STATE OF NORTH CAROLINA

COUNTY OF STANLY

MARIE T. HUNEYCUTT,

Plaintiff,

v.

THE CITY OF ALBEMARLE,

Defendant.

FILED
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STANLY CO., C.S.C.
BY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 722

COMPLAINT
(Jury Trial Demanded)

NOW COMES Plaintiff Marie T. Honeycutt (hereinafter "Plaintiff"), by and through undersigned counsel, and complains of Defendant, City of Albemarle, as follows:

PARTIES, JURISDICTION, AND VENUE

1. This action arises out of, *inter alia*, N.C. Gen. Stat. § 1-253, *et seq.*, N.C. Gen. Stat. Ch. 160D and other applicable law.

2. Plaintiff is a citizen and resident of Albemarle, Stanly County, North Carolina.

3. Defendant City of Albemarle (hereinafter the "City") is a municipal corporation organized and existing under and by virtue of the laws of the State of North Carolina and vested with powers in accordance with the provisions of the North Carolina General Statutes. The City may be sued and held liable in this civil action.

4. This action arose in Stanly County, North Carolina, and the actions complained of occurred in Stanly County, North Carolina. The City of Albemarle is located in Stanly County. Therefore, the Stanly County Superior Court has personal jurisdiction over the City.

5. This Court has subject matter jurisdiction over this lawsuit and the issues raised herein pursuant to N.C. Gen. Stat.§ 132-9, § 7A-38.3E and other applicable law.

6. Venue for this action is proper in the Superior Court of Stanly County pursuant to N.C. Gen. Stat.§§ 1-77 and 1-82.

FACTS

A. The City's Form of Governance and Regulation of Planning and Development.

7. The City is governed by its elected legislative body, known as the Albemarle City Council (the "City Council"), pursuant to, *inter alia*, N.C. Gen. Stat. Chapter 160A. The City Council consists of seven members. One of those Council members is the mayor, who is elected by the citizens of the City, but does not vote on business before the City Council except to break a tie. *See* N.C. Gen. Stat. § 160A-101(8). The current mayor of the City is Gerald "Ronnie" Michael (hereinafter the "Mayor").

8. The City is authorized to regulate planning and development in its jurisdiction, including zoning, pursuant to the terms and in accordance with the requirements and provisions set forth in N.C. Gen. Stat. Ch. 160D and other applicable law. The City of Albemarle Zoning regulations are found in the City's Code of Ordinances and regulate zoning and land use in the City (the "Zoning Ordinance").

9. Kevin Robinson, AICP ("Mr. Robinson") is the City's Director of Planning and Development Services. Mr. Robinson oversees the City's Planning Department and Planning Services, which is responsible for, among other things, preparing and presenting text amendments to the City Council and administering the Zoning Ordinances.

B. Plaintiff's Property.

10. Plaintiff owns 46.21 acres of land located on N.C. Highway 73 and further identified by Plat Number 653801371258, which is located inside the City limits (hereinafter "Plaintiff's Property"). *See* North Carolina General Warranty Deed attached as **Exhibit A**.

11. At the time of filing this Complaint, the Plaintiff's Property is vacant and is otherwise used to lease farmland to Huneycutt Brothers Farms, LLP.

12. Plaintiff's Property also abuts, at least in part, City Lake, which is a body of water owned by the City.

13. Prior to June 17, 2024, Plaintiff's Property was zoned R-10, General Residential District, which consists mainly of single family detached and two-family dwellings along with limited home occupations and private and public community uses. *See* Albemarle Code § 92.094.

14. As a result of the City's adoption of the City Lake Special Environs Overlay District, which is challenged by this action, properties that are within 1,000 feet of City Lake are now subject to a number of additional and unlawful restrictions as discussed *infra*. *See* Albemarle Code § 92.111(B)(2).

15. Plaintiff, along with 45 other property owners, own's property within the 1,000-foot buffer dictated by the City Lake Special Environs Overlay District. *See* estimated 1,000-foot buffer map attached as **Exhibit B**.

C. City Lake Special Environs Overlay District.

I. City Lake.

16. City Lake is partially located within the City limits.

17. After being drained for several years, in 2003, City Lake was filled and is now primarily used for recreational purposes by neighboring residents and other residents visiting the City of Albemarle and Stanly County.

18. Presently, the City Land Use Plan does not identify City Lake as a protected area floodplain nor does the City identify City Lake as a "Critical Area." *See* Watershed Map attached as **Exhibit C**.

19. Currently, the land around City Lake is comprised of both residential and industrial lots.

II. The City's Proposed Special Environs Overlay for City Lake.

20. The City's Zoning Regulations are located in Chapter 92 of the City of Albemarle's Code of Ordinances. Zoning Ordinance § 92.111 is entitled "CITY LAKE SPECIAL ENVIRONS OVERLAY DISTRICT" (the "Overlay Ordinance"). The Overlay Ordinance was a text amendment to the Zoning Ordinance, which was adopted along with a series of other unrelated text amendments by the City Council on June 17, 2024.

21. The stated purpose of the Overlay Ordinance is to provide "additional development requirements for properties within the city immediately adjacent to City Lake which are designed to preserve and protect the environment of a special resource within the city, while promoting, preserving, and protecting the health, safety, and welfare of residents and property owners of the surrounding area and enhancing the aesthetics of subsequent development in this area of the city." *See* Zoning Ordinance § 92.111, attached as **Exhibit D.**

22. The Overlay Ordinance currently applies to all properties within the City limits and within 1,000 feet of City Lake. *See* Albemarle Code § 92.111(B)(2).

23. The Overlay Ordinance imposes a number of new restrictions on at least 45 property owners, including Plaintiff, which include, but are not limited to the following:

a. Residential densities shall not exceed two units per acre and no more than 25% of any residential property in total may be developed;

b. Non-residential development shall not exceed 50% of any non-residential property;

c. All developments must maintain a vegetative buffer of at least 100 feet along the shoreline of City Lake;

d. Any development of five acres or more must also maintain a 50 foot preserved wooded buffer along all adjoining property lines;

e. Little to no development is allowed in the 100 year floodplain;

f. Mass grading of properties outside of the minimum buffer areas, is prohibited;

g. Post-construction removal of vegetation from common areas of any development is prohibited absent approval from the Council; and

h. The prospective inclusion of properties in the County and not yet annexed in the Overlay Amendment.

24. As to some of the restrictions on residential and non-residential development, a property owner may be exempt from this requirement if the new development includes stormwater best management practices designed for 25-year storm standards. *See* Albemarle Code § 92.111(E)(2).

25. Mr. Robinson and the City Staff initially proposed the Overlay Ordinance on or before April 4, 2024, at a meeting held by the City's Planning Board (hereinafter "Planning Board"). Upon information and belief, there was not a voting quorum present at the April 4th meeting, and the meeting was used as an information – only session of the Planning Board.

26. Mr. Robinson presented the Overlay Ordinance to the Planning Board for a second time on April 18, 2024.

27. During the Planning Board meeting on April 18, the Planning Board acknowledged that the Overlay Ordinance would restrain development on properties within 1,000 feet of City Lake to 25% of residential development and 50% nonresidential development.

28. Mr. Robinson further informed the Planning Board that currently, the Overlay Ordinance only applies to a handful of properties within the City limits but would preferably "automatically" apply to any properties that are eventually annexed into the City's limits.

29. At the close of Mr. Robinson's presentation and public comments, the Planning Board unanimously voted to recommend approval of the Overlay Ordinance to the City Council.

30. However, the Planning Board did not advise or comment on whether the Overlay Ordinance was consistent with any comprehensive or land-use plan that has been adopted by the City.

31. Upon information and belief, the Planning Board did not otherwise provide a written recommendation to the City Council that addresses plan consistency.

32. At the April 18 Planning Board meeting, the procedures for the hearing and other procedures employed by City were replete with legal violations. Among other errors, the April 18th meeting itself was inconsistent in multiple ways with the state enabling act, N.C. Gen. Stat. Chapter 160D. Therefore, the entire Overlay Ordinance is in violation of state law.

III. Notice to Affected Property Owners.

33. A public hearing was set before the City Council for June 17, 2024.

34. Prior to the City Council meeting on June 17, the City Staff caused to be published a "Notice of Albemarle City Council Public Hearings" in a local newspaper, the Stanly News & Press. See attached as **Exhibit E**.

35. In the notice, it was stated that the City Council would conduct a public hearing concerning, in part, "TA 24-03" (*i.e.* the Overlay Ordinance). Specifically, the City Council would hear a "[r]equest for a Text Amendment to City Ordinance pursuant to North Carolina General

Statute section 160D-2-4, to amend various development standards in Sections 91.10, 92.121-123, and 92-125." *See* **Ex. E.**

36. The publication did not state in any way that there would be a map amendment to the City's zoning map considered by the City Council. The notice did not provide sufficient notice that would inform the public that the Overlay Ordinance would be considered as a text amendment or a map amendment, and there is likewise no section 160D-2-4 in N.C. Gen. Stat. Chapter 160D.

37. Upon information and belief, the City also *drafted* at least one letter to each property owner whose property would be affected by the Overlay Ordinance (hereinafter "Notice Letter[s]").

38. The City produced copies of these letters to Plaintiff in response to a public records request.

39. After review of the same, it appears that the Notice Letters were not postmarked and otherwise contain no indication as to when the letters were mailed, if at all.

40. Upon information and belief, Plaintiff did not receive a Notice Letter.

41. The City provided a copy of a letter to Plaintiff in response to its public records request. That letter states that a public hearing would be held by the City Council to "[c]onsider a text amendment to City Ordinance (TA 24-03.)" In the Notice Letters, the City Planning Department also identified the percentage that each property would be affected by the Overlay Ordinance.

42. In the Notice Letter addressed to Plaintiff, the City Planning Department purported to inform Plaintiff that, excluding setbacks and floodplain areas identified in the Overlay Ordinance, only 25% of Plaintiff's property would remain developable for new structures, additions, and paving without additional, new expensive stormwater requirements.

43. As identified in the Notice Letter, of Plaintiff's 46.21 undeveloped acres of property, only 10.08 acres would remain developable following adoption of the Overlay Ordinance.

44. The Notice Letters did not provide any indication that the City would be adopting a map amendment to the City's zoning map.

45. Even to the extent that 10.08 acres of Plaintiff's Property remained developable following adoption of the Overlay Ordinance, residential densities on the Plaintiff's Property cannot exceed 2 units per acre. *See* Albemarle Code § 92.111(E)(1). This is a significant decrease from the density permitted by the underlying R-10 district, and that along with other restrictions cause significant damage to Plaintiff and her property rights.

IV. The City Approves the Overlay Ordinance.

46. During the June 17 City Council meeting, Mr. Robinson presented a staff report and PowerPoint explaining the proposed Overlay Ordinance. Mr. Robinson described the Overlay Ordinance as a text amendment to the City's Zoning Ordinance and did so on multiple occasions throughout his presentation, and without exception.

47. In addressing why 1000 feet was chosen as the area for the buffer, Mr. Robinson stated and the PowerPoint indicated it seemed like a "decent" buffer. No other facts or evidence exist to support the decision to choose 1000 feet or were apparently considered by the City Council. Mr. Robinson also stated that the City has not implemented a stormwater plan.

48. Following Mr. Robinson's presentation, the Mayor opened the public hearing, and numerous speakers opposed the Overlay Ordinance because of the significant new limitations on the affected property owners' use and development of their properties.

49. One of the members of the public that spoke against the Overlay Ordinance, Brandon Talbert (hereinafter "Mr. Talbert") criticized the substantial deprivation of property rights that he would suffer as a result of the Overlay Ordinance.

50. Specifically, Mr. Talbert advised that he owned property within the 1,000-foot buffer and as a result of the Overlay Ordinance, he would sacrifice the ability to develop about 5.7 acres of his property. In the purported Notice Letter drafted to Mr. Talbert, only 1.9 acres of the entire currently undeveloped portion of his property would remain developable for future construction.

51. After additional discussion, the Mayor closed the public hearing. During open discussion between City Council members, the City Council failed to address any concerns from the public regarding the deprivation of substantial development rights for 45 property owners.

52. One Councilmember, however, Mr. Bramlett expressed concerns regarding the Overlay Ordinance, stating it was confusing and difficult to understand. Mr. Bramlett stated that in his opinion, the language of the Overlay Ordinance was intended to prevent any future development that occurs within the 1,000-foot buffer area and new projects will never be approved by the City's Planning Department because of, *inter alia,* the convoluted nature of the Overlay Ordinance.

53. After additional discussion, Mayor Pro Tem Hall made a motion to approve the Overlay Ordinance as proposed. The vote was approved 6-1 in favor of the Overlay Ordinance. The Ordinance was thereafter approved. There were also purported consistency and reasonableness statements, but as explained *infra*, they were nothing but a restatement of the statutory standards, thus, did not meet State law requirements.

54. In voting to approve the Overlay Ordinance, the City Council sought to subject all properties within 1,000 feet of City Lake to the substantial restrictive provisions of the Overlay District. This significantly impaired Plaintiff's ability to use, develop, or otherwise maintain her property. Upon information and belief, the City's intention in approving the Overlay Ordinance was to make the future development around and along City Lake difficult if not impossible, for upon information and belief, the City's own purposes and not in the best interest of Plaintiff or other property owners.

55. However, despite purportedly approving the text amendment, the City otherwise failed to adopt a map amendment such that the Overlay Ordinance applies to Plaintiff's Property or any the other property within the 100-foot buffer.

56. All references to the Overlay Ordinance by the City, including documents, presentations, and otherwise, classify the Overlay Ordinance as a text amendment and not a map amendment or rezoning. To date, the City has not adopted an amendment to the City's zoning map which subjects any parcels within the 1000-foot area to the Overlay Ordinance.

57. The procedures for the public hearing and other procedures employed by City at and leading up to the June 17 public hearing were replete with legal violations. Among other errors, the June 17, 2024, meeting itself was improperly noticed and was inconsistent in multiple ways with the state enabling act N.C. Gen. Stat. Chapter 160D. Therefore, the entire Overlay Ordinance is in violation of state law.

58. The Overlay Ordinance was allegedly based on the pretense of environmental concerns and conservation, when upon information and belief, the true purpose was to restrict future development around City Lake which would in turn – among other things – not require the City to provide its required services and functions, such as street improvements and stormwater

control needed to protect its own property. Plaintiff submitted a public records request to the City requesting, *inter alia,* all documents that would support or that even discuss the alleged environmental concerns that prompted the Overlay Ordinance and not a single document was produced. Upon information and belief, no such documents exist and there are no documents or data that would provide such support.

FIRST CLAIM FOR RELIEF
(Request for Declaration Pursuant to N.C. Gen. Stat. § 1-253 that, *inter alia*, the City's Zoning Map was Not Amended by the Adoption of the Overlay Ordinance)

59. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

60. Under North Carolina law, text amendments change the language of a zoning ordinance. The defining and creation of the Overlay District and adding that district to the City's Zoning Ordinance for the first time is a text amendment. Text amendments do not change the City's zoning map nor do text amendments rezone properties.

61. N.C. Gen. Stat. § 160D-102 (34) defines a zoning map amendment or rezoning as:

> An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes (i) the initial application of zoning when land is added to the territorial jurisdiction of a local government that has previously adopted zoning regulations and (ii) the application of an overlay zoning district or a conditional zoning district. The term does not include (i) the initial adoption of a zoning map by a local government, (ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction, or (iii) updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.

62. The Overlay Ordinance is, at best, a text amendment to the City's Zoning Ordinances. However, in order to apply the Overlay Ordinance to the Plaintiff's Property and other property owners within 1,000 feet of City Lake, the City must adopt a zoning map amendment. This has not been done.

63. In Albemarle City Code § 92.111(A), the City Lake Special Environs Overlay District is "defined as a set of zoning requirements, described in the text, mapped, and imposed on addition to those of the underlying district."

64. Despite this language including the term "mapped" there is not an adopted zoning map amendment or any map reference that reflects the Overlay Ordinance contained within the Albemarle Zoning Ordinance.

65. Furthermore, upon information and belief, no map or map amendment was adopted at the time the Overlay Ordinance was adopted, nor at any other time, that zoned Plaintiff's or any other properties into an overlay district known as the "City Lake Special Environs Overlay District."

66. Therefore, Plaintiff requests that this Court enter a Declaratory Judgment that the Overlay Ordinance does not apply to Plaintiff's property or any other property within the 1,000-foot buffer of City Lake.

SECOND CAUSE OF ACTION
(Request for Declaration that the Overlay Ordinance is *Ultra Vires* and in Violation of N.C. Gen. Stat. §160D)

67. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

68. Pursuant to N.C. Const. Art. VII, Sec. 1 and N.C. Gen. Stat. § 160A-4, municipalities in North Carolina only have the authority to exercise powers, duties, privileges and immunities conferred upon them by the General Assembly.

69. According to N.C. Gen. Stat. Chapter 160D, local municipalities have the authority to regulate development and zoning *within their corporate limits*. N.C. Gen. Stat. § 160D-201(a)

(emphasis added). The City has not, or lacks the authority to, zone the extraterritorial area outside the corporate boundaries around City Lake.

70. The language in the Overlay Ordinance seeks to prospectively impose zoning restrictions on properties that are not currently annexed into the City automatically upon annexation.

71. The Ordinance states in relevant part: "[a]ny properties that are annexed into the incorporated city limits of the City of Albemarle in the future which are within 1,000 feet of City Lake as herein defined shall be subject to the provisions of this section." *See* Albemarle Code § 92.111(B)(3). Mr. Robinson also stated at the Planning Board meeting on April 18th that it is the City's intent that the Overlay Ordinance would automatically apply to properties that were annexed into the City in the future and within the 1,000-foot buffer surrounding City Lake.

72. The language within the Overlay Ordinance that seeks to prospectively impose zoning regulations on properties not within the City's limits is outside the scope of the authority granted to the City by the General Assembly. The City cannot zone property following annexation without providing appropriate notice, a public hearing, and other requirements set forth in N.C. Gen. Stat. Chapter 160D and other applicable law.

73. Plaintiff is entitled to a Declaratory Judgment pursuant to N.C. Gen. Stat. § 1-253 declaring that Ordinance § 92.111(B)(3) is unlawful for the reason that the City has exceeded its authority by seeking to prospectively zone properties that are not currently within the City's jurisdiction, and that the Albemarle Code § 92.111(B)(3) is void and without legal effect.

THIRD CLAIM FOR RELIEF
(Failure to Comply with Planning Board Requirements Pursuant to, *inter alia*, N.C. Gen. Stat. § 160D-604)

74. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

75. N.C. Gen. Stat. § 160D-604(b) provides: "Subsequent to the initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment." The planning board is then required to submit a written report and recommendation to the Town Council.

76. N.C. Gen. Stat. §160D-604(d) provides that when the planning board is reviewing a proposed zoning map amendment:

> [T]he planning board shall advise and comment on whether the proposed action is consistent with any comprehensive or land-use plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board.

77. The City Planning Board heard the Overlay Ordinance on April 18, 2024, and voted unanimously to recommend approval. The City's Planning Board did not, however, advise or comment on plan consistency nor provide a written recommendation that addressed plan consistency.

78. Upon information and belief, there was not a Planning Board report. Assuming *arguendo* that there was a Planning Board report, upon information and belief, it does not contain the information mandated by N.C. Gen. Stat. §160D-604(d).

79. The City failed to comply with the state statutory requirements set forth in N.C. Gen. Stat. §160D-604, thus, the Overlay Ordinance must be declared void and without legal effect.

FOURTH CLAIM FOR RELIEF
(City Council's Failure to Comply with N.C. Gen. Stat. § 160D-605 - No Legal Consistency and Reasonableness Statement)

80. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

81. The adoption of the Overlay Ordinance by the City violated N.C. Gen. Stat. §160D-605 because the City Council failed to approve a statement describing whether its action is

consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable. Furthermore, the City Council failed to adopt an additional statement of reasonableness analyzing the factors in N.C. Gen. Stat. §160D-605(b).

82. N.C. Gen. Stat. § 160D-605 required the City Council to take multiple actions when it adopted the text amendment: first, the City Council must adopt or reject the text amendment, and second, approve a proper statement[s] of consistency and reasonableness as required by N.C. Gen. Stat. § 160D-605. The City failed to lawfully take the second step, and did not approve a proper statement or statements. *See Atkinson v. City of Charlotte*, 235 N.C. App. 1, 760 S.E.2d 395 (2014). There is likewise no indication in the June 17 City Council Minutes showing compliance with N.C. Gen. Stat. § 160D-605.

83. Because the City Council violated N.C. Gen. Stat. §160D-605, the Overlay Ordinance must be declared void with no legal effect.

FIFTH CLAIM FOR RELIEF
(Unlawful Notice of the June 17, 2024, Public Hearing in Violation of N.C. Gen. Stat. Chapter 160D, Procedural Due Process, and Other Applicable Law)

84. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

85. Regardless of whether the Overlay Ordinance is a text amendment or a map amendment, N.C. Gen. Stat. § 160D-601(a) applies and requires that before adopting, repealing, or amending any zoning ordinance, the City Council "shall hold a legislative hearing." Notice of the hearing "shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing."

86. Due Process requires adequate notice and the opportunity to be heard. The notice must be reasonably calculated to apprise all interested parties of the planned proceeding and offer an opportunity to be heard.

87. North Carolina courts have held that notice of a legislative hearing must "fairly and sufficiently appraise those whose rights may be affected" of the nature and character of the action proposed. *Sellers v. Asheville*, 33 N.C. App. 544, 549, 236 S.E.2d 283, 286 (1977); *Board of Adjustment v. Town of Swansboro*, 108 N.C. App. 198, 204, 423 S.E.2d 498, 501 (1992); *Lake Waccamaw v. Savage*, 86 N.C. App. 211, 214, 356 S.E.2d 810, 811 (1987).

88. The notice must set forth information necessary to provide an adequate warning to all persons whose rights may be affected by the proposed action and apprise the public of the nature of the proposed zoning change.

89. The notice of the public hearing held on June 17, 2024, in the newspaper as described *supra* and incorporated as **Exhibit E**, was deficient in that it failed to describe in any way the proposed changes under consideration, including any mention of what the Overlay Ordinance's text included, what the text amendment purported to do, or even the name of the Overlay Ordinance. The notice completely failed to alert the public as to what properties would be affected, or what, if any, zoning text, districts, or classifications were asked to be changed.

90. The legal notice states only that the City will merely seek to "amend various development standards."

91. Furthermore, the publication identifies TA 24-03 as a "request for a Text Amendment to City Ordinance, pursuant to North Carolina General Statute 160D-2-4..." However, North Carolina has not adopted any statute entitled "160D-2-4."

92. The published notice was, therefore, in violation of N.C. Gen. Stat. § 160D-601(a), state and federal Due Process, and North Carolina case law; thus, the Overlay Ordinance must be declared void for those reasons.

93. Furthermore, assuming *arguendo* that the City adopted a map amendment, upon information and belief, the City failed to adhere to the additional proper notice requirements set forth in Chapter 160D of the N.C. General Statutes.

94. N.C. Gen Stat. § 160D-602 is entitled: "Notice of hearing on proposed zoning map amendments." Subsection (a) governs "[m]ailed notice" and requires that that "[t]he owners of affected parcels of land . . . shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. . . . This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing."

95. Despite drafting a Notice Letter to the Plaintiff relating to the Overlay Amendment, and the June 17, 2024 public hearing, upon information and belief, the Notice Letter was never mailed to the Plaintiff. Plaintiff otherwise did not receive a Notice Letter.

96. The City, thus, failed to comply with the mailed notice provisions of N.C. Gen. Stat. § 160D-602, so the Overlay Ordinance must be declared void for that reason.

97. In addition, upon information and belief, the City failed to post any notice of a map amendment. Plaintiff asked the City in a public records request to provide all evidence that such a posting took place and no documents were provided.

98. N.C. Gen. Stat. § 160D-602 (c) is entitled "Posted Notice" and provides:

> When a zoning map amendment is proposed, the local government shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing, specifically, "at least 10 but not more than 25

days prior to the date of the hearing." When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the local government shall post sufficient notices to provide reasonable notice to interested persons.

99. Upon information and belief, Plaintiff's property which is subject to the Overlay Ordinance, was not posted at all, either on the sites themselves or "on an adjacent public street or highway right-of-way." If there were posted notices, they were not easily visible and Plaintiff did not see any notices; thus, they were not posted at any location "sufficient . . . to provide reasonable notice to interested persons," particularly non-resident property owners and interested members of the public who may only be able to see the notices from off the site itself.

100. Even if posted notice was provided, which Plaintiff disputes, upon information and belief the posted notice was not provided at least 10-days before the public hearing as required by state law and was therefore illegal and ineffective.

101. Based on the foregoing failure to lawfully post, the Overlay Ordinance must be declared void.

SIXTH CLAIM FOR RELIEF
(Unlawful Adoption of Subjective Standards through the Overlay Ordinance Violates Chapter 160D, Due Process, and Existing Case Law)

102. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

103. Administrative decisions are "[d]ecisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations." N.C. Gen. Stat.§ 160D-102(1).

104. Quasi-judicial decisions require decisionmakers to "'investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.'" *County of Lancaster v. Mecklenburg County*, 334 N.C. 496, 507, 434 S.E.2d 604, 612 (1993), quoting *Black's Law Dictionary* 1245 (6th ed. 1990); *see also* N.C. Gen Stat.§ 160D-102(28) (defining quasi-judicial decisions).

105. In accordance with the North Carolina Supreme Court's holding in *County of Lancaster v. Mecklenburg County*, and, *inter alia,* N.C. Gen. Stat. § 160D-102, City staff members are not authorized to make quasi-judicial decisions, but only administrative ones.

106. The Overlay Ordinance includes multiple subjective standards intended to be applied by administrative staff, which include, but are not limited to:

a. "All new development on properties...designated to be within the City Lake Special Environs...shall submit ***detailed site plans*** showing compliance with these provisions..." *See* Albemarle City Code § 92.111 (C)(3) (emphasis added).

b. "[Z]oning map amendments to rezone additional properties within the City Lake Special Environs to allow industrial uses of any type ***should be discouraged***." See, Albemarle City Code § 92.111 (D) (emphasis added).

c. "...Preservation of existing woodlands is ***preferable***..." *See* Albemarle City Code § 92.111 (F)(2) (emphasis added).

d. "Tree Preservation. In order to preserve the tree line around the lake and forest canopy within the City Lake Special Environs preservation of stands of trees not necessary for building sites or infrastructure ***shall be required to the greatest extent***

possible during construction." *See* Albemarle City Code § 92.111 (H) (emphasis added).

e. "Street and Vehicular Access. Additional vehicular traffic is expected within new development in the City Lake Special Environs. In order to ensure safety for drivers and to minimize the impacts of additional traffic on both the sensitive environmental areas and the existing infrastructure, new development and streets ***should be well planned and adequately designed.***" *See* Albemarle City Code § 92.111 (I) (emphasis added).

f. "...Where connections to nearby streets would necessitate less than a 20% increase in total street length of a proposed development and/or where adjacent properties are of a minimal ***size that would make street construction with future development impractical or unlikely...***" *See* Albemarle City Code § 92.111 (I)(3) (emphasis added).

g. "Unnecessary turns and circuitous routes that encourage traffic access through street sections within the overlay district ***shall be avoided.***" *See* Albemarle City Code § 92.111 (I)(4) (emphasis added).

107. The foregoing excerpts of the Overlay Ordinance grant discretionary power to the City Staff to determine if future development is in compliance with the Overlay Ordinance, thus effectively grants a quasi-judicial function to administrative staff. This taints and renders the entire Overlay Ordinance unenforceable and void.

SEVENTH CLAIM FOR RELIEF
(Declaratory Judgment – Arbitrary and Capricious Exercise of the Zoning Power)

108. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

109. The City is authorized to make zoning and land use decisions, including decisions on zoning map amendments (or "rezonings"). It cannot, however, exercise the zoning power in an arbitrary and capricious manner.

110. Zoning decisions, including both map amendments and text amendments, which disregard fundamental zoning concepts and/or required procedures, ignore proper land use purposes and the suitability of proposed uses in the requested district and/or changed circumstances are arbitrary and capricious and, therefore, unlawful.

111. The City's approval of the Overlay Ordinance was arbitrary and capricious. A review of the whole record proves the approval was not based on proper land use purposes, valid or documented environmental issues, changed circumstances, or any other lawful purpose. The approval was, *inter alia,* part of a greater and unlawful plan to prevent landowners along City Lake from lawfully using and otherwise developing their property.

112. Upon information and belief, the City's approval of the Overlay Ordinance was motivated by improper intentions and the City otherwise ignored well-founded citizen complaints.

113. The City Council members refused to provide any reason or rationale for approving the Overlay Ordinance.

114. The evidence in the record supported denial of the Overlay Ordinance and there was no evidence, much less substantial evidence, to support approval of the Overlay Ordinance. Beyond the City's improper purpose behind adopting the Overlay Ordinance, the Overlay Ordinance contains unsupported and arbitrary standards.

115. The Overlay Ordinance applies a 1,000-foot buffer along City Lake, when there is no supporting data, environmental standards, or any other evidence which supports the need for a

buffer of 1,000 feet. It was selected on the basis that in Mr. Robinson's opinion, it was a "decent" buffer.

116. Furthermore, the City seeks to force all property owners within the 1,000-foot buffer to adopt expensive and unnecessary stormwater best management practices designed for 25-year storm standards. Again, there is no supporting data, environmental standards, or any other evidence which supports the need for property owners to comply with the best management practices for 25-year storm standards. City Lake is not a protected watershed nor is it identified as a "Critical Area." See, **Ex. C**.

117. The record is clear that the City's purposes in enacting the Overlay Ordinance were to benefit the City and individuals other than Plaintiff and other affected property owners – at their expense. Because it is a City-owned park, the City itself should address traffic, stormwater, landscaping and other issues around City Lake. Instead by the Overlay Ordinance, the City arbitrarily, capriciously, and unlawfully transferred that burden to Plaintiffs and others within 1,000 feet.

118. Accordingly, Plaintiff requests a declaratory judgment that the approval of the Overlay Ordinance was arbitrary and capricious and, therefore, void without legal effect.

EIGHTH CAUSE OF ACTION
(Inverse Condemnation, Takings Clause)

119. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

120. To the extent required by law, Plaintiff has exhausted all administrative remedies necessary to bring this claim and/or such exhaustion would have been futile.

121. As stated in the Notice Letter addressed to the Plaintiff, if Plaintiff's Property "i[s] subdivided, it will be limited to 80, ½ acre lots each developable by up to 25% each." The City is

effectively asking the Plaintiff to surrender development rights in 75% of her property in order to benefit the public, effectively constituting a taking under the Takings Clause.

122. In other Notice Letters provided by the City, Plaintiff is not the only property owner who is forced to relinquish her property rights. In the Notice Letters provided as public records by the City, property owners adjacent to City Lake have been forced to relinquish anywhere from 39% to 75% of their development rights in their property due to the restrictions imposed by the Overlay Ordinance.

123. Furthermore, the Overlay Ordinance imposes a restriction that non-residential development shall not exceed 50% of the Plaintiff's Property, or any other non-residential property located within the Overlay Ordinance.

124. The restrictions imposed by the City on Plaintiff's property effectively deprive Plaintiff of any meaningful and substantial use of her property rights within the 1000-foot area for the benefit of the public.

125. The City's aforementioned actions constitute a taking of and damages Plaintiff's property without just compensation in violation of North Carolina law, Article I, Section 19 of the North Carolina Constitution, and the Fifth Amendment of the U.S. Constitution.

126. As a result, the Plaintiff seeks to have the Overlay Ordinance declared void, or to be awarded just compensation for the City's taking of the Plaintiff's property.

NINTH CAUSE OF ACTION
(Violation of Equal Protection)

127. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

128. The 14th Amendment of U.S. Constitution states that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

129. To the extent required by law, Plaintiff has exhausted all administrative remedies necessary to bring this claim and/or such exhaustion would have been futile.

130. The Equal Protection Clause of the United States Constitution prevents the City from treating Plaintiff and other affected property owners differently than similarly situated property owners without a rational basis.

131. The Overlay Ordinance imposes burdens on Plaintiff based upon the proximity of her Property in relation to a nonprotected body of water owned by the City and which the City has a responsibility to protect. The City has, without a rational basis imposed the entirety of those burdens on Plaintiff and another small group. Upon information and belief, restrictions such as those in the Overlay Ordinance have not been imposed on other similarly situated properties in other parts of the City's land use jurisdiction and that may be near other unprotected bodies of water. The City has also not taken any of that responsibility and expense on itself despite being the owner of City Lake.

132. The Overlay Ordinance effectively deprives Plaintiff of her property rights. Specifically, the City's adoption of the Overlay Ordinance has effectively forced Plaintiff to sacrifice 75% of her property in order to "preserve and protect the environment of" City Lake. *See* Albemarle City Code § 92.111 (A).

133. The City's actions in adopting the Overlay Ordinance were discriminatory and upon information and belief, Plaintiff and others within 1,000 feet of City Lake were treated differently from others similarly situated and that there was no rational basis for the difference in treatment.

134. Accordingly, Plaintiff requests a declaratory judgment that the City's actions described herein, violate the Equal Protection Clause of the United States Constitution and declared void on that basis.

TENTH CAUSE OF ACTION
(Statutory Preemption and Inconsistency with State and Federal Law)

135. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

136. In North Carolina, cities have only those powers delegated to them by the General Assembly.

137. The City is entitled to enact regulations governing stormwater, trees, landscaping, forestry, floodplains and floodways, but only to the extent the regulations are consistent with and are not in violation or otherwise preempted by state or federal law. In addition, certain environmental ordinances must be presented to and approved by the State of North Carolina before they can be adopted by a municipal governing body.

138. Upon information and belief, the Overlay Ordinance purports to regulate stormwaters, landscaping, trees, forestry, and floodplains and flood ways in excess of the City's authority.

139. Upon information and belief, the regulations are inconsistent with and/or are preempted by state law.

140. Accordingly, Plaintiff requests a Declaratory Judgment that Albemarle Zoning Ordinance § 92.111 (E)(2) be declared void for the reasons set forth in the Claim for Relief.

ELEVENTH CLAIM FOR RELIEF
(Attorney's Fees and Costs – N.C. Gen. Stat. § 6.21.7)

141. Plaintiff realleges and incorporates by reference the allegations stated in the preceding numbered paragraphs.

142. The City's actions alleged herein, including but not limited to, failing to follow the requirements of N.C. Gen. Stat. Chapter 160D and arbitrarily and capriciously approving the Overlay Ordinance, and acting in excess of its delegated authority were in violation of well-established and well-known statutory procedures setting forth unambiguous limits on the City's authority. The City's actions were unlawful and violate unambiguous rulings in state appellate cases as well. The rules and law violated "are not reasonably susceptible to multiple constructions." *See* N.C. Gen. Stat. § 6-21.7. Plaintiff respectfully requests an Order requiring the City to pay its attorney's fees and costs pursuant to that provision. Plaintiff further requests attorney's fees under N.C. Gen. Stat. § 6-21.7 as the prevailing litigant.

WHEREFORE, Plaintiff Marie Huneycutt, respectfully prays that the Court grant the following relief:

1. Enter judgment declaring that the City's zoning map was not amended by the adoption of the Overlay Ordinance and the Overlay Ordinance does not apply to Plaintiff's property or any other property within the 1,000 foot buffer of City Lake;

2. Enter judgment declaring the City exceeded its authority by adopting the Overlay Ordinance and Albemarle City Code § 92.111 is void and without legal effect;

3. Enter judgment declaring that the City violated N.C. Gen. Stat. §§ 160D-604 and 160D-605, that the approval of the Overlay Ordinance is void;

4. Enter judgment declaring that the City violated N.C. Gen. Stat. §§ 160D-601 and 160D-602, that the approval of the Overlay Ordinance is void;

5. Enter judgment declaring that the Overlay Ordinance granted quasi-judicial functions to an administrative body and is, thus, unenforceable and void;

6. Enter judgment declaring that the Overlay Ordinance was arbitrary and capricious, void, and unlawful;

7. Enter judgment declaring that the Overlay Ordinance violated Plaintiff's Equal Protection rights;

8. Enter judgment declaring that the Overlay Ordinance constituted a taking and awarding plaintiff just compensation;

9. Enter judgment declaring that the Overlay Ordinance is preempted by State and Federal law;

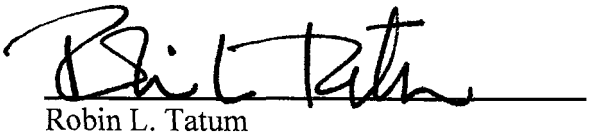
10. That Plaintiff recover her attorneys' fees and costs of this action plus interest pursuant to N.C. Gen. Stat. § 6-21.7 because, *inter alia*, the City's actions described herein violated the unambiguous limits on its authority under N.C. Gen. Stat. Chapter 160D and other applicable law.

11. That there be a trial by jury; and

12. That the Court grant such other and further relief as the Court deems just and proper.

This, the 16th day of August, 2024.

FOX ROTHSCHILD LLP



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Raleigh, NC 27601

Attorneys for Plaintiff

+R
WILL)

EXHIBIT A

City Lake

624

STANLY COUNTY NC 03/08/2000
$800.00
STATE OF NORTH CAROLINA Real Estate Excise Tax

Book 0741 Page 0624
FILED
STANLY COUNTY NC
03/08/2000 12:31 PM
CECIL I. ALMOND
Register Of Deeds
By: _____ Deputy/Asst.

Excise Tax 800.00 Recording Time, Book and Page 14.00

Tax Lot No _____ Parcel Identifier No _____
Verified by _____ County on the _____ day of _____ 19 ____
by _____

Mail after recording t _____

This instrument was prepared by **David L. Grigg, Morton, Grigg & Phillips, PO Box 519, Albemarle, NC 28002**

Brief description for the Index

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made as of the 1st day of **January** **2000**, by and between

GRANTOR	GRANTEE
NELL S. POPLIN **301 Harvard Drive** **Albemarle, NC 28001**	**MELVIN K. HUNEYCUTT and wife, MARIE T. HUNEYCUTT** **28376 Millingport Road** **Albemarle, NC 28001**

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of _____ **South Albemarle #2** Township **STANLY** County, North Carolina and more particularly described as follows

subject to the reservations on attached description

BEING THAT 46.21 ACRES PARCEL OF LAND LESS EXCEPTIONS AND TWO EASEMENT STRIPS DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

N.Poplin

The property hereinabove described was acquired by Grantor by instrument recorded in Deed Book 358, at Page 572, Stanly County Registry

A map showing the above described property is recorded in Plat Book _____ Page _____

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

All rights-of-way, easements, uses, permits, zoning ordinances, restrictions and reservations as may appear of record.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

Nell S. Poplin (SEAL)
NELL S. POPLIN

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

SEAL-STAMP

NORTH CAROLINA, STANLY County.

I, a Notary Public of the County and State aforesaid, certify that _____

Nell S. Poplin _____ Grantor,

personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 8th day of March 2000

My commission expires: 6-25-03 Shirley K. Swaringen Notary Public

SEAL-STAMP

NORTH CAROLINA. _____ County

I, a Notary Public of the County and State aforesaid, certify that _____

personally came before me this day and acknowledged that he is _____ Secretary of _____ a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by _____ as its _____ Secretary.

Witness my hand and official stamp or seal, this _____ day of _____

My commission expires: _____ Notary Public

Stanly Co., N. C.

The foregoing Certificate(s) of SHIRLEY K. SWARINGEN

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

CECIL I. ALMOND Register of Deeds for STANLY COUNTY

By: Tracy Driggs Deputy/Assistant - Register of Deeds

626

EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THAT CERTAIN DEED FROM NELL S. POPLIN [WIDOW] TO MELVIN K. HUNEYCUTT AND WIFE, MARIE T. HUNEYCUTT, DATED AS OF THE 1ST DAY OF JANUARY, 2000

Lying and being in South Albemarle #2 Township, Stanly County, North Carolina, and being more particularly described as follows:

BEGINNING at an iron pipe in the south right-of-way line of N.C. Highway No. 73, which iron pipe is 66 feet in an easterly direction from a concrete culvert across N.C. Highway No. 73, said beginning point being in the easterly line of the City Lake of Albemarle property, and runs thence with the south right-of-way line of N.C. Highway No. 73, South 82-55 East 91.09 feet to an iron pipe, a corner of the Jordan lot; thence with the Jordan lot South 49-17 East 331.13 feet to an iron pipe and North 30-24 East 222.83 feet to an iron pipe in the south right-of-way line of Highway No. 73; thence with the right-of-way line of the Highway as follows: South 85-40 East 495.44 feet; South 84-50 East 100 feet; South 82-09 East 100 feet; South 80-29 East 100 feet; South 78-23 East 100 feet; South 76-07 East 100 feet; South 74-26 East 100 feet; South 72-43 East 790.87 feet; and South 71-25 East 100 feet to an iron pipe; a corner of Paul Troutman; thence with two lines of Troutman, South 38-10 West 209.05 feet and South 66-11 East 150 feet to an iron pipe, a corner of Troutman and Webb Parker; thence with Parker's line South 66-11 East 194.11 feet to an iron pipe; thence South 39-53 West 622 feet to an iron pipe by a stone wall; thence with the John Parker lands North 59-07 West 437.68 feet to an iron pipe; North 12-31 West 97.75 feet to an iron pipe; South 77-12 West 1090.87 feet to an iron pipe; North 42-35 West 453 feet to an iron pipe; thence South 56-10 West 67.29 feet to a concrete monument in the City Lake line; thence four calls with said line as follows: North 43 West 138.14 feet; North 62-21 West 168.74 feet; North 28 West 395 feet; and North 13-24 East 338.05 feet to the point of beginning, containing 46.21 acres by survey of Thomas W. Harris on March 2, 1969.

For reference see deed of Ray D. Lowder, Inc. to Nell S. Poplin, dated December 1, 1986, and recorded in Deed Book 358, at Page 572, Stanly County Registry.

THERE IS EXCEPTED from the above described tract of land those two parcels of land conveyed to Peggy T. Huneycutt by deed dated January 28, 1997, and recorded in Record Book 620, at Page 657, Stanly County Registry, the same more particularly being shown on Plat Book 17, Page 86, Stanly County Registry.

THERE IS ALSO EXCEPTED from the above described tract of land and reserved unto Grantor, her heirs and assigns, the following described parcel of land:

That parcel of land containing 2.24 acres, more or less, shown on a plat recorded in Plat Book 17, at Page 289, Stanly County Registry, more particularly described as follows: BEGINNING at a new iron rod in the southerly margin of the right-of-way [60 feet wide right-of-way] of N.C. Highway 73 [Concord Road], said beginning point being located S. 51-40-37 E. 73.76 feet from an existing p.k. nail at the point of intersection of the centerlines of N.C. Highway #73 and MacArthur Road, said beginning point also being

located S. 12-27-58 E. 93.73 feet from NC Grid Monument "Hillside"; thence with the southerly margin of the right-of-way of N.C. Highway 73, S. 76-23-22 E. 205.30 feet to a new iron rod; thence again with the southerly margin of the right-of-way of N.C. Highway #73, S. 75-37-12 E. 144.90 feet to a new iron rod; thence again with the southerly margin of the right-of-way of N.C. Highway #73, S. 74-43-55 E. 30.26 feet to an existing iron pipe; thence S. 21-06-26 W., passing an existing iron pipe at 197.98 feet, for a total distance of 270.96 feet to a new iron rod; thence a new line N. 76-03-23 W. 341.65 feet to a new railroad spike; thence another new line N. 12-52-52 E. 269.50 feet to the place of Beginning and containing 2.24 acres as shown on said map recorded in Plat Book 17, at Page 289, Stanly County Registry.

GRANTOR ALSO RESERVES unto herself and her heirs and assigns a perpetual, non-exclusive right-of-way and easement, to run with the above described 2.24 acres parcel of land, for roadway, parking and traffic purposes, and for purposes of ingress and egress from the above described 2.24 acres parcel of land and N.C. Highway #73, including the right to maintain, repair and improve the same for said purposes, in, over and across the easement strips described below. The easement strips in, over and across which this right-of-way and easement is reserved are described as follows:

First Easement Strip:

Being that strip of land designated "New 30' Easement" on said map recorded in Plat Book 17, at Page 289, Stanly County Registry, described as follows: BEGINNING at a new iron rod, the beginning corner and northwest corner of the 2.24 acres parcel of land described above; thence with the westerly or northwesterly line of said 2.24 acres parcel S. 12-52-52 W. 269.50 feet to a new railroad spike at the southwest corner of said parcel; thence N. 76-03-23 W. 30.01 feet to a point; thence N. 12-52-52 E. 269.55 feet to a point in the southerly margin of the right-of-way of N.C. Highway #73; thence with the southerly margin of the right-of-way of N.C. Highway #73, S. 75-57-17 E. 30.01 feet to the place of Beginning.

Second Easement Strip:

Being a 30 feet wide strip of land running adjacent to the southerly lines of the above described 2.24 acres parcel of land and said First Easement Strip, the northerly line of said Second Easement strip [being 30 feet in width] being described as follows: BEGINNING at a new iron rod, the southeast corner of the 2.24 acres parcel of land above described and shown on map recorded in Plat Book 17, at Page 289, Stanly County Registry, and running thence with the southerly line of said 2.24 acres parcel and beyond, N. 76-03-23 W., passing the southwest corner of said 2.24 acres parcel, at 341.65 feet, for a total distance of 371.66 feet to a point which is the southwest corner of the First Easement Strip described above.

deed:des:sks:Cdrive:wp:N.Poplin

EXHIBIT B

City Lake
Parcels within 1,000-Foot Buffer with City Limits and County Inset

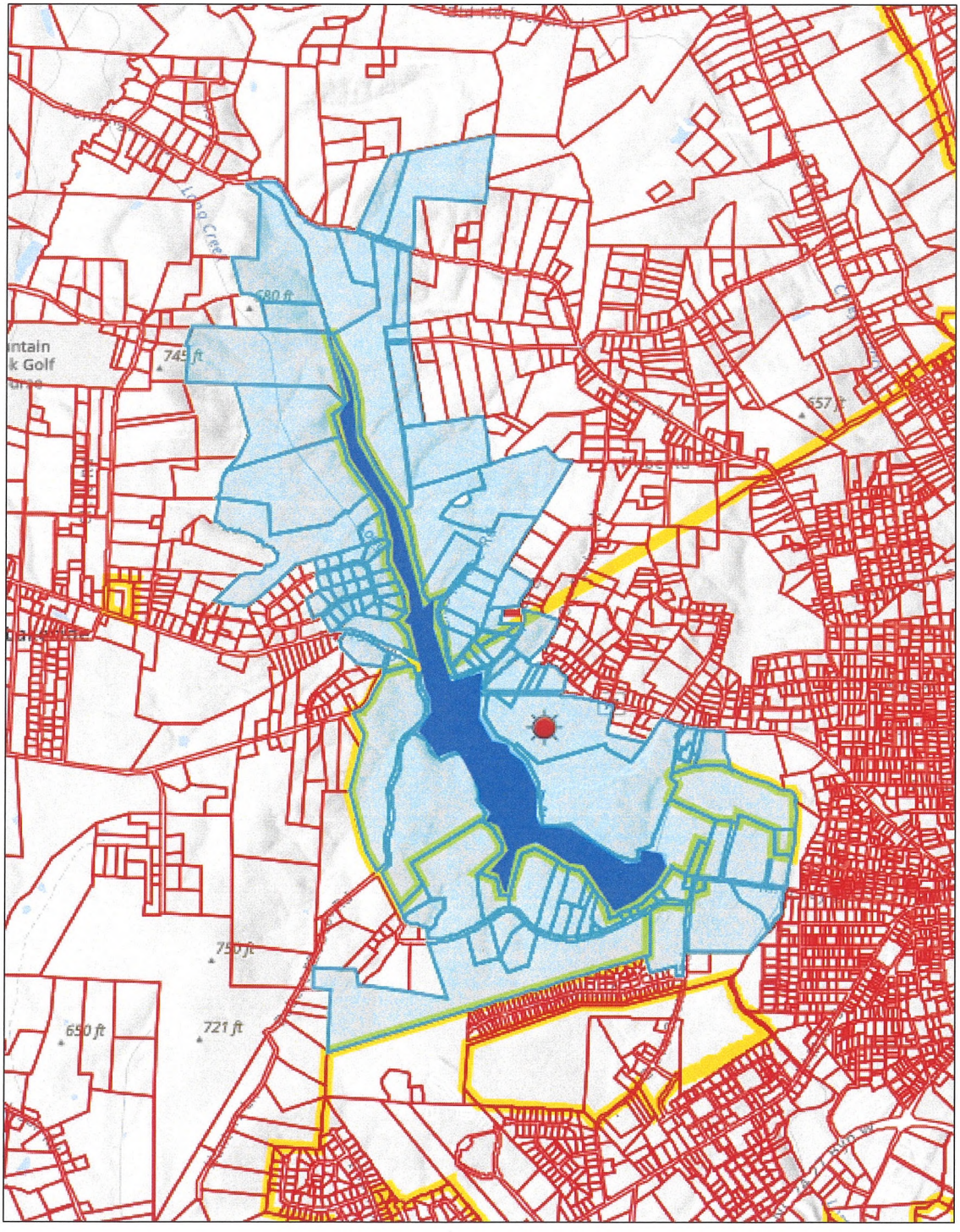
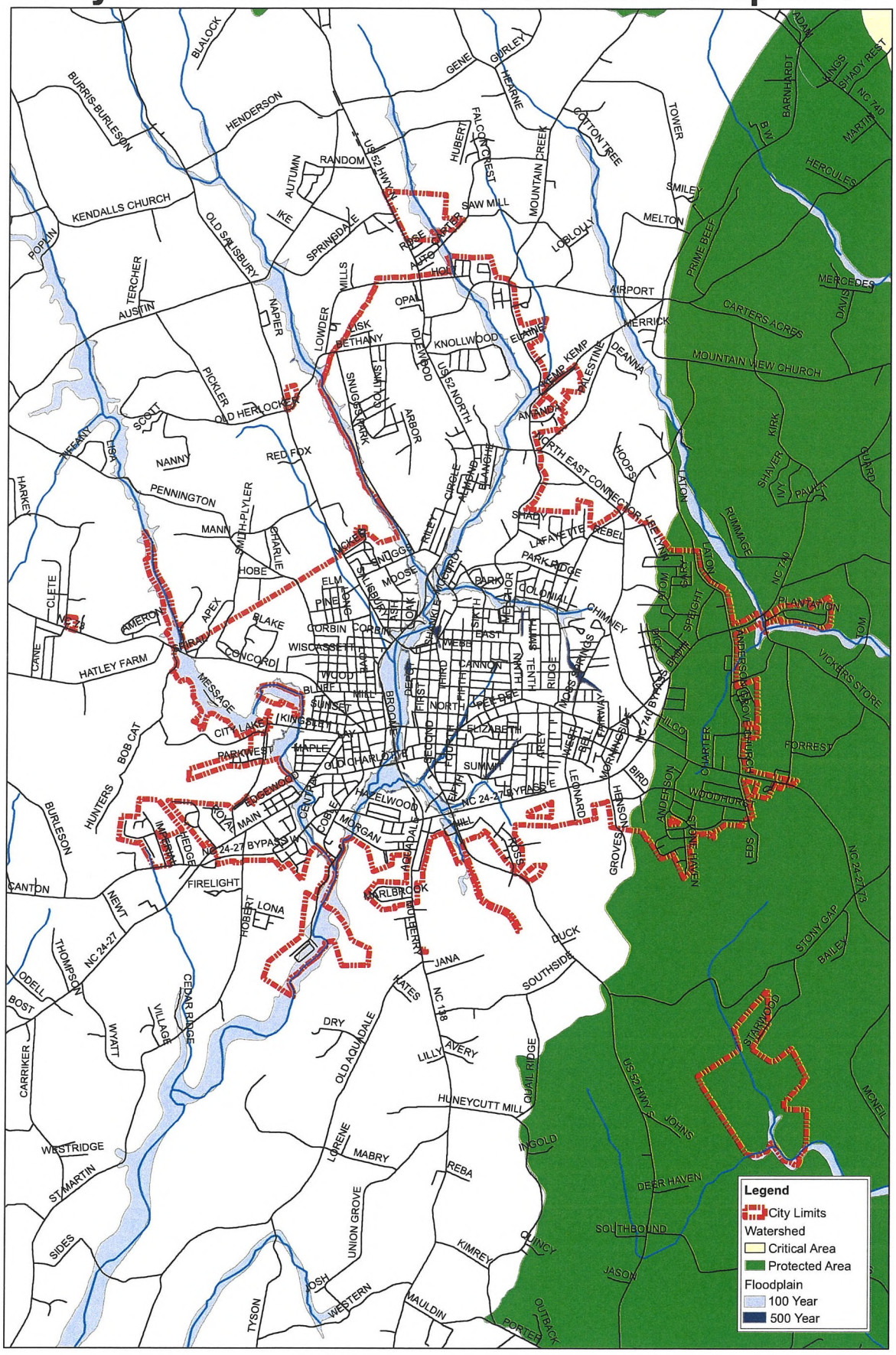


EXHIBIT C

City of Albemarle: Watershed and Floodplains



NC Division of Community Assistance
Piedmont Regional Office

Albemarle Land Use Plan 2028
Watershed and Floodplains Map

1:50,000

City of Albemarle
Department of Engineering Services
GIS Division (704) 984-9437

EXHIBIT D

('58 Code, § 14-9) (Am. Ord. 94-20, passed 9- 19-94; Am. Ord. 01-36, passed 8-6-02; Am. Ord. 01-39, passed 8-20-01; Am. Ord. 01-40, passed 8-20-01; Am. Ord. 02-40, passed 9-16-02; Am. Ord. 02-53, passed 12-16-02; Am. Ord. 07-14, passed 6-4-07; Am. Ord. 08-13, passed 4-21-08; Am. Ord. 10-20, passed 6-8-10; Am. Ord. 16-48, passed 11-21-16; Am. Ord. 19-26, passed 8-5-19; Am. Ord. 21-02, passed 1-19-21; Am. Ord. 21-26, passed 7-12-21; Am. Ord. 22-01, passed 1-3-22) Penalty, see § 10.80

§ 92.111 CITY LAKE SPECIAL ENVIRONS OVERLAY DISTRICT.

(A) Purpose and intent. The City Lake Special Environs (CLSE) Overlay District (defined as a set of zoning requirements, described in the text, mapped, and imposed in addition to those of the underlying district) provides additional development requirements for properties within the City immediately adjacent to City Lake which are designed to preserve and protect the environment of a special resource within the City, while promoting, preserving, and protecting the health, safety, and welfare of residents and property owners of the surrounding area and enhancing the aesthetics of subsequent development in this area of the City. These provisions are based, in part, on the following findings:

(1) The standards will encourage new development which will not be detrimental to the health or safety of existing residents or properties in the district, including the reduction of flood risks and minimization of new vehicular traffic impacts from new development.

(2) The standards will help to ensure that development within the sensitive environmental and aquatic and riparian habitats of City Lake are maintained as an important environmental resource for residents of Albemarle.

(3) The standards will help to maintain the visual aesthetics of City Lake and City Lake Park for visitors and residents who use and enjoy the recreational and natural resources of the park and lake alike.

(B) Defined Boundaries of City Lake and City Lake Special Environs Overlay District. Unless otherwise specified by City ordinance, the requirements of this section shall apply to all properties as provided herein

(1) The boundary of "City Lake" shall be defined approximately as all aquatic areas within the shoreline of the waterbody commonly known as "City" or "Long" Lake and all immediately adjacent areas under ownership of the City of Albemarle as well as the headwaters and riparian areas to its north under ownership of the City of Albemarle. These are more precisely defined as Stanly County tax parcel 22381 at the time of the adoption of this ordinance.

(2) This ordinance is applicable to all portions of any property incorporated into the city limits of the City of Albemarle at the time of this ordinance when any part of said

property is located within 1,000 feet of City Lake as herein defined. These are further defined by the following Stanly County tax parcels at the time of this ordinance:

23160, 141144, 36468. 36469, 36470, 36471, 36474, 36475, 36476, 36477, 36478, 36479, 36231, 36232, 36233, 36234, 36235, 36236, 139277, 27341, 29441, 13118, 30068, 147, 33435, 14416, 32605, 32113, 137654, 5295, 20326, 37108, 13524, 18279, 2075, 10382, 13526, 13522, 19828, 19859, 13532, 7679, 26071, 26524,14084, 14975

(3) Any properties that are annexed into the incorporated city limits of the City of Albemarle in the future which are within 1,000 feet of City Lake as herein defined shall be subject to the provisions of this section.

(4) All utility and infrastructure installations and improvements in City or state rights of way, within public or private easements or otherwise deemed to be a functional necessity shall be exempt from the provisions of this section.

(C) Applicability. Applicability of this section shall be as follows.

(1) Existing development, which shall include all permanent or semi-permanent structures and paved or graveled areas outside of said structures, within the defined area shall be exempt from the requirements of this chapter. Reconstruction of such structures or areas after demolition or destruction shall be exempt from the requirements of this chapter. Additionally, all development approved but not constructed prior to adoption of this chapter shall be exempt from the standards herein. Expansions of any structures or developed areas that exceeds existing developed area, either before or after demolition or destruction, shall be considered new development and must comply with the standards of this section with the remaining undeveloped portions of their respective properties used in calculating permitted development intensity and standards.

(2) Exemption of utilities and other infrastructure. All utility and infrastructure installations and improvements in City or state rights of way, within public or private easements or otherwise deemed to be a functional necessity shall be exempt from the provisions of this section.

(3) New development. All new development on properties in the City designated to be within the City Lake Special Environs shall comply with the provisions of this section. New subdivisions shall submit detailed site plans showing compliance with these provisions and be approved in conjunction with all formal subdivision approval processes. All other development, including construction on individual lots within new subdivisions, shall submit site plans, landscaping plans, and building plans as required for review and approval by City Staff.

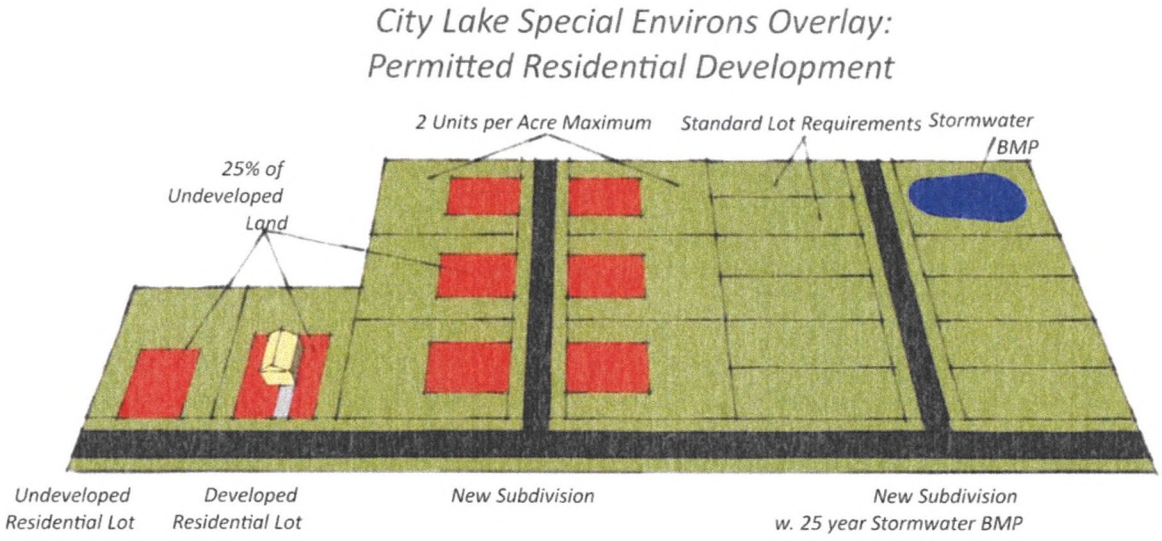
(D) Permitted uses. There shall be no additional restrictions to land use as provided by the existing underlying base zoning districts other than that which is herein prescribed. However, zoning map amendments to rezone additional properties within

the City Lake Special Environs to allow industrial uses of any type should be discouraged.

(E) Density and Intensity Development. In order to protect property and lives by mitigating flooding from future storm events, density and intensity of all new developments shall be limited on properties within the City Lake Special Environs District. Regardless of the permitted uses of the underlying base zoning district, development of any property shall not exceed the thresholds defined herein.

(1) Residential densities shall not exceed 2 units per acre and no more than 25% of any residential property in total may be developed, excluding roads and infrastructure. This includes when cluster subdivisions are utilized. This requirement may be exempt and standard zoning and subdivision requirements applied instead when new residential development includes stormwater best management practices designed for 25-year storm standards. In such cases retention, detention ponds and other BMPs shall be designed by a licensed engineer, which are capable of retaining and discharging stormwater runoff for the entirety of the developed area for which the exemption is requested. These shall be shown on plans prior to approval of the development. All such plans must also include an inspection and maintenance plan and agreement by the property owner(s) or other private parties to ensure the BMPs function as required in perpetuity without maintenance or expense from the City.

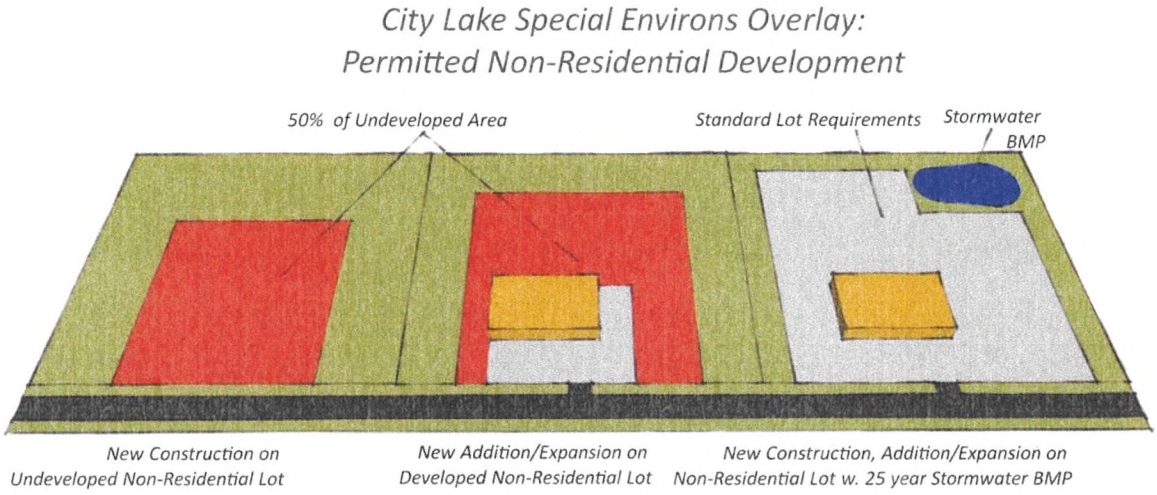
DIAGRAM 92.111(1): Residential Development Density & Intensity



(2) Non-residential development shall not exceed 50% of any non-residential property. This requirement may be exempt and standard zoning and subdivision requirements applied instead when new development includes stormwater best management practices designed for 25-year storm standards. In such cases retention,

detention ponds and other BMPs shall be designed by a licensed engineer, which are capable of retaining and discharging stormwater runoff for the entirety of the developed area for which the exemption is requested. These shall be shown on plans prior to approval of the development. All such plans must also include an inspection and maintenance plan and agreement by the property owner(s) or other private parties to ensure the BMPs function as required in perpetuity without maintenance or expense from the City.

DIAGRAM 91.111(2): Non-Residential Development Density & Intensity



(3) In the event that mixed, residential and non-residential uses are permitted on any single property City Staff shall apply the aforementioned requirements in a manner that best addresses the standards and intent of this section.

(4) Unless otherwise stated these exemptions shall apply only to density and intensity of development and do not exclude other requirements of this section or other applicable sections of City code.

(F) Buffering. In order to maintain water quality, protect aquatic and riparian habitats and preserve viewsheds in an around City Lake, vegetative buffering shall be required as prescribed herein:

(1) All developments in city limits immediately adjacent to City Lake shall maintain a minimum vegetative buffer of 100 feet in width along the shoreline of the lake consisting of existing woodlands. When permissible under state law, large single home lots of 5 acres or more or common open spaces within subdivisions may create or maintain small clearings of up to 50' in length along on the property owner's side of the shoreline for the purpose of viewing or accessing the lake. When allowed, all openings shall be separated by a minimum of 150 feet in length section of vegetative buffer and in no case shall more than a total of 25% of shoreline of any new development be

permitted to be cleared or maintained as a clearing. All other sections of shoreline not meeting these requirements shall be planted with a minimum 50-foot-wide Type III buffer as defined in section 92.121.

(2) Any development of 5 acres or more shall include a preserved wooded buffer of 50 feet in width or a new Type III vegetative buffer of a minimum of 50' in width along all adjoining property lines. Preservation of existing woodlands is preferable, but where they do not exist or have been removed, they shall be replanted to the levels prescribed for Type III buffers in section 92.121.

(3) Where any stormwater retention or detention ponds are used along the exterior of any development they shall be screened from view of any public rights-of -way and adjoining residential homes by a minimum 50-foot-wide preserved wooded buffer or Type III buffer of a minimum 50 feet in width.

(4) In extreme cases, when replanting of required buffers is not feasible, existing stands of wooded areas on adjoining properties may be preserved as an alternative. In such cases a permanent vegetative easement preserving the necessary wooded areas permanently shall be required from the adjacent property owner(s) with their consent.

(G) Encroachment Into Sensitive Areas. In order to preserve the quality of protected habitats and sensitive areas within the City Lake Special Environs such areas shall be preserved and protected from development.

(1) Unless approved by City Council and all applicable state and federal agencies no permanent structures shall be installed on City Lake or within 100 feet of its shoreline on properties within the City.

(2) All blue line streams and other areas determined by state or federal agencies to be protected habitats and/or wetlands shall meet the requirements of those agencies. When separation standards do not exist at the state or federal level the developer(s), builder(s) or owner(s) shall maintain non-encroachment areas from development, site improvements and/or new lot location by a minimum of 25 feet from the edge of the protected area, or in the case of streams 25 feet from either side of the centerline of the stream. With the exception of roads, trails, bridges, culverts and other infrastructure necessary for the functionality of the property or for meeting City ordinance there shall be no grading within this encroachment area or disturbance to existing vegetation located within it. Whether utilized as open space or not, all plans and subsequent documents for the development shall indicate this area is to be left undisturbed, except as provided herein, both during and after development. If disturbed, all vegetative areas shall be restored to their natural state and replanted with native species to the highest extent possible.

(3) With the exception of roads, trails, bridges, culverts and other infrastructure necessary for the functionality of the property or for meeting City ordinance there shall be no development within any areas federally or state designated as 100-year floodplain

or floodway. Creation of small new residential lots containing portions of floodplain or floodway shall be avoided to the greatest extent possible.

(H) Tree Preservation. In order to preserve the tree line around the lake and the forest canopy within the City Lake Special Environs preservation of stands of trees not necessary for building sites or infrastructure shall be required to the greatest extent possible during construction.

(1) Mass grading of properties, including developable areas outside of minimum required buffer areas and sensitive habitats, is prohibited. Plans shall include grading plans which minimize impacts on the tree canopy and distribute forested areas throughout the site to the greatest extent possible.

(2) Post construction removal of vegetation from open, common areas of any development shall be prohibited without approval from City Staff and/or City Planning and Zoning Board in cases where there is no alternative.

(3) Mass clearing and grading of multiple acres of land without an approved plan for development or as an approved agricultural or forestry practice is prohibited. Replanting of land prior to development may be required to the greatest extent authorized by the City in accordance with general statutes. In all cases a sedimentation and erosion control plan shall be required to be implemented and maintained until the site has been re-vegetated.

(I) Street and Vehicular Access Additional vehicular traffic is expected with new development in the City Lake Special Environs. In order to ensure safety for drivers and to minimize the impacts of additional traffic on both the sensitive environmental areas and the existing infrastructure, new development and streets should be well planned and adequately designed.

(1) New development and required streets should meet or exceed all requirements of existing City code.

(2) Interior street networks on all new developments should be designed with the intent of connecting with existing and future streets in all directions and at semi-regular intervals in order to disperse traffic and prevent congestion. Existing stub streets shall be connected to the new street network.

(3) Where connections to nearby streets would necessitate less than a 20% increase in total street length of a proposed development and/or where adjacent properties are of a minimal size that would make street construction with future development impractical or unlikely, rights-of-way shall be secured through said properties and the additional section of street constructed at the time of development. Where longer sections of street exceed 20% of the total street length of the proposed development and larger, developable tracts of land are located adjacent the street may be stubbed out to the property line for future connection.

(4) While connections to existing streets within the City Lake Special Environs are both required and encouraged, street networks within new developments in the overlay shall be designed with an emphasis and priority on traffic utilizing alternative ingress and egress points outside of the overlay district. Straight or curvilinear through streets channeling traffic to ingress and egress points outside of the City Lake Special Environs area shall be installed. Unnecessary turns and circuitous routes that encourage traffic access through street sections within the overlay district shall be avoided.

§ 92.121 BUFFERYARD REQUIREMENTS.

(A) General Purpose. The bufferyard is a precisely defined yard together with the planting required thereon. Both the amount of land and the type and amount of planting specified for each bufferyard requirement of Chapter 92 of the Code of Ordinances are designed to lessen incompatibilities between adjacent land uses or screen a use from a public road. It is intended that bufferyards will separate different land uses from each other in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights, signs, and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, or danger from fires or explosions. The planting units required have been calculation to ensure that they do, in fact, function as "buffers."

(B) General provisions.

(1) Initial determination. An initial determination of the proposed use and adjacent uses shall be made using the following:

(a) Single Family Residential is equivalent to R-15, R10, and R-8 districts.

(b) Multi-Family Residential is equivalent to the R-6 and R4 and R-O districts.

(c) High Intensity Commercial is equivalent to the CBD, SCD, GHBD, MUSCD, and I-O districts.

(d) Light Intensity Commercial is equivalent to the NBD, R-O and HMD districts.

(e) Industrial is equivalent to LID and HID districts. These specific uses shall be classified as industrial zoning types for bufferyard purposes only:

1. Banking and financial services, with drive-through facilities;
2. Car wash;
3. Convenience store with gasoline sales;
4. Implement sales and services;
5. Kennels;

EXHIBIT E

the bid made, and in case a resale | date stated in the notice that is at |

NOTICE OF ALBEMARLE CITY COUNCIL PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN to the general public that the Albemarle City Council will conduct public hearings concerning the items listed below at the date, time, and location provided herein:

1. **ZMA 24-05**: Request for a Zoning Map Amendment for two parcels totaling 1.09 +/- acres off of North Second Street (Tax Record 24431) to change the zoning of the property from NBD (Neighborhood Business) and R-8 (Residential-Office Re-Use) to R-4 (Traditional Neighborhood Design).
2. **TA 24-03**: Request for a Text Amendment to City Ordinance, pursuant to North Carolina General Statute 160D-2-4, to amend various development standards in Sections 91.10, 92.111, 92.121-123, and 92.125.

Hearings will be conducted by City Council in the City Hall Council Chambers located at:

144 North Second Street, Albemarle, North Carolina 28001 on Monday, June 17th at 6:30 p.m.

All interested parties are invited to attend hearings. Anyone wishing to speak for or against any of the aforementioned cases shall adhere to all

City Council's approved agenda, including applications for the items above can be found on the city's website. Applications for all items above are also kept on file at the City of Albemarle Planning and Development Services Department in the City Hall, which is open between 8:00 a.m. and 5:00 p.m., Monday through Friday. Please contact City Staff if you wish to attend the meeting or with any questions or comments, 704-984-9424.

Dated: May 31, 2024

Publish: Tuesday, June 4, 2024, & Tuesday, June 11, 2024