

NORTH CAROLINA
CATAWBACOUNTY

FILE NUMBER: 24 CVS 2814
FILM NUMBER: _____
IN THE GENERAL COURT OF JUSTICE
Superior Court Division

2025 JAN -2 A 8:38

MCCOMBS INVESTMENTS, LLC

Plaintiff,

-v-

CITY OF NEWTON

Defendant.

CATAWBA CO., C.S.C.

BY)



MOTION TO STRIKE, MOTION
TO DISMISS AND ANSWER

NOW COMES the City of Newton, responding to the Plaintiff's Complaint as follows:

MOTION TO STRIKE

Defendant moves the strike Paragraph 8 of the Complaint for irrelevancy.

FIRST DEFENSE

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendant moves to dismiss the Complaint, and each Claim of Relief alleged therein, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

SECOND DEFENSE

ANSWER

Subject to the foregoing motion to strike and motion to dismiss, Defendant City of Newton (hereinafter sometimes referred to as "City") responds by paragraph number of the Plaintiff's complaint as follows:

1. Admitted.
2. Admitted.
3. The allegations of Paragraph 3 contain legal conclusions and arguments to which no response is required. To the extent a response is required, it is admitted that Plaintiff's complaint attempts to assert claims for denial of Plaintiff's Right to Substantive Due Process, denial of Plaintiff's Right to Equal Protection, for a Declaratory Judgment Declaring the City's



Governing Board's action in denying Plaintiff's Rezoning Application void *ab initio*, and for attorney's fees, the right to which is denied.

4. Admitted.

5. Admitted.

FACTUAL BACKGROUND

6. Admitted.

7. In response to the allegations of Paragraph 7 of the Complaint, it is admitted that Parcel 374007793860, containing approximately 3.433 acres of the Subject Property is zoned "M-1" (General Manufacturing), and that Parcel 374007698306, containing approximately 42.91 acres, more or less) of the Subject Property is zoned into two zones comprised of "EM-1" (Exclusive Manufacturing) and "R-9" (Multifamily residential) districts; except as so admitted, the allegations of Paragraph 7 of the complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the Plaintiff's averments.

8. In response to the allegations of Paragraph 8 of the Complaint, it is admitted that 374007698306 was purchased by Dolan F. McCombs in 1944; except as so admitted, the allegations of Paragraph 8 are denied.

9. In response to the allegations of Paragraph 9, it is admitted that the Subject Property is shown on the City of Newton 1966 zoning map as being zoned R-9, M-1 and EM-1 and that there is no record of any changes to the subject site or surrounding areas from 1966 until the present; except as so admitted, the allegations of Paragraph 9 are denied.

10. In response to the allegations of Paragraph 10, it is admitted that the parcels lying to the immediate east, south, and west of the southernmost portion of Parcel 374007698306 are zoned residential (R-9), and that a map depicting the Subject Property and surrounding properties with their respective zoning classifications is attached to the Complaint as Exhibit 1; except as so admitted, the allegations of Paragraph 10 are denied.

11. In response to the allegations of Paragraph 11, it is admitted that Plaintiff has been trying to sell the Subject Property for several years; except as so admitted, the allegations of Paragraph 11 of the complaint are denied for lack of knowledge or information sufficient to form a belief as to the truth of the Plaintiff's averments.

12. Admitted.

13. In response to the allegations of Paragraph 13, it is admitted that Plaintiff submitted a site plan for development of 150 single-family residential lots with a density of 3.27 acres per acre and 19.8 acres of open space, 54 on street parking spaces which allows for 4.36 parking spaces per unit counting a 2-car garage or 2.36 spaces per unit not counting garages, a proposed common area comprised of an open air pavilion, playground area and benches, natural walking trails, a pedestrian bridge crossing the creek and pocket parks and sidewalks; except as so admitted, the allegations of Paragraph 13 are denied.

14. Admitted.

15. Admitted.

16. Admitted.

17. In response to the allegations of Paragraph 17, it is admitted that one Council member expressed concern whether residents living in the area, characterized by that Council member as an opportunity zone as an economically stressed underserved community for citizens with annual incomes of approximately \$50,000, would be able to afford homes in the price range of \$350,000 to \$400,000, that another Council member expressed concerns about the City's sewer treatment plant's capacity at present to support continued additional residential development, and that two audience members spoke during the public hearing to the effect that the "working poor" making \$40,000 to \$50,000 per year could not afford houses in the price range as projected by Miles Wright, project engineer, for the homes proposed to be built if the rezoning were approved; except as so admitted, the allegations of Paragraph 17 are denied.

18. In response to the allegations of Paragraph 18, it is admitted that the proposed development would have the benefit of increasing property values for the area, and that the same Council member who expressed concern about whether residents living in the area would be able to afford the proposed residential area also commented that if the proposed development upon approval of rezoning resulted in an increase in property values for the surrounding area that would likely result in higher taxes for current income level residents presently living in the community, and that the Mayor inquired if the discussion of planning the land development by the rezoning applicant or before the Planning Commission included discussion of "gentrification"; except as so admitted, the allegations of Paragraph 18 are denied.

19. In response to the allegations of Paragraph 18, it is admitted that some members of the public who spoke during the public hearing commented on the inability of persons having low to moderate incomes being incapable of affording the price of the residential homes proposed by the Plaintiff; except as so admitted, the allegations of Paragraph 19 are denied.

20. In response to the allegations of Paragraph 18, it is admitted that Council Member Dixon made a motion to approve Plaintiff's rezoning application on the basis that the Planning Commission had recommended approval of Plaintiff's rezoning application, stating as part of the motion that he knew that the rezoning application did not comply with City's adopted comprehensive land-use plan; it is further admitted that Councilman Dixon's motion to approve Plaintiff's rezoning application did not receive a second and thereby the application for rezoning was effectively denied for failure of Councilman Dixon's motion to approve the Plaintiff's rezoning application, that the Mayor announced that the rezoning application had been effectively denied and that the zoning of the Subject Property would remain "as-is"; except as so admitted, the allegations of Paragraph 20 are denied.

21. In response to the allegations of Paragraph 21, it is admitted that the City Council approved rezoning application 2023-01 rezoning application at 1466 Smyre Farm Road which Defendant believes Plaintiff refers to in Paragraph 21 as "Buffalo Ridge", from R-20 Single Family to PD-H Planned Development Housing on February 7, 2023, prior to the City of Newton's October, 2023 adoption of its current Blueprint Newton Comprehensive Land Use Plan; in further response to the allegations of Paragraph 21, it is admitted that the City Council approved rezoning application 2023-3 rezoning application for "Kaylor Ridge Development", a site of approximately 83.92 acres off Mt. Olive Church Road adjacent to two Planned Development Housing zones for Mt. Olive Manor and Maple Ridge, from M-1 & EM-1 to PD-H Planned Development Housing on September 5, 2023, consistent with the then existing land use plan for the area, prior to the City of Newton's October, 2023 adoption of its current "Blueprint Newton Comprehensive Land Use Plan"; in further response to the allegations of Paragraph 21, it is admitted that the City Council approved rezoning application 2023-4 rezoning application for "Rowe Estates", a site of approximately 11.7 acres located on the east side of North Rankin Avenue from EM-1 Exclusive Manufacture to PD-H Planned Development Housing on September 5, 2023, consistent with the then existing land use plan for the area, prior to the City

of Newton's October, 2023 adoption of its current "Blueprint Newton Comprehensive Land Use Plan"; in further response to the allegations of Paragraph 21, it is admitted that the City Council approved rezoning application 2024-01 rezoning application for "Meadows at Smyre Creek", a site of approximately 59.95 acres adjacent to Smyre Farm Road adjacent to two Planned Development Housing zones for Mt. Olive Manor and Maple Ridge, from R-20 Single Family and EM-1 Exclusive Manufacturing to PD-H Planned Development Housing on March 5, 2023, consistent with the City of Newton's current "Blueprint Newton Comprehensive Land Use Plan"; except as so admitted, the allegations of Paragraph 21 are denied.

FIRST CLAIM FOR RELIEF

(Declaration that Rezoning Denial Violated Plaintiff's Right to Substantive Due Process)

22. Defendant incorporates by reference its responses to Paragraphs 1 through 21 of Plaintiff's Complaint as set forth hereinabove as if fully set forth herein.

23. Denied.

24. The allegations of Paragraph 24 contain legal conclusions and arguments to which no response is required. To the extent a response is required, it is admitted that Plaintiff's complaint accurately quotes a portion of the cited North Carolina Court of Appeals majority opinion which was left undisturbed as not having precedential value by an equally divided North Carolina Supreme Court in Amward Homes, Inc. v. Town of Cary, 365 N.C. 305, 716 S.E 2d 849 (2011); except as so admitted, the allegations of Paragraph 24 are denied.

25. The allegations of Paragraph 24 contain legal conclusions and arguments to which no response is required. To the extent a response is required, the allegations of Paragraph 25 are admitted.

26. The allegations of Paragraph 26 contain legal conclusions and arguments to which no response is required. To the extent a response is required, the allegations of Paragraph 26 are admitted.

27. Denied.

28. In response to the allegations of Paragraph 28, it is denied that the City Council based its decision on the estimated price range of the homes in the proposed development and, by extension, the demographics of potential homebuyers. The remainder of the allegations of

Paragraph 28 contain legal conclusions and arguments to which no response is required. To the extent a response is required, to the remainder of the allegations of Paragraph 28, those allegations of Paragraph 28 are denied.

29. Denied.

SECOND CLAIM FOR RELIEF

(Declaration that the Rezoning Denial Violated Plaintiff's Right to Equal Protection)

30. Defendant incorporates by reference its responses to Paragraphs 1 through 21 of Plaintiff's Complaint as set forth hereinabove as if fully set forth herein.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

THIRD CLAIM FOR RELIEF

(Declaration that the Rezoning Denial is Void Ab Initio)

36. Defendant incorporates by reference its responses to Paragraphs 1 through 21 of Plaintiff's Complaint as set forth hereinabove as if fully set forth herein.

37. The allegations of Paragraph 37 contain legal conclusions and arguments to which no response is required. To the extent a response is required, the allegations of Paragraph 37 quoting a portion of N.C.G.S. § 160D-605(a) are admitted to the extent of the Complaint's partial quotation of that statute; in further response to the allegations of Paragraph 37, N.C. G.S. § 160D-605(a) further states that "the requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of the action on the amendment [to a zoning map amendment] the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive or land-use plan" which was done by the City Council in rejecting Plaintiff's rezoning application; except as so admitted, the allegations of Paragraph 37 are denied.

38. The allegations of Paragraph 38 contain legal conclusions and arguments to which no response is required. To the extent a response is required, the allegations of Paragraph 38 quoting a portion of N.C.G.S. § 160D-605(b) are admitted to the extent of the Complaint's partial quotation of that statute; except as so admitted, the allegations of Paragraph 38 are denied.

39. In response to the allegations of Paragraph 39, the requirement for a plan consistency statement was complied with by the clear indication in the minutes of the City Council at the time of the action on the amendment that the government was aware of and considered the planning board's recommendation and the relevant portions of the City's adopted comprehensive land-use plan; in further response to the allegations of Paragraph 39, the City Council rejected the proposed zoning map amendment because it was not in the public interest due to its inconsistency with the City's current comprehensive land-use management plan; except as so admitted, the allegations of Paragraph 39 are denied.

40. Denied.

41. Denied.

FOURTH CLAIM FOR RELIEF

(Attorney's Fees and Costs)

42. Defendant incorporates by reference its responses to Paragraphs 1 through 21 of Plaintiff's Complaint as set forth hereinabove as if fully set forth herein.

43. The allegations of Paragraph 43 contain legal conclusions and arguments to which no response is required. To the extent a response is required, the allegations of Paragraph 43 quoting a portion of N.C.G.S. § 6-21.7 are admitted to the extent of the Complaint's partial quotation of that statute; except as so admitted, the allegations of Paragraph 43 are denied.

44. Denied.

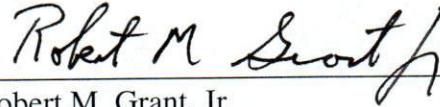
45. Denied.

WHEREFORE, Defendant, having fully answered and responded to the Complaint of Plaintiff, prays the Court to grant the following relief:

1. Entry of an order striking paragraph 8 from the Plaintiff's Complaint.
2. Entry of an Order denying Plaintiff's prayers for relief, dismissing the Plaintiff's Complaint and each claim for relief set forth therein, and ordering that the Plaintiff go hence without day;

3. Entry of an Order taxing the costs of this action to the Plaintiff; and
4. For entry of Order granting Defendant such other and further relief as the Court deems just and proper.

This the 31 day of December, 2024.



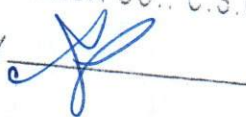
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Attorney for the Defendant]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Answer was served upon all parties of record by depositing a copy thereof in the United States mail, first class, postage prepaid and addressed as follows:

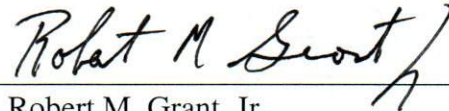
John F. Scarbrough
Scarbrough & Scarbrough, PLLC
141 Union Street South
Concord, NC 28025

FILED

2025 JAN - 2:14:38
CATAWBA CO., C.S.C.
BY 

This the 31 day of December, 2024.

By: _____



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STATE OF NORTH CAROLINA
CATAWBA COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 24-CVS-2814

MCCOMBS INVESTMENTS, LLC,

Plaintiff,

v.

CITY OF NEWTON,

Defendant.

2024 OCT 21 P 12:44

CATAWBA CO. C O C

BY [Signature]

COMPLAINT

NOW COMES Plaintiff McCombs Investments, LLC, and complaining of Defendant City of Newton, alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff McCombs Investments, LLC is a North Carolina limited liability company with its principal place of business in Catawba County, North Carolina.
2. Defendant City of Newton is a municipality with the capacity to be sued as provided in N.C.G.S. § 160A-11.
3. This action involves a challenge to the validity of a decision by the Newton City Council to deny an application for rezoning of Plaintiff's real property.
4. Plaintiff's real property which is the subject of this dispute is located within Catawba County and Catawba County is the proper venue for this action.
5. This Court has jurisdiction over the parties and subject matter of this Complaint.

FACTUAL BACKGROUND

6. Plaintiff is the owner of a 46.3-acre tract of land located in Catawba County, North Carolina (referred to herein as the "Subject Property"). The Subject Property is comprised of two parcels identified as Catawba County Parcel ID numbers 374007698306 and 374007793860. The

Subject Property is further described in a Warranty Deed recorded at Book 2327, Page 1797, Catawba County Registry, and a Warranty Deed recorded at Book 2327, Page 1795, Catawba County Registry, to which reference is made for a more complete description.

7. Approximately 16.363 acres of the Subject Property is zoned “R-9” (Multifamily Residential). Approximately 3.433 acres of the Subject Property is zoned “M-1” (General Manufacturing). The remaining 26.583 acres of the Subject Property is zoned “EM-1” (Exclusive Manufacturing).

8. The Subject Property has been owned by the McCombs family since 1944 when Dolan F. McCombs purchased it for farmland.

9. Upon information and belief, sometime in the mid-1980’s the City of Newton rezoned the Subject Property to an industrial zoning district. Mr. McCombs did not request or consent to this rezoning but decided not to challenge it due to his advanced age.

10. Over time, the area surrounding the Subject Property was developed largely for residential use. The Subject Property is adjoined by properties to the North, South, and West which are residential in nature, despite some of these properties having an industrial zoning classification. A map depicting the Subject Property and surrounding properties with their respective zoning classifications is attached hereto as Exhibit 1.

11. For the last 15 years, Plaintiff has been actively trying to sell the Subject Property. In that time, Plaintiff has received only three offers. Each potential buyer withdrew their offer due to site conditions which make the Subject Property unfeasible to develop for an industrial use. Plaintiff even tried to auction the Subject Property but did not receive a single bid.

12. In June 2024, Plaintiff submitted an application to rezone the Subject Property from its current zoning to “PD-H” (Planned Development—Housing).

13. As part of the rezoning application, Plaintiff submitted a site plan for a development of 150 single-family homes on the Subject Property. The proposed development would reserve nearly 20 acres of open space on the Subject Property and amenities would include an open air pavilion, playground areas, natural walking trails, a pedestrian bridge crossing a creek, and pocket parks spread throughout the development with benches and sidewalks. The development would have a density of 3.27 units per acre—less than the maximum density already allowed for the section of the Subject Property currently zoned R-9.

14. After a public hearing on August 12, 2024, the City of Newton Planning Commission voted 4 to 1 to recommend approval of the rezoning to the Newton City Council.

15. On September 3, 2024, the City Council held a public hearing on Plaintiff's rezoning application. The City Council heard presentations in support of the rezoning from Sue Rogers of McCombs Investments, LLC and Miles Wright, an engineer with Wright & Associates.

16. A Council member asked Mr. Wright about the prices of homes in the proposed development and Mr. Wright answered that the homes would likely be in the \$350,000 to \$400,000 range.

17. A discussion ensued in which Council members spoke in opposition to the rezoning on the basis that the proposed homes would be too expensive for citizens in the surrounding area to afford. One Council member cited census data showing that annual household income in the surrounding area was only \$50,000 per year.

18. Mr. Wright, speaking on behalf of Plaintiff, pointed out that the proposed development would have the benefit of increasing property values for the surrounding area. A Council member objected to this line of reasoning by opining that an increase in property values would result in higher taxes for citizens living in the surrounding community. The Mayor warned

of “gentrification” and used the City of Charlotte as an example. Another Council member asked if Plaintiff had considered more “affordable” homes.

19. The few members of the public who spoke in opposition to the rezoning all focused on the price of the proposed homes being “too high.”

20. After closing the public hearing, the Mayor called for a motion. A Council member made a motion to approve Plaintiff’s rezoning on the basis that the Planning Commission had recommended approval. The motion did not receive a second. The Mayor then declared that the rezoning application had effectively been denied because the motion to approve the rezoning had not received a second. According to the Mayor, the zoning for the Subject Property would therefore remain “as-is.”

21. In 2023 and 2024, the City Council has approved at least four rezonings from industrial to residential planned development (PD-H) for properties similarly situated to the Subject Property. These developments include “Buffalo Ridge,” “Kaylor Ridge,” “Meadows at Smyre Farm,” and “Rowe Crossing.”

FIRST CLAIM FOR RELIEF

(Declaration that the Rezoning Denial Violated Plaintiff’s Right to Substantive Due Process)

22. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 21 as if fully set forth herein.

23. The Newton City Council’s denial of Plaintiff’s rezoning application violated Plaintiff’s right to substantive due process under Article I, Section 19 of the North Carolina Constitution.

24. “[S]ubstantive due process protects the public from government action that (1) unreasonably deprives them of (2) a liberty or property interest. Substantive due process denotes a standard of reasonableness and limits a state’s exercise of its police power.” *Amward Homes, Inc.*

v. *Town of Cary*, 206 N.C.App. 38, 63, 698 S.E.2d 404, 422 (2010), *aff'd*, *ordered not precedential*, 365 N.C. 305, 716 S.E.2d 849 (2011).

25. Plaintiff has a property interest in the Subject Property and a fundamental right to use its property free from government action that is arbitrary and capricious.

26. A decision to deny a rezoning request is invalid if it is arbitrary, capricious, or made without a reasonable basis in fundamental zoning concepts.

27. The City Council's decision to deny Plaintiff's application for rezoning did not reflect any consideration of the character of the land, the suitability of the land for the proposed use, consistency with the City's plan, changed circumstances on the land, or any other zoning-related consideration.

28. Instead, the City Council based its decision solely on the estimated price range of homes in the proposed development and, by extension, the demographics of potential homebuyers. It is well-established that such considerations are impermissible in zoning and that any decision based on such considerations is arbitrary, capricious, and unreasonable.

29. For all the foregoing reasons, and additional reasons to be proven at trial, Plaintiff is entitled to a declaratory judgment that the City Council's decision to deny Plaintiff's application for rezoning violated Plaintiff's right to substantive due process and was arbitrary, capricious, and unreasonable. Plaintiff is further entitled to an order setting aside the City Council's denial of the rezoning as invalid and void.

SECOND CLAIM FOR RELIEF

(Declaration that the Rezoning Denial Violated Plaintiff's Right to Right Equal Protection)

30. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 21 as if fully set forth herein.

31. The Newton City Council's denial of Plaintiff's rezoning application also violated Plaintiff's right to equal protection of the laws under the North Carolina Constitution (Article I, § 19) and the Fourteenth Amendment to the United States Constitution.

32. The City Council has treated Plaintiff differently from similarly-situated landowners requesting a rezoning from an industrial zoning district to "PD-H" (Planned Development—Housing), including the owners of "Buffalo Ridge," "Kaylor Ridge," "Meadows at Smyre Farm," and "Rowe Crossing."

33. The City Council's unequal treatment of Plaintiff was intentional and there was no rational basis for the disparate treatment because the rezoning denial was arbitrary, capricious, and unreasonable as set forth above.

34. The City Council's violation of Plaintiff's right to equal protection of the laws has caused pecuniary loss to Plaintiff.

35. For all the foregoing reasons, and additional reasons to be proven at trial, Plaintiff is entitled to a declaratory judgment that the City Council's decision to deny Plaintiff's application for rezoning violated Plaintiff's right to equal protection of the laws. Plaintiff is further entitled to an order setting aside the City Council's denial of the rezoning as invalid and void.

THIRD CLAIM FOR RELIEF
(Declaration that the Rezoning Denial is Void *Ab Initio*)

36. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 21 as if fully set forth herein.

37. N.C.G.S. § 160D-605(a) provides, in pertinent part, that "[w]hen adopting or rejecting any zoning text or map amendment, the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive or land-use plan." N.C.G.S. § 160D-605 (emphasis added).

38. N.C.G.S. § 160D-605(b) provides, in pertinent part, that “[w]hen adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board.” N.C.G.S. § 160D-605 (emphasis added).

39. The Newton City Council never adopted a statement of consistency or a statement of reasonableness as required by N.C.G.S. § 160D-605.

40. In fact, the City Council did not take any official action on Plaintiff’s rezoning application—the Mayor simply declared that the rezoning had been denied after a motion to approve the rezoning failed for lack of a second. The City Council never actually voted on Plaintiff’s request for a rezoning.

41. For all the foregoing reasons, and additional reasons to be proven at trial, Plaintiff is entitled to a declaratory judgment that the rezoning denial is void *ab initio* because the City Council failed to vote on the rezoning application and failed to comply with N.C.G.S. § 160D-605. Plaintiff is further entitled to an order setting aside the rezoning denial as void *ab initio*.

FOURTH CLAIM FOR RELIEF
(Attorney’s Fees and Costs)

42. Plaintiff incorporates by reference the allegations in Paragraphs 1 through 21 as if fully set forth herein.

43. N.C.G.S. § 6-21.7 provides, in pertinent part, that “[i]n any action in which a city or county is a party, upon a finding by the court that the city or county violated a statute or case law setting forth unambiguous limits on its authority, the court shall award reasonable attorneys’ fees and costs to the party who successfully challenged the city’s or county’s action.” N.C.G.S. § 6-21.7 (emphasis added).

44. The City of Newton violated unambiguous limits on its authority by denying Plaintiff's rezoning application in an arbitrary and capricious manner, and by failing to comply with N.C.G.S. § 160D-605.

45. For all the foregoing reasons, and additional reasons to be proven at trial, Plaintiff is entitled to an award of attorney's fees and costs pursuant to N.C.G.S. § 6-21.7.

WHEREFORE, Plaintiff prays Judgment of the Court as follows:

1. For a declaration pursuant to N.C.G.S. § 1-253, *et seq.* that the City Council's decision to deny Plaintiff's application for rezoning was arbitrary and capricious, and violated Plaintiff's right to substantive due process;
2. For a declaration pursuant to N.C.G.S. § 1-253, *et seq.* that the City Council's decision to deny Plaintiff's application for rezoning violated Plaintiff's right to equal protection of the laws;
3. For a declaration pursuant to N.C.G.S. § 1-253, *et seq.* that the City Council's decision to deny Plaintiff's application for rezoning was procedurally invalid and void *ab initio*;
4. That the Court enter an order setting aside the City Council's decision to deny Plaintiff's application for rezoning;
5. That Plaintiff have and recover its costs, expenses, and attorneys' fees pursuant to N.C.G.S. § 6-21.7 and other applicable law;
6. That Plaintiff have such other relief as may be just and proper.

This the 17th day of October, 2024.

[ATTORNEY SIGNATURE ON FOLLOWING PAGE]

SCARBROUGH & SCARBROUGH, PLLC:



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jfs@sandslegal.net

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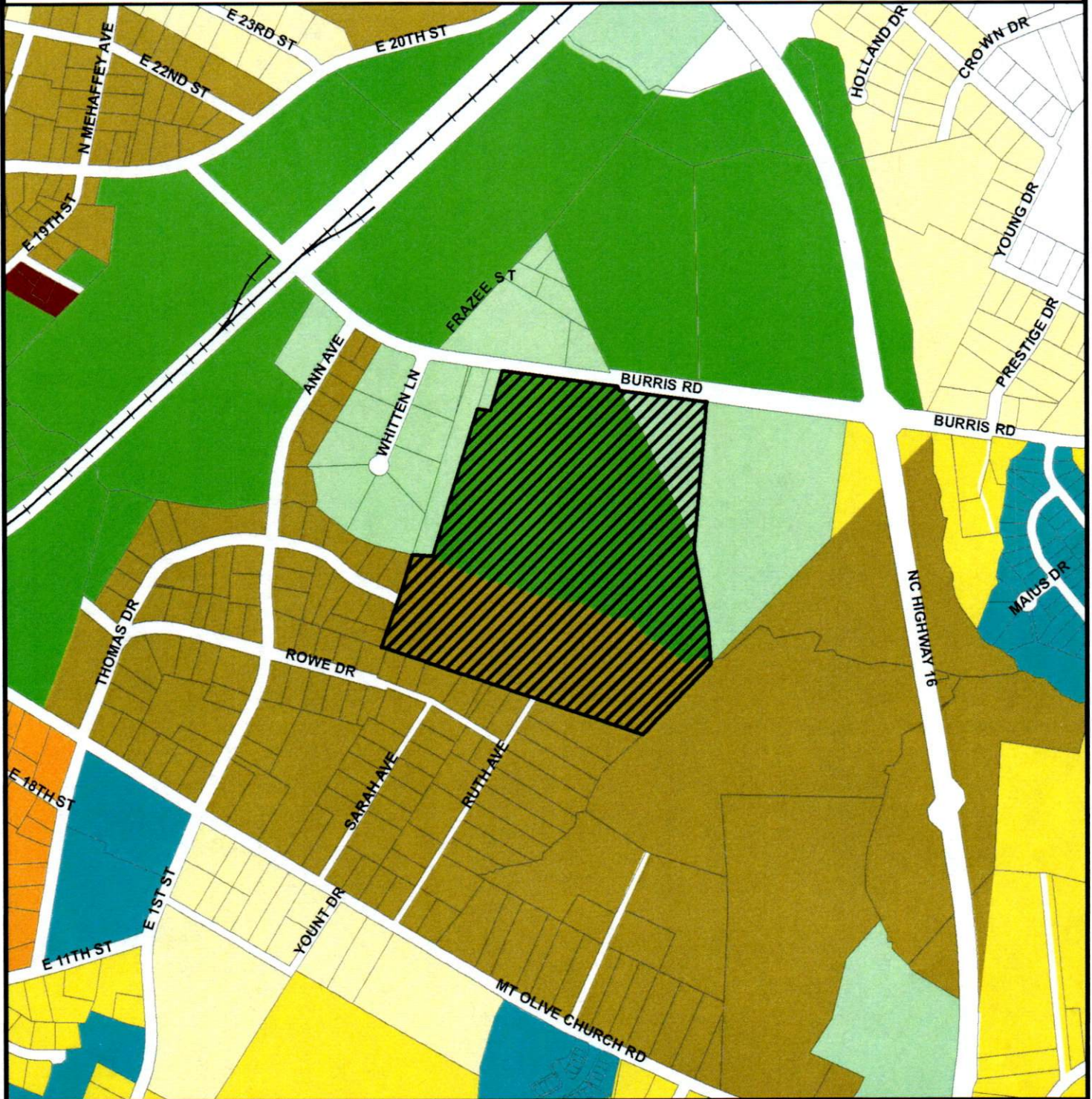
BY  _____

EXHIBIT 1



Rezoning 2024-06

McCombs Investments, LLC
Burris Road



- Multifamily and Manufactured Home Residential (R-7A)
- Multifamily Residential (R-9)
- Single Family Residential (R-20)
- Single Family and Manufactured Home Residential (R-20A)

- General Business (B-4)
- General Manufacturing (M-1)
- Exclusive Manufacturing (EM-1)
- Planned Development Housing (PD-H)

