Neighborhood General component of this plan is as follows:

- Intent: Create areas that are predominantly residential.
- Location: The Neighborhood Centers are located throughout the study area, indicated on the Zone Map.
- Intensity: Building heights ranging from 1 to 3 stories are required, with a minimum density of 3 to 5 units per acre.
- Frontage Requirements: Buildings must define 60 to 80 percent of the frontage of the block face. Operable doors are required a minimum of every 60 feet.
- Mixture of Uses: Residential and live-work units are allowed. Operable doors are required a minimum of every 60 feet. Civic uses are allowed.
- Building Types Allowed: live-work, townhouses, duplex or two family homes, single family detached, civic buildings.

Under the proposed rezoning request, the maximum density permitted under the CR zoning designation is 1 unit per 2 acres if developed as a conventional subdivision.

The NC 73 plan also shows the lower portions of each of these properties designated as open space preservation through Neighborhood Greens.

The 1990 Northwest Area Plan calls for the subject properties to be developed as medium density residential uses with densities up to 4.5 units per acre. It also indicates that the intersection of NC 73 and Poplar Tent Rd. should develop with commercial uses. The newest draft of the Northwest Area Plan calls for this area to be developed residentially at 1-3 units per acre. The draft plan indicates that the intersection of Poplar Tent Road and NC 73 should develop as a Neighborhood Center. The draft plan was used as a basis for the rezoning map adopted by Cabarrus County in 2005.

Conclusions:

The NC 73 Small Area Land Use Plan and map support the development of the subject properties as residential. However the NC 73 plan defines these properties as part of a larger possible Neighborhood Center. Per the current zoning designation (C-2) to the south and general development trends in the area, it appears that a neighborhood center is already starting to develop. A medical office has been developed on PIN# 4672-40-3559 and additional plans have been submitted to the City of Kannapolis for a drug store, a bank, a grocery store and other general retail. These uses are all part of the approved Renaissance Square Retail Center.

This rezoning could be considered an extension of an existing CR zoning district. Under the Countywide Zoning Atlas Amendment, adopted in June 2005, the general consensus was that residential densities in this area of the county should not be increased due to school overcrowding and traffic congestion issues.

Recommendation:

The proposed rezoning meets the overall residential component of the NC 73 Small Area Land Use Plan. However, it does not meet the intensity of residential development specified in the plan for the parcels under consideration (minimum of 3 to 5 units per acre). Since the proposed rezoning request is not compatible with all elements described in the NC 73 plan, the Board should consider the information presented and decide whether or not amending the subject property's zoning classification to CR is appropriate as it relates to the Planning and Zoning Board's vision for this area of Cabarrus County. In addition, development trends in this area already support the proposal set forth in the NC 73 plan for this area (including the subject properties) to develop as a neighborhood center.

List of Permitted Uses

Permitted

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 (PBS)

Accessory apartment
Auction house
Bed & breakfast
Cemetery
Civic organization facility
Convenience store with petroleum sales
Convenience store without petroleum sales
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
Recreational facility, outdoor
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

List of Adjacent Property Owners

Louie Looper
11180 NC Hwy 73 W
Huntersville, NC 28078
PIN# 4672-41-2528
PIN# 4672-40-8468
PIN# 4672-40-2805
Mecklenburg County Parcels
00720108
00720204

Cabarrus Memorial Hospital
Northeast Medical Center
45 Lake Concord Rd.
Concord, NC 28078
PIN# 4672-40-3559

Johnny Franklin Shinn
213 St. Christopher Walk
Rocky Mount, NC 27804
PIN# 4672-32-7160

Procedo Investment LLC
9548-D Mt. Holly/Huntersville Road #224
Huntersville, NC 28078
PIN# 4672-42-2160

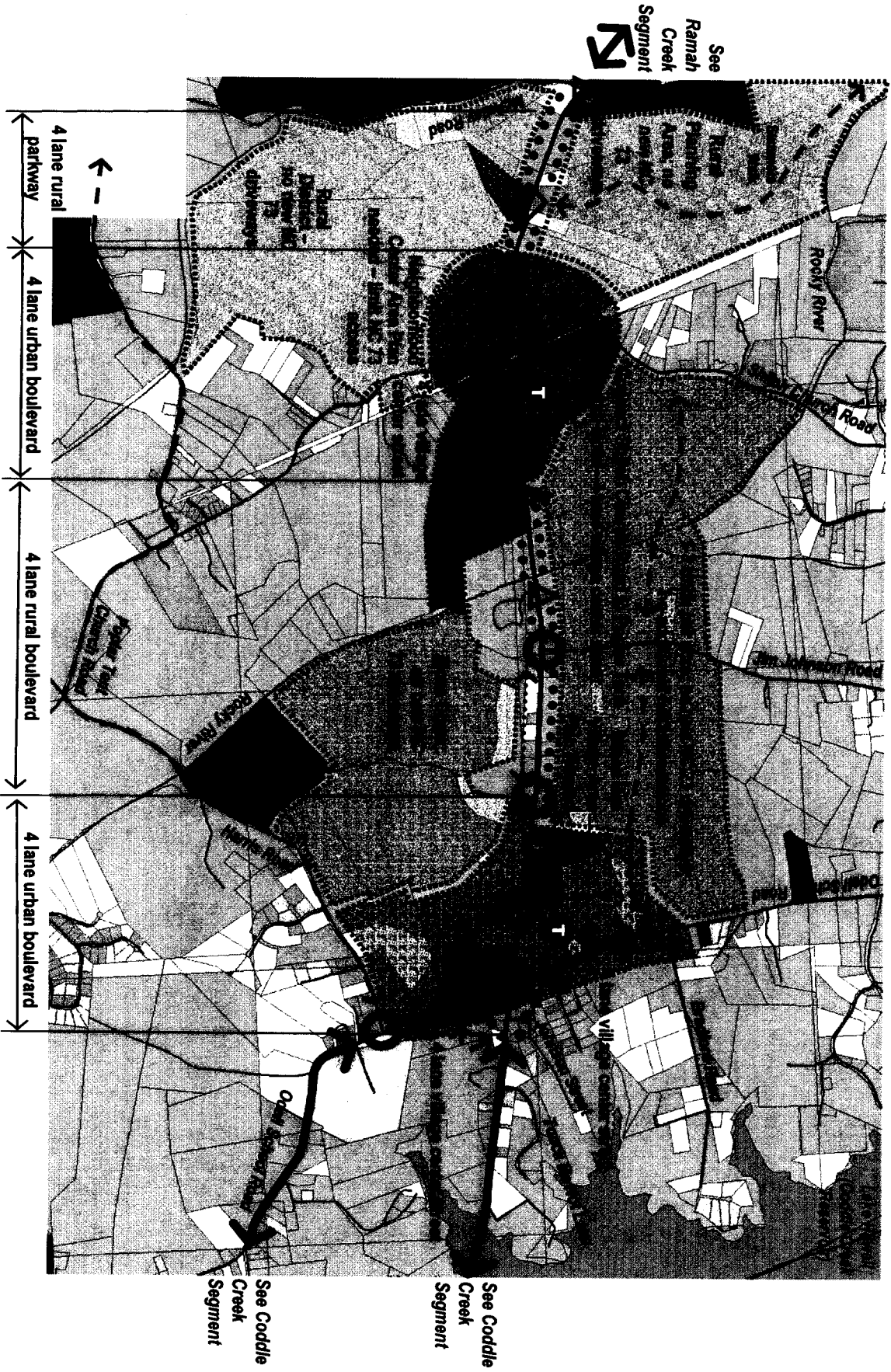
Valarie Denise Thrasher
2468 Shiloh Church Rd.
Davidson, NC 28036
PIN# 4672-42-4210

Maggie Thasher
2482 Shiloh Church Rd.
Davidson, NC 28036
PIN# 4672-42-5331

Estate of John Mercer
c/o Shirley Elizabeth Mercer
2531 Shiloh Church Rd.
Davidson, NC 28036
PIN# 4672-42-8486

Ronald Gold Overcash
P.O. Box 5030
Concord, NC 28027-5030
PIN# 4672-41-8671

Segment Plan – Rocky River





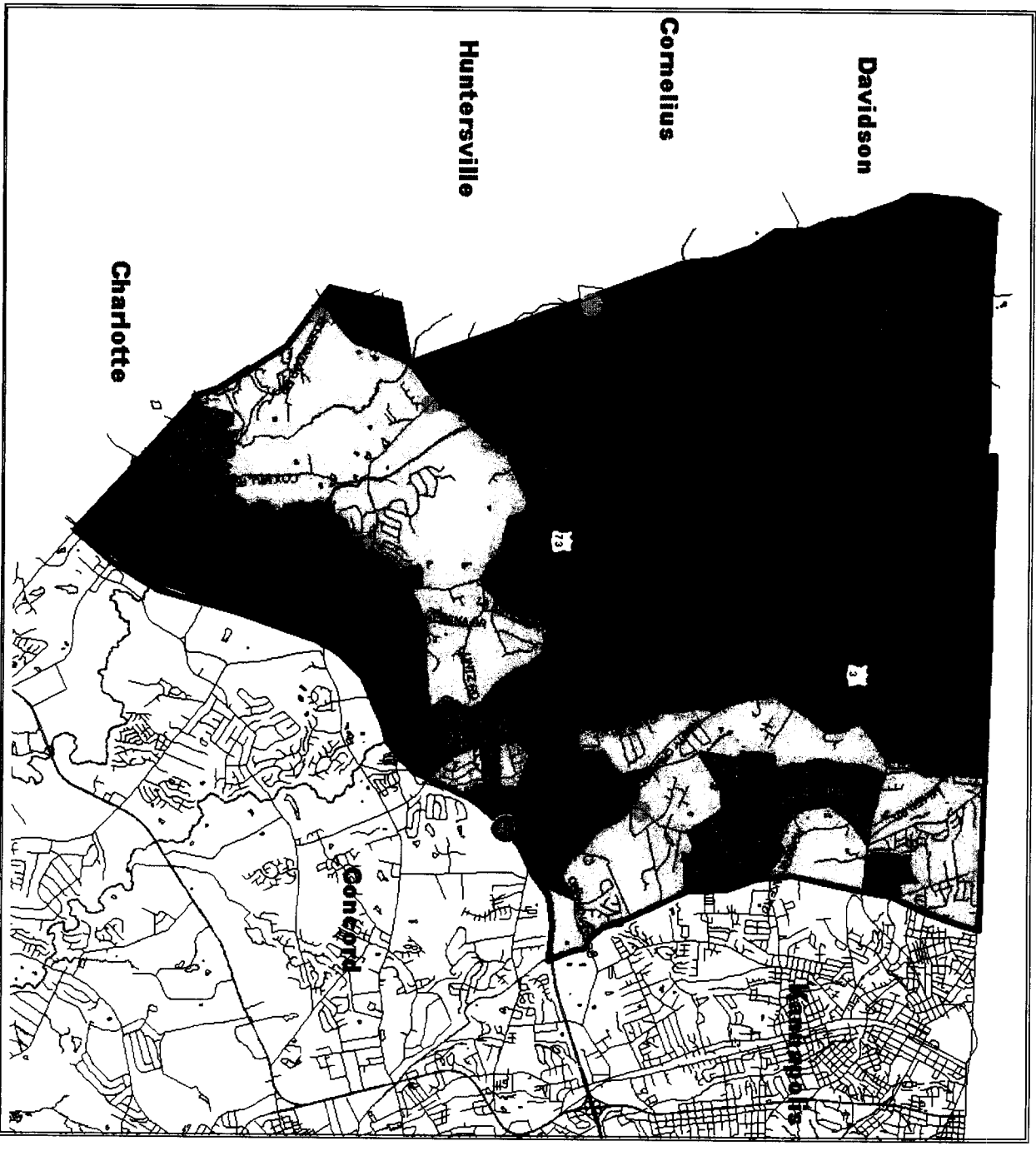
Northwestern Plan Area Future Land Use

DRAFT

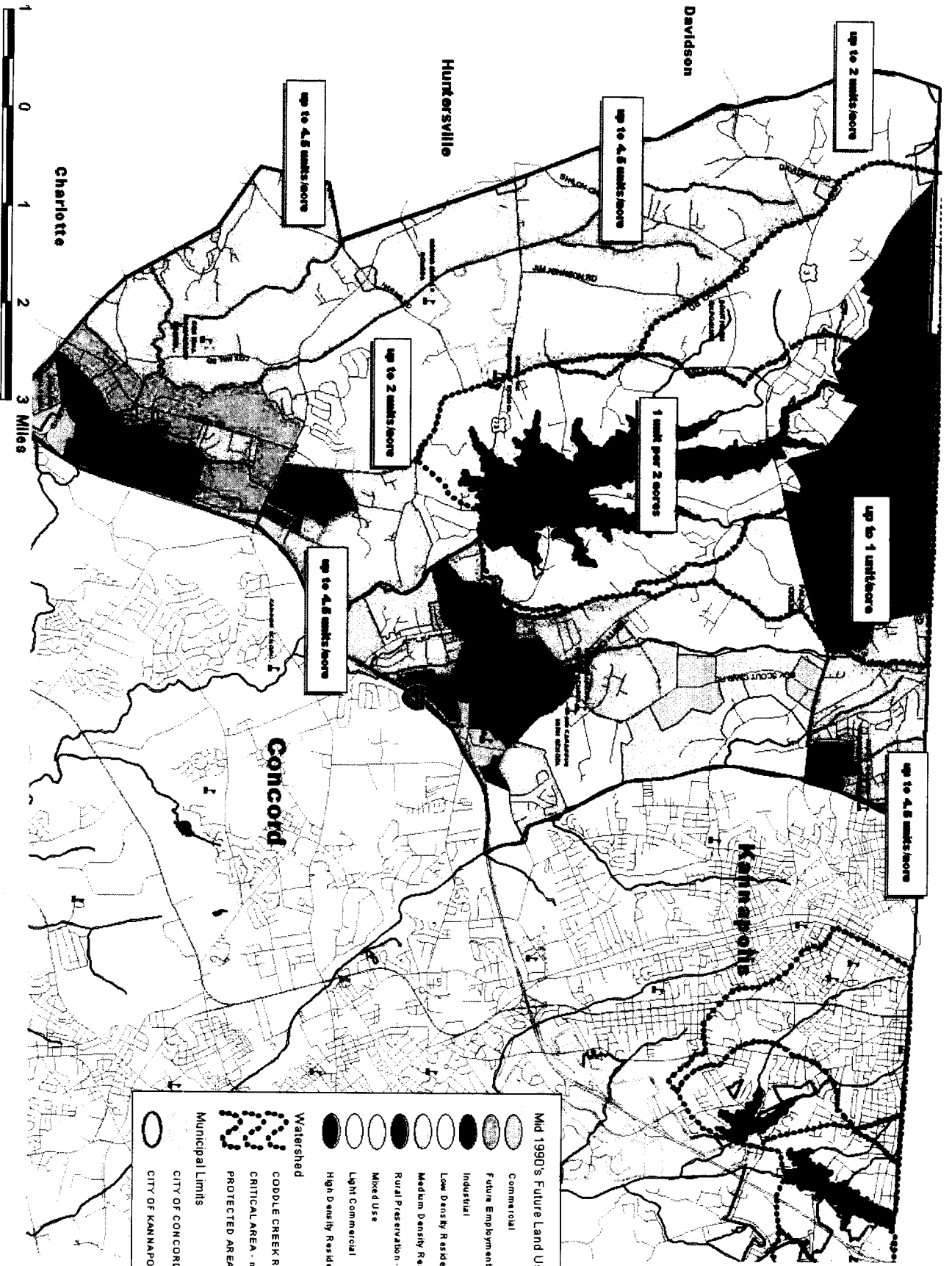
Legend

Future Land Use Categories

	1 unit per 2 acre
	1-3 Units per acre
	2-4 Units per acre
	5+ Units per acre
	Mixed Use
	Commercial
	Employment
	Neighborhood Center



Northwest Area Plan



Mid 1990's Future Land Use

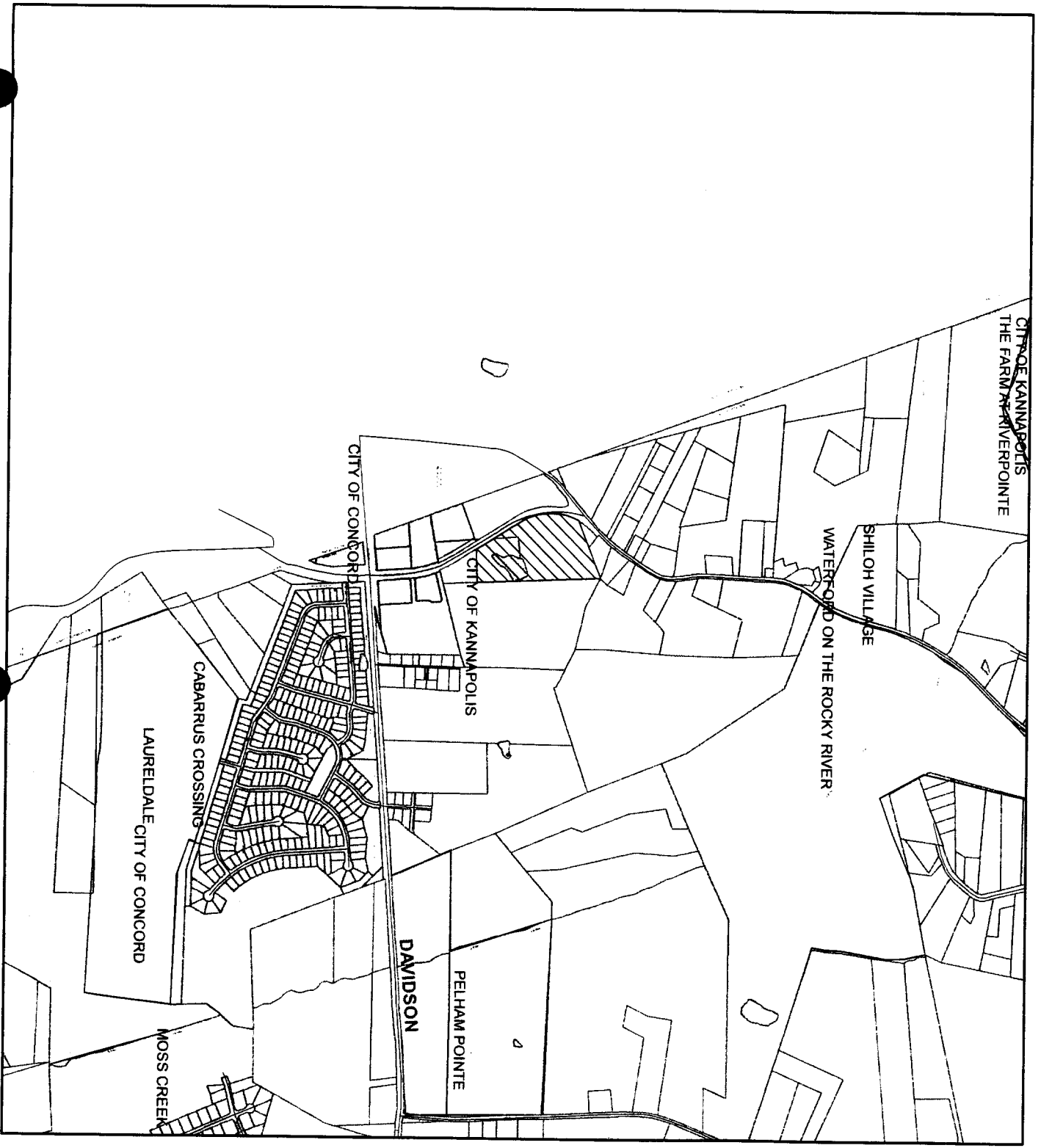
- Commercial
- Future Employment
- Industrial
- Low Density Residential - up to 2 units/acre
- Medium Density Residential - up to 4.5 units/acre
- Rural Reservation - up to 1.5 units/acre
- Mixed Use
- Light Commercial
- High Density Residential - greater than 5 units/acre

Watershed

- CODDLE CREEK RESERVOIR
- CRITICAL AREA - no more than 1 unit per 2 acres
- PROTECTED AREA - no more than 1 unit/acre

Municipal Limits

- CITY OF CONCORD
- CITY OF KANNAPOLIS






Area Map

C2006-07 (R)
Loopier Rezoning
O/I to CR
P/O PIN 4672-41-5122
and 4672-41-2528



Legend



-  Subject Property
-  Street/Centerline
-  Water Poly



C2006-07 (R)
 Looper Rezoning
 O/I to CR
 P/O PIN 4672-41-5122
 and 4672-41-2528



Legend

-  Water Poly
-  Street Centerline



Planning and Zoning Commission Minutes
September 21, 2006
7:00 P.M.

Mr. Larry Griffin, Chairman, called the meeting to order at 7:05 p.m. Members present in addition to the Chair were Mr. Todd Berg, Ms. Brenda Cook, Mr. Eugene Divine, Mr. Danny Fesperman, Mr. Roger Haas, Mr. Ted Kluttz, Mr. Leonard Lancaster, Mr. Ian Prince and Mr. Barry Shoemaker. Attending from the Planning and Zoning Division were Ms. Susie Zakraisek, Planning and Zoning Manager, Ms. Colleen Nelson, Sr. Planner, Mr. Chris Moore, Planner, Mr. Jay Lowe, Zoning Officer, and Ms. Arlena Roberts, Clerk to the Board.

The chair swore in the reappointed board members, Mr. Todd Berg, Ms. Brenda Cook, Mr. Leonard Lancaster, and newly appointed alternate board member Mr. Ted Kluttz.

Roll Call

New Business:

Ms Zakraisek addressed the board stating that there will need to be two readings to approve the update to the Planning and Zoning Commission Rules and Procedures. The second reading will happen next month and will be the first item on the agenda. She said if the board approves the change, then a new Chair and Vice Chair will be selected. She said this is just a first reading and a chance to answer any questions. It is a change to make the rules consistent with when the board members are appointed. She said a motion will be made at the second reading.

Approval of Minutes

Mr. Berg **Motioned, Seconded** by Mr. Fesperman to **Approve** the August 17, 2006, minutes, with the Findings of Facts for Application C-715 submitted by Attorney Richard Koch. The vote was unanimous.

New Business – Board of Adjustment Function:

Conditional Use Permit C-748 -Cabarrus County Parks and Recreation Department

Request: The applicant is seeking permission to construct a public use facility (Public Park)

The Chair swore in Mr. Jay Lowe, Mr. Steve Whaley, Ms. Janet Magaldi, Mr. Eric Hefner and Ms. Charlotte Snodgrass.

Mr. Jay Lowe addressed the board stating that this application will look very similar to an application that was previously before the board. He said that application was 715-C. He said the board must realize that the application heard before is totally separate from this new application. He said Application 715C was denied by this Board and has been filed; the vote was 6 to 2 in favor, but that was not enough votes for it to go forward. He said this is a totally new application, the applicant was requested to submit all new site plans and they were included in the board packets.

Mr. Lowe said the application is C-748, the applicant is Cabarrus County Parks and Recreation Department and the property owner is Cabarrus County. The zoning on the property is LDR (Low Density Residential); the location of the property is 1300 Cox Mill Road and is also the location of the existing Cox Mill Elementary School. The size of the total property is 62.40 acres. The applicant has submitted a complete application and the additional information required by the Cabarrus County Zoning Ordinance for a Conditional Use Permit. The adjacent property owners have been notified by mail.

Mr. Lowe said the public hearing notice was published on September 8th and September 11th of 2006, in the Charlotte Observer's Cabarrus Neighbors, and September 7th and September 11th of 2006, in the Independent Tribune. A zoning public hearing sign has been placed on the property advertising the time and place of the public hearing. As per section 3-8 (Table of Permitted Uses) of the Cabarrus County Zoning Ordinance, Public Use Facilities are allowed as a Conditional Use in the LDR (Low Density Residential) zoning district. He said we do not have a specific line item for this use, so we choose the most suitable use and by the ordinance it tells us that parks go under public use facilities.

He said the Cabarrus County Parks and Recreation Department is seeking permission to construct a public park behind the existing Cox Mill Elementary School. If granted, the park will include walking trails, ball fields and a concession building with bathrooms. The applicant intends to construct the required parking area with a pervious (not gravel) material. He said if budget issues arise, the parking will be paved with asphalt. Either way, all standards of the ordinance will be met.

Mr. Lowe said the board packets are mailed out a week in advance and on the day they were mailed, the bids for the paving were received by Parks and Recreation. He said it will not be in the Parks budget to do the pervious pavers, so this will be an asphalt parking lot. He said he glanced at the numbers and some of them came into be 3 and 4 times higher when looking at pervious pavers. He wanted to make it clear that it was their intent to use pervious pavers but it is not going to work out; they are looking at using asphalt, either way, the standards of the ordinance are being met.

Mr. Lowe said the applicant has made an effort to maintain a 100 foot buffer in most areas. He said concerning the southern property line, it appears that the buffer has been reduced in a couple of areas to 75 feet; however, by choosing this option, buffers will need to be planted with evergreen vegetation to make it opaque. He said the applicant went above and beyond what the ordinance calls for; they had the option to leave the property lines opaque by using evergreen vegetation. He said they have done that but did

not reduce the buffer except in a couple of areas just around the ball field where it extends into that 100 feet area. He said there is a wood line there and the applicant proposes to plant evergreens along the wood line that would make it opaque all the way through and they are not reducing the buffer yard except in those couple of areas where the ball fields extend in. He said even then they are not going down to 50 feet; the closest they would ever get would be 75 feet; so they have actually gone above and beyond what the ordinance calls for there.

Mr. Lowe said these are the two critical things; the applicant is here along with the engineer. He is sure there is some opposition and he thinks those folks are here as well. He would be happy to answer any questions.

The Chair asked if there were any questions.

Mr. Shoemaker said he didn't see any kind of parking lot, he saw the parking lot plan but no schematic as to how they were going to do the parking lot, as far as the concrete barriers, the curbs and gutters and that type of stuff.

Mr. Steve Whaley with W.K. Dickson, representing the owner, said the parking lot is basically a flat asphalt surface, they do not have curb or gutter on the site. He said there are some curve stops at the handicap parking spaces.

Mr. Shoemaker asked if the green areas in the parking lot are just going to be domed up.

Mr. Whaley said that is correct, that would be landscaped and there will be landscaping around the parking lot to meet code and beyond.

The Chair asked if there were any more questions for the applicant. There being no more questions for the applicant, the floor was open for public comment.

Ms. Charlotte Snodgrass, of 1400 Cox Mill Road, addressed the board stating that the plans for the park impacted her residence more than any other residents in the area and that noise is a great concern. She said the folks at Parks and Recreation agreed they would work with them on this issue. She does have a question about the differences of the distances of the buffer and how that impacts the area closest to her house now, before it was 100 feet, what has it been changed to now? She is also very concerned about the parking lot being of a permeable substance for the water run off. She is concerned about the water run off getting into the water table, because they are on well water.

Mr. Lowe said in the previous application the buffer was 75 feet, at this point and time, the buffer has been pushed back to a 100 foot buffer in most places. He said there are a few places where the ball field will extend into those 75 feet but they have gone back and planted more evergreens within that buffer. He thinks that would help the noise problem some, but the bottom line is they have added 25 feet to that buffer.

Mr. Berg asked for clarification on whether the ball field would extend into the 75 feet.

Mr. Lowe said it would not extend into the 75 feet buffer but into the 100 feet buffer. He said in no case will they go any closer than 75 feet, according to the site plan. He said as for the environmental issue with the asphalt parking lots, there have never been any substantial facts that this is going to cause any harm to the environment. He said the applicant was proposing to have the least detrimental impact to the environment, if at all possible. He said Mr. Prince had mentioned before that the parking lot was far enough away from the wetlands that it was unlikely that it would cause any harm.

Ms. Snodgrass understood that the soil conservation person suggested or recommended gravel as opposed to asphalt and she supports his feelings about that as well.

Mr. Lowe said she is speaking about Dennis Testerman, he has not spoken with him but the applicant has had some contact with him.

Mr. Eric Hefner, resident of Cox Mill Road area, addressed the board. He is an adjoining property owner to the park and he does not oppose the park. He said he would like to make it clear out of respect to the children our future generation, what this park represents and what it will do for this community. He understands there is a short fall of real estate, liquid funds and budget restraints for the county and he respects that. He said this is a beautiful facility on a 62 acre parcel. He has served as a member on the storm water committee for Cabarrus County and is a licensed contractor in the state of North Carolina. He is quite familiar with the property; he worked the property prior to the construction of the school. He is familiar with the wetlands and that is a great concern, the stormwater, the surface runoff is one of his greatest concerns. Mr. Hefner said the issue of this meeting is to discuss and decide on the park and he respects that side of it, but by the same token, due to the fact that it is housed on school property, and as a tax payer and concerned citizen, he would like for strong consideration to be given to the environmental side of this, the excessive run off.

Mr. Hefner has been a liaison; a steward to the Land Trust for approximately 7 years and over saw the construction in relation to the wetlands. He said you can take a candid walk behind the strip mall across the street from Concord Mills, the beautiful pristine wetlands and you can view the oil skims, the trash, the filth, the runoff through the storm system as we speak. He relates to this as a contractor because he sees so much of it and he does not want this subject matter to be made light of respectively, out of concern for the wetlands, the quality of water. He knows, he witness, and he sees and works around construction and sees what damage is taking place. He said as property owner he witnessed it having wetlands to exist on his property at present. He is struggling with strong emphasis being placed such a big facility, it is a wonderful thing, we need more parks and he agrees to that but let's take some strong consideration in education to these kids. He said we have a school there that is housing approximately 1,200 kids and unfortunately we are out of space and already have approximately 10 mobiles on that property. He said that is what he struggles with, when you have a 62 acre parcel of land and you are constructing this wonderful facility on the back side of the property and you can only house less than 1,200 kids that the facility was built for.

He sees not only a pristine rookery in jeopardy here; he witnessed it as a 28 year resident in the county. He is trying to place the shoe on the other foot and give a little consideration to the future of this community as hole. He feels this is a very positive step for the County and for the future of our children.

Mr. Lancaster said he is not sure if Mr. Hefner is for or against the park. He said obviously the run off is Mr. Hefner's main concern, and asked what type of surface he was in favor of?

Mr. Hefner said gravel surface, anything but oil based material.

Mr. Lancaster said you are for the park with a gravel parking lot?

Mr. Hefner said yes.

The Chair asked Mr. Hefner if he had a choice to do asphalt parking lots versus not having a park which he would choose.

Mr. Hefner said no park.

Ms. Janet Magaldi native of Cabarrus County addressed the board stating that she recently learned about the park. She said within a thousand feet of this park is one of the largest Blue Herring rookeries this far west in North Carolina. She said Land Trust of Central North Carolina bought that property 10 or 11 years ago in order to save that rookery from draining and development. She said this park will impact it and that is a shame. She asks the Board to consider the environment, the ecology and our natural heritage. She said the least we can do is put in a gravel parking lot. She talked to Steve the other day and the prices are about the same more or less. She thinks the gravel would be better for the environment. She does not know where the birds will go; they will have to fend for themselves like everyone else.

Mr. Lancaster said he had questions for Steve Little.

The Chair swore in Steve Little, Director of Cabarrus County Parks and Recreation.

Mr. Lancaster asked how much the parks budget will go up if asphalt is used versus gravel.

Mr. Little said the budget was \$520,000 over budget. The pavers were any where from \$245,000 to \$600,000.

Mr. Whaley said due to the fact that the board turned down the gravel parking lot, bids were not taken for the gravel, so he is not sure of what the cost difference would be. He said if you look at the cost of the gravel for the maintenance, that you would have to do yearly (maintenance) versus pavement, he is not sure what the cost difference would be

in that kind of comparison either. He said one thing the board may want to think about is that the total impervious area on the whole site is 8.5%, the increase that the small parking lot and drive that we are adding to the site was less than half an acre so it is not going to increase the impervious area that is already there by 1% at the most or less than that 1%. He said they maintained anywhere from 100 to 2 or 3 hundred feet on the end next to the Snodgrass property from the wetlands so that we are maintaining a buffer from the wetland.

Mr. Lancaster asked what the low bid was on asphalt.

Mr. Whaley said it was a lump sum bid and that was lumped in so he is not sure exactly what the low bid was; we have been working with the lower bidder right now but they do not have break downs from all the other bidders, so he cannot say what the exact cost was.

Mr. Lancaster said you do not know how much that increased the budget on the property?

Mr. Whaley said no.

Mr. Berg said when you said 8.5% impervious area on the whole site, are you including the school?

Mr. Whaley said yes, it was 5.35 acres total impervious, the school and the parking lot and the new parking lot and drive that we have; and the site is 62 acres.

Mr. Little said generally gravel is two-thirds the cost of asphalt parking lots so if you have \$60,000 normally it will cost \$90,000 to \$100,000 to asphalt it. He thinks Mr. Whaley makes a good point that you would have to do quite a bit of maintenance for a gravel parking lot, maybe not every month but you would have to bring in additional gravel and so forth. He said even if we could afford the pavers, there are a lot of maintenance issues on pavers, you constantly have to relocate and move them around quite a bit. He said there were some other issues that were taken for environmental issues; we substituted the soil amendments for all of the turf improvements; Bermuda grass needs a lot of fertilizer and we are using compost and those types of materials instead of fertilizer. He said there will be some fertilizers but very limited, he thinks that is a unique stand point. He said we are also bringing topsoil on to the site trying to avoid any type of contamination to the site.

Mr. Little said there is almost 400 feet from the parking lot down to the wetland areas and that serves as sort of a buffer even if you have any problems.

Mr. Berg asked Mr. Little to explain the concept of the drainage off of that parking lot, if it were sheet flow off of the asphalt and across; it is not being collected in catch basins?

Mr. Whaley said that is correct; that is why they did not use curb and gutter. We were using just sheet flow so that it could be absorbed into the grass system.

Mr. Shoemaker asked if at the end of the project all the silt containment ponds would be flattened out and the flood plain restored back to its normal height.

Mr. Whaley said yes, it is state law that you have to do that.

The Chair asked if there were further questions or comments.

Mr. Fesperman said with the price of oil dropping as it has, this is a positive situation when they do go out and bid on this. He said it should help on the reduction of the cost of paving.

The Chair asked if Mr. Fesperman was saying there is less difference in the cost of paving versus gravel.

Mr. Fesperman said correct.

Mr. Koch said this is a new application but yet very similar to the one presented a month ago. He said last time the applicant proposed gravel, and actually gravel is not allowed by the ordinance but that was part of their proposal and is what you considered. He said this application is different in reference to that particular matter because they have resubmitted this application asking for asphalt which is required by the ordinance. He said you cannot require them to put in gravel, the only way that gravel could be used on this site would be if the application were resubmitted after a text amendment to the ordinance which would have to be approved by the County Commissioners. He said you would have to consider the application as proposed and this application now is totally in compliance with ordinance in terms of what is being proposed for it.

Mr. Koch said this is a conditional use application, everyone was sworn in, the only evidence you can consider is the substantial material and competent facts that have been presented. He said opinions, concerns, ideas about what may happen or things that may have happened on other properties are not material substantial or competent evidence.

The Chair asked if Mr. Koch was saying that if they did not have any substantiated environmental experts here tonight that everything submitted about that matter is purely outside.

Mr. Koch said yes, any statements that were made that represent concerns, or opinions about environmental impact would not qualify as facts or as evidence under the standards that are required by both the ordinance and by state law.

The Chair said or denying the Conditional Use.

Mr. Koch said that is correct.

Mr. Lancaster asked if Mr. Koch is saying that gravel or asphalt is really not a concern of ours.

Mr. Koch said that is correct.

The Chair asked if Mr. Koch is saying that they have met the substantial requirements of the law.

Mr. Koch said that is for the Board to decide. He wanted to point out to the Board particularly in view of what occurred last time in the discussions, that this application is different in that one important respect, and is totally in compliance with the ordinance this time; where as last time it was not because they were essentially asking you for a variance which technically he does not think they can do. He wanted them to be aware that you have a little bit different situation here.

Mr. Haas asked if this application was denied and it was appealed by the Parks and Recreation Department which would be the next step in this process; then in effect the County would be taking the County to court.

Mr. Koch said that would be true.

There being no further discussion the Chair called for a Motion.

Mr. Prince **Motioned, Seconded** by Mr. Fesperman to **Approve** Conditional Use Application C-748 as submitted. The Vote was unanimous. Conditional Use Application C-748 **Approved**.

The consensus of the Board is to have Mr. Koch prepare the findings and submit them at the next meeting.

Planning Board Function:

Zoning Atlas Amendment – Petition C2006-07 (R)

Mr. Louie Thomas Looper, Jr
11180 NC Highway 73W
Huntersville, NC 28078

Request: (OI) Office Institutional to (CR) Countryside Residential to build two Single Family home on the property.

Mr. Chris Moore, Planner, addressed the board presenting Petition C2006-07 (R), Zoning Atlas Amendment. He said the property owner is Mr. Louie Looper, Jr. The existing zoning on the property is (OI) Office Institutional and Mr. Looper is requesting that it be rezoned to (CR) Countryside Residential in order to build two single-family homes on the property. It is about 12.25 acres and is currently vacant. The property was rezoned

during the June 2005 countywide mass rezoning from (MDR) Medium Density Residential to (OI) Office Institutional. This rezoning was sent out for comments from all jurisdictions involved in the NC 73 Small Area Land Use Plan. The only comments received were from Kannapolis Planning Director, Richard Smith, who stated he believes the property should be part of a larger development. This small area plan specifies the area to develop in the neighborhood general category, which anticipates residential development in the rate of 3 to 5 units per acres. The (CR) Countryside Residential zoning designation that Mr. Looper is requesting would allow a minimum lot size of 2 acres in a conventional subdivision or 1 acre as a part of a minor subdivision.

Mr. Moore said the 1990 Northwest Area Plan also applies to the property and calls for it to be developed as (MDR) Medium Density Residential with densities up to 4.5 units per acre. He said the 1990 Northwest Area Plan also indicates that the intersection of 73 and Poplar Tent and Shiloh Church Road, just south of this property, should be developed as a commercial center; which is currently occurring on the property. He said the newest draft of the Northwest Area Plan, which is not adopted, calls for the area to develop residentially at a rate of 1 to 3 units per acre with the intersection developing as a neighborhood center. He said this draft plan was used as the basis for the rezoning map adopted by the County Commission in 2005.

Mr. Moore said the NC 73 Small Area Land Use Plan and map support development of this property as residential. However the plan envisions a higher density development that is allowed under the (CR) Countryside Residential zoning. He said the NC 73 Plan also sees the property as a part of a larger possible Neighborhood Center, which he stated earlier, is starting to develop. He said the proposed rezoning could be considered an extension of the existing (CR) Countryside Residential zoning district that abuts the property to the north.

Mr. Moore said the proposed rezoning meets the overall residential component of the NC 73 Small Area Land Use Plan. However, it does not meet the intensity of residential development specified in the plan for the parcels under consideration, which would be a minimum of 3 to 5 units per acre. He said since the proposed rezoning request is not compatible with all elements described in the NC 73 Plan, the Board should consider the information presented and decide whether or not amending the subject property's zoning classification to (CR) Countryside Residential is appropriate as it relates to the Planning and Zoning Board's vision for this area of Cabarrus County. He said in addition, development trends in this area already support the proposal set forth in the NC 73 Plan for this area, including the subject properties to develop as a neighborhood center.

Mr. Moore said the applicant is here tonight to answer any questions the Board might have.

The Chair said if there were any questions for staff or the petitioner.

Mr. Looper, owner of the property addressed the board. He stated that in May he was trying to rezone the 19 acres from (OI) Office Institutional to (CR) Countryside Residential so that he and his son could each build a home on the property. He said in July 2004, he signed a contract with Northeast Regional Hospital to let them purchase the land his home is on at the present time. He said at that time, the 19 acres was zoned (CR) Countryside Residential, on June 20, 2005, it was rezoned to (OI) Office Institutional and he was not aware of it until April 2006. He is not familiar with rezoning, so he asked the planning staff if he had a chance to get the 19 acres rezoned back to (CR) Countryside Residential but as you all know it was denied. Mr. Looper said at that meeting the Chair advised that if he had a smaller portion surveyed off the 19 acres he would have a better chance of getting it rezoned, and he has done that and attached it to the existing (CR) Countryside Residential as advised by the Planning staff. He also had the Health Department do a soil test and it has passed (it is going to require a pump station but at least they can have their septic system on there).

Mr. Fesperman asked if Mr. Looper is saying he went from 19 acres to what he came forth with before.

Mr. Looper said to put the house where his son wants his, on the side of the pond. He said they had to survey it up to a little over 12 acres for him to get his house in there. He said on the remaining property he has discussed with the developers doing the shopping center about putting a daycare on that section and that would work out perfect. He said they want approximately 1.5 acres and that is going to be about 1.75.

The Chair said he (the Chair) should not have been giving advice.

Mr. Looper said the Planning staff gave him the same advice, to survey off a section and then attach it to the existing (CR) Countryside Residential behind it.

Mr. Haas asked Mr. Looper where his home is now that Northeast has an option on (the property).

Mr. Looper showed on the map where his home is currently. He said at the time he signed the contract, all the land he owned out there was (CR) Countryside Residential and he was not notified when it was rezoned.

The Chair said staff determined that Mr. Looper had been sent a letter.

Mr. Looper said he was sent a letter that said they intended for a lot of this area to be commercial, which he agreed to let a lot of that happen, but nobody ever said that they did not want him to build a house on any of it or that they were going to rezone it to (OI) Office Institutional.

Mr. Jerry Newton addressed the board stating that he came to Cabarrus County in 1990 as their Planning Director. He said when the County was concerned about growth, the County Manager at that time was saying we need help and are concerned about it. He

said he told the County Manager not to be concerned about it, that it is something you embrace, understand, and develop with it.

Mr. Newton said he is a certified land use planner, for 17 years, reviewed thousands of plans, has designed town centers, subdivisions, developments and has been involved in all facets of real estate. He and his wife currently own Century 21 Cornerstone here in the community, with four offices and 65 agents. He loves the community and would like to see things done right.

He said recently, Mr. Looper came to him to talk about what was going on with his property. He said after looking at the situation, it was pretty clear that what he is trying to do is actually implement it; the beginning facets of the Highway 73 plan.

Mr. Newton said Mr. Looper's father bought the property where he resides and it has the Commercial zoning as well as the Office Institutional, back about 40 years ago. He said when Mr. Looper's father died; about 33 years ago he and his siblings had a decision to make. He said three of them wanted to sell for profit and Mr. Looper wanted to stay on the family property. He said Mr. Looper took a second job by farming his property and he worked off and paid and purchased all the land both in Cabarrus County as well as Mecklenburg County. He said what Mr. Looper is simply asking to do is to stay on his family property. He said a couple of things have happened to Mr. Looper that does not make it very comfortable for him. He said when Mr. Looper looked and when the hospital looked at the property as a location that they wanted to expand into, being on the Cabarrus County side as close as they could get to county line with Mecklenburg. He said they selected a location where they are currently. He said they also wanted the property where his house is, Mr. Looper did not want to move. He said the hospital looked at how the zoning was in place, Mr. Looper had other land and he could move to where he ultimately wanted to be; which is around his pond. He said zoning permitted that at the time and he signed a contract that would allow that to happen and materialize. Mr. Newton said by the way the 1990 plan which is the current plan that is the adopted plan as well as the Small Area Plan of 73; but the 1990 plan was one that was done when he came as the County Planning Director, it was the beginning of Land Use Plans. He said prior to that people would put in zoning prior to having a plan. He said that is the existing document that is of record to be considered as well as the one that was recently adopted being the 73 Plan.

Mr. Newton said Mr. Looper contracted with them which would then allow him to move over by the pond. He said when Mr. Looper came to the County, he found out that the property was zoned out of (CR) Countryside Residential into (OI) Office Institutional. He said for those of you who are familiar with the other ordinances in the county and the city, when you look at (OI) Office Institutional that zoning designation allows residential. He said in fact if you look at your ordinance, permitted by standards you allow home occupations in your ordinance but you do not allow the homes. He said the design of the (OI) Office Institutional was one that was consistent that would allow homes. He said Mr. Looper found out and was informed, sorry you cannot do that; which is why he tried to come back and make a presentation earlier this year. He said the reason Mr. Looper

has to extend it up to (CR) Countryside Residential is he does not want to be involved in the spot zoning issue. He said what makes this important as a way to implement what the County of Cabarrus, what the Town of Davidson, and the City of Kannapolis are wanting is the plan that they have put in place, and that is the 73 study plan that was adopted earlier this year. He said that document was prepared through a form of charrette and the communities come up with a plan and the main part of that plan was to create a little community of activity that they called Poplar.

Mr. Newton said Buddy Looper calls that main activity that they call Poplar his property. Mr. Newton said Mr. Looper was not involved in that charrette, he was not involved in that planning process, but the central theme of that entire document is built upon the development of his property that he was not even involved in. Mr. Newton said as you look at it and as you examine it, what he is actually putting together now begins to implement this. He said the central point was creating Poplar that is Buddy Looper's property both in Mecklenburg County and Cabarrus County, North of Highway 73. He said the widening of Shiloh Church or the extension of Poplar Tent was a donation that Mr. Looper made and did not charge NCDOT anything because it was being discussed for the need for this. Mr. Newton said Mr. Looper wants to stay on his property.

Mr. Newton said the document itself talks about having up to 15 million square feet of employment opportunity on land where his house is sitting right now, it does not allow a house where Mr. Looper's house is now. He said the location Mr. Looper is asking to move his house to is on both sides of the pond. He said you cannot implement that document with his house sitting in the middle of an area that is calling for up to 15 million squares feet of employment development and does not call for single family. He said within the document it talks about that area specifically in Chapter 6. He said Mr. Looper is identified as being in a location that is in the neighborhood center. He said further, Chapter 9, of the document identifies the pond and land on both sides as neighborhood green, being an area that is not to be developed at the density called for on the other locations. He said what they have done is simply gone back to the design of the Perrow growth poll theory, where you have high density and you bring it down lower, it is the design we developed 250 years ago and that we are pulling back into and now calling it new urbanism.

Mr. Newton said the key to this is Mr. Looper, as the property owner, agreeing to have it first, developed on something that has been designed to many details that he has not been involved in. He said Mr. Looper likes the idea as to what the plan proposes but wants to stay on his property. He said the only place that really works and supports the location for him to stay on his property is around that pond, it does match the Land Use Plan both the adopted plan that is in place as well as the newly adopted plan. He said it allows for the development to occur of the employment, the live work units, and the residential to the densities all around it and then you also have the property owner in a position that he wants to begin to see it happen. He said that is Mr. Looper's point.

He said at the being of the meeting you had a reminder to everybody of your duties. He suggests strongly that your duty is to approve this rezoning because it does put in place

the beginning steps of that next portion of the property to be developed. He said your current zoning does not permit any of this to occur. He said in fact the document you have when it comes to the conclusions and recommendations section actually proposes in its conclusions that the best thing to have happen is to put in an overlay that reflects this type of zoning, that which has a mixed use. He said the (CR) Countryside Residential proposal implements the preservation around the lake, it is not a spot zoning. He said it allows the Board to begin the further implementation, and he would add a better implementation strategy than having it setting in (OI) Office Institutional that allows none of this area to develop and puts Mr. Looper's house smack in the middle of a development that will not develop with his house there or if he decides not to sell any of the other land.

Mr. Newton said Mr. Looper wants to remember his property and he wants to be able to stay there and Mr. Looper does want to see it developed properly. He said that is why although he was not a participant, was not aware when he contracted with the hospital to purchase his property that he was not going to be able to move over onto the land that he owns. He said Mr. Looper still wants to see this community developed well which is what he thinks we are all here for.

The Chair said fundamentally he guesses Mr. Newton is making the argument that living off the property Mr. Looper is living on now and doing what he is proposing to do is more consistent with the Land Use Plans, the Highway 73 Plan in the current zoning.

Mr. Newton said that is correct. He said it begins to further implement even the first tenure horizon they give in the document without him having gone through and enclosing the actual zoning regulation, conditions that the aerial plans suggest.

Mr. Fesperman said through out Mr. Newton's presentation you kept talking about Mr. Looper did not do that, he did not follow up, he didn't know it was going to happen and all that while everything was happening. He wishes Mr. Looper had been involved, there was a charrette going on. He said none of this had to happen, Mr. Looper owned all the property and if he still wanted residential and the privacy he had before all of this he could have maintained and held his land. He said Mr. Looper did not do that and he wishes Mr. Looper had followed up and made his suggestions because he was very powerful at that particular time in the play of all this as it was moving forward. He is disappointed that time after time Mr. Looper was not present for all of the meetings that went on. He said you have 5 municipalities that were involved, this is a large very important development that is going on out there and there is tons of residential that are coming on line out there from all directions. He said that area needs to have what is going in there now as far as the commercial and retail to support 15 to 20 years out.

Mr. Newton said absolutely, Mr. Looper agrees with that same thing, Mr. Looper said he in talking that he should have been involved. He thinks everybody would say if the whole plan focal point is on a person's property that guy ought to be involved in it. He said the fact that he was not, we cannot change, but what we can do is find a way that he can continue to live on his property and become a supporter of a document that was

worked on by 5 jurisdictions and actually begin to implement that further. He said that is where Mr. Looper is now; this affords him a way to actually be involved, to stay on the property. He said there have been discussions about Mr. Looper working closer to actually implement what is showing the design portion of this because this document also shows and he did not go into other chapters that actually talks about design issues that are not be met in the front portion of the Cabarrus County side right now.

He said Mr. Looper would like to stay there and certainly Mr. Looper in retrospect, wishes he had been a lot more involved in it. He said the good thing is where he is proposing to put his houses for he and his son, are compatible to this document. He said it works within every aspect of it from the open space chapter, to the frame work setting of the different overlay zonings that they are proposing, to the half mile walk areas, to perpetual green spaces. He said Mr. Looper's option is if he does not want anything to happen certainly he can put restricted covenants and keep it so that none of this ever happens. He said Mr. Looper is not in a vindictive mode, saying okay, I was not involved so nobody is going to develop this, instead Mr. Looper said okay he did not know it happened, shame on me, and what can we do; here's what we can do. He said that is what Mr. Looper is trying to do, live on his land, proceed and find a way that it can and still be developed within the frame work that Davidson, Kannapolis, Mecklenburg, Cabarrus and even Concord wants to see happen.

The Chair asked if there were any more questions or discussion.

Mr. Shoemaker asked Susie Zakraisek, what the status is on the plan.

Ms. Zakraisek, Planning and Zoning Manager, addressed the Board saying as you can see by the map, the property that we are talking about is attached on the plan, and the part in the front is what is currently developing in Kannapolis's city limits as Renaissance Square. She said that area is taking shape as a neighborhood center. She said as far as where the pond is and in that particular area it is designated by the 73 Plan as green space; green space would be parks, neighborhood parks or greens. She said the vision that the plan has is that the green would develop and then you would have your higher density residential developing around that with your commercial closer to your main corridors. She said that is the general overview of what that plan is asking for in that particular area.

The Chair when he looks at this and the extent of the (OI) Office Institutional zoning, you have to ask yourself where the higher density stuff is going to go.

Ms. Zakraisek believes that when a lot of these (OI) Office Institutional properties came up, they were properties where the county expected growth and wanted to some extent have input on that. She said (OI) Office Institutional does not permit residential.

The Chair asked if she were saying the County kind of stamped (OI) Office Institutional on the stuff that they wanted to require people to ask for rezoning.

Ms. Zakraisek said (OI) Office Institutional was used as a tool, but (OI) Office Institutional is limited. She said in order to expand, if a commercial center was called for in that particular area or for a mixed use type project very similar to the situation that you had recently off Highway 3, they may need some different zoning. She said in order for this project to happen, more than likely it will eventually be in Kannapolis because of utilities and it would have the appropriate zoning. She said (OI) Office Institutional does permit some of those uses to take place, the office and lighter commercial types uses she believes allows a bank and some different things, so the plan can be implemented based on the current zoning.

The Chair said if you wanted to follow through with the residential and all you cannot do it.

Ms. Zakraisek said that is correct, because what it is looking for more is multi-family type uses. She said the commercial element tends to be there but the residential element is not in that particular zoning designation. She believes that was deliberate as far as excluding the residential from the (OI) Office Institutional.

Mr. Shoemaker asked if at the time of this particular rezoning which was June 2005, the charrette had not been completed at that point and was this a document that came out late last fall.

Ms. Zakraisek said that is correct. She said the process was happening at that point; maybe they had a draft document that they were doing revisions of. She believes Davidson to some extent, was the lead on that, but it would not have been adopted by any other jurisdictions at that time.

The Chair said the last time that we considered this rezoning Davidson, Huntersville and Kannapolis had provided comments that were not positive in terms of rezoning. He asked what you have gotten back this time.

Ms. Zakraisek said this time we tried to solicit comments; there is a specific website that the Council of Government has that we place these projects on. She said we placed the project out there for review and comment and the only entity that chose to comment back to us was Kannapolis. She said we further solicited from Huntersville and Davidson because initially they had very strong feelings. She is not certain that they realized it was a different case but they did not choose to provide us comments.

Mr. Haas said his concern is as we have said before is the county did a systematic planning process and said this is what we would like to see develop not just here but across the county and your rezoned according to that plan. It appears to him every time we have a meeting on a monthly basis we bring back on the agenda somewhere a piece in the county that was rezoned as a part of that 2005 plan that we want to go back to the old zoning. He said what we are doing in effect is taking the 2005 plan and shelving it piece by piece instead of doing it all at one time we keep taking away from what you plan to start with.

Mr. Haas said a couple of months ago we had a rezoning request that came a little further up the road and a little east of where we were that all of the people that night said we need to keep it (OI) Office Institutional, because that is the best and highest use of the property. He said the only reason being they did not want to see it rezoned to what this particular applicant was wanting. He said now we are coming back saying the best use of this one is to change it from (OI) Office Institutional because that is what the applicant wants again. It appears to him we have fallen into a pattern of taking the county's zoning that you have worked systematically on for a long long time and we begin to dismantle it piece by piece based upon what the applicant feels. He said to Mr. Looper that is the only valid he sees to the rezoning is it is what he wants, it works for what he is looking for. His concern is that we are charged with the best and highest use of what has been put together, the property and the plan that the county has done.

Mr. Newton said he appreciates what Mr. Haas is saying but he would respectfully disagree with a couple of the comments. He said at the time that zoning was put in place, the Planning Board and the County Commissioners had not yet reviewed and adopted this Land Use Plan. He said this Land Use Plan is the document that is supposed to be implemented. He said this is what the County specifically is saying, this is what we want to see in this area, they have identified that the best zoning is not (OI) Office Institutional. He said they have identified in Chapter 13, next steps adopting the accompanying zoning overlay. He read the following:

“Adopting the accompanying zoning overlay. The accompanying zoning overlay will be the main implementation vehicle for the master plan. The jurisdictions and its citizens should review and refine the overlay as soon as possible.”

Mr. Newton said this is not reverting back, it is avoiding spot zoning which is not permitted and it implements the area plan that specifically doesn't. He said the 2005 adjustments that were made across the county were getting toward something. He said it is as if you are carving, which he carves and he can carve it down close to the shape but when I get down to the refinement it is done in this type of form. He said the document that the county has put in place says that you need to be working toward this. He said the zoning that is currently in place does not implement this document, this is an extension and all of this is inconsistent with that document. He said the current zoning is inconsistent with now the adopted plan.

Mr. Prince said the overlay has not been adopted.

Mr. Newton said the overlay has not been adopted, but the frame work for Chapters 6 and Chapter 13 that plan itself was, further the 2005 zoning that was put in place, portions of that were done off of an updated Northwest Area Plan that has not been adopted by the County Commissioners. He said the technical land use documents that the Board has in front of them to work off of are the 1990 document that this rezoning implements and secondly the very detailed one which this implements. He said it moves Mr. Looper off the piece where it does not allow one story residential, moves him into a space that in the

document talks neighborhood greenways that allow this type of use specifically mentioned in that document the county has adopted.

Mr. Shoemaker said when the staff asked us do you want us to begin working on this plan and the board said yes. He does not know what that meant as far as what the next steps were for the staff. He thought we were all in pretty much the same mind that we liked what we saw in that plan and wanted them to move forward.

The Chair said we approved the plan and passed it on to the County Commissioners.

Ms. Zakraisek said the plan is in place and there are elements of the plan that can be implemented under the current zoning. She said the only element that is not available at this time would be residential of up to 4 units, because (CR) Countryside Residential does not permit that. She said the CR is more intended for areas where there would not be utilities, however, because of the growth in this particular area and because of the way it is developing, utilities are probably on the way. She said you cannot always anticipate what is going to happen on the property, at that point in time the (OI) Office Institutional was placed on that particular property knowing that this plan was on the way and that it would allow some implementation of the plan to begin. She thinks that the implementation is there, it does not currently permit the residential part of it, but then again, we have not been approached by anyone wanting to do a higher density type product in that particular area.

The Chair said which they would have to buy the land from Mr. Looper to do. His interpretation of the process you just described is that you have to put it in the bank with (OI) Office Institutional, as the plan develops you expect it to be rezoned either by us or Kannapolis.

Ms. Zakraisek said that is correct.

Mr. Fesperman asked how it is taxed if something is changed from (OI) Office Institutional back to (CR) Countryside Residential.

Ms. Zakraisek said she cannot answer that question. She is not a tax person, but zoning classifications do impact the tax value of the property. She has heard from other property owners but she has not verified it that some folks toward Harrisburg when their property was rezoned to (OI) Office Institutional, and then a similar situation where there was an economic impact identified the property was zoned to (OI) Office Institutional that their taxes were more under the (OI) Office Institutional zoning designation.

The Chair said it also has something to do with the prospect of development too.

Ms. Zakraisek said that is correct, because they are in there looking at the highest and best use.

Mr. Newton said he would like to address that from another aspect. He said he served 2 terms on the Cabarrus County Board of Equalization and Review, which is the equivalent of this Board for looking at tax issues. He served as Vice-Chairman of that and most of that time conducted a lot of appeals on that issue. He said what Mr. Looper is proposing will have some impact at the point when it is rezoned; however they do not look at the zoning as the only and main criteria. When they do the appraisals are mass appraisals, it is not individual or specific, and it is possible that on appeal come the end of January next year we will say we think it is too high. He does not think he will come back next year and think it is too low, but he can individually be look at next year based off of current zoning or future zoning. He said the zoning is one of many criteria that is looked at and even the Board of E and R considers a lot of other items.

Mr. Lancaster said when this was all rezoned (CR) Countryside Residential was very little or did not exist at all, so he does not think this will be backing up to go from (OI) Office Institutional to (CR) Countryside Residential because before the rezoning of 2005 that was all (MDR) Medium Density Residential in that area, which is a higher density. He does not think we would be backing up or going backwards. He said we knew at the time when we rezoned that we would definitely have people coming forward wanting to get rezoning due to the fact that that whole area was changed at one time. He said it did happen that a lot of people did not know there property was changed.

The Chair addressed Mr. Bobby L. Deaton, Sr. who had a question unrelated to the Looper Case and was told to contact staff with his questions.

Mr. Fesperman said Mr. Looper does not have to sell his current residence, and is still living in a house and has not been turned out on the street. He said Mr. Looper does not have to move or commit to Northeast from that stand point. He said Mr. Looper is in a very amiable situation and he is happy for him. He was talking with Joe Smith from the stand point that there is a very good fortune out there with all that has taken place. He said no matter what our decision is it is not going to impact Mr. Looper in a negative way, except that he knows Mr. Looper wants to build his house on the other piece of land. Mr. Fesperman wishes that Mr. Looper had gotten involved early on in all of this process. He said your land is a very valuable asset, so you have to stay attune to what is going on around you at all times.

Mr. Berg said he does not have to move but as long as he stays there, regardless of what the piece of property is zoned it is effectively residential, which does impede development in that area where he is now.

The Chair said it impedes the implementation of the plan.

Mr. Looper said he is under contract with Northeast Regional and in just over 2 years from now he will have to move, he has no choice. He has to go somewhere that is why he is here today to get it lined up hopefully before July after next because they are going to tell him he has 1 year and he has to go somewhere. He said what he is hearing from Paul Davis and Steve Brumm who are doing Renaissance Square is that they are not

going to say they do not want it, they are going to want it and are going to want to expand and he has to go somewhere, which is why he is here tonight. He wants to go on the property that he has own for 30 years.

Mr. Fesperman said they are not evicting him, that it is Mr. Looper's decision, he worked in a business relation with Northeast or who ever is buying the property and the deal is done.

Mr. Newton said at the time Mr. Looper did that he had the ability to move over to another residentially zoned piece of property. He said it was rezoned after he signed that option. He said Mr. Looper no longer has a position where he can back out, when he signed it, it was right because he had a place to go, and he no longer has that zoning designation.

Mr. Looper said he had 2 representatives at that meeting and neither one of them heard anything said that his property was going to be rezoned to (OI) Office Institutional. He said they came back and discussed and he agreed with what was going on, but nobody ever told Paul Davis or Steve Brumm that they were going to rezone his property to (OI) Office Institutional. He knew what was coming and agreed too it, he let Renaissance Square happen, but nothing was ever said at any of those meetings about rezoning his property. He felt like he could move forward and move to the other section of the property.

There being no further discussion the Chair called for a motion.

Mr. Shoemaker **MOTIONED, SECONDED** by Mr. Lancaster to **APPROVE** Zoning Atlas Amendment – Petition C-2006-07 (R) as requested. The vote was 6 to 3 to **APPROVE** Zoning Atlas Amendment – Petition C-2006-07 (R) with Mr. Shoemaker, Mr. Griffin, Mr. Berg, Ms. Cook, Mr. Lancaster, and Mr. Devine voting in favor of approval and Mr. Prince, Mr. Fesperman, and Mr. Haas voting in favor of denial. There not being super majority vote, the Zoning Petition will go before the County Commissioners.

Mr. Koch said the Board will need to do a consistency statement.

The Chair said the argument has been made that it is consistent with the area plans and inconsistent with the current zoning and it is reasonable and in the public interest.

Old Business – Planning Board Function:

Preliminary Subdivision Plat Approval – Petition C2006-03(S) Cascades at Skybrook

The Chair asked Mr. Koch to give the Board a synopsis of the document they received in which Mr. Koch seems to find that the interest were vested.

Mr. Koch said you may recall the last time this particular Preliminary Plat Approval was on the Agenda, a question came up concerning whether there were some vested rights accorded the developer with reference to this particular part of the Skybrook Subdivision, and at that point since Mr. Loeberg who was here last time, his company was unaware of where they stood on that particular point. Mr. Koch said if he recalls correctly, he thinks they have closed on the purchase of this property, they bought it from another individual who was involved with it at the time that the Skybrook development was first set up. He said it was a Mr. Coley that they contracted with and closed with. Mr. Koch thinks it was indicated to them that there was some vested rights but did not have any documentation to support it. He said the Board voted so that we could look into the matter. He said come to find out subsequent to that meeting date that there had been a Consent Agreement that had been entered into between the County and the developers of Skybrook, sort of a master Consent Agreement, that covered the entire proposed development. He said that is the document that he distributed to the Board tonight. He said that document actually calls for specific vesting of the parcels that are contained in the Skybrook Development including this parcel; it provides that as long as they have plat approval for different portions of it within a 2 year period that the vesting rights would continue. He said what he did not distribute to them was a schedule of all the plats that have been approved, there have actually been some 15 or 20 of them and some are revisions and some of them are actual plat approval for different parts of it. He said nevertheless it's sufficient to look at the list of that 2 years time period in which they have to continue to have plats approved as maintained since July 2000 when this Consent Agreement was entered into. He said what this agreement also provides in Section 2.2.1 on page 3, is that the development of these parcels will be done in accordance with the ordinances that were in effect as of January 1999.

Mr. Koch said what the applicant was proposing in his plat last time is not something that is in conformance with that particular set of ordinances that were in existence at that time, so he thinks that their position this evening is that they would like some additional time to perhaps rework their plan. He thinks that what they had was something more of a hybrid of what had been in existence and what is presently in existence in the form of the ordinance; and also an interpretation had been made by Rodger Lentz; he said you may recall a letter that Rodger had written about a certain part of that. He thinks the applicant is going to ask that the Board table the subdivision plat approval for them to have an opportunity for them to rework it.

The Chair said in compliance with the 1999 ordinance which is probably less stringent than the ones we today that they were trying to meet.

Mr. Koch said that could very well be, he cannot comment on that but perhaps Susie can, but certainly that is something that had been agreed upon between the developer of this development and the County and is a binding contractual obligation. He thinks what would be helpful this evening is to go ahead since it is the province of this Board to approve vested rights even though there is not a document, he thinks it would be helpful to go ahead and entertain a motion to that affect and recognize it since it was an issue that was left open from last time.

The Chair asked if Mr. Koch was saying they have not locked up contractually by law, they have vested rights,

Mr. Koch said that is his interpretation of this document. He said there is also a matter of another parcel he thinks they may have under contract or have actually closed on, which is across the main entry street from this particular parcel.

The Chair asked if it was covered by this general document as well.

Mr. Koch said it is part of it as well.

Mr. Loeberg addressed the Board showing the subject properties on a map. He said they have purchased the subject property and they have a contract agreement to purchase the other property. He asks the Board to include both parcels in this affirmation.

The Chair said you would like us to recognize the vested rights that they have in both.

Mr. Loeberg said yes.

Ms. Zakraisek said our legal counsel has determined that they have vested rights. She believes they would like to look at the option; she is not sure if they will be able to pick up the additional units based on the design. She said the design schemes are very different between the ordinance that the original consent agreement was done under and the requirements now. She said if they come back she is not sure if they will use the same product or if they will want to look at it to see if they can get additional units. She said the last plat that Colleen worked with them on needed some of those changes that they had to make through that interpretation, if they are not now having to make those changes then she believes it will probably have an impact on their project.

The Chair asked if the vesting allowed them to meet the standards of the 1999 ordinance.

Ms. Zakraisek said that is correct, when a project is vested then they are subject to that particular ordinance at that time. She said since they have been recording preliminary plats it would continue the vesting under that particular ordinance.

The Chair said they have met the requirements of the contract, the consent agreement.

Ms. Zakraisek said that is correct, and as long as they meet the terms of the ordinance at that time, then the Board will be obligated to approve.

Ms. Cook asked, regardless of how much additional property they purchase?

Ms. Zakraisek said the consent agreement covers the initial area that was Skybrook, if they went out and purchased some additional property across the street or something like that, then we would be talking about a whole new ball game and it would not apply at

that point and they would have to do a new consent agreement and would then be vested at time.

The Chair said the way he understands it is this only covers the property that was included in the Master Plan for Skybrook.

Ms. Zakraisek said right, this consent agreement was not the typical consent agreement that you all potentially here about or see now, where it is based on a preliminary plat, this consent agreement was based on their overall project. She said it was in conjunction with their rezoning and the anticipation of what the densities were going to be for those particular areas.

Mr. Berg said at the last meeting we tabled this to this meeting do we need to table this again?

Mr. Koch thinks you need to entertain a motion to recognize that there are vested rights but then also table the consideration of the preliminary subdivision plat until the next meeting. He said in a conversation he had with Mr. Loeberg, he mentioned some changes.

Mr. Berg **MOTIONED, SECONDED** by Mr. Shoemaker to **APPROVE** the vested rights pursuant to the Consent Agreement and table the application until the next meeting.

The Chair asked if there were any discussion of the motion.

There begin no further discussion the vote was **Unanimous** to **APPROVE** the vested rights pursuant to the Consent Agreement and table the application until the next meeting.

Directors Report

Ms. Zakraisek sent out an email about some training, if any one is interested in attending please let her know, the County will pay for you to attend.

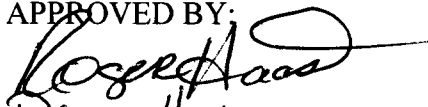
The Chair asked for motion to adjourn.

Mr. Haas **MOTIONED, SECONDED** by Mr. Divine to adjourn the meeting. The vote was **Unanimous**. The meeting adjourned at 8:47 p.m.


**FINDINGS OF FACT
APPLICATION C-748**

1. The Board adopts as its own findings the responses of the applicant under the general and specific requirements section of the application.
2. The Cabarrus County Zoning Ordinance requires a level 1 buffer for this property, but the Board finds that an opaque buffer with a minimum of 75 feet of buffer is necessary on the side of this property adjacent to Mr. and Mrs. Snodgrass, a condition to which the applicant agrees.

APPROVED BY:


Larry Griffin, Chairman

SUBMITTED BY:


Arlena B. Roberts

ATTEST BY:

Susie Zakraisek
Planning and Zoning Manager