

**TOWN OF SOUTHERN PINES
BOARD OF ADJUSTMENT MEETING
WEDNESDAY, 5:30 P.M., NOVEMBER 16, 2011
POLICE STATION, 450 W PENNSYLVANIA AVENUE**

AGENDA


CALL TO ORDER


- 1. Roll Call and Declaration of a Quorum**
- 2. Approval of Minutes**
- 3. Administration of Oath to Witnesses**
- 4. Request**
- 5. Adjourn**

A-06-11 Karen M. Frank, Petitioner (Don Frank, Agent)

The Petitioner is appealing an interpretation by the Administrative Official that a commercial hay business is being operated at 598 Tremont Street which violates Section(s) 14.100 Agricultural Operations, Farming of Southern Pines Unified Development Ordinance. The property is located on the West Side of Tremont Street. The address is known as Farm Lot 3B, LRK Number 94000683

TO: Zoning Board of Adjustment

FROM:  Joy Richards, Code Enforcement Officer

THRU:  Bart Nuckols, Planning Director

DATE: November 16, 2011

APPLICANT: Karen M. Frank, Petitioner (Don Frank, Agent)
598 Tremont Street, Southern Pines, N.C.

REQUEST A-06-11 Karen M. Frank, Petitioner (Don Frank, Agent)

The Town of Southern Pines Planning Office received several complaints from neighboring properties of Been There Farm located at 598 Tremont Street, that a Commercial Hay Business is being conducted on the property. The complaint is that hay is being delivered to the property by tractor trailers from another property and then being distributed by pick-up and delivery. Section 14.000 of the Unified Development Ordinance permits Agricultural Operations and farming, but would interpret the use of bringing hay in from an outside source to be sold and distributed as a commercial business.

The Petitioner is challenging the interpretation of the administrative official in that GS 153A-340 (b) (2) exempts bona fide farms from municipal zoning regulations and that a commercial hay business is permitted.

Property Owner Mailing Address: _____
(Please Print) _____

PETITIONERS SIGNATURE IS REQUIRED BEFORE APPLICATION IS ACCEPTED.

NOTE: If a corporation makes the request, the names and addresses of all officers in the corporation must be provided.

The applicant or his representative is expected to attend all meetings to answer questions concerning the request. The absence of the applicant is sufficient grounds

POSSIBLE SUMMARY DISPOSITION OF APPLICATION

to warrant a deferral of action by the Board of Zoning Adjustment.

If the zoning administrator concludes that the application fails to allege a matter that the Board of Adjustment may hear or that the applicant lacks standing to seek the hearing, the zoning administrator will so notify the Chairman of the Board of Adjustment, who may poll individually the members of the Board of Adjustment and, if a majority confirm the zoning administrator's conclusion, the Applicant shall be notified that the Board will not hear the matter. The applicant may appeal any such decision to the Superior Court.

SECTION A -- Variance

1. The requirement of the Town's Unified Development Ordinance from which I seek a variance is the provision of Section _____ of the Unified Development Ordinance that provides:

2. The property that is the subject of this application fails to meet this requirement in the following way: _____

3. I believe that I will be able to demonstrate the following:
 - (1) If I comply strictly with the provisions of the ordinance, I can make no reasonable use of this property;
 - (2) The hardship of which I complain is one suffered by me rather than by the neighbors or the general public;
 - (3) The hardship relates to my land, rather than personal circumstances;
 - (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
 - (5) The hardship is not the result of my own actions; and
 - (6) The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land.

SECTION D Special Use Permit

1. The applicant must demonstrate that if completed as prepared, the development more probably than not;
 - a. Will not endanger the public health or safety;
 - b. Will not injure the value of adjoining or abutting property;
 - c. Will be in harmony with the area in which it is located; and
 - d. Will be in conformity with the land use plan, thoroughfare plan; or other plan officially adopted by the council.

2. The proposed Special Use Permit request is as follows:

A variance may be granted by the Board of Adjustment only if the Board concludes that each of the circumstances listed in 3, above, exists and that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured and substantial justice done.

In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

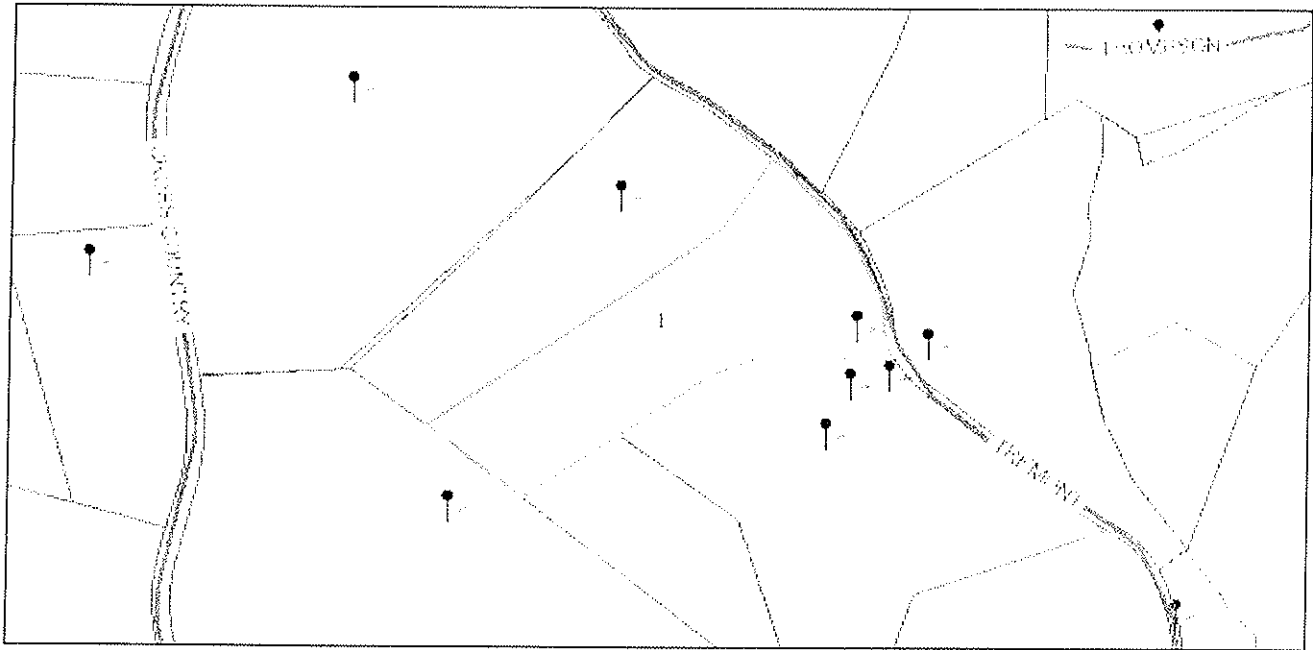
A variance may be issued for an indefinite duration or for a specified duration only.

SECTION B - - Appeal from Order or Determination

1. The name and title of the administrative official who made the order or determination is
Letter and Citation from Joy Richards (attached)
2. The order or determination that was made and from which you are appealing is
“
3. Describe the manner in which you contend the order or determination was erroneous.
GS 153A-340(b)(2) exempts bona fide farms from municipal zoning regulation.
4. If you are not the owner of the property that was the subject of the order or determination, describe the basis for concluding that you are financially harmed in a manner different from the harm suffered by the general public.

SECTION C - - Map Interpretation

1. The boundary the location of which I seek to have determined is
2. The reason that I need a determination is



Parcels

LRK:	94000683	PIN:	859100457013	Total Value:	372010
Owners Name:	FRANK, KAREN M	Deed Book:	1678	Deed Page:	487
NBHD:	703	Name:		Township:	7
Prop Description:	TREMONT FARM LOT 3 B	Stamp Value:	0	Build Value:	267630
Land Value:	104380	Trans Date:	11/13/2000 12:00 AM	Class:	FI
Year Built:	1950	ADDRESS:	PO BOX 1505	City:	SOUTHERN PINES
State:	NC	Zip:	28388	Deed Acres:	15.066
Calculated Acres:	15.14	City Code:		Fire District:	A

1:644 feet





PLANNING DEPARTMENT

180 SW Broad Street
Southern Pines, NC 28387

September 1, 2011

Phone: (910) 692-4003
Fax: (910) 692-9495

Mr. Don Frank
Been There Farm
P.O. Box 1505
Southern Pines, N.C. 28387

REF: Hay Distribution Business

Dear Mr. Frank:

During a conversation on July 7, 2011, my understanding was that you wished to give an affidavit to the town to rebut the evidence tending to show that you are operating a commercial hay business at your farm. Since we have not received any such affidavit, a civil citation of \$50 will be issued for each day that the violation continues after September 9, 2011.

Again I would like to remind you that you can appeal to the Board of Adjustment if you allege there is error in any order, requirement, decision, or determination made in the enforcement of the zoning ordinance.

If you have any questions, please contact me at the Department of Planning and Development, 180 S.W. Broad Street, Southern Pines, N.C. 28387.

Sincerely,

Joy Richards
Code Enforcement Officer

cc: Douglas Gill, Town Attorney

TOWN OF SOUTHERN PINES

CIVIL PENALTY

**MR. DON FRANK
BEEN THERE FARM
P.O. BOX 1505
SOUTHERN PINES, NC 28387**

CC-01-11

You are in violation of Section (s) 14.100 Agricultural Operations, Farming of the Southern Pines Unified Development Ordinance in that:

HAY DISTRIBUTION BUSINESS IS NOT PERMITTED IN THE RURAL ESTATES ZONING DISTRICT OF THE SOUTHERN PINES UNIFIED DEVELOPMENT ORDINANCE.

This citation is issued for a violation which occurred or existed on **September 10th-19th, 2011**, at the following location: **598 Tremont Street, Southern Pines, N.C.** This violation subjects you to a civil penalty in the amount **\$500 which must be paid within seventy-two (72) hours from the receipt of this citation.** Failure to correct the herein described violation shall cause additional civil penalties to be assessed against you. If this penalty is not paid by the date and time shown below, the Town will proceed against you in Civil Court.

This citation mailed the **21st** day of **September, 2011** must be paid at the Southern Pines Department of Planning and Development, 180 S.W. Broad Street, Southern Pines, N.C. within 72 hours of receipt of citation.

Issued By:

Title:


Code Enforcement Officer

Mailed this 21st day of September, 2011

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-363
HOUSE BILL 168

AN ACT TO CLARIFY THE DEFINITION OF "BONA FIDE FARM PURPOSES," TO PROHIBIT THE INVOLUNTARY MUNICIPAL ANNEXATION OF PROPERTY USED FOR BONA FIDE FARM PURPOSES, AND TO PROVIDE THAT PROPERTY USED FOR BONA FIDE FARM PURPOSES IS EXEMPT FROM THE EXERCISE OF MUNICIPAL EXTRATERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-340(b)(2) reads as rewritten:

- "(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural products~~ agriculture as defined in ~~G.S. 106-581.1~~ having a domestic or foreign market. G.S. 106-581.1. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:
- a. A farm sales tax exemption certificate issued by the Department of Revenue.
 - b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
 - c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
 - d. A forest management plan.
 - e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency."

SECTION 2. G.S. 160A-36 is amended by adding a new subsection to read:

"(f) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the owner or owners of the property."

SECTION 3. G.S. 160A-48 is amended by adding a new subsection to read:

"(g) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the owner or owners of the property."

SECTION 3.1. If House Bill 845, 2011 General Assembly, is enacted, G.S. 160A-58.54, as enacted by that act, is amended by adding a new subsection to read:

"(c) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an



identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the owner or owners of the property."

SECTION 4. G.S. 160A-360 is amended by adding a new subsection to read:

"(k) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from exercise of the municipality's extraterritorial jurisdiction under this Article. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to exercise of the municipality's extraterritorial jurisdiction under this Article."

SECTION 5. This act is effective when it becomes law. Sections 2, 3, and 3.1 of this act apply to annexations of property used for bona fide farm purposes that were initiated by municipalities on or after that date or are pending on that date.

In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

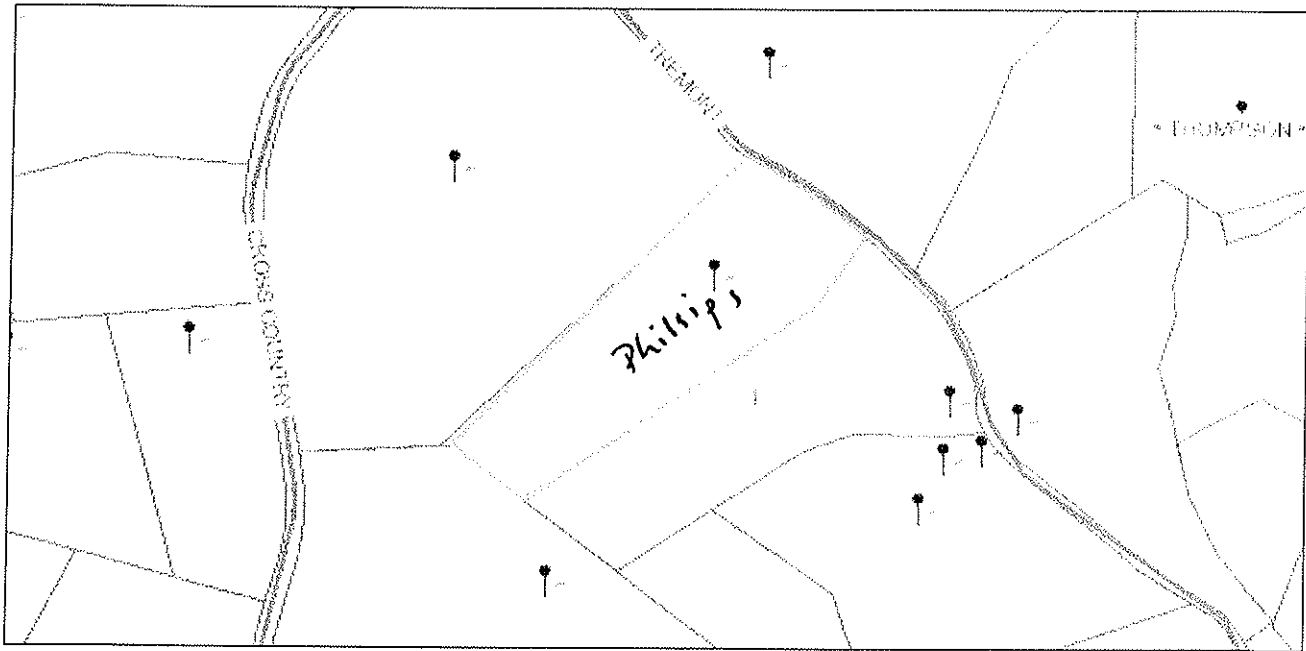
s/ Beverly E. Perdue
Governor

Approved 12:36 p.m. this 27th day of June, 2011

§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

- (1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- (2) The planting and production of trees and timber.
- (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- (4) Aquaculture as defined in G.S. 106-758.
- (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- (6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6.)

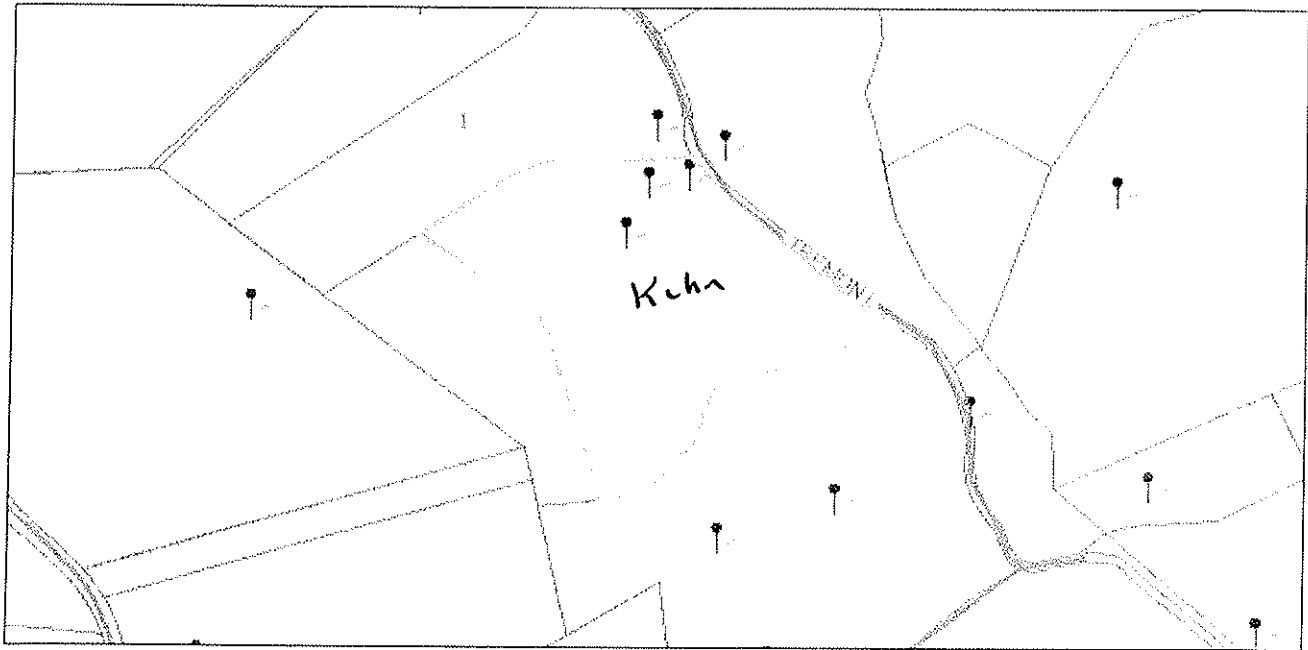


Parcels

LRK:	94000682	PIN:	859101453364	Total Value:	1153650
Owners Name:	PHILLIPS, JAMES L & CHARLOTE J	Deed Book:	1530	Deed Page:	546
NBHD:	703	Name:		Township:	7
Prop Description:	TREMONT FARM LOT 3 A	Stamp Value:	780	Build Value:	388650
Land Value:	765000	Trans Date:	7/15/1999 12:00 AM	Class:	FI
Year Built:	1999	ADDRESS:	4400 CHESAPEAKE AVE	City:	HAMPTON
State:	VA	Zip:	23669	Deed Acres:	15
Calculated Acres:	14	City Code:		Fire District:	A

1:654 feet



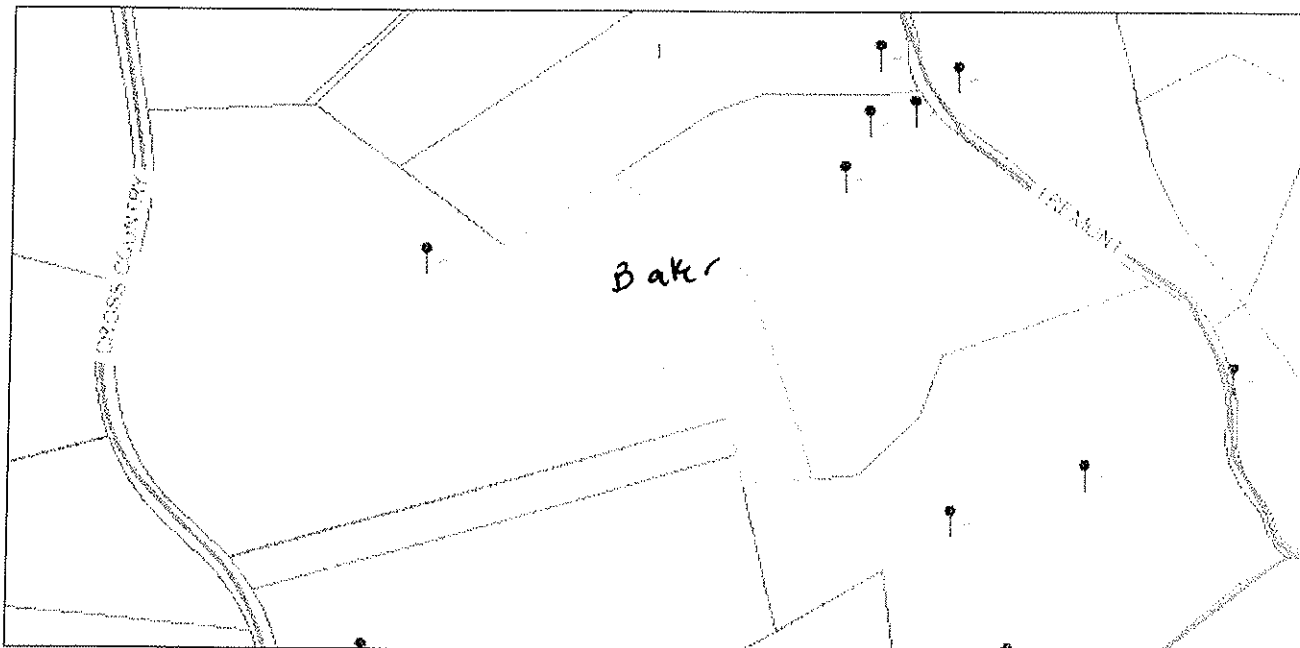


Parcels

LRK:	94000312	PIN:	859100542488	Total Value:	304900
Owners Name:	KUHN, MATTHEW & BETTY JANE	Deed Book:	1350	Deed Page:	344
NBHD:	703	Name:		Township:	7
Prop Description:	TREMONT FARM LOT 4A	Stamp Value:	0	Build Value:	198760
Land Value:	106140	Trans Date:	2/24/1998 12:00 AM	Class:	FI
Year Built:	1950	ADDRESS:	PO BOX 712	City:	SOUTHERN PINES
State:	NC	Zip:	28388	Deed Acres:	21
Calculated Acres:	21	City Code:		Fire District:	A

1:653 feet



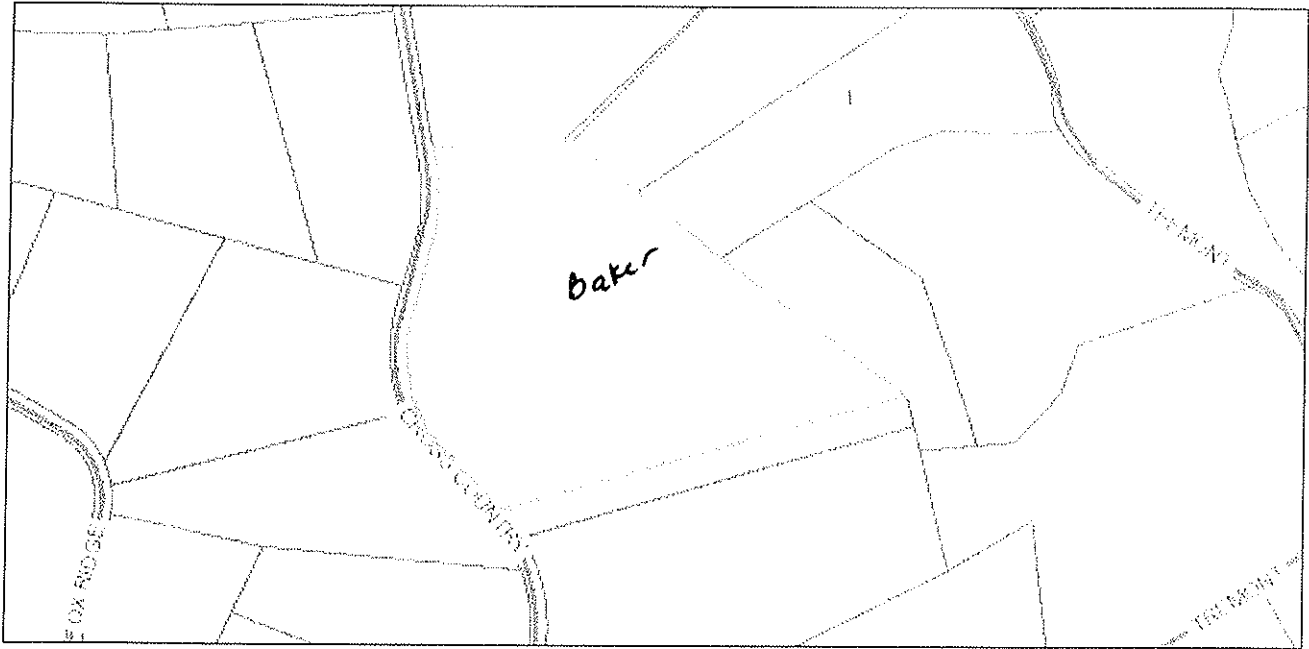


Parcels

LRK:	20080301	PIN:	859100447208	Total Value:	274310
Owners Name:	BAKER, JAMES P JR & ADELE C	Deed Book:	3426	Deed Page:	176
NBHD:	703	Name:		Township:	7
Prop Description:	LOT 4B	Stamp Value:	539	Build Value:	0
Land Value:	274310	Trans Date:	6/5/2008 12:00 AM	Class:	RV
Year Built:	0	ADDRESS:	PO BOX 2449	City:	SOUTHERN PINES
State:	NC	Zip:	28388	Deed Acres:	8
Calculated Acres:	8	City Code:		Fire District:	A

1:578 feet





Parcels

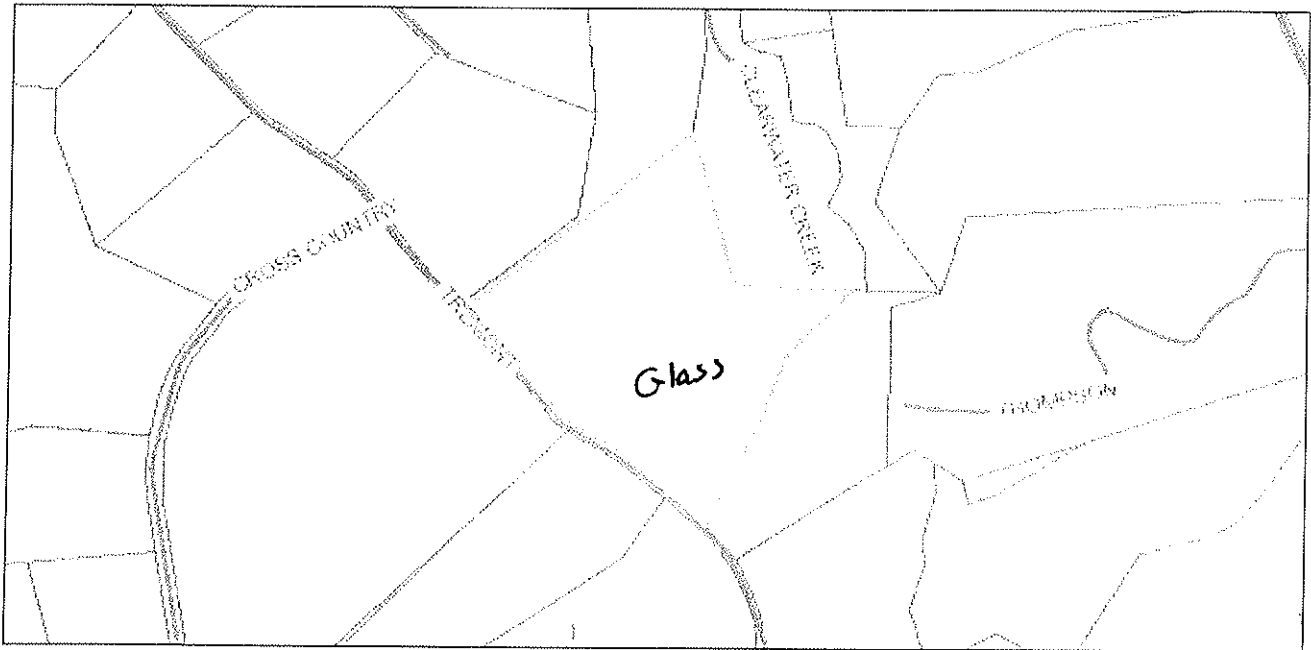
LRK: 33379
Owners Name: BAKER, JAMES P JR & ADELE C
NBHD: 703
Prop Description: MOSS LAND
Land Value: 190050
Year Built: 1971
State: NC
Calculated Acres: 34

PIN: 859103346232
Deed Book: 2874
Name:
Stamp Value: 3000
Trans Date: 8/25/2005 12:00 AM
ADDRESS: PO BOX 2449
Zip: 28388
City Code:

Total Value: 868440
Deed Page: 442
Township: 7
Build Value: 678390
Class: FI
City: SOUTHERN PINES
Deed Acres: 35
Fire District: A

1:711 feet



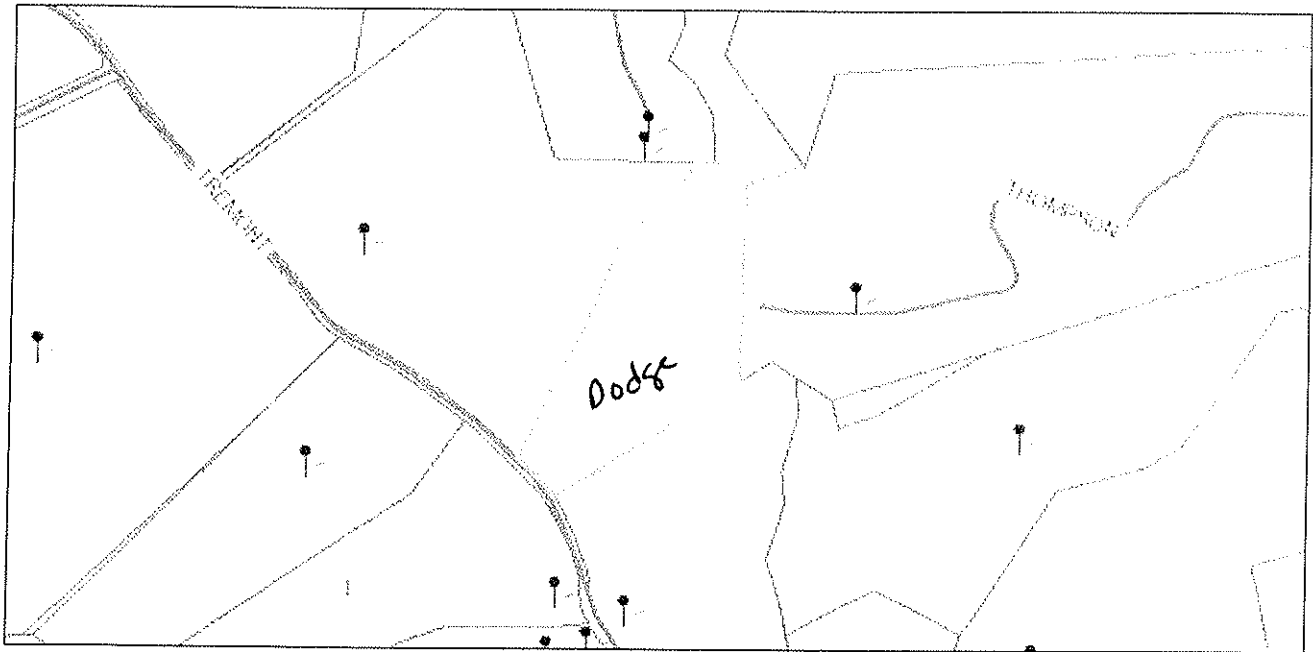


Parcels

LRK:	33552	PIN:	859102560118	Total Value:	1885090
Owners Name:	GLASS, CHARLES MARSHALL &	Deed Book:	1191	Deed Page:	419
NBHD:	703	Name:	ALICE CRAMER	Township:	7
Prop Description:	NOTRE DAME LAND	Stamp Value:	0	Build Value:	609330
Land Value:	1275760	Trans Date:	7/12/1996 12:00 AM	Class:	FI
Year Built:	1935	ADDRESS:	PO BOX 54	City:	SOUTHERN PINES
State:	NC	Zip:	28388	Deed Acres:	23
Calculated Acres:	26	City Code:		Fire District:	A

1:782 feet



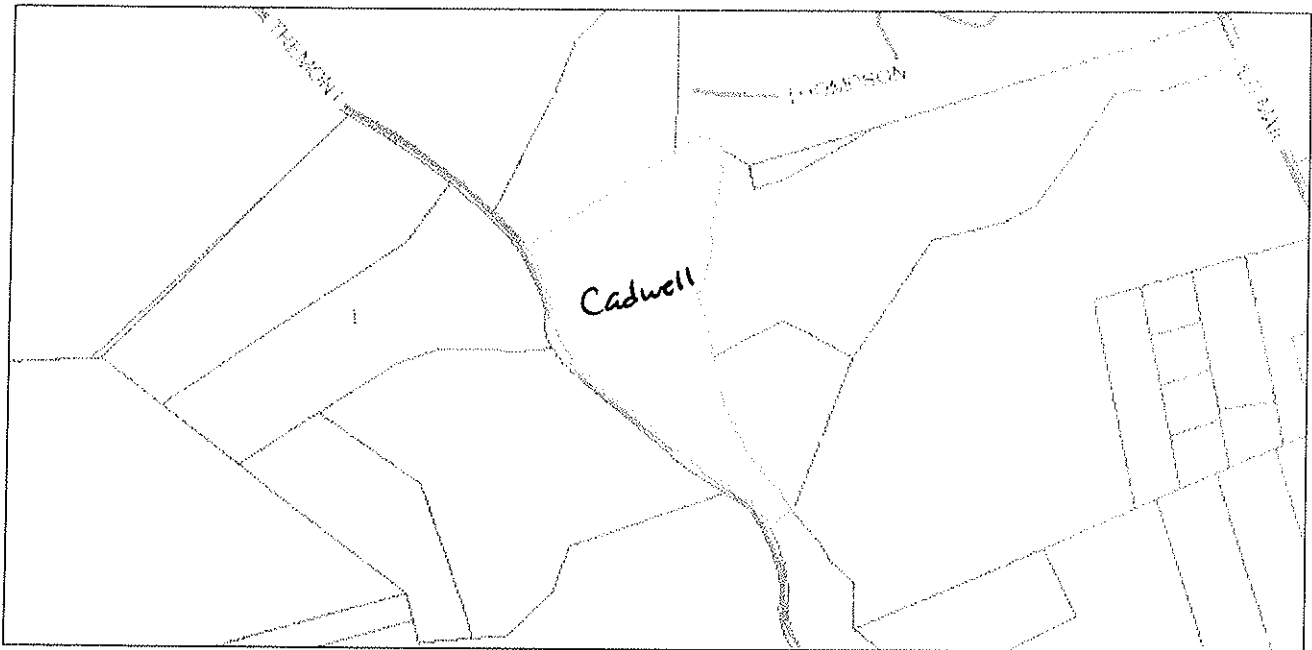


Parcels

LRK:	33550	PIN:	859100556934	Total Value:	495430
Owners Name:	DODGE, DIANA	Deed Book:	1028	Deed Page:	114
NBHD:	703	Name:	C/O KBMG LLC	Township:	7
Prop Description:	YOUNGS ROAD	Stamp Value:	264	Build Value:	0
Land Value:	495430	Trans Date:	8/29/1994 12:00 AM	Class:	FV
Year Built:	0	ADDRESS:	6 EAST 45TH ST 10TH FL	City:	NEW YORK
State:	NY	Zip:	10017	Deed Acres:	14
Calculated Acres:	10	City Code:		Fire District:	A

1:631 feet





LRK: 95000209
 Owners Name: CADWELL, G MASON JR & JENNIFER
 NBHD: 703
 Prop Description: TREMONT FARM PART LOT 2
 Land Value: 890180
 Year Built: 2009
 State: NC
 Calculated Acres: 16

Parcels

PIN: 859104548901 Total Value: 1083220
 Deed Book: 1062 Deed Page: 259
 Name: Township: 7
 Stamp Value: 421 Build Value: 193040
 Trans Date: 1/1/1901 12:00 AM Class: FI
 ADDRESS: PO BOX 1694 City: SOUTHERN PINES
 Zip: 28388 Deed Acres: 17
 City Code: Fire District: A

1:774 feet

