MEMORANDUM

TO: Chairwoman Helen P. Ross and Board of Zoning Appeals members
FROM: Mike Craig, Zoning Administrator
DATE: May 6, 2016 for May 16 meeting
RE: **AP2016-02: The Bragg Hill Corporation** (adjoining property owner) Appeal of a Zoning Administrator Decision.

ISSUE

There are two issues:
Is the Bragg Hill Corporation an aggrieved party that has standing to appeal the Zoning Administrator's determination on an adjacent property?

And, if so, should the Board of Zoning Appeals reverse the Zoning Administrator's determination that a certain parcel of land now known as GPIN 7870-00-3906 is zoned R-2 Residential?

For the purposes of this memo, GPIN 7870-00-3906 will be known as "the Parcel".

RECOMMENDATION

On February 11, 2014 the Parcel was a part of GPIN 7860-90-3994 and was rezoned by Ordinance 14-06 from R-1 to R-2. Either determine that the Bragg Hill Corporation is not an aggrieved party and has no standing to bring an appeal or uphold the Zoning Administrator's determination that the GPIN 7870-00-3906 is zoned R-2.

GENERAL BACKGROUND

On February 29, 2016, Mark Glazebrook, one of the two owners of a 0.806 acre parcel of land, applied for a Technical Review Committee pre-application conference to discuss building townhomes on the Parcel under a purported R-12 zoning designation. [1]

On March 10, 2016, the Zoning Administrator sent the Bragg Hill Corporation a determination letter stating that the property is actually zoned R-2, Residential.[2] The R-2 district permits single family dwellings at a maximum density of 2 dwelling units per acre, but it does not permit townhouse (single family attached) development. Bragg Hill Corporation filed this appeal, contesting the determination that the land is zoned R-2 and not R-12.

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[1] Exhibit 1, Pre-application Conference application.
[2] Exhibit 2, Zoning Administrator Determination dated March 10, 2016

STANDING – "AGGRIEVED PARTY"

The current owners of the subject parcel, according to the GIS system, are Mike Glazebrook and Mike Degen. Bragg Hill Corporation is a former owner of the parcel, and it owns the land adjoining the parcel, identified as GPIN 7860-90-3994.

The Bragg Hill Corporation filed this appeal of the March 10 determination on April 11, 2016. Neither Mr. Glazebrook nor Mr. Degen filed an appeal before the 30 day deadline. Under Code of Virginia §15.2-2311(A), an appeal to the BZA may be taken by any person "aggrieved" by the decision. Therefore, the first question for the BZA is whether Bragg Hill Corporation has standing to bring this appeal.

In the 2013 case *Friends of the Rappahannock v Caroline County Board of Supervisors* (FOR) the Virginia Supreme Court stated the rule for determining who is an "aggrieved party" in a zoning appeal. As a general matter, the appellant must articulate legally enforceable rights for adjudication. When the appellant is not the owner of the subject parcel, then it has standing to challenge a land use decision only if it (1) owns or occupies real property in close proximity to the subject parcel and (2) alleges facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally. Mere ownership of land adjacent to the subject parcel was not enough to establish standing. There must be some "actual controversy" between the appellant and the decision-maker such that the appellant's rights will be affected by the outcome of the case.[3]

Bragg Hill Corporation is the owner of land in proximity to the subject parcel – it owns the adjacent parcel. However, the letter of appeal does not state how Bragg Hill Corporation is affected by the Zoning Administrator's decision about the zoning of the subject parcel. It does not state any particularized harm to a personal or property right, or the imposition of a burden or obligation upon it different from that suffered by the public generally. The Appellant has not provided evidence that shows how the determination that the Parcel is zoned R-2 instead of R-12 does particularized harm to the Bragg Hill Corporation.

If Bragg Hill Corporation does not provide this evidence to the BZA, then it should conclude that the corporation does not have standing to bring this appeal.

APPEAL – MERITS

If Bragg Hill is an aggrieved party, then the board should determine whether or not the administrative decision is correct. The determination is presumed to be correct. At the hearing, the Zoning Administrator explains the basis for his determination after which the appellant has the burden of proof to rebut the presumption of correctness by a preponderance of the evidence.[4]

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[3] Exhibit 3, *Friends of the Rappahannock v. Caroline County Board of Supervisors*, 286 Va. 38, 48 - 51 (2013), attached.

[4] Code of Virginia §15.2-2309.

The Appellant claims that the Parcel was rezoned from R-1 to R-12 as part of a City led rezoning in 2014. The City's position is that the rezoning, approved as Ordinance 14-06 on February 11, 2014, rezoned the Parcel from R-1 to R-2.

GPIN 7870-00-3906 is a 0.806 acre parcel adjacent to Wicklow Drive across from the Riverwalk subdivision and between the Bragg Hill townhomes fronting on Rann Court to the south and the Sunshine Ballpark to the north. The parcel is an undeveloped, generally flat, open field. The Bragg Hill Corporation owns an adjacent vacant 33.96 acre parcel of land now known as GPIN 7860-90-3994. The City's Official Zoning Map also shows both the Parcel and GPIN 7860-90-3994 as zoned R-2 Residential. Neither vacant property has been assigned a street address by the City.

GPIN 7870-00-3906 was created as an independent GPIN on September 17, 2015.[5] Prior to its creation as an individual entity within the GIS system, the Parcel was included as part of GPIN 7860-90-3994.[6]

On February 11, 2014 the City Council adopted Ordinance 14-06, which rezoned all the remaining R-1 zoned property in the City.[7] The rezoning was a City sponsored rezoning whose intent was to bring the existing uses established on lands annexed by the City into zoning districts that reflect their use in accord with sound planning practices. Out of 2,963 acres of R-1 zoned land, 1,078 acres of vacant land and land with single family homes was rezoned to R-2, 25.64 acres of land consisting of the Bragg Hill / Central park Townhomes was rezoned R-12, 13 acres of land consisting of the Heritage Park Apartments was rezoned R-16, and 4.8 acres of land consisting of the Riverview Apartments was rezoned R-30. The staff report from previous Zoning Administrator Debra Mathis to City Manager Beverly R. Cameron dated January 28, 2014 describing the rezoning is attached to this memo.[8]

Both the Staff Report presented to and the Ordinance subsequently adopted by City Council on February 11, 2014 included both an Exhibit A containing a list of properties rezoned and Exhibit maps.[9] As listed in the Ordinance's Exhibit A, properties with an assigned street address were rezoned by that address. Properties without street addresses were rezoned by GPINs. The Ordinance's Exhibit A shows that GPIN 7860-90-3994 was rezoned to R-2. The exhibit maps show two things: GPIN 7870-00-3906 was at that time included within GPIN 7860-90-3994 and GPIN 7860-90-3994 was rezoned from R-1 to R-2. The City's GIS Analyst also confirmed in her memo that on February 11, 2014 GPIN 7860-90-3994 contained what is now identified as 7870-00-3906.[10]

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[5] GPIN numbers are a representation of land updated and maintained as part of the City's Geographic Information System (GIS). The GIS system contains a disclaimer that the GIS system is neither a survey product nor replacement for appropriate deed research.
[6] Exhibit 4, Memorandum from Kim Williams, GIS Analyst
[7] Exhibit 5, Ordinance 14-06 including Exhibit A and maps.
[8] Exhibit 6, Staff Report from Zoning Administrator Debra Mathis
[9] Staff reports presented before the City Council in 2014 are still available on the City's website. The staff report, Exhibit A, and the Exhibit Maps may be accessed on-line @ http://va-fredericksburg.civicplus.com/AgendaCenter/ViewFile/Item/711?fileID=722
[10] Exhibit 3, Memorandum from Kim Williams, GIS Analyst

GPIN 7860-90-9711 is shown in lavender in Exhibit 3 as it appeared on February 11, 2014. GPIN 7860-90-9711 is the same shape on the map today as it was in 2014. Both the 2014 Staff Report and Ordinance 14-06 show that GPIN 7860-90-9711 was rezoned to R-12 as part of the Bragg Hill / Central Park Townhomes portion of the rezoning and that the areas now identified as GPINs 7860-90-3994 and 7870-00-3906 (the subject Parcel) were not a part of GPIN 7860-90-9711.

Therefore, it is the City's position that the current Official Zoning Map is correct. On February 11, 2014 the Parcel was rezoned from R-1 to R-2 by Ordinance 14-06. The appellant has submitted GIS reports for GPIN 7860-90-9711 that describe the parcel as 0.806 acres of land, but that also show the parcel as the Bragg Hill Section 6 common area (not the subject Parcel). The GIS reports are clearly incorrect. The staff is working through the history of the parcel to develop an explanation of this anomaly.

CONCLUSION:

The Board should determine that Bragg Hill Corporation is not an "aggrieved party" and therefore has no standing to bring this appeal. If the Board decides that Bragg Hill Corporation is an "aggrieved party," it should still uphold the Zoning Administrator's determination that the subject property is zoned R-2.

ATTACHMENTS:

1. Exhibits 1- 6
2. The Bragg Hill Corporation's appeal and supporting documents

EXHIBIT 1

Community Planning
and Building Department
Planning Services Division

City of Fredericksburg
715 Princess Anne Street
P.O. Box 7447
Fredericksburg, VA 22404-7447
Telephone: 540 372-1179
Fax: 540 372-6412

PRE-APPLICATION CONFERENCE APPLICATION

DATE: FEBRUARY 29, 2016

LOCATION OF PROPERTY: END OF WICKLOW DRIVE

APPLICANT: MARK GLAZEBROOK

MAILING ADDRESS: 11541 GRANARY HILLS DRIVE
AMELIA COURTHOUSE, VA. 23002

PHONE: 540-226-1618 E-MAIL ADDRESS: MWGLAZE@gmail.com

ZONING OF PROPERTY: R-12 GPIN #: 7860-90-9711

PREVIOUS USE: VACANT PROPOSED USE: TOWNHOUSES (10)

PLEASE DESCRIBE THE PURPOSE FOR ATTENDING THE PRE-APPLICATION CONFERENCE.

DISCUSS DEVELOPMENT OF TEN (10) TOWNHOUSES ON 0.806 ACRE PARCEL ON WICKLOW DRIVE. PARCEL IS ADJACENT TO SECTION 6 OF BRAGG HILL AND CAL RIPKEN PARK TO NORTH.

☒ SITE PLAN, PLAT, OR TAX MAP ATTACHED

SIGNATURE OF APPLICANT

2-29-16
DATE

DATE RECEIVED: _____ DATE OF MEETING _____

If you have questions, please contact Marne Sherman in Planning Services Division at (540) 372-1179 or Debby Hall in Building Services Division at (540) 372-1080.

For Office Use:

CHECK IF APPLICABLE:
☐ SITE PLAN SUBMITTAL
☐ SPECIAL USE PERMIT REQUIRED
☐ REZONING REQUIRED
☐ PLAT/SUBDIVISION SUBMITTAL
☐ SPECIAL EXCEPTION REQUIRED
☐ OTHER

NO FEE REQUIRED

EXHIBIT 1

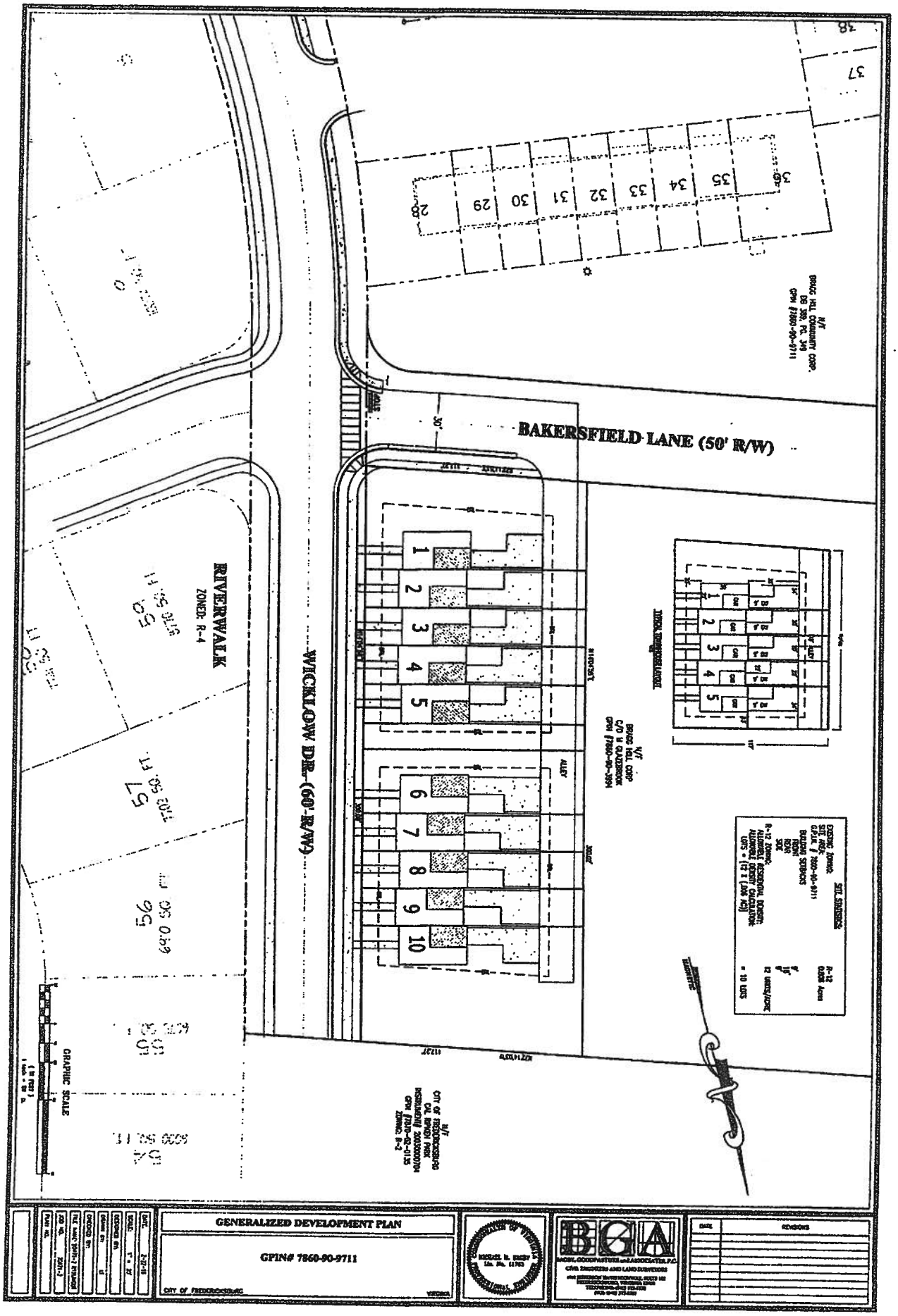

BAKERSFIELD LANE (50' R/W)
WICKLOW DR. (60' R/W)
RIVERWALK
ZONED: R-4
GENERALIZED DEVELOPMENT PLAN
GPIN# 7860-90-9711
CITY OF FREDERICKSBURG
VIRGINIA
GRAPHIC SCALE

EXHIBIT 2

Mike Craig
Zoning Administrator

City of Fredericksburg
PO Box 7447
Fredericksburg, VA22404-7447
Telephone: 540-372-1179
Fax: 540-372-6412
mjcraig@fredericksburgva.gov

012-16D

March 10, 2016

Bragg Hill Corporation
C/O Mr. Mark Glazebrook
11541 Granary Hills Dr.
Amelia Courthouse, Va 23002

Re: Technical Review Committee Application regarding GPIN 7870-00-3906

Dear Mr. Glazebrook:

We received your Technical Review Committee (TRC) application regarding the development of a portion of your property now identified as GPIN 7870-00-3906 into 10 ten townhomes. The zoning on the application is listed as R-12, Residential. The City's official zoning map shows that this property is zoned R-2, Residential.

The City Council rezoned 1,121 acres from R-1 to R-2 Residential, R-12 Residential, R-16 Residential, and R-30 Residential by ordinance #14-06 on February 11, 2014. A copy of the ordinance is attached to this letter. GPIN 7870-00-3906 was not individually identified on the exhibit maps at the time of the rezoning, however, I've sketched it onto the attached map for illustrative purposes. The portion of the property now identified as GPIN 7870-00-3906 was rezoned from R-1 Residential to R-2 Residential by Ordinance 14-06.

Any person aggrieved by this determination may have the right to appeal to the Board of Zoning Appeals within 30 days of the date of this determination. Such appeal shall be in writing to the Zoning Administrator, specify the grounds for the appeal and include an appeal fee of $400.00.

Sincerely,

Mike Craig
Zoning Administrator

ENC: Ordinance 14-06
Technical Review Committee Application

CC: Bagby, Goodpasture, and Associates, P.C.
1985 Jefferson Davis Highway
Suite 102
Fredericksburg, Virginia 22401

EXHIBIT 2

MOTION: **PAOLUCCI**

SECOND: **KELLY**

February 11, 2014
Regular Meeting
Ordinance No. 14-06

RE: **REZONING APPROXIMATELY 1,121 ACRES FROM R-1 RESIDENTIAL TO R-2 RESIDENTIAL, R-12 RESIDENTIAL, R-16 RESIDENTIAL, OR R-30 RESIDENTIAL**

ACTION: **APPROVED; Ayes: 7; Nays: 0**

FIRST READ: **January 28, 2014** **SECOND READ:** **February 11, 2014**

IT IS HEREBY ORDAINED by the Fredericksburg City Council that the Official Zoning Map of the City, established under the Unified Development Ordinance §72-30, is amended as follows:

I. Background Information

On November 13, 2013, the Planning Commission initiated an application to rezone approximately 1,121 acres of land from R-1 Residential to R-2, R-12, or R-16 Residential. All of the subject land is included in the 2,963 acres of land annexed by the City effective January 1, 1984. At the time of annexation, the land was initially classified as R-1 Residential zoning with the intent to rezone the land to a more appropriate zoning district at a later date. Over the years, 1,842 acres have been rezoned. The purpose of this zoning map amendment is to reclassify the remaining land into a zoning district more suited to its existing or planned development.

The Planning Commission conducted a public hearing on this ordinance on December 11, 2013 and adopted a motion to recommend the zoning map amendment at that meeting. The City Council conducted a public hearing on January 28, 2014. In adopting this ordinance, City Council has considered the applicable factors in Virginia Code § 15.2-2284. The City Council has determined that public necessity, convenience, general welfare and good zoning practice favor the requested rezoning.

II. Official Zoning Map Amendment

The Official Zoning Map, prepared in accordance with Unified Development Ordinance §72-30, is hereby amended by rezoning approximately 1,121 acres of land from R-1 Residential to R-2, R-12 or R-16 Residential, as more particularly described in Exhibit A, "Properties Rezoned from R-1 Residential to R-2, R-12, or R-16 Residential by Ordinance 14-06, Adopted by the Fredericksburg City Council February 11, 2014."

III. Effective Immediately

This ordinance is effective immediately.

EXHIBIT 2

Approved as to form:

Kathleen Dooley, City Attorney

****

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 14-06 duly adopted at a meeting of the City Council meeting held February 11, 2014 at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council

EXHIBIT 2

PROPERTIES REZONED FROM R-1 RESIDENTIAL TO R-2, R-12, OR R-16 RESIDENTIAL

BY ORDINANCE 14-06

ADOPTED BY THE FREDERICKSBURG CITY COUNCIL FEBRUARY 11, 2014

1. **The following properties are rezoned from R-1, Residential to R-2, Residential:**

300-501 Altoona Dr.,

2-27 Apache Terr.,

1000-1014 Black Oak Ct.,

6-44 Briscoe Ln.,

1000-1210 Century Oak Dr.,

10-40 Curtis Est.,

3219-3468 Fall Hill Av.,

301-304 Falling Creek Rd.,

1800-1829 Genther Ln.,

6400 Gordon W. Shelton,

1002-1200 Great Oaks Ln.,

2101-2207 Hays St.,

1001-1019 Hickory Ct.,

1000-1021 Jami's Pl.,

2231 Jeff Davis Hwy.,

1000-1008 Jessi's Av.,

1002-1014 Jill's Pl.,

1002-1006 Jon's Pl.,

1000-1009 Julia's Pl.,

1109 Mahone St.,

1-9 Matoca Ct.,

1002-1005 Oakwood Ct.,

1005-1101 Oakwood St.,

2-32 Pawnee Dr.,

1-8 Peace Pipe Ln.,

104-125 Poplar Dr.,

1303-1428 Preserve Ln.,

5321-5517 River Rd.,

10-43 Seneca Terr.,

3403 Vidalia St.,

1102-1109 Westwood Dr.,

1200 Wicklow Dr.,

1711-1805 A-D William St.,

101-142 Woodland Rd.,

GPIN #s

7769-77-8378 (no address),

7769-16-0941 (no address),

7769-26-0788 (no address),

7769-47-1903 (no address),

7779-24-2528 (no address),

7870-11-7643 (no address),

7870-11-1775 (no address),

EXHIBIT 2

7870-10-4269 (no address),

7870-21-0133 (no address),

7870-10-4527 (no address),

7870-20-6853 (no address),

7870-21-8644 (no address),

7870-21-4459 (no address),

7870-30-5391 (no address),

7779-29-6826 (no address),

7779-29-2738 (no address),

7769-94-7825 (no address),

7779-15-3264 (no address),

7779-15-1314 (no address),

7779-05-9510 (no address),

7779-05-5551 (no address),

7870-03-1000 (no address),

7860-90-3994 (no address),

7779-22-4866 (no address),

7779-33-3632 (no address),

7779-34-8153 (no address),

7779-33-7697 (no address),

7779-23-5833 (no address),

7779-23-6834 (no address),

7779-23-7980 (no address),

7779-32-4817 (no address),

7778-16-6891 (no address),

7779-24-4390 (no address),

7779-04-4091 (no address),

7779-05-7004 (no address),

7860-52-1115 (no address),

7860-72-2838 (no address),

7779-07-7560 (no address),

7769-98-2024 (no address),

7779-17-0369 (no address),

7779-06-2534 (no address),

7769-96-4560 (no address),

7779-14-5535 (no address),

7779-08-6240 (no address),

7779-06-4427 (no address),

7779-07-1395 (no address),

7779-00-6239 (no address),

7778-06-2695 (no address),

7779-59-0836 (no address), and

7779-08-2325 (no address).

2. The following properties are rezoned from R-1, Residential to R-12, Residential:

200-222 Brighton Sq.,

317-343 Brock Sq.,

400-416 Chadwick Ct.,

600-817 Denton Cir.,

501-517 Harris Ct.,

100-322 Hickok Cir.,

100-152 Hughey Ct.,

218-241 Ivanhoe Ct.,

400-445 Rann Ct.,

900-1009 Roffman Rd.,

GPIN #

7769-99-0343 (no address),

7769-99-7765 (no address),

7769-99-4595 (no address),

7779-09-1846 (no address),

7870-00-2360 (no address), and

7860-90-9711 (no address),.

3. **The following properties are rezoned from R-1, Residential to R-16, Residential:**

   1000 Heritage Park Dr.

   1009 Heritage Park Dr.

   GPIN # 7769-98-1474 (no address)

4. **The following property is rezoned from R-1, Residential to R-30, Residential:**

   1099 Wicklow Dr.

EXHIBIT 2

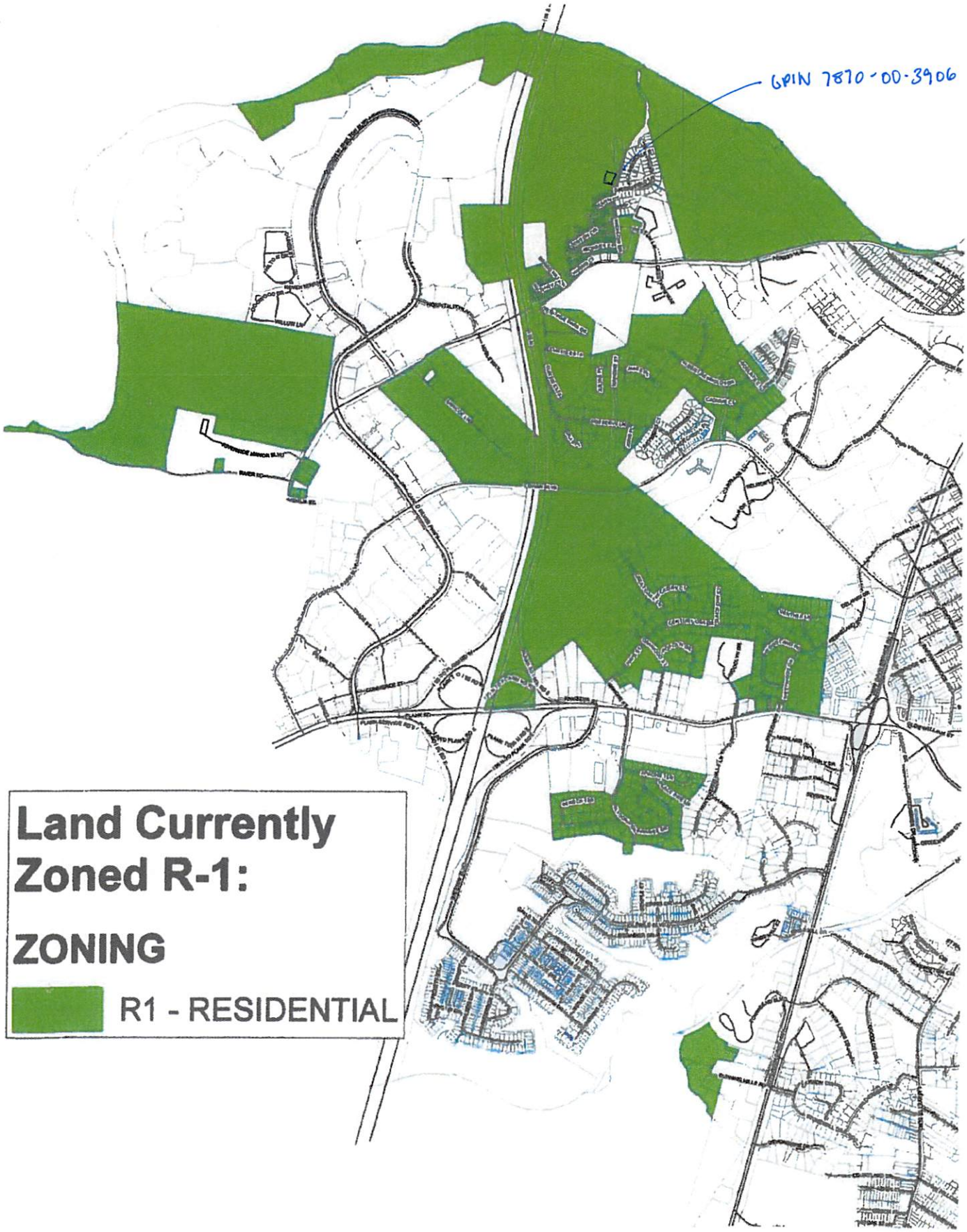

GPIN 7870-00-3906
Land Currently Zoned R-1:
ZONING
R1 - RESIDENTIAL

EXHIBIT 2

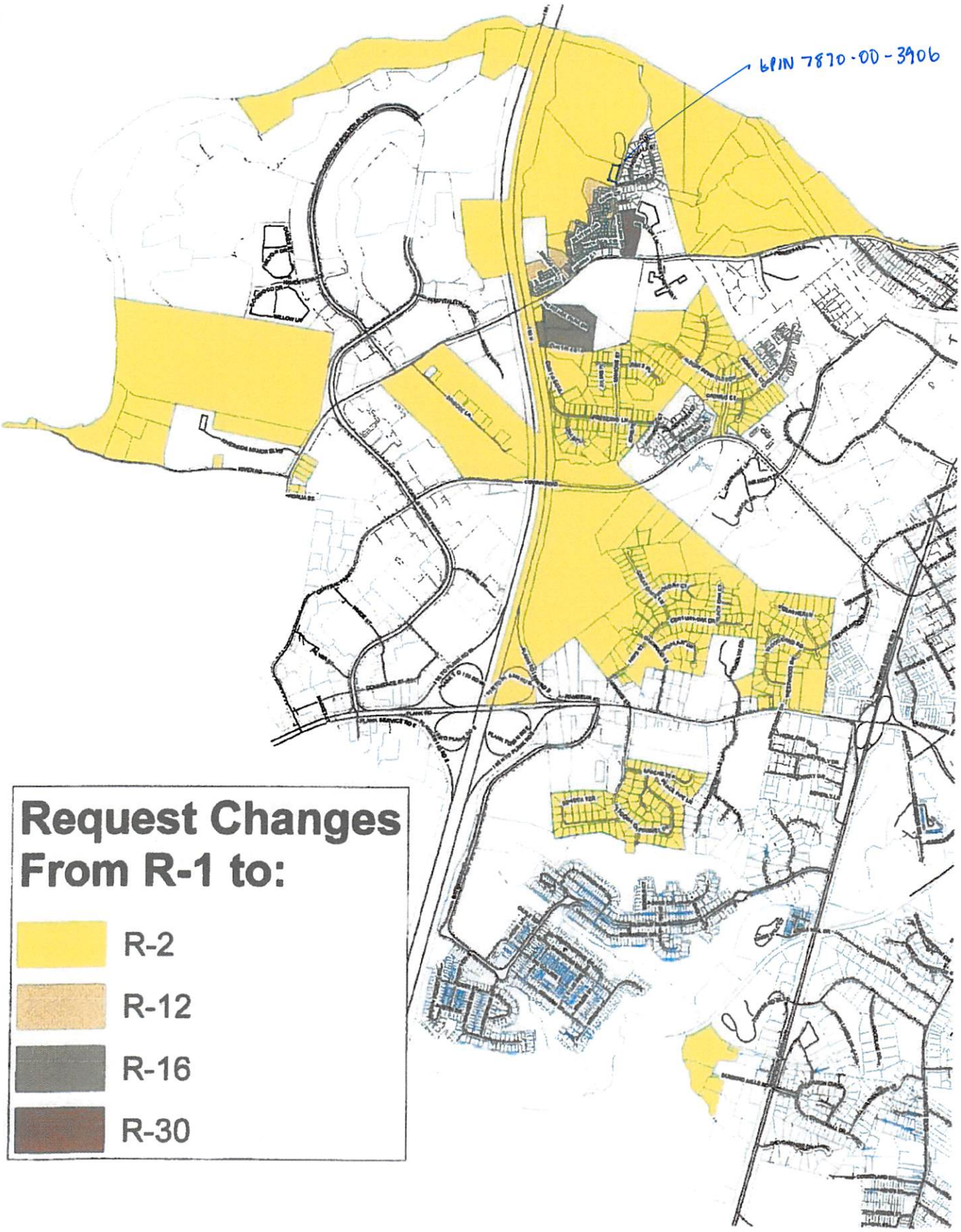


EXHIBIT 2

Community Planning
and Building Department
Planning Services Division

City of Fredericksburg
715 Princess Anne Street
P.O. Box 7447
Fredericksburg, VA 22404-7447
Telephone: 540 372-1179
Fax: 540 372-6412

PRE-APPLICATION CONFERENCE APPLICATION

DATE: FEBRUARY 29, 2016

LOCATION OF PROPERTY: END OF WICKLOW DRIVE

APPLICANT: MARK GLAZEBROOK

MAILING ADDRESS: 11541 GRANARY HILLS DRIVE
AMELIA COURTHOUSE, VA. 23002

PHONE: 540-226-1618 E-MAIL ADDRESS: MNGLAZE@gmail.com

ZONING OF PROPERTY: R-12 GPIN #: 7860-90-9711

PREVIOUS USE: VACANT PROPOSED USE: TOWNHOUSES (10)

PLEASE DESCRIBE THE PURPOSE FOR ATTENDING THE PRE-APPLICATION CONFERENCE.

DISCUSS DEVELOPMENT OF TEN (10) TOWNHOUSES ON 0.806 ACRE PARCEL ON WICKLOW DRIVE. PARCEL IS ADJACENT TO SECTION 6 OF BRAGG HILL AND CAL RIPKEN PARK to NORTH.

☒ SITE PLAN, PLAT, OR TAX MAP ATTACHED

SIGNATURE OF APPLICANT 2-29-16 DATE

DATE RECEIVED: _____ DATE OF MEETING _____

If you have questions, please contact Marne Sherman in Planning Services Division at (540) 372-1179 or Debby Hall in Building Services Division at (540) 372-1080.

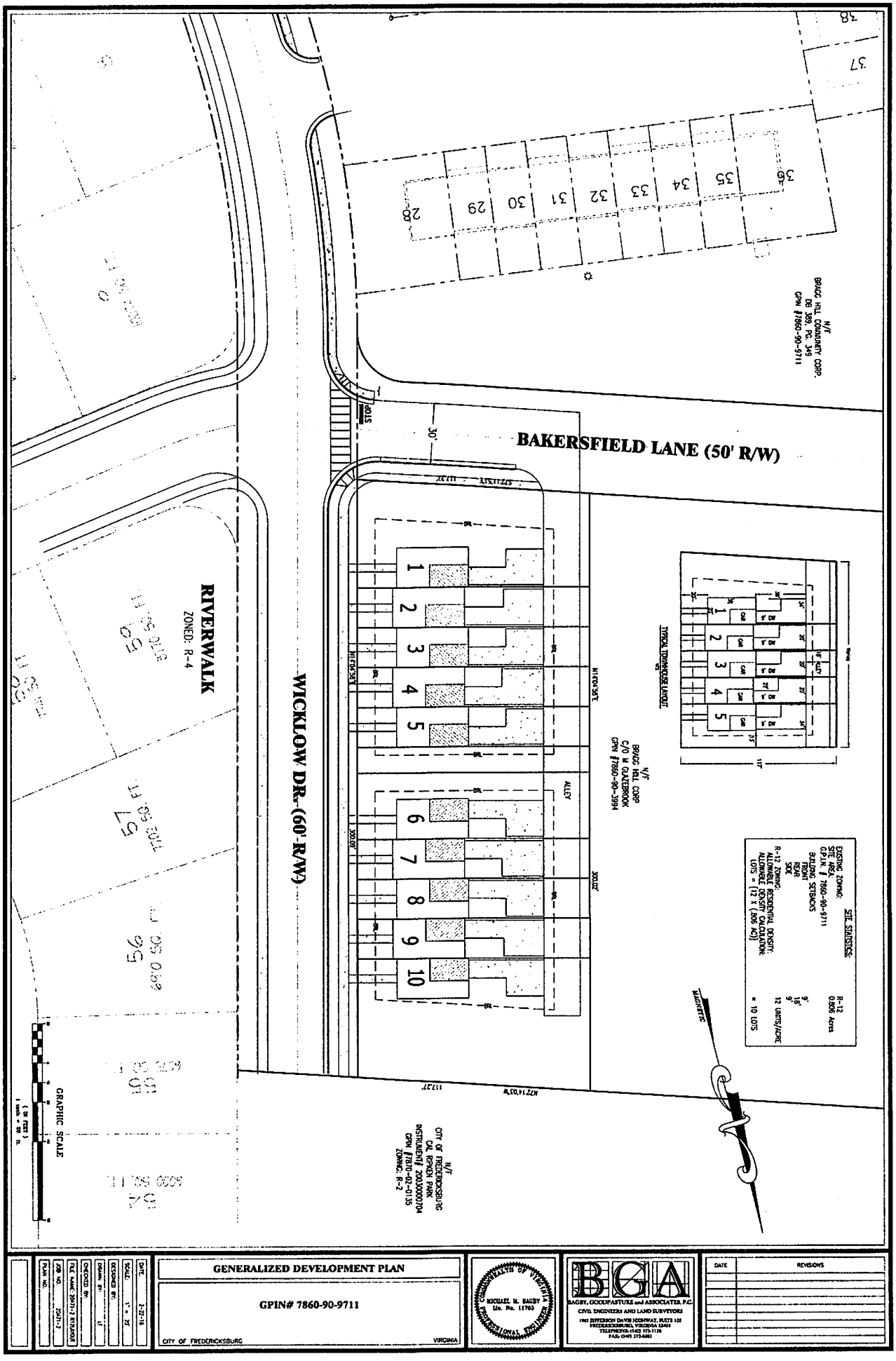
For Office Use:

CHECK IF APPLICABLE:

☐ SITE PLAN SUBMITTAL
☐ SPECIAL USE PERMIT REQUIRED
☐ REZONING REQUIRED
☐ PLAT/SUBDIVISION SUBMITTAL
☐ SPECIAL EXCEPTION REQUIRED
☐ OTHER

NO FEE REQUIRED

EXHIBIT 2


BAKERSFIELD LANE (50' R/W)
WICKLOW DR. (60' R/W)
RIVERWALK
ZONED: R-4
N/F
BRAGG HILL COMMUNITY CORP.
DB 358, PG. 349
GPIN #7860-90-9711
N/F
BRAGG HILL CORP.
C/O M GLAZEBROOK
GPIN #7860-90-3994
N/F
CITY OF FREDERICKSBURG
CAL RIPKEN PARK
INSTRUMENT# 200300007704
GPIN #7810-02-0135
ZONING: R-2
ALLEY
TYPICAL TOWNHOUSE LAYOUT
SITE STATISTICS:
EXISTING ZONING: R-12
SITE AREA: 0.806 Acres
G.P.I.N. # 7860-90-9711
BUILDING SETBACKS
FRONT 9'
REAR 18'
SIDE 9'
R-12 ZONING: 12 UNITS/ACRE
ALLOWABLE RESIDENTIAL DENSITY:
ALLOWABLE DENSITY CALCULATION:
LOTS = (12 X (.806 AC))
= 10 LOTS
MAGNETIC
GRAPHIC SCALE
GENERALIZED DEVELOPMENT PLAN
GPIN# 7860-90-9711
CITY OF FREDERICKSBURG
VIRGINIA
MICHAEL M. BAGBY
Lic. No. 11763
BAGBY, GOODPASTURE and ASSOCIATES, P.C.
CIVIL ENGINEERS AND LAND SURVEYORS
DATE
REVISIONS

743 S.E.2d 132

EXHIBIT 3

286 Va. 38
Supreme Court of Virginia.

FRIENDS OF THE RAPPAHANNOCK, et al.
v.
CAROLINE COUNTY BOARD OF SUPERVISORS, et al.

Record No. 120874.
|
June 6, 2013.

Synopsis

Background: Non-profit organization, together with several local landowners and a lessee, filed complaint for declaratory judgment, challenging a special exception permit issued by county board of supervisors that approved use of land adjacent to river for a sand and gravel mining operation. The Circuit Court, Caroline County, Joseph J. Ellis, J., dismissed complaint. Plaintiffs appealed.

Holdings: The Supreme Court, Leroy F. Millette, Jr., J., held that:

[1] circuit court did not err in applying "aggrieved person" standard to determine standing, and

[2] allegations in complaint were insufficient to allege particularized harm and, therefore, insufficient to confer standing to bring suit.

Affirmed.

West Headnotes (10)

[1] **Pleading** Facts well pleaded

Pleading Inferences and conclusions of fact

A "demurrer" accepts as true all facts properly pled, as well as reasonable inferences from those facts; however, a demurrer does not admit inferences or conclusions from facts not stated.

3 Cases that cite this headnote

[2] **Pleading** Insufficiency of facts to constitute cause of action

Pleading Scope of Inquiry and Matters Considered on Demurrer in General

At the demurrer stage, it is not the function of the trial court to decide the merits of the allegations set forth in a complaint, but only to determine whether the factual allegations pled and the reasonable inferences drawn therefrom are sufficient to state a cause of action.

4 Cases that cite this headnote

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EXHIBIT 3

[3] **Pleading** Uncertainty, indefiniteness, or lack of particularity

To survive a challenge by demurrer, a pleading must be made with sufficient definiteness to enable the court to find the existence of a legal basis for its judgment.

1 Cases that cite this headnote

[4] **Appeal and Error** Cases Triable in Appellate Court

A trial court's decision sustaining a demurrer presents a question of law which the appellate court reviews de novo.

1 Cases that cite this headnote

[5] **Declaratory Judgment** Interest in subject matter

Declaratory Judgment Statement of controversy

To establish a "justiciable interest" at the pleading stage, as would support a conclusion that a complainant has standing to bring a declaratory judgment action, a plaintiff must allege facts demonstrating an actual controversy, such that complainant's rights will be affected by the outcome of the case.

Cases that cite this headnote

[6] **Declaratory Judgment** Interest in subject matter

Declaratory Judgment Subjects of relief in general

Circuit court did not err in applying the "aggrieved person," instead of "justiciable interest," standard to determine standing in complainants' declaratory judgment action challenging decision of county board of supervisors to approve use of land adjacent to river for a sand and gravel mining operation; any distinction between an "aggrieved party" and "justiciable interest" was a distinction without a difference in declaratory judgment actions challenging land use decisions. West's V.C.A. § 15.2–2314.

1 Cases that cite this headnote

[7] **Declaratory Judgment** Statement of controversy

To show a justiciable controversy sufficient to establish a claim for declaratory judgment, the individual complainants must articulate legally enforceable rights, and courts must be able to evaluate those claims of right.

Cases that cite this headnote

[8] **Declaratory Judgment** Subjects of relief in general

A party who claims no ownership interest in the subject property has standing to file a declaratory judgment action challenging a land use decision only if it (1) owns or occupies real property within or in close proximity to the property that is the subject of the land use determination, thus establishing that it has a direct, immediate, pecuniary, and substantial interest in the decision, and (2) alleges facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.

2 Cases that cite this headnote

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EXHIBIT 3

[9] **Declaratory Judgment** Subjects of relief in general

Absent an allegation of injury or potential injury not shared by the general public, complainants have not established standing to bring a declaratory judgment action in a land use case.

1 Cases that cite this headnote

[10] **Declaratory Judgment** Subjects of relief in general

Allegations in complaint seeking declaratory judgment, challenging special exception permit issued by county board of supervisors that approved use of land adjacent to river for a sand and gravel mining operation, an area already zoned for industrial use, based on complainants' conclusory allegations that noise, particulate matter, or pollution off site would cause actual harm, were insufficient to allege particularized harm to some personal or proprietary right different than that suffered by general public and, thus, were insufficient to confer standing on complainants to challenge board's permit decision to the circuit court. West's V.C.A. § 15.2–2314.

2 Cases that cite this headnote

Attorneys and Law Firms

****133** David S. Bailey, Manassas (Jennifer French; Tammy L. Belinsky, Copper Hill; Environmental Law Group, on briefs), for appellants.

M. Ann Neil Cosby, Richmond (L. Lee Byrd, Richmond; Sands Anderson, on brief), for appellee Board of Supervisors of Caroline County.

John R. Walk, Richmond (Charles W. Payne, Jr., Fredericksburg; Jaime B. Wisegarver, Richmond; Hirschler Fleischer, on brief) for appellees Black Marsh Farm, Inc. and Vulcan Constructions Materials, L.P.

Present: All the Justices.

Opinion

Opinion by Justice LEROY F. MILLETTE, JR.

***41** The Friends of the Rappahannock ("Friends"), together with several local landowners and one lessee, (collectively, "individual complainants") appeal the order of the Circuit Court of Caroline County sustaining a demurrer and motion to dismiss to their complaint challenging a Special Exception Permit ("permit") issued by the Caroline County Board of Supervisors ("Board") that approved the use of land adjacent to the Rappahannock River for a sand and gravel mining operation. We will affirm the judgment of the circuit court dismissing the complaint for failure to allege a sufficient basis to demonstrate standing.

***42 I. Facts and Proceedings**

In 2011, the Board issued a permit, subject to certain enumerated conditions, to appellees Black Marsh Farm, Inc. and Vulcan Construction Materials, L.P., (collectively, "Black Marsh") for the development of a sand and gravel mining operation on a 514 acre tract bordering the Rappahannock River in Caroline County. Under Article IV, Section 5 of the Zoning Ordinance of Caroline County ("zoning ordinance"), extraction of natural materials is specifically included as a permitted use in the applicable Rural Preservation District, but requires issuance of a permit. After appropriate review, the Board granted Black Marsh's application and granted a permit subject to 33 conditions pursuant to Article XVII, Section 13 of the zoning ordinance.

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Friends, a non-profit organization committed to the preservation of the Rappahannock River, and the individual complainants challenged the Board's decision to issue the permit by filing a complaint entitled "Petition for Review and Complaint for Declaratory Judgment" in the Circuit Court of Caroline County. Friends alleged that Black Marsh's use of the river for product transport will interfere with and harm Friends' interests in water quality protection, preservation of the river's scenic beauty, and public education efforts in land use and resource conservation advocacy.

The complaint also alleged bases for standing for each of the individual complainants. John D. Mitchell holds a leasehold interest and a right of first refusal in property adjacent to the Black Marsh site. Mitchell uses ****134** the property for duck hunting, fishing, and river access. Mitchell complains that the land disturbance, noise and industrial activity at the site will frighten away the wildlife, prevent or deter new wildlife from entering the area, and render the property useless for hunting, causing him harm.

Sally Jane Raines Kizer is the owner of 164 acres of farmland adjacent to the site. A tenant lives in Kizer's farmhouse. Kizer contends that mining activities at the site will interfere with her right-of-way to the river, make it more difficult to find tenants for the farmhouse, and create problematic noise and airborne particulate conditions. Kizer also alleges that Black Marsh's permit contains requirements that are insufficient to ensure that the pond left on the reclaimed site will not become a stagnant lake and thereby a nuisance.

***43** The other four individual complainants, Elizabeth Lanyon Reynolds, Ronald S. Mosley, and Kurt and Brenda Kuberek live directly across the river in King George County, approximately 1,500 feet away from the Black Marsh property. Each of the complainants owns a private residence on a one-quarter to one-third acre lot in a residential development known as Hopyard Farm, and each residence is separated from the river by approximately 200 feet of open space owned by the Hopyard Farm Homeowners' Association. These individual complainants allege that the industrial activities on the site will end the scenic beauty of the location. Also, they allege that the activities will increase noise, dust, and traffic from barges and commercial boats in a manner that will alter their quiet enjoyment of the area. In addition, the Kubereks allege that the industrial use of the property will harm their recreational use of the river for wading and observing wildlife, and that they are concerned for the long term health and well-being of their children, one of whom is asthmatic, from the dust and particulate pollution from the proposed operation.

In response to the complaint, the Board filed a demurrer and Black Marsh filed a motion to dismiss. The Board and Black Marsh argued that Friends and the individual complainants lacked standing to bring the suit because they failed to show they were aggrieved parties, their alleged injuries were based on speculative grievances, the facts as pled were insufficient as a matter of law to grant standing, and they were seeking to vindicate interests shared by the entire public. Friends and the individual complainants filed a memorandum in opposition to the motion to dismiss in which they argued that, under Code §§ 8.01–184 and 15.2–2285(F), they did not need to show that they are "aggrieved," but merely that they have a "justiciable interest."

After a hearing on the matter, the circuit court issued a letter opinion in which it held that Friends and the individual complainants lacked standing. In reaching this conclusion, the court accepted Black Marsh's argument that there is a two-step test to determine standing: first, the court must consider the complainants' proximity to the objectionable use; and second, the court must determine whether the challenged use will deny rights or impose burdens different from those suffered by the general public. The court held that the claims alleged were not supported by sufficient facts, and that the allegations were conclusory and did not show a loss of some personal or property right "different from that suffered by the public generally."

***44** Friends and the individual complainants declined the opportunity to amend their pleadings and the circuit court entered an order sustaining the demurrer and the motion to dismiss. Friends and the individual complainants filed a petition for appeal, which the Court granted as to two issues. In their first assignment of error, Friends and the individual complainants argue that the circuit court erred in applying the "aggrieved person" standard in evaluating whether they had standing to appeal the Board's decision to grant the permit when the complaint was filed pursuant to the Virginia Declaratory Judgment Act, which applies the "justiciable interest" test for standing. In the second assignment of error, which was granted only as to the individual

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EXHIBIT 3

complainants and not as to Friends, the individual complainants challenge the circuit court's ruling that they had alleged only "non-particularized harms" insufficient for standing.

****135 II. Discussion**

A. *Standard of Review*

[1] The standard of review applicable to the circuit court's decision to sustain a demurrer is well established. "A demurrer accepts as true all facts properly pled, as well as reasonable inferences from those facts." *Steward v. Holland Family Props., LLC,* 284 Va. 282, 286, 726 S.E.2d 251, 253–54 (2012). A demurrer, however, does not admit "inferences or conclusions from facts not stated." *Arlington Yellow Cab Co. v. Transportation, Inc.,* 207 Va. 313, 319, 149 S.E.2d 877, 881 (1966) (internal quotation marks and citation omitted).

[2] [3] [4] At the demurrer stage, it is not the function of the trial court to decide the merits of the allegations set forth in a complaint, but only to determine whether the factual allegations pled and the reasonable inferences drawn therefrom are sufficient to state a cause of action. *Riverview Farm Assocs. Va. Gen. P'ship v. Bd. of Supervisors of Charles County,* 259 Va. 419, 427, 528 S.E.2d 99, 103 (2000). To survive a challenge by demurrer, a pleading must be made with "sufficient definiteness to enable the court to find the existence of a legal basis for its judgment." *Eagle Harbor, L.L.C. v. Isle of Wight County,* 271 Va. 603, 611, 628 S.E.2d 298, 302 (2006) (internal quotation marks omitted). "A trial court's decision sustaining a demurrer presents a question of law which we review de novo." *Harris v. Kreutzer,* 271 Va. 188, 196, 624 S.E.2d 24, 28 (2006).

45 B. *Whether the Circuit Court Erred in Applying the "Aggrieved Person" Standard to Determine Standing

Friends and the individual complainants argue that the appropriate analysis of standing in declaratory judgment actions, as expressed in *Cupp v. Board of Supervisors of Fairfax County,* 227 Va. 580, 590, 318 S.E.2d 407, 412 (1984), is whether the complaining party has a "justiciable interest" in the subject matter of the suit. Thus, Friends and the individual complainants contend that the circuit court inappropriately applied an "aggrieved person" standard to the declaratory judgment action in the case at bar because such a standard is not present in either the Court's precedent or within the language of Code §§ 8.01–184 or 15.2–2285(F).[*] Further, they contend that our decision in *Braddock, L.C. v. Board of Supervisors of Loudoun County,* 268 Va. 420, 601 S.E.2d 552 (2004), in which we discussed a requirement that neighbors bringing suit to challenge rezoning be "aggrieved" to have standing, and upon which Black Marsh relies, is irreconcilable with the authorities on which it is based.

Black Marsh, however, argues that the "justiciable interest" and "aggrieved person" standards are not incompatible with each other in a land use case. Black Marsh therefore contends that the circuit court did not err in defining a justiciable controversy by using an "aggrieved person" standard, and argues that the term "aggrieved" requires having a sufficient proximity to the property subject to the land use decision and an allegation of particularized harm not shared by the general public.

Implicit in the argument of Friends and the individual complainants is the contention that an "aggrieved person" standard provides for a more restrictive basis for standing than the requirement of a justiciable interest in a declaratory judgment action in the challenge of a land use decision. We disagree.

We have recently addressed the general principles requiring a complainant to assert a justiciable controversy for a circuit court to ***46** exercise its authority in a declaratory judgment action. *See Charlottesville Area Fitness Club Operators Ass'n v. Albemarle County Bd. of Supervisors,* 285 Va. 87, 737 S.E.2d 1 (2013). Code § 8.01–184, the "statutory authority for declaratory judgment ****136** proceedings," authorizes jurisdiction "[i]n cases of actual controversy." *Charlottesville Area Fitness,* 285 Va. at 97–98, 737 S.E.2d at 6. As "[t]he purpose of a declaratory judgment proceeding is the adjudication of rights[,] an actual controversy is a prerequisite to a court having authority." *Id.* at 98, 737 S.E.2d at 6. The pleadings, therefore, must allege an "actual controversy" existing between the parties based upon an "actual antagonistic assertion and denial of right." Code § 8. 01–184; *see also Charlottesville Area Fitness,* 285 Va. at 98, 737 S.E.2d at 6.

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[5] A complainant "must establish a justiciable interest by alleging facts demonstrat[ing] an actual controversy ... such that [the complainant's] rights will be affected by the outcome of the case." *Charlottesville Area Fitness*, 285 Va. at 98, 737 S.E.2d at 7 (second alteration added) (internal quotation marks omitted); *see also Cupp*, 227 Va. at 590, 318 S.E.2d at 412 (holding that the parties had a direct stake in challenging an ordinance applicable to their nursery business because the ordinance would have impacted what they could sell in their business and required donation of a portion of their land to the county); *Board of Supervisors v. Fralin & Waldron, Inc.*, 222 Va. 218, 224, 278 S.E.2d 859, 862 (1981) (determining that an option holder on certain land sales contracts had standing to challenge rezoning of the property on which it held options); *but see Deerfield v. City of Hampton*, 283 Va. 759, 766, 724 S.E.2d 724, 727 (2012) (holding that a committee formed under the city charter had no standing because it had no rights under the charter to file suit challenging a proposed land use after the purpose for which the committee had been formed had ceased to exist).

The cases cited above address the "justiciable interest" requirement in declaratory judgment actions challenging land use decisions. The particular statutory requirement, however, for standing in the context of a challenge to a *land use decision by a board of zoning appeals* is that the party be aggrieved:

> Any *person or persons jointly or severally aggrieved* by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, ***47** may file with the clerk of the circuit court for the county or city a petition ... specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Code § 15.2–2314 (emphasis added.) Although the text of Code § 15.2–2314 refers only to a board of zoning appeals, we have previously applied the same standard to actions originating from land use decisions made by local governing bodies. *See Deerfield*, 283 Va. at 762, 767, 724 S.E.2d at 725, 728 (applying the "aggrieved person" standard to a city's decision to allow a development of a residential subdivision on a portion of a beach); *Braddock*, 268 Va. at 422–25, 601 S.E.2d at 552–54 (applying the "aggrieved person" standard to a party's challenge to a board of supervisors' denial of its application to rezone two tracts of land). Additionally, we have stated that it would be inconsistent to interpret the statutory section governing appeals from boards of supervisors differently from the statutory section governing appeals from boards of zoning appeals. *Friends of Clark Mtn. Found. v. Board of Supervisors of Orange County*, 242 Va. 16, 22, 406 S.E.2d 19, 22 (1991).

We further disagree with complainants' argument that *Braddock* is inconsistent with the authorities on which it is based. In that case, when Braddock challenged a board of supervisors' denial of its application to rezone two tracts of land, we first considered whether Braddock had an ownership interest in the subject property. 268 Va. at 422–23, 601 S.E.2d at 552–53. We then addressed whether Braddock, as a non-owner, nonetheless had standing. In determining that Braddock, as a non-owner, had no standing to challenge the denial of rezoning, we indicated that "a party, to have standing, must show that he has been *aggrieved by* the judgment or decree appealed from." *Id.* at 425, 601 S.E.2d at 554 (emphasis added) (internal quotation marks and citation omitted). Because Braddock did not have an interest in the entire property subject to rezoning at the time of the filing of the suit, having assigned its right to purchase a portion of the land, and subsequently having neither a proprietary ****137** or a legal right affected by the rezoning, it "was not injuriously affected by the Board's refusal to rezone." *Id.* at 426, 601 S.E.2d at 554.

We affirmed in a recent case that the "aggrieved person" standard is appropriate in the context of a challenge to a land use decision by means of a declaratory judgment action. *See Deerfield*, 283 Va. at 762, 767, 724 S.E.2d at 725, 728. In *Deerfield*, appellants, ***48** members of the Committee of Petitioners of the Buckroe Beach Bayfront Park Petition, initiated a declaratory judgment action challenging the City's decision to allow the development of a residential subdivision on a portion of Buckroe Beach. *Id.* at 761–62, 724 S.E.2d at 725. In reaching our conclusion, we employed *both* the declaratory judgment "justiciable interest" language and the "aggrieved person" standard. We held that the Committee lacked standing because it did not maintain an "ongoing *justiciable right* or *interest that could be aggrieved* by the development of the Buckroe Beach Property such as would give rise to legal standing by the Committee to challenge the development in a declaratory judgment action." *Id.* at 767, 724 S.E.2d at 728 (emphasis added.)

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[6] As evidenced by our analysis herein, any distinction between an "aggrieved party" and "justiciable interest" is a distinction without a difference in declaratory judgment actions challenging land use decisions. Accordingly, the circuit court did not err in applying the "aggrieved person" standard to determine standing in Friends and the individual complainants' declaratory judgment action challenging the Board's land use decision.

C. *Whether Pleadings Sufficient to Allege Standing*

[7] To show a justiciable controversy sufficient to establish a claim for declaratory judgment, the individual complainants must articulate legally enforceable rights, and courts must be able to evaluate those claims of right.

[8] Unlike a challenge to a land use decision by a party claiming an ownership interest in the subject property where the affected property right is readily apparent, a party who claims no ownership interest in the subject property has standing to file a declaratory judgment action challenging the land use decision only if it can satisfy a two-step test. First, the complainant must own or occupy "real property within or in close proximity to the property that is the subject of" the land use determination, thus establishing that it has "a direct, immediate, pecuniary, and substantial interest in the decision." *Virginia Beach Beautification Comm'n v. Board of Zoning Appeals,* 231 Va. 415, 420, 344 S.E.2d 899, 902–03 (1986).

[9] Second, the complainant must allege facts demonstrating a particularized harm to "some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally." *Virginia Marine Res.* ***49** *Comm'n v. Clark,* 281 Va. 679, 687, 709 S.E.2d 150, 155 (2011) (internal quotation marks omitted); *see also Virginia Beach Beautification Comm'n,* 231 Va. at 419–20, 344 S.E.2d at 903 (indicating that complainants must demonstrate that they stand to suffer a particularized harm not shared by the general public). Complainants do not need to establish that the particularized harm has already occurred. *Charlottesville Area Fitness,* 285 Va. at 98, 737 S.E.2d at 11–12 ("The General Assembly created the power to issue declaratory judgments to resolve disputes before the right is violated.") (internal quotation marks omitted). Absent an allegation of injury or potential injury not shared by the general public, complainants have not established standing to bring a declaratory judgment action in a land use case.

[10] When applying these requirements to the case at bar, and assuming without deciding that the individual complainants all hold property interests sufficiently proximate to the Black Marsh site, each is still required to plead facts sufficient to claim particularized harms to rights not shared by the general public. It is in this requirement that the pleading of each individual complainant fails.

The site in question was already zoned for industrial use, and sand and gravel extraction activities are permitted subject to any ****138** conditions imposed by the permit approved by the Board. The individual complainants have not tied their allegations of harm to any activity of Black Marsh, either by reference to the inadequacy of the conditions imposed by the permit or otherwise. Although the individual complainants presented conclusory allegations as to possible harms, the general objections pled by the individual complainants present no factual background upon which an inference can be drawn that Black Marsh's *particular* use of the property would produce such harms and thus impact the complainants. Thus, the individual complainants have not met their burden to provide sufficient facts in their complaint to allege how this particular use, Black Marsh's sand and gravel extraction site, causes the loss of some personal or property right belonging to the individual complainants different from the public in general.

Indeed, the individual complainants failed to offer *any* factual background from which to infer that the proposed mining operation would cause sufficient noise, particulate matter, or pollution *off site* to cause actual harm. Rather, the permit attached to the complaint imposing conditions for operation of the project requires that ***50** Black Marsh adhere to county restrictions regarding pollution, particulate matter, and noise. The individual complainants do not allege any facts to indicate that the conditions imposed by the permit would be inadequate to protect their property rights.

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The individual complainants rely heavily on *Riverview*, in which we recognized that certain landowners had standing, noting that their location within 2,000 feet of the proposed use meant that they lived within sufficient proximity to have a "justiciable interest." *Riverview*, 259 Va. at 427, 528 S.E.2d at 103. As we have reiterated today, however, proximity alone is insufficient to plead a "justiciable interest" in a declaratory judgment action appealing a land use decision. To demonstrate standing, a complaint must also allege sufficient facts showing harm to some personal or proprietary right different than that suffered by the public generally.

Unlike the Black Marsh site, the property in question in *Riverview* was not already zoned for industrial use, but rather commercial use, and the land use decision complained of was a rezoning. *Id.* at 422–23, 528 S.E.2d at 100–01. Furthermore, plaintiffs in *Riverview* included in their complaint a laundry list of particularized harms, including: (1) that they already experienced noise and disturbances from the 300 trucks a day on adjacent roadways, which number would double to up to 600 under the proposal; (2) that the United States Coast Guard had conducted a study indicating that liquid leakage, "garbage juice," was draining off of a barge and into the river; and (3) that Virginia Department of Environmental Quality officials found contaminated liquid spilling from garbage containers being loaded onto barges. Second Amended Complaint at 12, 18–19, *Riverview Farm Assocs. v. Board of Supervisors*, 259 Va. 419, 528 S.E.2d 99 (2000) (Record No. 990853).

Here, the complaint filed by the individual complainants, who were given leave to amend but decided against amendment, does not allege any factual basis for the individual complainants' concerns of off-site effects caused by the sand and gravel operation. As a result, we conclude that the individual complainants have failed to meet their burden of alleging the particularized harms required to survive a demurrer.

III. Conclusion

For the reasons stated, we hold that the circuit court did not err in applying the aggrieved party standard in determining standing ***51** in a declaratory judgment action challenging a local governing body's land use decision. We further hold that, based upon the insufficiency of allegations in their complaint, the individual complainants did not have standing to proceed. Thus, we will affirm the circuit court's judgment.

Affirmed.

All Citations

286 Va. 38, 743 S.E.2d 132

Footnotes

* Under Code § 15.2–2285(F), a decision of a Board of Supervisors in granting or failing to grant a special exception may be challenged in the circuit court:

> Every action contesting a decision of the local governing body adopting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision. However, nothing in this subsection shall be construed to create any new right to contest the action of a local governing body.

End of Document

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EXHIBIT 4

MEMORANDUM

TO: Mike Craig, Zoning Administrator and Kathleen Dooley, City Attorney
FROM:
DATE: May 10, 2016 (for May 16 meeting)
RE: Board of Zoning Appeals – GPIN 7870-00-3906

BACKGROUND

The City of Fredericksburg built its Geographic Information System (GIS) in 2009-2010. Property lines in the City were drawn based on property lines shown in Tax Maps at that time. The section of the City now in question was drawn based on 2009 Tax Map page A19, attached. The 2009 Tax Map included the subject parcel in A19-84A. The whole Tax Map parcel A19-84A became 7860-90-3994 in the new GIS system.

Therefore, on February 11, 2014, the GIS did not represent the .806 acre piece of land now identified as 7870-00-3906 as its own parcel due to the fact that this piece of land was part of the larger 33.962 acre parcel identified as 7860-90-3994 on the City tax maps.

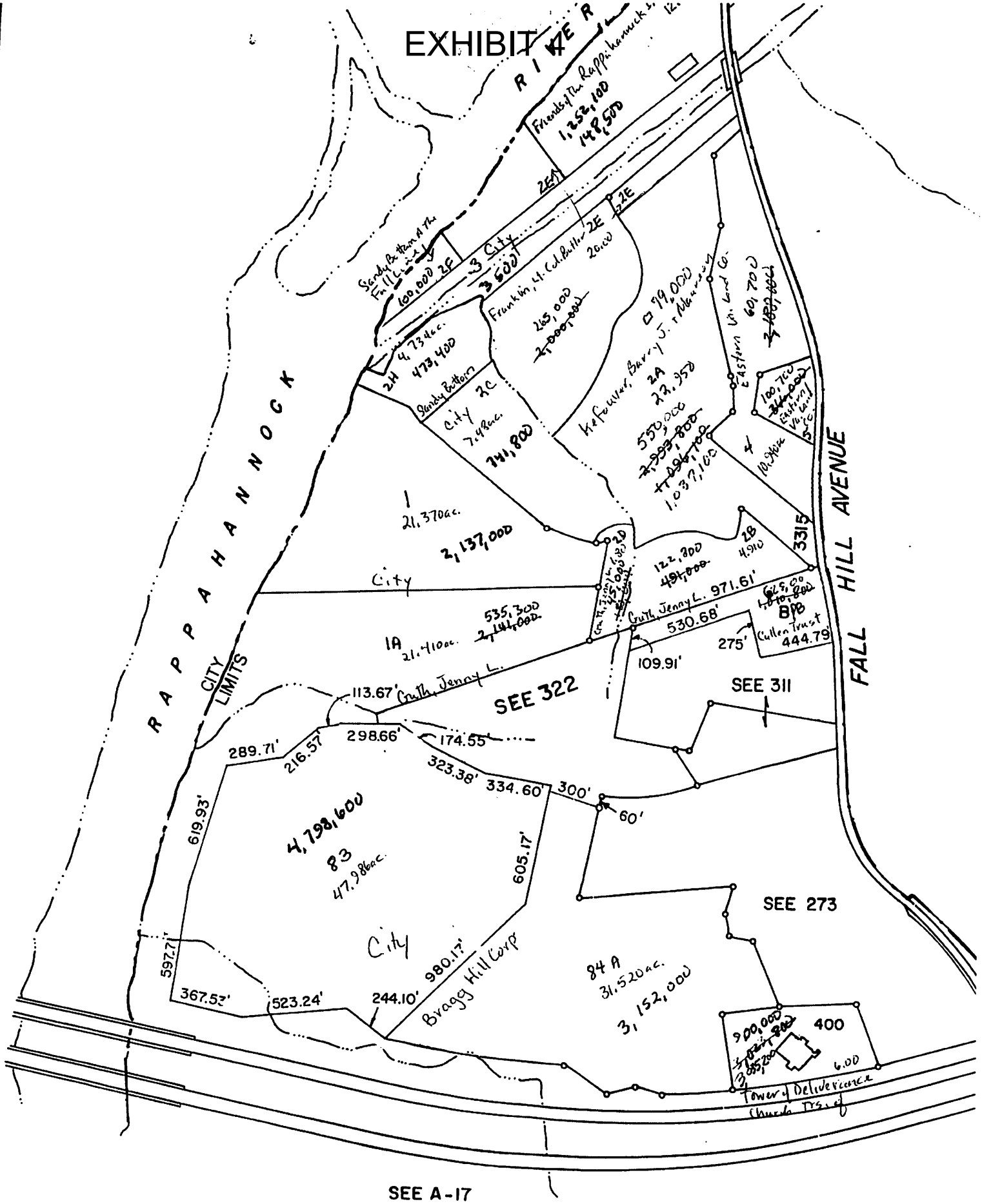
The .806 acre parcel identified as 7870-00-3906 was created in the GIS on September 17, 2015 in response to a request from Real Estate. Attached are renditions of both how this area of the City appeared in the City of Fredericksburg GIS prior to September 17, 2015, and after the September 2015 edits were completed.

Thank you,

Kim B. Williams

Kim B. Williams

EXHIBIT 4



SEE A-17

EXHIBIT 4

Property Lines and GPINs
Prior to September 17, 2015

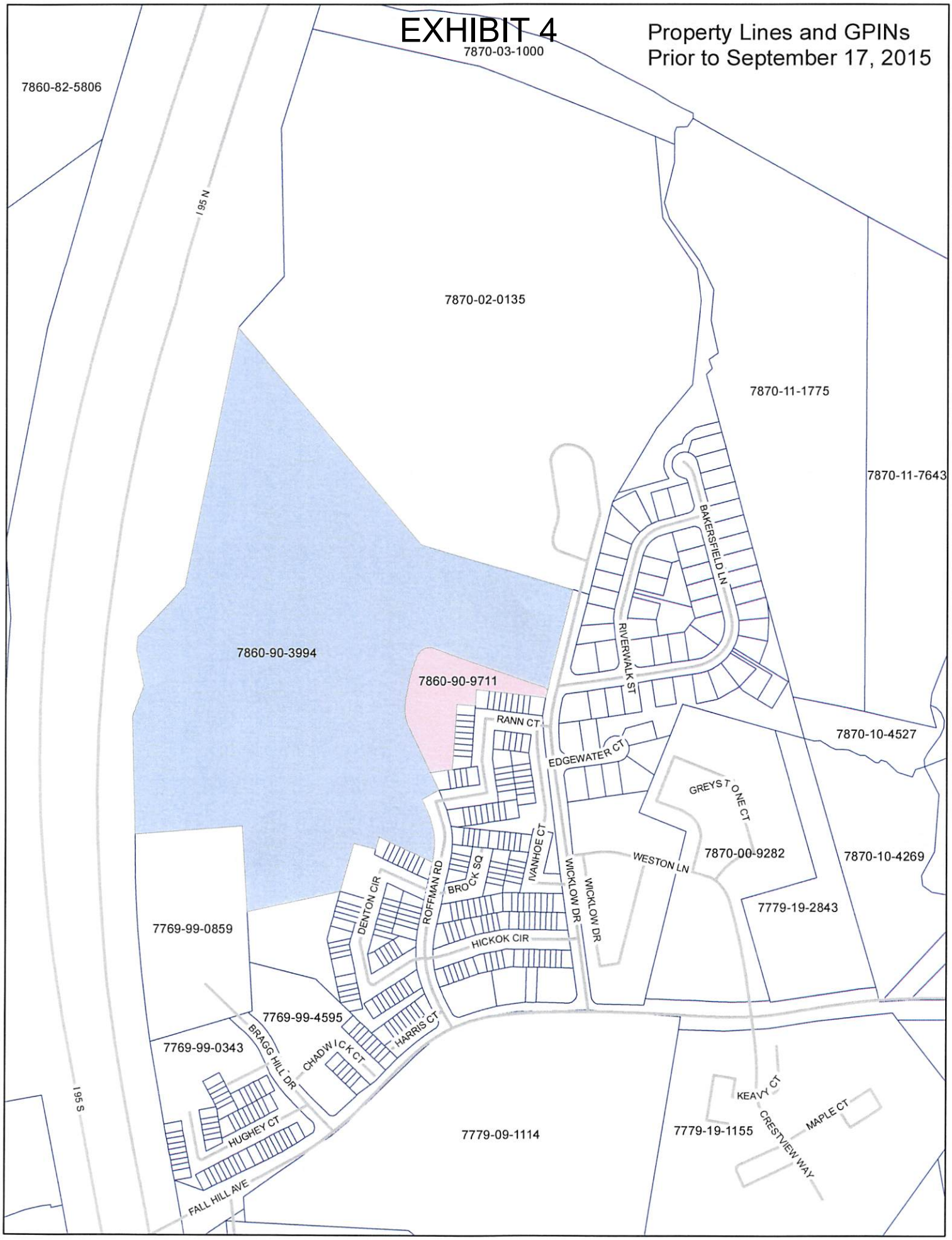


EXHIBIT 4

Property Lines and GPINs
Post to September 17, 2015

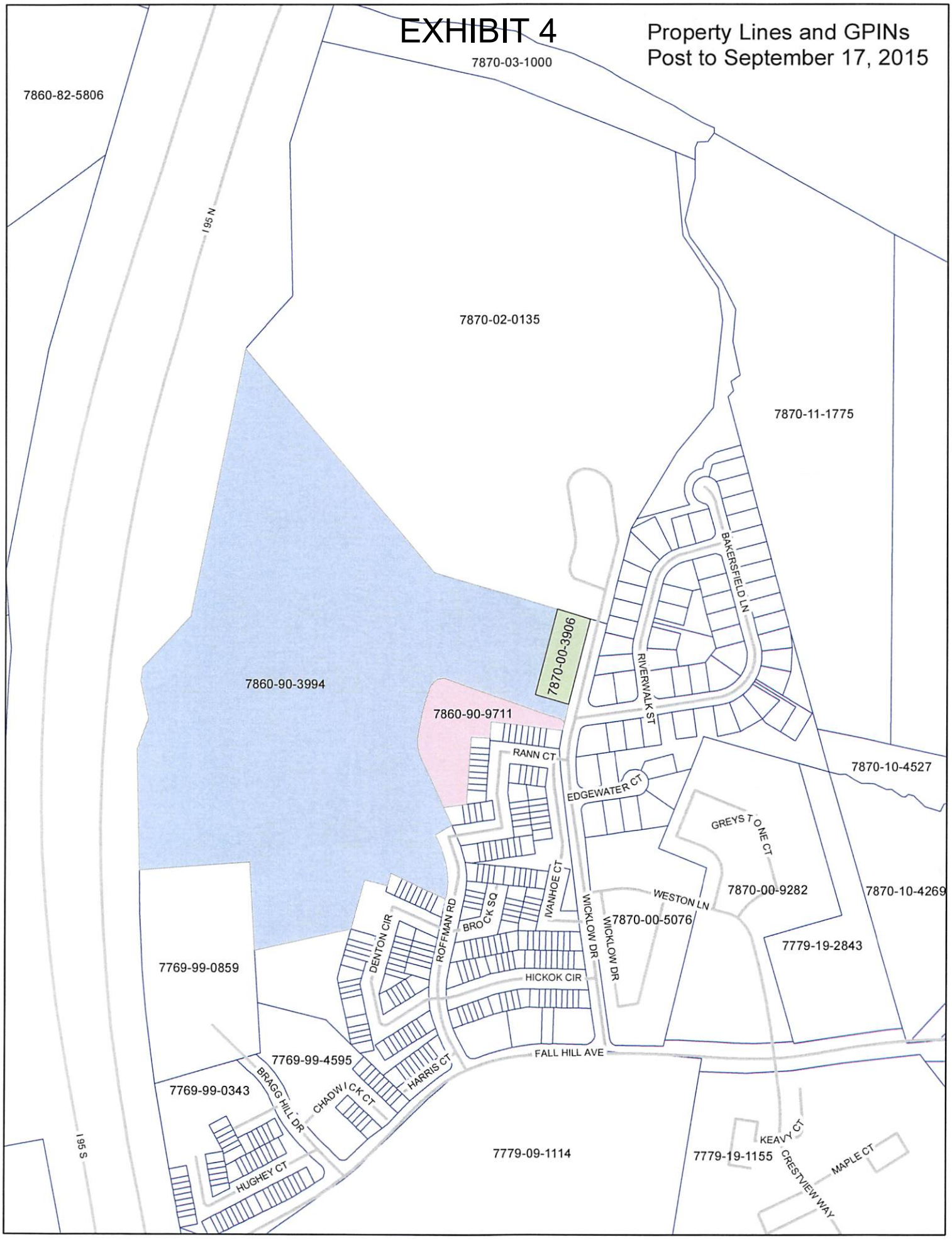


EXHIBIT 5

MOTION: **PAOLUCCI**

SECOND: **KELLY**

February 11, 2014
Regular Meeting
Ordinance No. 14-06

RE: **REZONING APPROXIMATELY 1,121 ACRES FROM R-1 RESIDENTIAL TO R-2 RESIDENTIAL, R-12 RESIDENTIAL, R-16 RESIDENTIAL, OR R-30 RESIDENTIAL**

ACTION: **APPROVED; Ayes: 7; Nays: 0**

FIRST READ: **January 28, 2014** **SECOND READ:** **February 11, 2014**

IT IS HEREBY ORDAINED by the Fredericksburg City Council that the Official Zoning Map of the City, established under the Unified Development Ordinance §72-30, is amended as follows:

I. Background Information

On November 13, 2013, the Planning Commission initiated an application to rezone approximately 1,121 acres of land from R-1 Residential to R-2, R-12, or R-16 Residential. All of the subject land is included in the 2,963 acres of land annexed by the City effective January 1, 1984. At the time of annexation, the land was initially classified as R-1 Residential zoning with the intent to rezone the land to a more appropriate zoning district at a later date. Over the years, 1,842 acres have been rezoned. The purpose of this zoning map amendment is to reclassify the remaining land into a zoning district more suited to its existing or planned development.

The Planning Commission conducted a public hearing on this ordinance on December 11, 2013 and adopted a motion to recommend the zoning map amendment at that meeting. The City Council conducted a public hearing on January 28, 2014. In adopting this ordinance, City Council has considered the applicable factors in Virginia Code § 15.2-2284. The City Council has determined that public necessity, convenience, general welfare and good zoning practice favor the requested rezoning.

II. Official Zoning Map Amendment

The Official Zoning Map, prepared in accordance with Unified Development Ordinance §72-30, is hereby amended by rezoning approximately 1,121 acres of land from R-1 Residential to R-2, R-12 or R-16 Residential, as more particularly described in Exhibit A, "Properties Rezoned from R-1 Residential to R-2, R-12, or R-16 Residential by Ordinance 14-06, Adopted by the Fredericksburg City Council February 11, 2014."

III. Effective Immediately

This ordinance is effective immediately.

EXHIBIT 5

Approved as to form:

Kathleen Dooley, City Attorney

****

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 14-06 duly adopted at a meeting of the City Council meeting held February 11, 2014 at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council

EXHIBIT 5

PROPERTIES REZONED FROM R-1 RESIDENTIAL TO R-2, R-12, OR R-16 RESIDENTIAL

BY ORDINANCE 14-06

ADOPTED BY THE FREDERICKSBURG CITY COUNCIL FEBRUARY 11, 2014

1. **The following properties are rezoned from R-1, Residential to R-2, Residential:**

300-501 Altoona Dr.,

2-27 Apache Terr.,

1000-1014 Black Oak Ct.,

6-44 Briscoe Ln.,

1000-1210 Century Oak Dr.,

10-40 Curtis Est.,

3219-3468 Fall Hill Av.,

301-304 Falling Creek Rd.,

1800-1829 Genther Ln.,

6400 Gordon W. Shelton,

1002-1200 Great Oaks Ln.,

2101-2207 Hays St.,

1001-1019 Hickory Ct.,

1000-1021 Jami's Pl.,

2231 Jeff Davis Hwy.,

1000-1008 Jessi's Av.,

1002-1014 Jill's Pl.,

1002-1006 Jon's Pl.,

1000-1009 Julia's Pl.,

1109 Mahone St.,

1-9 Matoca Ct.,

1002-1005 Oakwood Ct.,

1005-1101 Oakwood St.,

2-32 Pawnee Dr.,

1-8 Peace Pipe Ln.,

104-125 Poplar Dr.,

1303-1428 Preserve Ln.,

5321-5517 River Rd.,

10-43 Seneca Terr.,

3403 Vidalia St.,

1102-1109 Westwood Dr.,

1200 Wicklow Dr.,

1711-1805 A-D William St.,

101-142 Woodland Rd.,

GPIN #s

7769-77-8378 (no address),

7769-16-0941 (no address),

7769-26-0788 (no address),

7769-47-1903 (no address),

7779-24-2528 (no address),

7870-11-7643 (no address),

7870-11-1775 (no address),

EXHIBIT 5

7870-10-4269 (no address),

7870-21-0133 (no address),

7870-10-4527 (no address),

7870-20-6853 (no address),

7870-21-8644 (no address),

7870-21-4459 (no address),

7870-30-5391 (no address),

7779-29-6826 (no address),

7779-29-2738 (no address),

7769-94-7825 (no address),

7779-15-3264 (no address),

7779-15-1314 (no address),

7779-05-9510 (no address),

7779-05-5551 (no address),

7870-03-1000 (no address),

7860-90-3994 (no address),

7779-22-4866 (no address),

7779-33-3632 (no address),

7779-34-8153 (no address),

7779-33-7697 (no address),

7779-23-5833 (no address),

7779-23-6834 (no address),

7779-23-7980 (no address),

7779-32-4817 (no address),

7778-16-6891 (no address),

7779-24-4390 (no address),

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7860-52-1115 (no address),

7860-72-2838 (no address),

7779-07-7560 (no address),

7769-98-2024 (no address),

7779-17-0369 (no address),

7779-06-2534 (no address),

7769-96-4560 (no address),

7779-14-5535 (no address),

7779-08-6240 (no address),

7779-06-4427 (no address),

7779-07-1395 (no address),

7779-00-6239 (no address),

7778-06-2695 (no address),

7779-59-0836 (no address), and

7779-08-2325 (no address).

EXHIBIT 5

2. The following properties are rezoned from R-1, Residential to R-12, Residential:

200-222 Brighton Sq.,

317-343 Brock Sq.,

400-416 Chadwick Ct.,

600-817 Denton Cir.,

501-517 Harris Ct.,

100-322 Hickok Cir.,

100-152 Hughey Ct.,

218-241 Ivanhoe Ct.,

400-445 Rann Ct.,

900-1009 Roffman Rd.,

GPIN #

7769-99-0343 (no address),

7769-99-7765 (no address),

7769-99-4595 (no address),

7779-09-1846 (no address),

7870-00-2360 (no address), and

7860-90-9711 (no address),.

3. The following properties are rezoned from R-1, Residential to R-16, Residential:

1000 Heritage Park Dr.

1009 Heritage Park Dr.

GPIN # 7769-98-1474 (no address)

4. The following property is rezoned from R-1, Residential to R-30, Residential:

1099 Wicklow Dr.

EXHIBIT 5

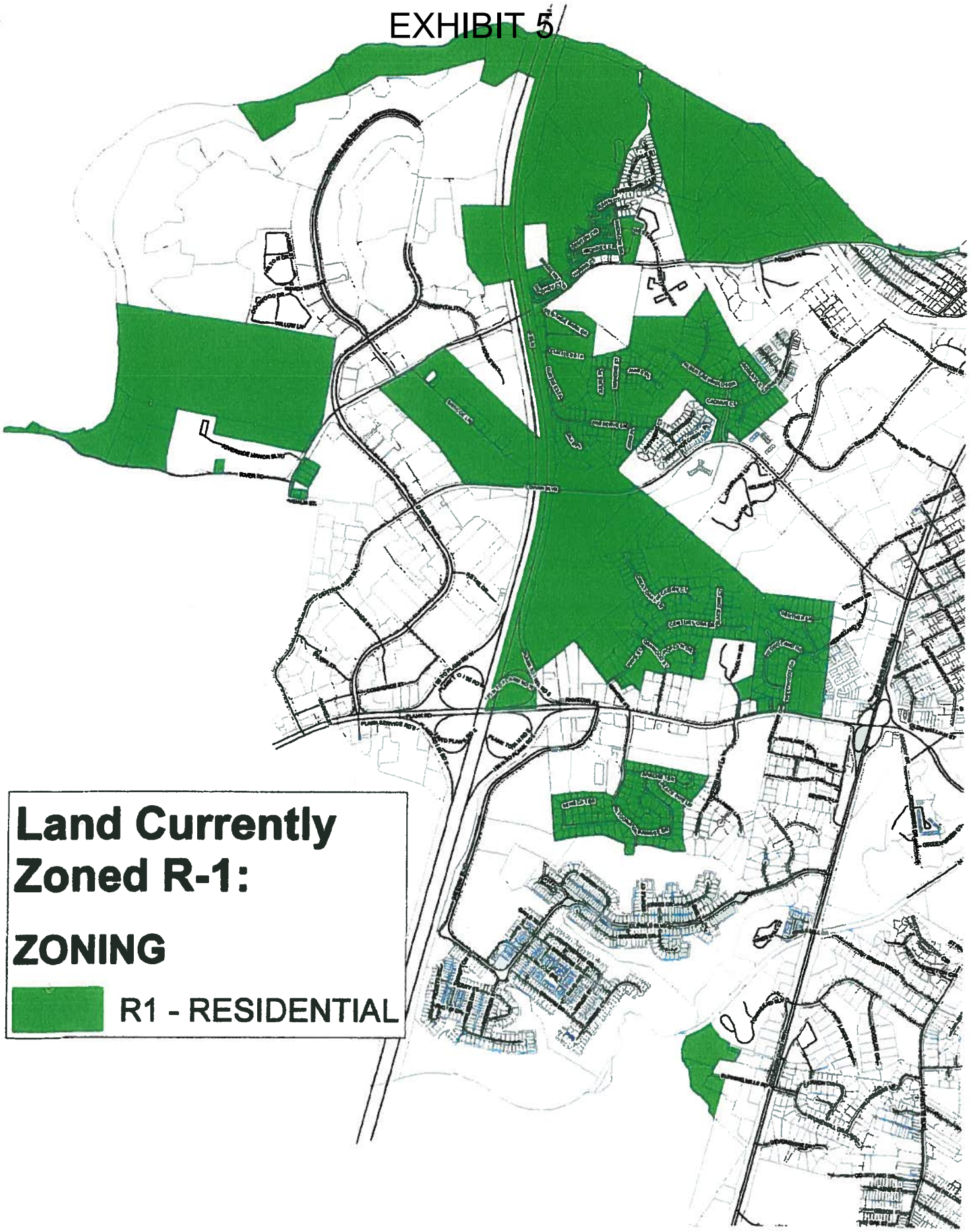

EXHIBIT 5

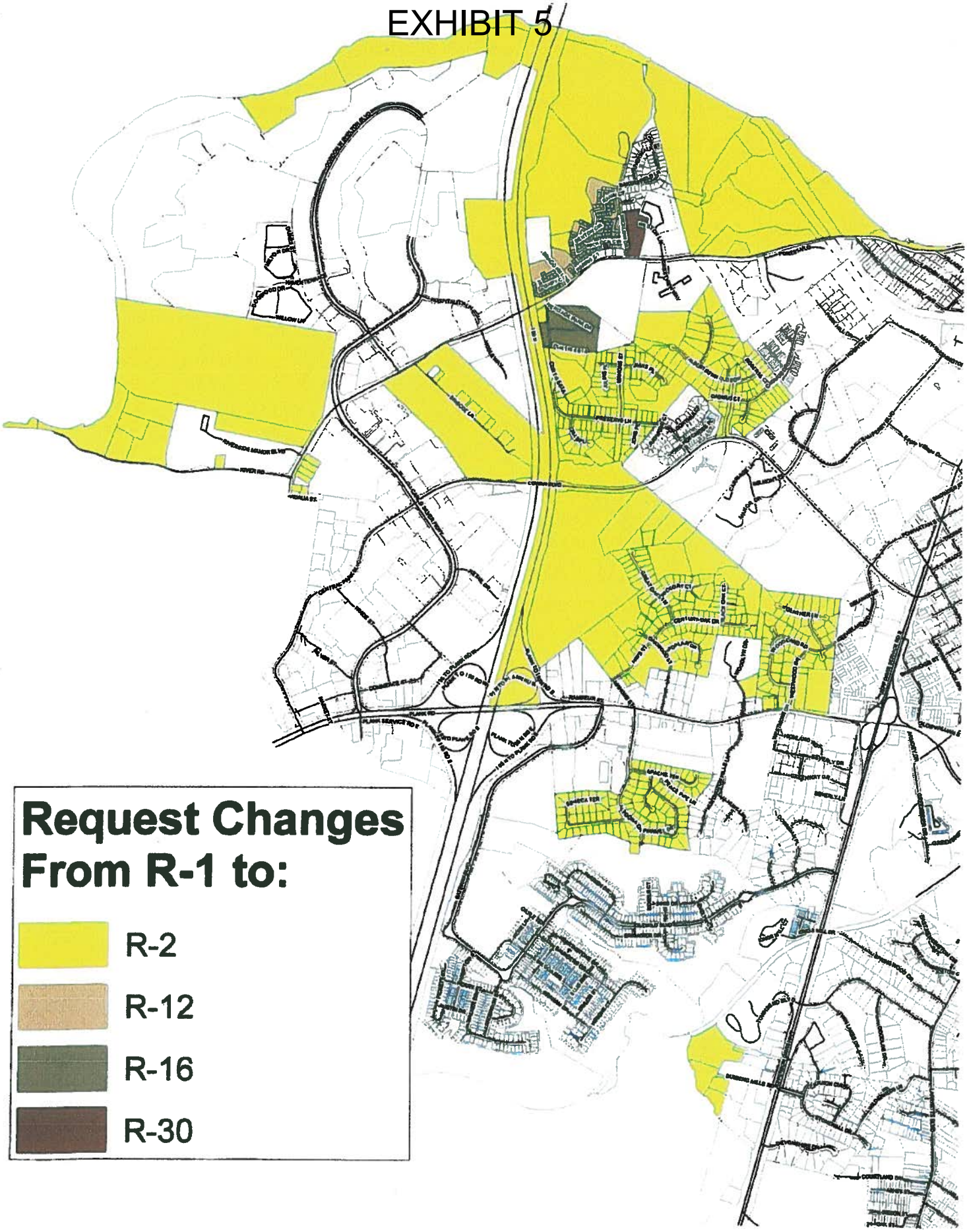

EXHIBIT 6 **ITEM #8C**

MEMORANDUM

TO: Beverly R. Cameron, City Manager
FROM: Debra L. Mathis, Zoning Administrator
DATE: January 28, 2014
SUBJECT: **RZ2013-05:** Rezoning of R-1, Residential Properties, *Amended for second read*

ISSUE

This is a request from the Planning Commission to amend the City Zoning Map to rezone all parcels currently in the R-1, Residential zoning district, (see Attachment 1) to zoning districts which will most closely match the current use of the property. Placing property in zoning districts that reflect their use is in accord with sound planning practice and will make zoning practices in the City more accurate and efficient.

RECOMMENDATION

Item was first read and approved on January 28, 2014. This is a second reading for the amendment to the City Zoning Map to rezone approximately 1,121 acres from R-1 Residential to R-2 Residential, R-12 Residential, R-16 Residential, or R-30 Residential (see specific description of properties to be rezoned at the end of this report).

DISCUSSION

After a public hearing on December 11, 2013 at which no one spoke in opposition, the Planning Commission voted (6-1) to recommend approval of all the proposed rezoning.

In 1984, the City annexed 2,963 acres (4.63 sq miles) of territory from Spotsylvania County. The procedure, at that time, was to initially classify all the annexed properties as R-1, Residential, with the intent to place property in more appropriate zoning districts at a later date. Of the original annexation area, 1,121 acres (761 parcels) remain in the R-1 zoning district. With some exceptions, specifically townhouses and apartment complexes along Fall Hill Avenue (see Attachment 2), this request will place the majority of the R-1 zoned properties (1,078) acres into the R-2 district that has the same purpose and intent, permitted uses, density, bulk, site size and open space requirements as the R-1 district.

The following chart shows a comparison of the higher density uses along Fall Hill Avenue and the zoning districts that most closely meet what is actually existing:

EXHIBIT 6

	EXISTING	PROPOSED	
Bragg Hill/Central Park Townhomes	25.64 acres 267 units 10.4/units per acre 25% open space	R-12	12/units per acre 25% open space
Heritage Park Apartments	13 acres 202 units 15.5/units per acre 21% open space	R-16	16/units per acre 25% open space
Riverview Apartments	4.8 acres 96 units 20/units per acre 44% open space	R-30	30/units per acre 40% open space

As a consequence of this zoning map amendment UDO Section 303.A. (R-1) is redundant and should be repealed. In addition, it is necessary to amend the text of 303.F (R-16) and 303.G. (R-30) allowing for land previously annexed by the City to be placed into these zoning districts. These amendments are addressed in the staff report regarding text amendments to the Unified Development Ordinance.

DESCRIPTION OF PROPERTIES TO BE REZONED

1. **Properties to be rezoned from R-1, Residential to R-2, Residential.**

300-501 Altoona Dr.,
2-27 Apache Terr.,
1000-1014 Black Oak Ct.,
6-44 Briscoe Ln.,
1000-1210 Century Oak Dr.,
10-40 Curtis Est.,
3219-3468 Fall Hill Av.,
301-304 Falling Creek Rd.,
1800-1829 Genther Ln.,
6400 Gordon W. Shelton,
1002-1200 Great Oaks Ln.,
2101-2207 Hays St.,
1001-1019 Hickory Ct.,
1000-1021 Jami's Pl.,
2231 Jeff Davis Hwy.,
1000-1008 Jessi's Av.,
1002-1014 Jill's Pl.,
1002-1006 Jon's Pl.,
1000-1009 Julia's Pl.,
1109 Mahone St.,
1-9 Matoca Ct.,
1002-1005 Oakwood Ct.,
1005-1101 Oakwood St.,
2-32 Pawnee Dr.,
1-8 Peace Pipe Ln.,
104-125 Poplar Dr.,
1303-1428 Preserve Ln.,
5321-5517 River Rd.,
10-43 Seneca Terr.,
3403 Vidalia St.,
1102-1109 Westwood Dr.,
1028-1040 & 1200 Wicklow Dr.,
1711-1805 A-D William St.,
101-142 Woodland Rd.,
GPIN #s
7769-77-8378 (no address),
7769-16-0941 (no address),
7769-26-0788 (no address),
7769-47-1903 (no address),
7779-24-2528 (no address),
7870-11-7643 (no address),
7870-11-1775 (no address),
7870-10-4269 (no address),
7870-21-0133 (no address),
7870-10-4527 (no address),
7870-20-6853 (no address),

EXHIBIT 6

7870-21-8644 (no address),
7870-21-4459 (no address),
7870-30-5391 (no address),
7779-29-6826 (no address),
7779-29-2738 (no address),
7769-94-7825 (no address),
7779-15-3264 (no address),
7779-15-1314 (no address),
7779-05-9510 (no address),
7779-05-5551 (no address),
7870-03-1000 (no address),
7860-90-3994 (no address),
7779-22-4866 (no address),
7779-33-3632 (no address),
7779-34-8153 (no address),
7779-33-7697 (no address),
7779-23-5833 (no address),
7779-23-6834 (no address),
7779-23-7980 (no address),
7779-32-4817 (no address),
7778-16-6891 (no address),
7779-24-4390 (no address),
7779-04-4091 (no address),
7779-05-7004 (no address),
7860-52-1115 (no address),
7860-72-2838 (no address),
7779-07-7560 (no address),
7769-98-2024 (no address),
7779-17-0369 (no address),
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7779-07-1395 (no address),
7779-00-6239 (no address),
7778-06-2695 (no address),
7779-59-0836 (no address), and
7779-08-2325 (no address).

2. Properties to be rezoned from R-1, Residential to R-12, Residential.

200-222 Brighton Sq.,
317-343 Brock Sq.,
400-416 Chadwick Ct.,
600-817 Denton Cir.,
501-517 Harris Ct.,
100-322 Hickok Cir.,
100-152 Hughey Ct.,
218-241 Ivanhoe Ct.,
400-445 Rann Ct.,
900-1009 Roffman Rd.,

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7769-99-4595 (no address),
7779-09-1846 (no address),
7870-00-2360 (no address), and
7860-90-9711 (no address),.

3. Properties to be rezoned from R-1, Residential to R-16, Residential.

1000, 1009 Heritage Park Dr. and GPIN # 7769-98-1474.

4. Properties to be rezoned from R-1, Residential to R-30, Residential.

1099 Wicklow Dr.

ATTACHMENTS

1. Ordinance
2. Exhibit A

EXHIBIT 6

3. Zoning Map, Existing R-1, Residential
4. Zoning Map, Proposed Rezonings
5. Portion of Minutes from December 11, 2013 Planning Commission Meeting

EXHIBIT 6

MOTION: **February 11, 2014**
Regular Meeting
SECOND: **Ordinance No. 14-06**

RE: **REZONING APPROXIMATELY 1,121 ACRES FROM R-1 RESIDENTIAL TO R-2 RESIDENTIAL, R-12 RESIDENTIAL, R-16 RESIDENTIAL, OR R-30 RESIDENTIAL**

ACTION: **APPROVED; Ayes: 0; Nays: 0**

First read: **January 28, 2014** **Second read:** _____

IT IS HEREBY ORDAINED by the Fredericksburg City Council that the Official Zoning Map of the City, established under the Unified Development Ordinance §72-30, is amended as follows:

I. Background Information

On November 13, 2013, the Planning Commission initiated an application to rezone approximately 1,121 acres of land from R-1 Residential to R-2, R-12, or R-16 Residential. All of the subject land is included in the 2,963 acres of land annexed by the City effective January 1, 1984. At the time of annexation, the land was initially classified as R-1 Residential zoning with the intent to rezone the land to a more appropriate zoning district at a later date. Over the years, 1,842 acres have been rezoned. The purpose of this zoning map amendment is to reclassify the remaining land into a zoning district more suited to its existing or planned development.

The Planning Commission conducted a public hearing on this ordinance on December 11, 2013 and adopted a motion to recommend the zoning map amendment at that meeting. The City Council conducted a public hearing on January 28, 2014. In adopting this ordinance, City Council has considered the applicable factors in Virginia Code § 15.2-2284. The City Council has determined that public necessity, convenience, general welfare and good zoning practice favor the requested rezoning.

II. Official Zoning Map Amendment

The Official Zoning Map, prepared in accordance with Unified Development Ordinance §72-30, is hereby amended by rezoning approximately 1,121 acres of land from R-1 Residential to R-2, R-12 or R-16 Residential, as more particularly described in Exhibit A, "Properties Rezoned from R-1 Residential to R-2, R-12, or R-16 Residential by Ordinance 14-__, Adopted by the Fredericksburg City Council February 11, 2014."

III. Effective Immediately

EXHIBIT 6

This ordinance is effective immediately.

Approved as to form:

_____
Kathleen Dooley, City Attorney

****

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 14-06 duly adopted at a meeting of the City Council meeting held February 11, 2014 at which a quorum was present and voted.

_____
Tonya B. Lacey, CMC
Clerk of Council

EXHIBIT 6

PROPERTIES REZONED FROM R-1 RESIDENTIAL TO R-2, R-12, OR R-16 RESIDENTIAL

BY ORDINANCE 14-__

ADOPTED BY THE FREDERICKSBURG CITY COUNCIL FEBRUARY 11, 2014

1. **The following properties are rezoned from R-1, Residential to R-2, Residential:**

300-501 Altoona Dr.,

2-27 Apache Terr.,

1000-1014 Black Oak Ct.,

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1000-1210 Century Oak Dr.,

10-40 Curtis Est.,

3219-3468 Fall Hill Av.,

301-304 Falling Creek Rd.,

1800-1829 Genther Ln.,

6400 Gordon W. Shelton,

1002-1200 Great Oaks Ln.,

2101-2207 Hays St.,

1001-1019 Hickory Ct.,

1000-1021 Jami's Pl.,

2231 Jeff Davis Hwy.,

1000-1008 Jessi's Av.,

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1-9 Matoca Ct.,

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1005-1101 Oakwood St.,

2-32 Pawnee Dr.,

1-8 Peace Pipe Ln.,

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1303-1428 Preserve Ln.,

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10-43 Seneca Terr.,

3403 Vidalia St.,

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7870-10-4269 (no address),

7870-21-0133 (no address),

7870-10-4527 (no address),

7870-20-6853 (no address),

7870-21-8644 (no address),

7870-21-4459 (no address),

7870-30-5391 (no address),

7779-29-6826 (no address),

7779-29-2738 (no address),

7769-94-7825 (no address),

7779-15-3264 (no address),

7779-15-1314 (no address),

7779-05-9510 (no address),

7779-05-5551 (no address),

7870-03-1000 (no address),

7860-90-3994 (no address),

7779-22-4866 (no address),

7779-33-3632 (no address),

7779-34-8153 (no address),

7779-33-7697 (no address),

7779-23-5833 (no address),

7779-23-6834 (no address),

7779-23-7980 (no address),

7779-32-4817 (no address),

7778-16-6891 (no address),

7779-24-4390 (no address),

7779-04-4091 (no address),

7779-05-7004 (no address),

7860-52-1115 (no address),

7860-72-2838 (no address),

7779-07-7560 (no address),

7769-98-2024 (no address),

7779-17-0369 (no address),

7779-06-2534 (no address),

7769-96-4560 (no address),

7779-14-5535 (no address),

7779-08-6240 (no address),

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7779-00-6239 (no address),

7778-06-2695 (no address),

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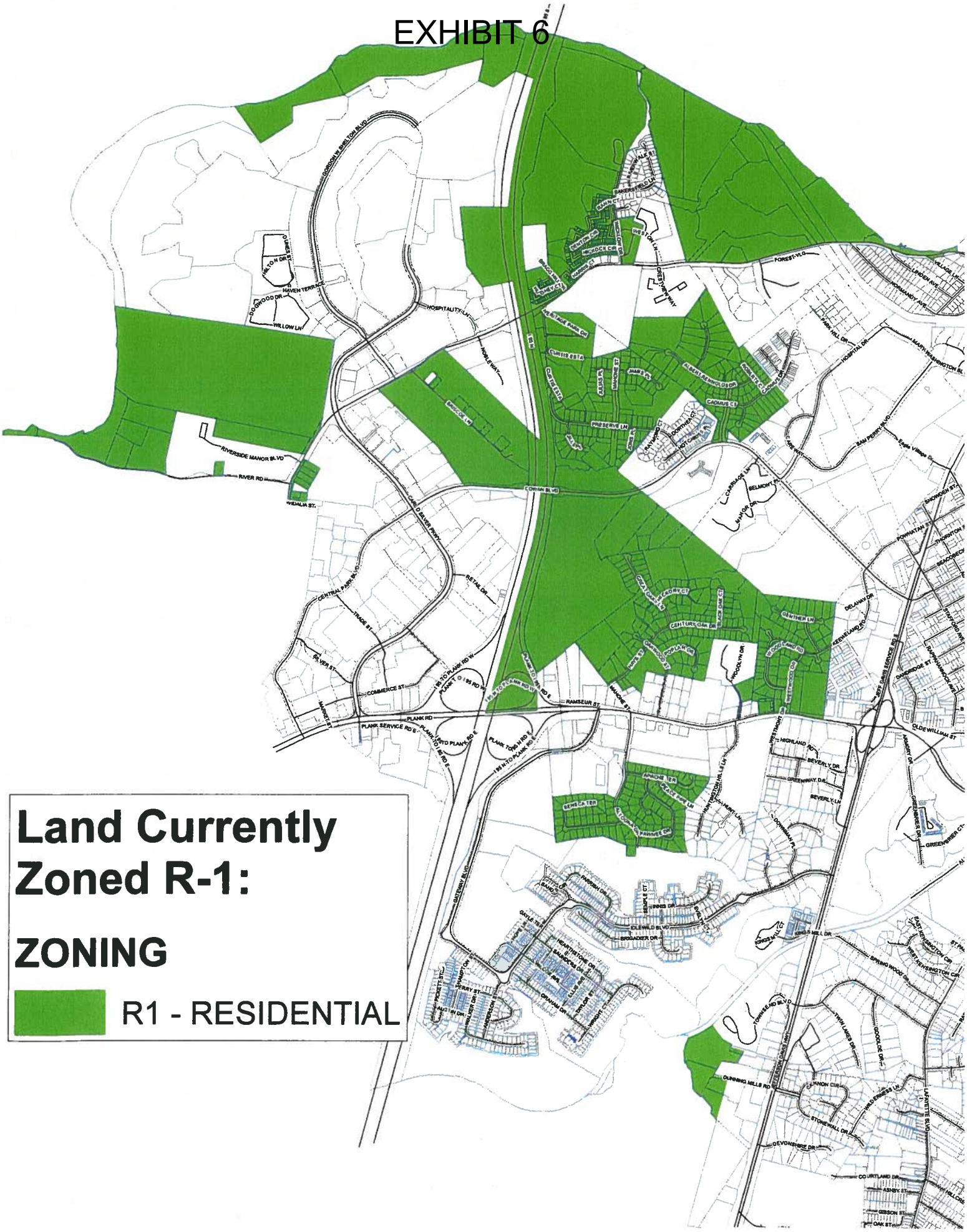
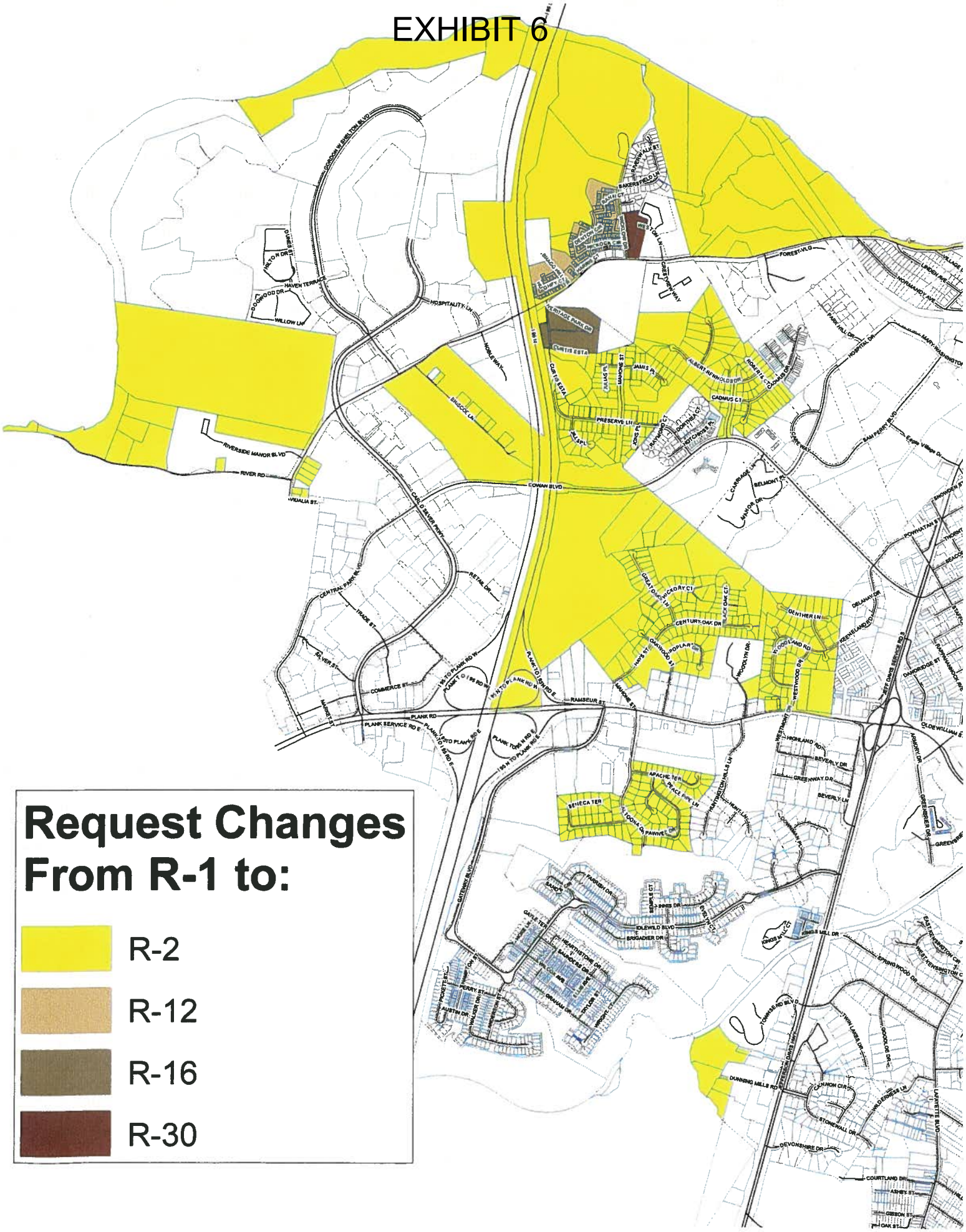
EXHIBIT 6