



Agenda

**Town of Southern Pines Planning Board
Regular Meeting, Thursday, September 22, 2011– 7:00 PM
Douglass Community Center, 1185 West Pennsylvania Avenue,
Southern Pines, NC**

- I. Call to Order
- II. Approval of Minutes – August 18, 2011 Meeting
- III. Public Hearings:

OA-05-11 – Amend Section 326 Protests to Zoning District Changes, Town of Southern Pines, Petitioner

The request is to amend the Unified Development Ordinance, **Article XX: Amendments, Section 326 Protests to Zoning District Changes** to update based on the *North Carolina General Statutes 160A-385 Changes* which concerns “qualified protests”.

Z-03-11 to FRR, Martin Park at 350 Commerce Ave., Town of Southern Pines - Petitioner

This is a request to rezone Martin Park at 350 Commerce Ave. to FRR (Facilities, Resources, Recreation). The property is identified as PIN 857113232733 (LRK# 53340). Per the Moore County Tax records, the property owner as the Town of Southern Pines. The property is 48.63 acres and is located on the west end of Commerce Avenue cul-de-sac. The parcel also has approximately 554 feet of road frontage along Murray Hill Rd.

- IV. New Business
- V. Other Business
- VI. Adjournment

Minutes
Town of Southern Pines
Meeting – August 18, 2011, 7:00 PM – Douglass Community Center,
Southern Pines, NC 28387

The Town of Southern Pines Planning Board met in regular session, Thursday, August 18, 2011, 7:00 PM, at the Douglass Community Center, 1185 West Pennsylvania Avenue, Southern Pines, NC.

The members of the Planning Board in attendance were Chairman John McInerney, Vice-Chairman Sean Butler, Beth Lyerly, Mike Martin, Archie Morrison and Jim Simeon and Joan Strawson.

Staff members attending the meeting were Kathy Blake, AICP, Planner and Neva Sherry, Secretary to the Planning Board.

Chairman McInerney called the meeting to order at 7:05 PM.

Jim Simeon, seconded by Sean Butler, made a **motion** to approve the minutes from the July 21 2011 meeting. The **motion carried unanimously**.

PUBLIC HEARINGS CONTINUED FROM JULY 21, 2011 MEETING:

Chairman McInerney reminded everyone that the Public Hearing was still open from the July 21, 2011 meeting, on Z-02-11 and CU-03-11.

- **Z-02-11 from RS-2 to RS-1 at 1640 E. Indiana Ave., Warren Dabbs - Petitioner**
This is a request to rezone the property at 1640 E. Indiana Ave. from Residential Single-family 2 (RS-2) to Residential Single-family, 1 (RS-1). The property is identified as PIN 858119501314 and is also known as LRK# 52523. Moore County Tax records list the property owner as McDonald Brothers, Inc. The property is 2.89 acres and is located on the west side of E. Indiana Ave. with approximately 440 feet of road frontage. Located at the intersection of Canterbury Rd., this parcel is described as between S. Bethesda Rd. and Canterbury Rd.
- **CU-03-11 Dabbs Subdivision - CUP**
This is a request for a Conditional Use Permit to subdivide the 2.89 acre tract on the west side of E. Indiana Ave. between Bethesda Road and Canterbury Road into (8) single-family lots as a structurally integrated subdivision per the UDO. It is identified as PIN 958119501314 and as LRK 52523. Representing Dabbs Brothers, LLC, Warren Dabbs is the Petitioner. The property owner is listed as McDonald Brothers, Inc.

Chairman McInerney asked Staff if the zoning remained RS-2, would the applicant still be able to build a structurally integrated subdivision. **Ms. Blake** replied, yes. **Mr. McInerney** expressed concern regarding changing the zoning on the property to the higher density of RS-1. The zoning

district would remain, if approved, even if the proposed project was not developed. He felt this zoning was inappropriate for the neighborhood.

Kathy Blake, Planner, presented a brief overview of the proposal, noting that the applicant had submitted graphics showing what would be allowed under the current zoning, a new layout for the amended CUP to (8) eight lots of the proposed structurally integrated subdivision showing the correct setback information, and the density allowed for dwelling units under the existing zoning.

Mark Parson, representing the applicant, spoke regarding the new layout of the proposed development, noting the reduction of dwelling units from the original submittal. He also discussed the current zoning verses changing the zoning to RS-1. It was his opinion that the proposed zoning of RS-1 would have less impact on the area verses what would be allowed under the current zoning of RS-2. This will give a better product than what was presented to the Planning Board last month.

A discussion ensued regarding the new proposed layout. **Sean Butler** commented that it was a much better plan with the reduction of two dwelling units. **Mike Martin** commented that he thought it would be good to increase the vegetative buffer between the proposed subdivision and Eric Paul's property line. **Beth Lyerly** said that the real issue seemed to be when Mr. Paul spoke at the July meeting, was the realtor had said no one would build on the property requested for Conditional Use. **Mark Person** said that this was unfortunate that Eric Paul was told this, as no one could say that was ever a fact. A discussion ensued regarding the buffer with **Ms. Blake** noting to the Planning Board that this was not a requirement per the UDO. **Mike Martin** asked if all the trees along Indiana Avenue would remain. **Warren Dabbs**, developer stated that this was the intent. **Mr. Dabbs** also said that the storm water would be addressed by the engineer for the project. They were in the process of hiring an engineer for the project.

John McInerney spoke against the proposed rezoning of the property to RS-1. He feels very strongly this is not in harmony with the current neighborhood zoning of RS-2 and RS-3.

Mr. Dabbs commented that the driveway permit had not been issued by NCDOT, however he had spoken with Chuck Dumas at the DOT, regarding a preliminary plan for egress and ingress to the proposed development. This would be part of the engineering for the site.

A motion made by Beth Lyerly, seconded by Joan Strawson, to close the Public Hearing for Z-02-11 **carried unanimously**.

A **motion** made by Joan Strawson, seconded by Sean Butler, to close the Public Hearing for CU-02-11 **carried unanimously**.

The Planning Board held a brief discussion regarding the rezoning request. **John McInerney** expressed his reluctance to approve the rezoning to RS-1. Several members of the Planning Board voiced they did not have an issue with rezoning the property for the proposed development.

Sean Butler, seconded by Joan Strawson, made a **motion** the proposed amendment Z-02-11, is consistent with the documents that constitute the officially adopted land development plan or other applicable plans.

The roll call vote on the motion:

Archie Morrison	Yes
Joan Strawson	Yes
Sean Butler	Yes
Jim Simeon	Yes
Beth Lyerly	Yes
Mike Martin	Yes
John McInerney	No

The **motion carried 6 to 1.**

Sean Butler, seconded by Jim Simeon to recommend approval of Z-02-11 to the Town Council.

The roll call vote on the motion:

Archie Morrison	Yes
Joan Strawson	Yes
Sean Butler	Yes
Jim Simeon	Yes
Beth Lyerly	Yes
Mike Martin	Yes
John McInerney	No

The **motion carried 6 to 1.**

A discussion ensued regarding conditions the Planning Board may wish to include with the recommendation for the Town Council. Everyone felt something should be stated as a condition on the CUP regarding the rear of the property. The Planning Board asked what would be owned by the homeowner and was informed that the homeowner would only “own” three feet from the footprint of the dwelling unit.

Joan Strawson, seconded by Archie Morrison, made a **motion** the proposed amendment, CU-02-11, is consistent with the documents that constitute the officially adopted land development plan or other applicable plans.

The roll call vote on the motion:

Archie Morrison	Yes
Joan Strawson	Yes

Sean Butler	Yes
Jim Simeon	Yes
Beth Lyerly	Yes
Mike Martin	Yes
John McInerney	Yes

The **motion carried unanimously.**

Sean Butler, seconded by Joan Strawson, made a **motion** to recommend to the Town Council: approval of CU-02-11 with the following condition: retain a 10-foot rear property setback to be delineated at the time of construction with the intent of providing an adequate landscape screen.

Archie Morrison	Yes
Joan Strawson	Yes
Sean Butler	Yes
Jim Simeon	Yes
Beth Lyerly	Yes
Mike Martin	Yes
John McInerney	Yes

The **motion carried unanimously.**

The meeting adjourned at 8:05 PM.

Neva Sherry

MEMORANDUM

To: Planning Board

Via: Bart Nuckols, Planning Director

From: Kathy Blake, Planner

Subject: OA-05-11 Article XX Amendments, Section 326 Protests to Zoning District Changes, Town of Southern Pines, Petitioner

Date: September 22, 2011

OA-05-11 Article XX Amendments, Section 326 Protests to Zoning District Changes, Town of Southern Pines, Petitioner

It has come to Planning staff's attention that the NC General Statutes concerning zoning protest petitions has been amended and that the Town's Unified Development Ordinance, Article XX Amendments, Section 326 Protests to Zoning District Changes should be updated.

Existing:

Article XX, Section 326 Protests to Zoning District Changes:

- (a) If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the council membership.
- (b) To trigger the three-fourths vote requirements, the petition must:
 - (1) Be signed by the owners of twenty percent or more either of (i) the lots included in a proposed change, or (ii) the lots within 100 feet of either side or the rear of the tract to be rezoned, or (iii) the lots directly opposite the tract to be rezoned and extending 100 feet from the street frontage of such opposite lots.
 - (2) Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.
 - (3) Be received by the town clerk in sufficient time to allow the town at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
 - (4) Be on a form provided by the town clerk and contain all the information requested on this form.

Proposed replacement of existing Section 326:

Article XX, Section 326 Protests to Zoning District Changes:

- (a) Qualified Protests.
 - (1) Zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the town council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered "members of the council" for calculation of the requisite supermajority.
 - (2) To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine the "owners" of potentially qualifying areas.
 - (3) The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use district, (ii) conditional use district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use district, conditional use district, or conditional district.
- (b) Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1. (1923, c. 250, s. 5; C.S., s. 2776(v); 1959, c. 434, s. 1; 1965, c. 864, s. 1; 1971, c. 698, s. 1; 1977, c. 912, s. 7; 1985, c. 540, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 1; 1991, c. 512, s. 4; 2005-418, s. 5.)
- (c) Protest petition; form; requirements; time for filing.

No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the town clerk in sufficient time to allow the town at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. **The protest petition shall be on a form provided by the town and all required information on the form shall be completed to determine the sufficiency and accuracy of the petition.** A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement. (1963, c. 1058, s. 2; 1971, c. 698, s. 1; 2005-418, s. 6.)

Planning Board Actions:

The Planning Board shall vote on whether the proposed amendment is consistent with the Land Use Plan that has been adopted and any other officially adopted plan that is applicable. The Town Council could make one of the following findings for their recommendation:

1 Motion to **approve** the requested text amendment and to make a finding and determination that the approval of the text amendment request is consistent with the adopted Land Use Plan and that the approval of the text amendment request is reasonable and in the public interest due to the approval being consistent with the comprehensive plan and, as a result, the approval furthers the goals and objectives of the comprehensive plan; OR

2 Motion to **deny** the requested text amendment and to make a finding and determination that the denial of the text amendment request is consistent with the adopted Land Use Plan and that the denial of the text amendment request is reasonable and in the public interest due to the denial being consistent with the comprehensive plan and, as a result, the denial furthers the goals and objectives of the comprehensive plan.

Then:

1. I move to **recommend approval** of OA-05-11; OR
2. I move to **recommend denial** of OA-05-11; OR
3. I move to **recommend approval** of OA-05-11 **with the following conditions...**

Agenda Item

To: Planning Board

Via: Bart Nuckols, Planning Director

From: Kathy Blake, Planner

Subject: Z-03-11 Martin Park, 350 Commerce Ave., to FRR,
Town of Southern Pines, petitioner

Date: September 22, 2011

Z-03-11 Martin Park, 350 Commerce Ave., to FFR, Town of Southern Pines, petitioner

The Town of Southern Pines seeks to zone Martin Park to Facilities, Resources, Recreation (FRR). In 1995, the Town of Southern Pines received from Mr. and Mrs. Martin the 49.63 acre parcel at 350 Commerce Avenue. The Moore County Tax records have assigned the Parcel Identifier Number (PIN) as 857113232733 and LRK# 53340. In 1997, it appears the parcel was annexed into the City limits but no zoning was assigned. The parcel is known as Martin Park and is used as an off-lease dog park. The property located at the west end of Commerce Avenue and surrounds the cul-de-sac.

The surrounding property to the north, west, south, and southeast are not within the Town of Southern Pines jurisdiction and the zoning appears to be residential. To the east, parcels are zoned GB (General Business). The Town's properties are typically assigned FRR (Facilities, Resources, Recreation).

Analysis:

The **FRR** district is established as a district in which the principal use of land is for open space and facilities owned or used by the public and privately owned and man-made recreation areas. Publicly owned land uses include governmental, recreational, education, natural resource and utility facilities. Privately owned land uses include golf resorts and related facilities, land trusts established to preserve natural resources, schools and recreational facilities that typically include substantial open space. The major objectives of the FRR district are to (1) provide land for publicly-owned governmental facilities and privately-owned natural and man-made resource and recreation areas; (2) exclude major residential, retail office, institutional, and industrial uses that typically provide limited open space.

- Comprehensive Long Range Plan Future Land Use Map depicts this parcel as Urban Reserve.

Per the *Comprehensive Long Range Plan 2010*:

The **Urban Reserve** designation defers development intensity decisions until a later date. The designation conveys an understanding that the land may develop at an urban intensity, but the precise preferred extent and type of which cannot yet be determined. The land may not be well-suited to immediate development due to population growth forecasts, or it may be best left undeveloped until surrounding conditions indicate development and provide sufficient guidance on the character and type of development the land should absorb. Development proposals at intensities greater than one unit per five acres requires a review of the long-range comprehensive plan with a corresponding zone change to a designation/intensity befitting circumstances.

- Staff recommends that the request be recommended for approval per the recommendation noted per the *Comprehensive Long Range Plan 2010*.

Attachments:

- Legal description
- TOSP GIS Zoning Map
- Excerpt from the CLRP Future Land Use Map

Staff Comments:

The Planning Board shall vote on whether the proposed amendment is consistent with Land Use Plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board could make one of the following motions for recommendations or any alternative they wish:

1. I move that we advise that: The proposed amendment is consistent with those documents that constitute the officially adopted land development plan and other applicable plans; or
2. The proposed amendment is not consistent with the documents that constitute the officially adopted land development plan or other applicable plans, in that

I move to recommend to the Town Council:

1. The approval of Z-013-11;
2. The denial of Z-03-11; OR
3. The approval of Z-03-11 with the following additional conditions...

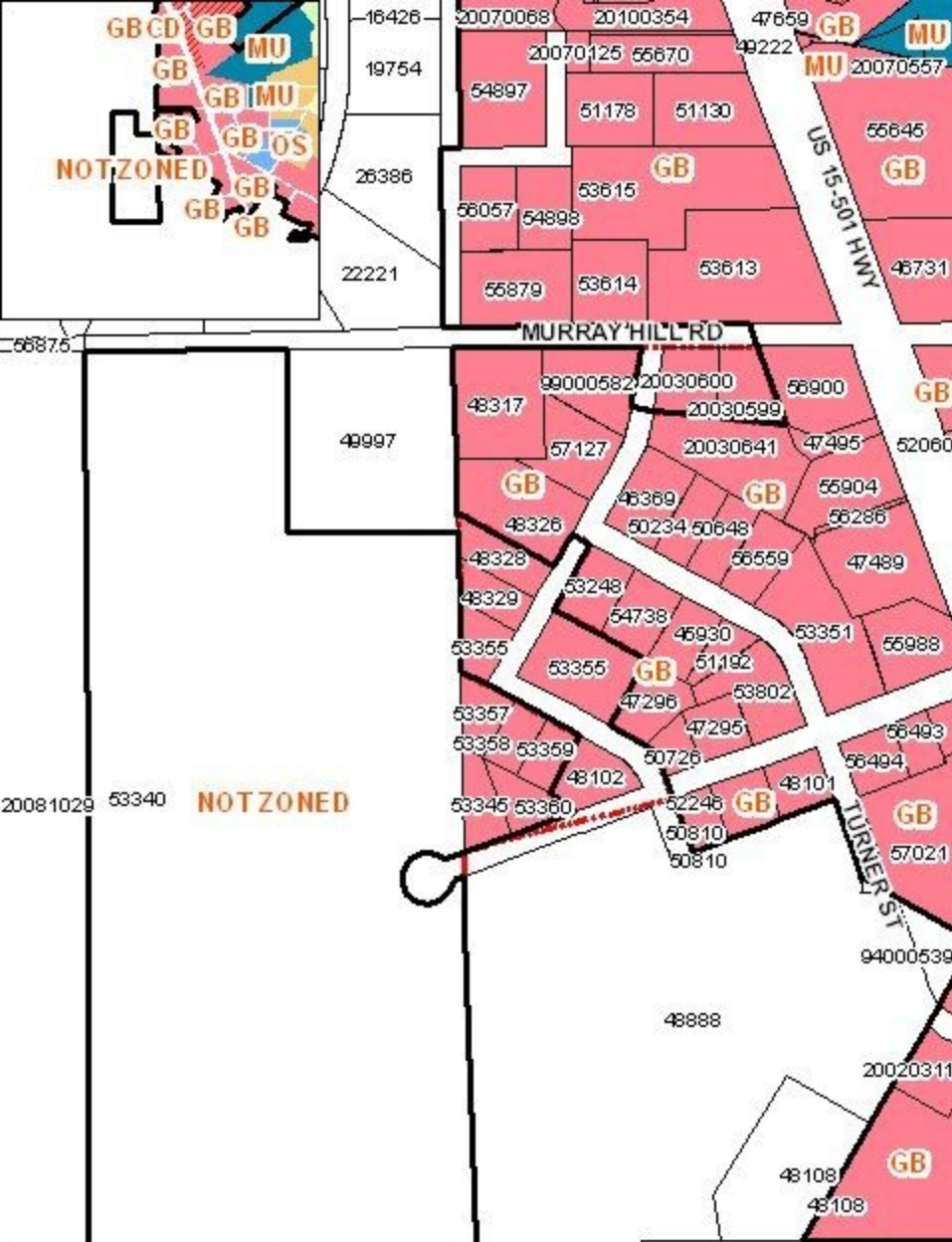
Exhibit "A"

BEING a portion of Lot 49, Whitehouse Heights being further described as follows:

BEGINNING at an existing iron pin, the corner of Lots 49 and 50 of Whitehouse Heights as shown in a map recorded in Map Book 2, Page 16, Moore County Register of Deeds and proceeding thence N 89 degs 25 mins 00 secs East 554.49 feet to a point in the right of way of Murray Hill Avenue; thence S 00 degs 35 mins 00 secs East 15 feet to a point, said point being the corner of a 5.00 acre parcel conveyed to Greybriar Retirement Center, Inc. as recorded in Plat Cabinet 4, Slide 344, Moore County Register of Deeds; and proceeding along the Greybriar line S 00 degs 35 mins 00 secs 488.23 feet to a point; thence N 89 degs 25 mins 00 secs East 445.97 feet to a point in the line of Yadkin Park, Section 4, as shown in Plat Cabinet 3, Slide 146; and thence along the Yadkin Park line S 00 degs 33 mins 13 secs East 1,900.51 feet to a concrete monument in the line of the sanitary sewer line in the easement to Carolina Power and Light; and proceeding thence 89 degs 23 mins 35 secs West 999.00 feet to an existing iron pin, the southern corner in common of Lots 49 and 50 of Whitehouse Heights; and proceeding thence along the common line of Lots 49 and 50 N 00 degs 35 mins 31 secs West 2,389.17 feet to the point of beginning; and consisting of 49.84 acres.

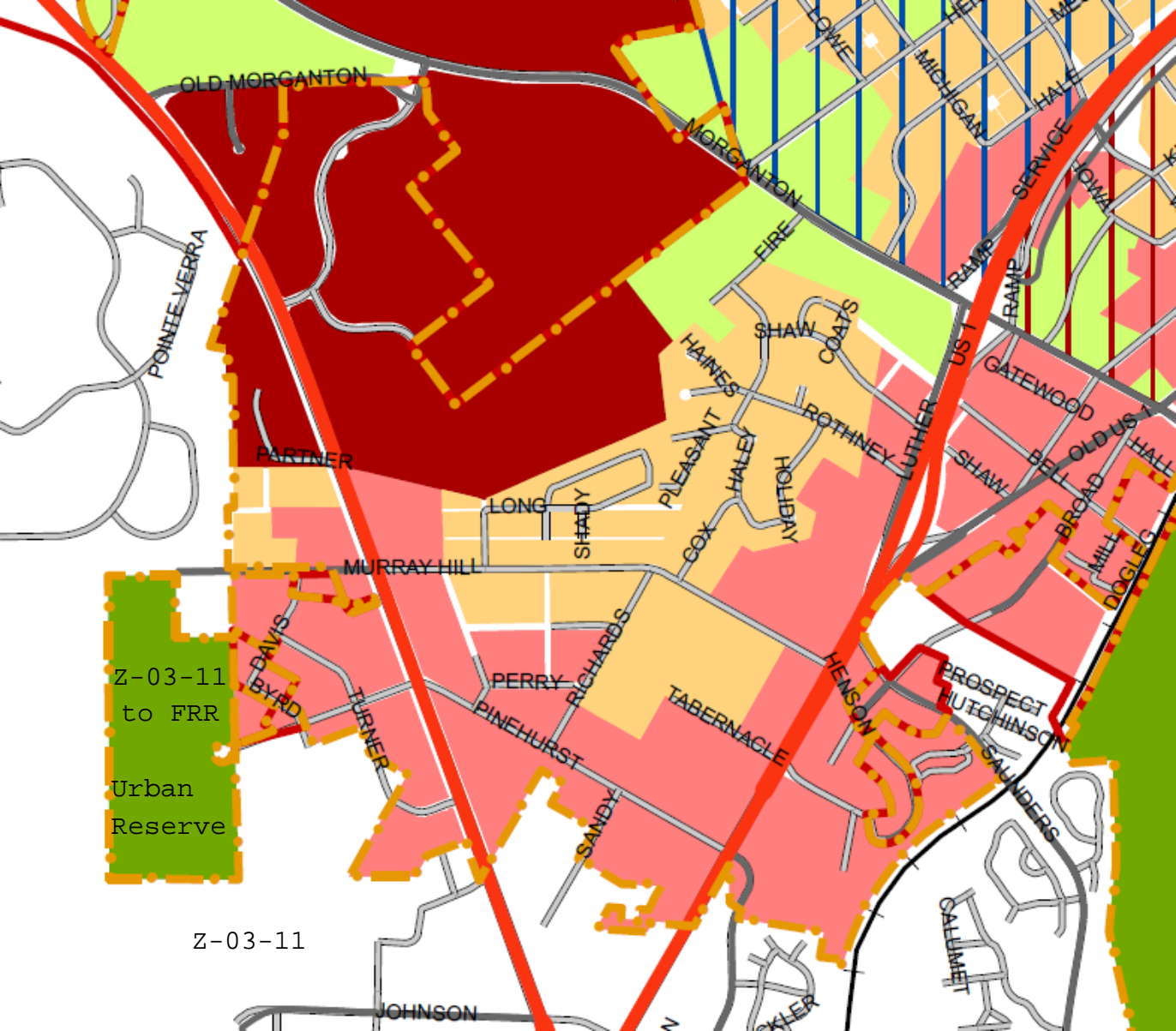
EXCEPTING however, from the 49.84 acres, that parcel of property described of the cul-de-sac of Commerce Avenue which is a portion of Yadkin Park and is shown on the replat of Lots 52 and 53, Section 4, a revision of Commerce Avenue recorded in the Moore County Register of Deeds in Plat Cabinet 5, Slide 806.

BOOK
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- ### Zoning
-  Central Business Conditional District
 -  Central Business
 -  Facilities Resources Recreation
 -  FRR Conditional District
 -  General Business
 -  General Business Conditional District
 -  I, Industrial
 -  Mixed Use, see Section 180.4 of UDO
 -  Neighborhood Business
 -  Neighborhood Bus. Conditional District
 -  Not Zoned
 -  Office Services
 -  Office Services Conditional District
 -  Planned Development
 -  Rural Estates
 -  Rural Estates Conditional District
 -  Residential Single & Multi-Family
 -  Residential Single & Multi-Family
 -  Rural Residential
 -  Residential Conditional District
 -  Residential Single Family
 -  Residential Single Family Conditional District
 -  Residential Single Family
 -  Residential Single Family Conditional District
 -  Residential Single Family





OLD MORGANTON

POINTE VERRA

PARTNER

LONG

MURRAY HILL

Z-03-11
to FRR
Urban
Reserve

DAVIS
BYRD

TURNER

PERRY

RICHARDS

PINEHURST

SANDY

JOHNSON

MORGANTON

FIRE

SHAW

COATS

HAINES

PLEASANT

HALEY

HOLBANY

COX

ROTHNEY

LUTHER

GATEWOOD

SHAW

BEL OLD US 1

BROAD

MILL

DOGLEG

PROSPECT
HUTCHINSON

SAUNDERS

SALLINET

KLER

Z-03-11