

NO.: COA 24-666

DISTRICT TWENTY-TWO

NORTH CAROLINA COURT OF APPEALS

CAMP CAREFREE, INC., MICRIS,
LLC, BRANDON W. LEEBRICK AND
AMY E. LEEBRICK, DONALD DOHM
AND CHRISTINE DOHM, DAVID
FORBES AND WENDY FORBES,
MARY LEA ANDERSON, JEFFREY
DARREN SCOTT, and JILL N.
MEIER,

Plaintiffs/Appellants,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS,
LLC,

Defendants/Appellees.

FROM ROCKINGHAM COUNTY
23 CVS 2013

PLAINTIFFS/APPELLANTS' BRIEF

INDEX

ISSUES PRESENTED	1
STATEMENT OF THE CASE.....	2
GROUND FOR APPELLATE REVIEW	3
STATEMENT OF THE FACTS	4
I. Introduction.....	4
II. The County passes the Zoning Legislation.	5
III. RA and HC zoning districts.	6
IV. Facts specific to plaintiffs’ standing.	7
A. Injuries common to all plaintiffs.	7
B. Injuries specific to plaintiff Camp Carefree.....	9
C. Injuries to plaintiff Micris, LLC.....	10
D. Injuries to plaintiffs Brandon and Amy Leebrick.	11
E. Injuries to Donald and Christine Dohm.	12
F. Injuries to David and Wendy Forbes.	12
G. Injuries to Mary Anderson.	12
H. Injuries to Jeffery Scott.	13
I. Injuries to Jill Meier.	13
STANDARD OF REVIEW	14
ARGUMENT.....	14
I. THE LOWER COURT ERRED IN GRANTING DEFENDANTS’ MOTIONS TO DISMISS IN A DECLARATORY JUDGMENT ACTION ON THE BASIS OF STANDING.....	14
A. Standards Applicable To A Challenge Of Legislative Zoning Decisions.	17

i. Proximity	18
ii. Specific personal and legal interest, directly and adversely affected.....	20
iii. Impairment of statutory right	21
B. Special Damages Are Not Required To Establish Standing In The Legislative Zoning Context.....	22
i. The difference between zoning legislation and quasi- judicial cases.....	23
ii. According to the mandates of stare decisis, this Court must apply a "specific personal and legal interest" standard for standing.....	25
C. Plaintiffs Have Set Forth Sufficient Allegations For Purposes Of Standing Under The Declaratory Judgment Act.....	29
D. Plaintiffs Also Have Standing To Challenge The County's Procedural Irregularities In Passing The Zoning Legislation.....	31
E. In The Alternative, Plaintiffs Have Demonstrated "Special Damages" Sufficient For Standing.....	33
CONCLUSION	36
CERTIFICATE OF COMPLIANCE.....	37
CERTIFICATE OF SERVICE	38

APPENDIX

Complaint with Verifications (R pp 5-37).....	App 1-33
Rockingham County Motion to Dismiss and Answer (R pp 193-194)	App 34-35
Motion to Dismiss in Lieu of Answer (R pp 207-211)	App 36-40
Order Granting Motion to Dismiss (R pp 460-461)	App 41-42
Zoning Categories (R pp 301-302)	App 43-44
Uses in the Residential Agricultural Zoning District (RA) (R p 630)	App 45
Uses in the Highway Commercial Zoning District (HC) (R pp 627-628)	App 46-47
Palmer – Market Research Letter (R pp 66-71)	App 48-53
Affidavit of Rhonda B. Rodenbough (R pp 73-74) ..	App 54-55
Affidavit of Amy E. Leebrick (R pp 92-94)	App 56-58
Affidavit of Brandon Whitt Leebrick (R pp 108-110)	App 59-61
Affidavit of Christine M. Dohm (R pp 119-120)	App 62-63
Affidavit of David Forbes (R pp 124-125)	App 64-65
Affidavit of Jeffrey Scott (R pp 130-131)	App 66-67
Affidavit of Jill N. Meier (R pp 135-136)	App 68-69
Affidavit of Mary Lea Anderson (R pp 143-144)	App 70-71
Affidavit of Michael J. Cusato, Jr. (R pp 149-150) ..	App 72-73

Affidavit of Wendy Forbes (R pp 162-163).....App 74-75

Map of the Property, Camp Carefree, Leebricks, etc. (R p
643)App 76

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Allgood v. Town of Tarboro</i> , 281 N.C. 430 (1972)	25
<i>Asheville Sports Props., LLC v. City of Asheville</i> , 199 N.C. App. 341 (2009).....	5
<i>Blades v. Raleigh</i> , 280 N.C. 531 (1972)	<i>passim</i>
<i>Budd v. Davie County</i> , 116 N.C. App. 168 (1994).....	19
<i>Cherry Cmty. Org. v. City of Charlotte</i> , 257 N.C. App. 579 (2018).....	23, 27, 28
<i>Cherry v. Wiesner</i> , 245 N.C. App. 339 (2016).....	28
<i>Chrismon v. Guilford Cnty.</i> , 322 N.C. 611 (1988)	25
<i>Comm. to Elect Forest v. Employees PAC</i> , 376 N.C. 558 (2021)	<i>passim</i>
<i>Davis v. Archdale</i> , 81 N.C. App. 505 (1986).....	23
<i>Edwards v. Town of Louisburg</i> (N.C. Ct. App. 2023).....	17
<i>Fearrington v. City of Greenville</i> , 386 N.C. 38 (2024)	15, 17
<i>Frizzelle v. Harnett County</i> , 106 N.C. App. 234 (1992).....	19, 31
<i>George v. Town of Edenton</i> , 294 N.C. 679 (1978)	19

<i>Godfrey v. Zoning Bd. of Adjustment</i> , 317 N.C. 51 (1986)	31
<i>Goldston v. State</i> , 361 N.C. 26 (2006)	15, 21
<i>Good Neighbors of South Davidson v. Town of Denton</i> , 355 N.C. 254 (2002)	25
<i>Greensboro v. Wall</i> , 247 N.C. 516 (1958)	20, 31
<i>Hall v. Durham</i> , 88 N.C. App. 53 (1987).....	30
<i>Heery v. Highlands Zoning Bd. of Adjustment</i> , 61 N.C. App. 612 (1983).....	28
<i>Lee v. Simpson</i> , 44 N.C. App. 611 (1980).....	19, 31
<i>Mangum v. Raleigh Bd. of Adjustment</i> , 362 N.C. 640 (2008)	22, 33, 35
<i>Martinez v. Wake Cty. Bd. of Educ.</i> , 258 N.C. App. 466 (2018).....	27
<i>Messer v. Town of Chapel Hill</i> , 346 N.C. 259 (1997)	17
<i>Morris Communs. Corp. v. City of Asheville</i> , 356 N.C. 103 (2002)	15, 31
<i>Morris v. Plyler Paper Stock Co.</i> , 89 N.C. App. 555 (1988).....	15
<i>Murdock v. Chatham Cty.</i> , 198 N.C. App. 309 (2009).....	33, 34
<i>Musi v. Town of Shallotte</i> , 200 N.C. App. 379 (2009).....	19, 26
<i>Northeast Concerned Citizens, Inc. v. City of Hickory</i> , 143 N.C. App. 272 (2001).....	26
<i>Pugh v. Howard</i> , 288 N.C. App. 576 (2023).....	28

<i>Respass v. Respass</i> , 232 N.C. App. 611 (2014).....	27
<i>Ring v. Moore Cty.</i> , 257 N.C. App. 168 (2017).....	26
<i>Sanchez v. Town of Beaufort</i> , 211 N.C. App. 574 (2011).....	33
<i>Sharpe v. Park Newspapers of Lumberton, Inc.</i> , 317 N.C. 579 (1986)	18
<i>Sherrill v. Wrightsville Beach</i> , 81 N.C. App. 369 (1986).....	23, 24
<i>State v. Coria</i> , 131 N.C. App. 449 (1998).....	27
<i>Swaps, LLC v. ASL Props.</i> , 250 N.C. App. 264 (2016).....	17
<i>Taylor v. Raleigh</i> , 290 N.C. 608 (1976)	17, 20, 25
<i>Templeton v. Town of Boone</i> , 208 N.C. App. 50 (2010).....	26
<i>Thrash Ltd. P'ship v. Cty. of Buncombe</i> , 195 N.C. App. 727 (2009).....	24, 26, 31, 33
<i>Townes v. Portfolio Recovery Assocs., LLC</i> , 382 N.C. 681 (2022)	27
<i>United Daughters of the Confederacy v. City of Winston-Salem</i> , 383 N.C. 612 (2022)	14, 32
<i>Unruh v. City of Asheville</i> , 97 N.C. App. 287 (1990).....	15, 25
<i>Vill. Creek Prop. Owners Ass'n v. Town of Edenton</i> , 135 N.C. App. 482 (1999).....	25, 26
<i>Violette v. Town of Cornelius</i> , 283 N.C. App. 565 (2022).....	23, 26, 27, 28
<i>Woodard v. Carteret County</i> , 270 N.C. 55.....	16

<i>Zopfi v. Wilmington</i> , 273 N.C. 430 (1968)	<i>passim</i>
---	---------------

Statutes

N.C.G.S. §1-253 <i>et. seq.</i>	15
N.C.G.S. §1-254	15, 16, 29
N.C.G.S. §1-264	16
N.C.G.S. § 7A-27(b)(1)	3
N.C.G.S. §106-660(D)	7
N.C.G.S. §130A-333 through 343	7
N.C.G.S. §131E-272	7
N.C.G.S. §143-215.1	7
N.C.G.S. § 160D-102(30)	24
N.C.G.S. § 160D-702(a)	24
N.C.G.S. § 160D-705(a)	24
N.C.G.S. § 160D-705(d)	23
N.C.G.S. § 160D-1401	15, 16, 17, 25
N.C.G.S. § 160D-1402	24
N.C.G.S. § 160D-1402(c)	24
N.C.G.S. § 160D-1402(c)(1)	24
N.C.G.S. § 160D-1402(c)(2)	24
N.C.G.S. §210.123	7

Other Authorities

Const N.C.	15
N.C. R. App. P. 10	32

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PLAINTIFFS/APPELLANTS' BRIEF

ISSUES PRESENTED

- I. Did the trial court err in deciding plaintiffs lacked standing to challenge a zoning legislation changing a 192.74-acre lot from Rural Agricultural to Highway Commercial when plaintiffs own properties neighboring the rezoned lot?

STATEMENT OF THE CASE

On 18 October 2023, plaintiffs commenced this action under the Declaratory Judgment Act to challenge defendant Rockingham County's (the "County") recent zoning legislation. (R p 5) (App. 1-33). On 15 December 2023, the County Answered and moved to dismiss. (R pp 193-194) (App. 34-35). On 8 January 2024, the remaining defendants moved to dismiss. (R pp 207-211) (App. 36-40).

On 18 March 2024, the Honorable Clayton D. Somers, Special Superior Court Judge presiding, heard defendants' motions to dismiss in the Rockingham County Superior Court. (R pp 460-461) (App. 41-42). On 21 March 2024, the Judge Somers entered an Order dismissing plaintiffs' Complaint on subject matter jurisdiction grounds related to standing. (*Id.*) Plaintiffs filed and served a notice of appeal on 19 April 2024. (R p 462).

Plaintiffs did not order a transcript of the proceedings. (R p 466). Plaintiffs served the proposed record on 3 June 2024, defendants served objections on 3 July 2024, no judicial settlement was requested, and the record was settled on 13 July 2024. (R p 470). Defendants filed the record on appeal on 29 July 2024, and it was docketed on 30 July 2024.

GROUND FOR APPELLATE REVIEW

The lower court's 21 March 2024 Order is a final judgment, and appeal lies to the Court of Appeals pursuant to N.C.G.S. § 7A-27(b)(1).

STATEMENT OF THE FACTS

I. Introduction.

The County passed zoning regulations in the form of a text amendment and map amendment with the ultimate goal of enticing a gambling casino to build its facility along with its trappings in an agricultural area of Rockingham County. Plaintiffs are neighbors to the property in question. They have businesses and lifestyles on their properties that would be significantly disrupted by the rezoning. They filed this action to challenge the County's decision to change its zoning regulations.

In the lower court, defendants claimed plaintiffs did not have standing to challenge the zoning decisions and argued for the application of the wrong standing requirements – those applicable to the challenge evidentiary hearings involved in the *permitting process for individual properties*, not those applicable to the challenge of legislative hearings for amendments to zoning regulations. The lower court agreed with defendants, found that plaintiffs did not have standing, and dismissed this action.

Under the proper standing requirements, plaintiffs have clearly demonstrated standing. In fact, the potential harm to plaintiffs is so significant that they would still have standing even if the Court applied the higher standards applicable to evidentiary hearings involved in the permitting process. Finally, even if plaintiffs failed to demonstrate standing by showing the potential harm to their property interests, they would have standing because they also challenged the County's legislative process in passing the zoning regulations.

II. The County passes the Zoning Legislation.

The zoning legislation at issue here consists of 1) an amendment to the County’s zoning map to change the zoning classification of a single property (“Map Amendment”), and 2) a text amendment significantly increasing the allowable uses in the County’s Highway Commercial zoning district (“Text Amendment”), (collectively “Zoning Legislation”).

Specifically, on 9 June 2023, defendant NC Development Holdings, LLC (“NC Development”) submitted an Application (“Application”) for the Map Amendment. (R pp 5, 7) (App. 1, 3).¹ The Application requested that a 192.74-acre parcel (the “Property”) be rezoned from Residential Agricultural (“RA”) to Highway Commercial (“HC”). (R pp 5, 38-43) (App. 1).

Three days later (and before the Application was considered), the Rockingham County Planning Board (“Planning Board”) reviewed the proposed Text Amendment to the HC zoning classification. (R p 8) (App. 4). The Planning Board voted to recommend the Text Amendment on 12 June 2023. (*Id.*) Seven days later, the Rockingham County Commissioners (“Commissioners”) approved the Text Amendment by unanimous vote on 19 June 2023. (R p 8) (App. 4).

The Text Amendment allows all uses licensed by the State of North Carolina and State Entities to operate **by right** in the County’s HC districts. (*Id.*) Further, the Text Amendment specifically permits “Electronic Gaming Operations” **by right**

¹ Plaintiffs’ Complaint is verified and so may be treated as an affidavit. *Asheville Sports Props., LLC v. City of Asheville*, 199 N.C. App. 341, 345 (2009).

in HC districts, removing the requirement that they be permitted only as a special use. (*Id.*)

Afterwards, on 10 July 2023, the Planning Board reviewed the Application for the Map Amendment and voted to recommend denial of it. (R p 9) (App. 5).

On 21 August 2023, plaintiffs, through counsel, wrote to the Commission to point out numerous procedural errors in the consideration and passage of the Text Amendment and the processing of the Map Amendment to date, as well as numerous reasons why the Map Amendment should be rejected under the law. (R S pp 45-169).

Nevertheless, on 21 August 2023, the Commissioners considered the Application for the Map Amendment and eventually voted to approve it unanimously. (R p 9) (App. 5). The Property is now rezoned from RA to HC.

On 18 October 2023, plaintiffs filed the current action challenging the Zoning Legislation and, by Order entered 2 April 2024, the lower court dismissed plaintiffs' Complaint for lack of subject matter jurisdiction. (R pp 5-192; 460-61) (App. 1-33, 41-42).

III. RA and HC zoning districts.

The RA zoning district is

...established in areas that are characterized by large lots, clustered subdivisions, agricultural uses and open lands. These areas may include prime farmland and unique topographical or environmental restrictions that are remote from existing developed areas...[where there is] limited public water and no public sewer utilities [available].

...

[The RA district] carries forth the principles associated with the **preservation and conservation of rural lands** throughout the county where low density is desirable in

order to protect environmentally sensitive areas, agricultural areas, and viewsheds.

(R pp 301-02) (App. 43-44) (R S pp 630) (App. 45) (emphasis added).

In sharp contrast, a HC district

...provides areas for more **intensive regional highway-oriented business**, office, service and civic uses. The district regulations are designed to protect and encourage the transitional character of the districts by permitting uses and building forms that are **compatible with the surrounding area**.

(R p 301) (App. 43) (emphasis added).

Considering the Text Amendment, uses which are issued licenses by the State or a State entity and now permitted by right in an HC district include electronic gaming operations, dry cleaning facilities, crematories (N.C.G.S. §210.123), fertilizer manufacturers (N.C.G.S. §106-660(D)), hotels, fairgrounds, hospitals (N.C.G.S. §131E-272), landfills for hazardous and industrial waste (G.S. 130A, Article 9), and wastewater collection, treatment and disposal facilities (N.C.G.S. §§143-215.1, 401; N.C.G.S. §130A-333 through 343) among other uses.²

IV. Facts specific to plaintiffs' standing.

A. Injuries common to all plaintiffs.

All plaintiffs are citizens and property owners in Rockingham County, North Carolina with properties either abutting or in close proximity to the Property. (R pp 5-6) (App. 1-2). All plaintiffs stand to suffer injury related to the Zoning Legislation due to the following:

² When a use is permitted by right there are no development standards, temporary use restrictions, or special use permits required for the use.

- a. Higher intensity uses on neighboring properties and in the area which are starkly incompatible with the current uses;
- b. Water pollution from large scale development, non-agricultural, and higher intensity uses contaminating private wells and natural springs in the area, on plaintiffs' properties, and, in particular, Hogan's Creek and the lake on Camp Carefree's property;
- c. Increased traffic and safety issues around the Property, related to the permissible number of high intensity uses and large-scale developments;
- d. The potential for increased criminal activity including trespassers from large scale developments, high intensity uses, the probability of a vice-oriented tourist attraction, and the unavailability of law enforcement resources to accommodate the increase in these concerns;
- e. Increased noise, odor, glare, light trespass, litter, and parking from large scale development and high intensity uses;
- f. Increased traffic, noise, odor, glare, light, trespass, litter, and parking from the numerous large-scale and high intensity developments;
- g. Decreased property values due to the proximity to the large-scale developments, high intensity uses, the probability of a vice-oriented tourist attraction, the inadequate increase in law enforcement resources, as well as the increased noise, odor, light, litter, water pollution, and parking limitations;
- h. Significantly decreased peace and quiet enjoyment of the surrounding properties, but most notably for Camp Carefree and the campers who suffer from neurological disorders that are significantly affected by loud noises, light, and over stimulation;
- i. Significant increases in runoff and pollution to lake at Camp Carefree, the streams on the Property like

Hogan's Creek, plaintiffs' wells/drinking water, and the local watershed; and

- j. Significant increases in the acres of paved impervious surfaces, creating drainage and erosion issues where there used to be healthy ecosystems and farmland.

(R pp 15-16 (App. 10-11); R pp 66-71 (App. 48-53); R pp 73-74 (App. 54-55); R pp 92-94 (App. 56-58); R pp 108-10 (App. 59-61); R pp 119-20 (App. 62-63); R pp 124-25 (App. 64-65); R pp 130-31 (App. 66-67); R pp 135-36 (App. 68-69); R pp 143-44 (App. 70-71); R pp 149-50 (App. 72-73); R pp 162-63 (App. 74-75)).

Further, real estate appraiser John Palmer opined that the Map Amendment would “tend to have an adverse impact on the fair market value of the surrounding property uses...” (R p 67) (App. 49).

B. Injuries specific to plaintiff Camp Carefree.

Camp Carefree owns property located directly south of and adjacent to the Property. (R p 11; R S p 643 (App. 7, 76)). Since 1986, during the summer months, Camp Carefree has provided a free, one-week overnight camping experience for kids as young as six (6) with chronic illnesses, for well siblings of ill children, and a week for children with a sick parent. (*Id.*) Many of these children otherwise live a protected life and spend a good deal of their youth in hospitals and doctor's offices. (R p 12) (App. 8). Camp Carefree provides these children with needed freedom to play, learn, and have fun with others who encounter similar difficulties. (*Id.*) Camp Carefree can accommodate 120 campers, counselors, medical personnel, and volunteers. (R pp 11-12) (App. 7-8). Outside of the summer months, Camp Carefree rents out its facilities to churches, businesses, and community and family groups. (R p 12) (App. 8).

Rhonda Rodenbough, Camp Carefree’s managing board member who resides on Camp Carefree Property, testified the Zoning Legislation would negatively impact its property use by:

- “[I]mpacting the physical and mental wellbeing of our campers who suffer from neurological disorders that are significantly affected by loud noises, light and over stimulation.”
- “[D]ramatically impacting” the camp “in terms of visual intrusiveness, and noise and light trespass.”
- The “significant increase” in traffic along the access roads to the camp.

(R pp 73-74) (App. 54-55).

C. Injuries to plaintiff Micris, LLC.

Micris, LLC owns property located less than 650 feet to the east of the Property. (R pp 12; R S p 643) (App. 8, 76). Michael J. Cusato, Jr. is the managing member of Micris and the owner and President of Kalo Food, LLC, the bakery that occupies the Micris Property. (R p 149) (App. 72). The bakery specializes in delivering gluten free foods to its customers throughout Maryland, Virginia, and North Carolina. (R p 12) (App. 8).

Mr. Cusato testified the Zoning Legislation threatened to:

- Result in “a significant increase in traffic,” further straining the already insufficient resources available to build infrastructure to correct traffic hazards. This, in turn, would increase the safety risk for Kalo Food’s trucks and drivers.
- Increase light trespass.

- Stretch the already limited county law enforcement resources to police the higher intensity operations.

(R pp 149-50) (App. 72-73).

D. Injuries to plaintiffs Brandon and Amy Leebrick.

Brandon and Amy Leebrick own property located approximately 300 feet south of the Property at issue. (R p 12; R S p 643) (App. 8, 76). On their property, the Leebricks operate Still Small Farms, LLC, a small farm on their property, a registered homeschool for three of their four children, and a rental house. (R pp 12-13, 108) (App. 8-9, 59).

Mr. Leebrick testified the Zoning Legislation threatened to:

- Contaminate the private wells and natural springs on their property.
- “[D]ramatically and detrimentally impact,”
 - their farm operations and opportunities,
 - their ability to rent their rental home,
 - their ability to homeschool and educate their children safely, and
 - visual intrusiveness as well as noise and light trespass, as the development is within sight of their farm.
- Increase traffic accidents and incidents involving driving under the influence of alcohol.
- Increase criminal activity and trespass on their property due to its proximity to the rezoned Property, as well as the lack of any conditions that would require walls, fences, or other barriers.

(R pp 108-09) (App. 59-60).

E. Injuries to Donald and Christine Dohm.

Donald and Christine Dohm have owned property located directly north and adjacent to the Property in question and have lived there since 2005. (R p 13; R S p 643) (App. 9, 76).

Mrs. Dohm testified the Zoning Legislation threatened to:

- Significantly increase traffic, making it more difficult for the Dohms to enter and exit their neighborhood due to the required turns and U-turns among highway traffic.
- “[D]ramatically and detrimentally” impact their property in terms of visual intrusiveness, noise, and light trespass.

(R pp 119-20) (App. 62-63).

F. Injuries to David and Wendy Forbes.

David and Wendy Forbes have owned property located directly north and within 350 feet of the Property at issue since 2019. (R p 13; R S p 643) (App. 9, 76).

Mr. Forbes testified the Zoning Legislation threatened to:

- Increase in traffic along with criminal activity
- Overburden the local utilities
- Cause light and noise trespass, and visual intrusiveness.

(R p 124) (App. 64).

G. Injuries to Mary Anderson.

Mary Anderson has owned the property located directly north and immediately adjacent to the Property at issue since 2004. (R p 14; R S p 643) (App. 10, 76). This property has been in Ms. Anderson’s family since 1986. (*Id.*)

Ms. Anderson testified the Zoning Legislation threatened to:

- Significantly increase traffic along Highway 220 “interfering with my ability to come and go from my property without increased danger.”
- Result in her family’s loss of privacy and ability to enjoy the “peacefulness and safety of a rural community.”
- Cause visual intrusiveness, as well as noise and light trespass.

(R pp 143-44) (App. 70-71).

H. Injuries to Jeffery Scott.

Jeffery Scott has owned the property located directly north and adjacent to the Property at issue and has lived there since 2019. (R p 14; R S p 643) (App. 10, 76).

Mr. Scott testified the Zoning Legislation threatened to:

- Significantly increase traffic.
- Decrease his privacy and safety.
- Cause noise, light, and well water pollution.
- Decrease the safety of his children on the roads and at home.

(R pp 130-31) (App. 66-67).

I. Injuries to Jill Meier.

Jill Meier owns the property southwest of the Property at issue. (R p 14; R S p 643) (App. 10, 76). Prior to moving to Stokesdale, Ms. Meier had lived in New York and other states with entertainment districts and has “first-hand knowledge of the problems, including high traffic, lights, noise and other intrusions that come with large properties zoned as highway commercial.” (R p 135) (App. 68). She moved to Stokesdale and chose her property because she no longer wanted to live in or near a

city – she wanted a small farm in a rural setting without big businesses, lights, noise, and excess traffic. (R pp 135-36) (App. 68-69).

Ms. Meier testified the Zoning Legislation threatened to:

- Significantly increase traffic on Simpson Road.
- Increase the dangerous traffic conditions at the intersection of Simpson Road and U.S. Highway 220 which “is already a congested and dangerous intersection.”

(R pp 135-36) (App. 68-69).

STANDARD OF REVIEW

Standing is a subject matter jurisdiction issue. *United Daughters of the Confederacy v. City of Winston-Salem*, 383 N.C. 612, 624 (2022). Appellate courts apply a *de novo* standard of review to subject matter jurisdiction issues regardless of whether the complaint is dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) or Rule 12(b)(6). *Id.*

On a motion to dismiss for lack subject matter jurisdiction, the Court “**view[s] the allegations as true and the supporting record in the light most favorable to the nonmoving party...**” *Id.* (emphasis added). A court reviewing subject matter jurisdiction “may consider information outside the scope of the pleadings in addition to the allegations set out in the complaint.” *Id.*

ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING DEFENDANTS’ MOTIONS TO DISMISS IN A DECLARATORY JUDGMENT ACTION ON THE BASIS OF STANDING

The North Carolina Constitution provides that “every person for an injury done to him in his lands, goods, person, or reputation shall have remedy by due course of law.” N.C. Const. Art. I, §18. It stands to reason that North Carolina’s Constitution opens the courthouse doors to all who suffer injury *Fearrington v. City of Greenville*, 386 N.C. 38, 45 (2024) (citing, *Comm. to Elect Forest v. Employees PAC*, 376 N.C. 558, 609-10 (2021)). Consistent with this mandate, the North Carolina Uniform Declaratory Judgment Act (“DJA”) provides:

[A]ny person . . . whose rights, status or legal relations are affected by a statute, municipal ordinance . . . may have determined any question of construction or validity arising under the . . . statute, ordinance . . . and obtain a declaration of rights, status, or other legal relations thereunder.

N.C.G.S. §1-254; *Goldston v. State*, 361 N.C. 26, 33 (2006).

In the context of a declaratory judgment action, a complaint is sufficient if it “alleges the existence of a real controversy arising out of the parties’ opposing contentions and respective legal rights” under a statute, ordinance or other instrument. *Morris v. Plyler Paper Stock Co.*, 89 N.C. App. 555, 557 (1988).

A declaratory judgment action is a proper means to challenge the validity of a zoning ordinance or amendment thereto, especially by owners of property within a rezoned area or those directly and adversely affected by legislative zoning changes. N.C.G.S. §1-253 *et. seq.*; *Blades v. Raleigh*, 280 N.C. 531, 544 (1972); *Unruh v. City of Asheville*, 97 N.C. App. 287, 291 (1990); *Morris Communs. Corp. v. City of Asheville*, 356 N.C. 103, 104 (2002). Moreover, N.C.G.S. § 160D-1401 provides that, “Challenges of legislative decisions of governing boards, including the validity or constitutionality

of development regulations adopted pursuant to this Chapter, . . . may be brought pursuant to Article 26 of Chapter 1 of the General Statutes”, to wit, the Declaratory Judgment Act.

In *Comm. to Elect Forest*, a case decided under the DJA, our Supreme Court explained that

[W]hen the legislature exercises its power to create a cause of action under a statute, even where a plaintiff has no factual injury and the action is solely in the public interest, **the plaintiff has standing to vindicate the legal right so long as he is in the class of persons on whom the statute confers a cause of action.**

Comm. to Elect Forest, 376 N.C. 558, 608 (emphasis added).

When challenging a legislative zoning decision as contemplated by N.C.G.S. §160D-1401, the legislature has conferred upon “[A]ny person . . . whose rights, status or legal relations **are affected** by a statute, municipal ordinance” to have “determined any question of construction or validity arising under the . . . statute, [or] ordinance” N.C.G.S. §1-254 (emphasis added). The word “person”, wherever used in the DJA, “shall be construed to mean any person, State agency, partnership, joint-stock company, unincorporated association, or society, or municipal corporation or other corporation of any character whatsoever.” N.C.G.S. §1-264. Moreover, a declaratory judgment action is intended to be remedial, to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered. *Woodard v. Carteret County*, 270 N.C. 55, 59 (citing N.C.G.S. §1-264).

Considering the liberal construction and administration of the DJA, and the dictates of our Supreme Court, each plaintiff, including Micris, LLC³, falls within the class of persons upon whom the statute confers a cause of action to have determined the question of validity of the Zoning Legislation adopted by defendant County and obtain their legal rights arising under such ordinance. Yet, how one is affected, or in common parlance, standing, is still an essential element of bringing a cause of action under the DJA. *Taylor v. Raleigh*, 290 N.C. 608 (1976).

A. Standards Applicable To A Challenge Of Legislative Zoning Decisions.

In accord with N.C.G.S. § 160D-1401, plaintiffs challenged the Zoning Legislation under the DJA. (R p 5) (App. 1). In turn, defendants challenged plaintiffs' standing to do so. (R p 193, 207-211) (App. 34, 36-40).

“Standing is a ‘party’s right to make a legal claim or seek judicial enforcement of a duty or right.’” *Fearrington*, 386 N.C. at 45 (quoting, *Comm. to Elect Forest*, 376 N.C. at 564. Stated differently, “[s]tanding refers to whether a party has a sufficient stake in an otherwise justiciable controversy such that he or she may properly seek adjudication of the matter.” *Edwards v. Town of Louisburg* (N.C. Ct. App. 2023) (citing *Beachcomber Props., L.L.C. v. Station One, Inc.*, 169 N.C. App. 820, 823 (2005) (citations omitted)). “Standing is initially determined by whether an actual controversy exists between the parties when the action is filed.” *Messer v. Town of Chapel Hill*, 346 N.C. 259, 260 (1997). In order to satisfy the jurisdictional

³ See, e.g., *Swaps, LLC v. ASL Props.*, 250 N.C. App. 264 (2016) where Swaps, LLC prevailed on a claim under the North Carolina Uniform Declaratory Judgment Act although it may not have fit directly under the definition of “person” under the DJA.

requirement of an “actual controversy,” a mere difference of opinion on the law, or its application, is not enough; it is necessary that litigation appear unavoidable.” *Sharpe v. Park Newspapers of Lumberton, Inc.*, 317 N.C. 579, 589 (1986).

i. Proximity

As developed through a line of this state’s Supreme Court, a party has standing to challenge a zoning ordinance under the DJA as owners of property in the adjoining area affected by the zoning regulation. *Zopfi v. Wilmington*, 273 N.C. 430 (1968); *Blades*, 280 N.C. 531.

Zopfi arises from a declaratory judgment action by non-residents of the City of Wilmington challenging the City’s determination to rezone a portion of property located within the city limits from single family residential use to commercial and multi-family use. 273 N.C. at 430. The plaintiffs resided approximately 600 feet from the multi-family district and 800 feet from the commercially zoned property. *Id.* The Court addressed the fact that plaintiffs’ challenge was not to a limitation on the use of their property, but the new uses permitted for the rezoned property. *Id.* at 433.

When considering plaintiffs’ ability to make such a challenge, the Court considered the fact that if the amended zoning ordinance is beyond the legislative power of the governing body, the adoption of the ordinance does not affect the previous zoning designation and any use which would violate that prior designation thus allowing owner of adjoining property to enjoin such use. *Id.* at 437. Ultimately, the Court ruled against plaintiffs but not before opining that adjoining property owners seeking to challenge a rezoning are proper parties to maintain such an action

as any use of property in conformity with the potentially invalid zoning regulation would be unlawful and adjoining owners would be injured by it. *Id.* at 433.

Similarly, *Blades* was a suit for a declaratory judgment to determine the validity of the City of Raleigh's zoning changes. There, the City of Raleigh passed an ordinance after a realty company's application that rezoned property from R-4 which allowed for single family residences to R-6 which permitted the construction of townhouses and other buildings. 280 N.C. 531. Plaintiffs who owned property in the adjoining area challenged the ordinance claiming it was invalid. *Id.* In regard to standing, the court, relying on *Zopfi*, stated that the plaintiffs, as owners of property in the adjoining area affected by the ordinance, are parties in interest entitled to maintain the action. *Id.* at 544.

Simply enough, under *Zopfi* and *Blades*, one can achieve standing to challenge a zoning ordinance and enter the courthouse merely by owning property in, next to, or near the area subject to the zoning change. See, e.g., *George v. Town of Edenton*, 294 N.C. 679, 680 (1978) (the plaintiffs "as residents of Chowan County within the jurisdiction of the zoning powers of defendants" had standing); *Musi v. Town of Shallotte*, 200 N.C. App. 379, 382 (2009) (neighbors near high density housing project had standing); *Budd v. Davie County*, 116 N.C. App. 168, 171-172 (1994) (neighbor adjoining sand dredging operation had standing); *Frizzelle v. Harnett County*, 106 N.C. App. 234 (1992) (as landowners in the area of the county affected by the zoning ordinance, plaintiffs had standing); *Lee v. Simpson*, 44 N.C. App. 611 (1980) (owners of property adjacent to rezoned property had standing).

ii. Specific personal and legal interest, directly and adversely affected.

Yet, general allegations of injury cannot pave the road to the courthouse. In *Taylor*, 290 N.C. 608, the Court expanded upon the standing analysis of *Blades* with comparison to *Greensboro v. Wall*, 247 N.C. 516 (1958).⁴ There, the City of Raleigh adopted a rezoning ordinance changing the zoning class from R-4 to R-6 where the landowner planned to build an apartment complex. *Id.* Plaintiffs were located within the same zoning area but some 2800 feet from the rezoned property. First, the court considered whether plaintiffs had standing to attack the zoning ordinance. *Id.* at 620. The court reasoned that for the validity of a municipal zoning ordinance to be properly decided under the Declaratory Judgment Act, the person challenging the ordinance must be one who has a specific personal and legal interest in the subject matter affected by the zoning ordinance and who is directly affected hereby. *Id.*

After *Blades*, *Taylor* set forth a two-part analysis for determining whether standing exists to challenge a rezoning decision under the Declaratory Judgment Act: first, a plaintiff must demonstrate a specific personal and legal interest in the subject matter affected by the zoning ordinance and second, the plaintiff must show that that they are directly and adversely affected thereby.

⁴ Although *Wall* involved a citizen's challenge to tax expenditures under the Declaratory Judgment Act, for a determination of standing the Court only considered persons directly and adversely affected by the challenged action as those that would bring to the attention of the court all facets of a legal problem.

iii. Impairment of statutory right

Building on the principle of the requisite standing needed to seek relief under the DJA, our Supreme Court, in *Comm. to Elect Forest*, clarified the law. In that case, our Supreme Court explained that standing under North Carolina law is broader than under federal law as there is no case-or-controversy requirement in our Constitution and thus no injury-in-fact requirement for standing to bring a declaratory judgment action. *Comm. to Elect Forest* at 599; accord *Goldston*, 361 N.C. at 35 (“...the nuts and bolts of North Carolina standing doctrine are not coincident with federal standing doctrine.”) As such,

[w]hen a person alleges the infringement of a legal right arising under a cause of action at common law, a statute, or the North Carolina Constitution, however, **the legal injury itself gives rise to standing**. The North Carolina Constitution confers standing to sue in our courts on those who suffer the infringement of a legal right, because "every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law N.C. Const, art. I, § 18, cl. 2.

Id. at 608 (emphasis added).

In this vein, the Court went on to address the “concrete adverseness” principle for standing indicating such principle is “grounded on prudential principles of self-restraint in exercise of” a court’s power of judicial review. *Id.* at 595. To satisfy this “concrete adverseness,” where a purely statutory right is at issue, no direct injury beyond the impairment of the statutory right is required. *Id.* at 600. This is known

as an impairment of a “legal right.” *Id.* at 599. Factual harm or injury in fact are not required. *Id.* at 607.⁵

B. Special Damages Are Not Required To Establish Standing In The Legislative Zoning Context.

Although not a land use case, *Comm. to Elect Forest* did involve standing under the DJA. Further, the court demonstrated its point with reference to land use cases. The court explained that it “did not impose a constitutional requirement of ‘injury-in-fact’” in the quasi-judicial land use case of *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 644 (2008). Rather, because *Mangum* was a quasi-judicial land use case, the court only imposed the “injury in fact” standard because the governing statute *required it to do so*. *Id.* at 602 fn.45. (“The requirement for special damages to have standing to sue in such [quasi-judicial review] cases **arises from the requirements of the statute** which creates and confers the cause of action on certain persons, **not the constitution.**”) (emphasis added). In other words, unless the injury in fact requirement is imposed by statute, the court simply may not impose this barrier to access the courts when it is not there. *Id.* at 601. Significantly, the North Carolina Supreme Court in *Comm. to Elect Forest* eschewed a line of cases originating from the Court of Appeals that required allegation and showing of an “injury-in-fact,” which is akin to a showing of “actual injury.” *Id.* at 599-600.

⁵ A good example of the impairment of common law “legal right” discussed in *Comm. to Elect Forest* is trespass. Someone may enter your property without consent, cause no factual injury or damages, and the property owner would still be entitled or have standing to bring a claim. *Id.* at 605-606, 853 S.E.2d at 732.

The *Comm. to Elect Forest* Court in several instances pointed out that the “special damages” or “special injury” requirement for standing stems from a statutory directive that pertains only to writ of certiorari appeals of quasi-judicial zoning actions. 376 N.C. at 602, fn 45 and 376 N.C. at 608, fn 51. This will, hopefully, squash another aberrant line of cases from the Court of Appeals holding that “special damages” is a component of standing for declaratory judgment challenges to the validity of legislative rezoning actions. These cases include *Cherry Cmty. Org. v. City of Charlotte*, 257 N.C. App. 579 (2018); *Violette v. Town of Cornelius*, 283 N.C. App. 565 (2022) and *Davis v. Archdale*, 81 N.C. App. 505 (1986).⁶

i. The difference between zoning legislation and quasi-judicial cases.

To better understand how the *Comm. to Elect Forest* is relevant in this context, one must understand the differences between zoning regulations adopted by way of legislative hearings and quasi-judicial decision heard through evidentiary hearings. See *Sherrill v. Wrightsville Beach*, 81 N.C. App. 369, 373 (1986). *It is critical to understand the difference between these kinds of cases*, as they employ two different kinds of standing.

In a “quasi-judicial decision,” which *this is not*, a zoning authority adjudicates a request for a specific kind of permission. For example, a homeowner may apply to a county for a variance to rebuild a home past the county’s setback ordinance.

⁶ In *County of Lancaster v. Mecklenburg County*, the Supreme Court in a footnote addressed standing to challenge a legislative zoning decision and referred to *the Blades-Taylor* Supreme Court opinions that have been cited in this brief. The *County of Lancaster* Court mentions *Davis v. Archdale* and its “special damages” test as one arising from challenges to quasi-judicial zoning decisions. 334 N.C. 496, 503, fn4 (1993).

N.C.G.S. § 160D-705(d); *Sherrill*, 81 N.C. App. at 373 (“... a proceeding to grant a variance or special use permit is quasi-judicial in nature.”) In another example, an ordinance may require landowners seeking to build a manufacturing facility to seek a special-use permit in order to show how their plan will meet certain standards for noise, traffic, and pollution. N.C.G.S. § 160D-102(30); *Sherrill*, 81 N.C. App. at 373.

Quasi-judicial decisions are often delegated to a specialty board, like a board of adjustment. N.C.G.S. § 160D-705(a). Parties can appeal quasi-judicial decisions to the Superior Court in the nature of *certiorari*. N.C.G.S. § 160D-1402.

Standing for these certiorari proceedings is established by statute, to wit, N.C.G.S. § 160D-1402(c). Automatic standing is granted to the applicant, those with ownership interests in the subject property, and the local government. N.C.G.S. § 160D-1402(c)(1). Most third-parties, however, do not have standing unless they can show they will “**suffer special damages**” because of the decision. N.C.G.S. § 160D-1402(c)(2) (emphasis added).

Again, this case does not involve a quasi-judicial decision. This is a zoning legislation case. In a zoning legislation case, a county legislature changes the county zoning laws. *See* N.C.G.S. § 160D-702(a). Rezoning is a legislative act, where the General Assembly delegates its police power to regulate land use to a county (or other municipal corporation). *Zopfi*, 273 N.C. at 434. This legislative power is subject to the limitations of the enabling statutes, the Constitution, and the legislative body’s own procedural rules. *Id.*; *Thrash Ltd. P’ship v. Cty. of Buncombe*, 195 N.C. App. 727, 730 (2009).

Zoning legislation can be unilaterally initiated by a governmental authority, and have a sweeping effect over multiple, unrelated properties. The affected property owners often do not ask for the change, but they are certainly affected by it.

A challenge to zoning legislation is not before the Superior Court as an appeal by way of *certiorari*. Zoning legislation is challenged through the Declaratory Judgment Act, and it is brought in the Superior Court for its initial review. N.C.G.S. § 160D-1401, N.C.G.S. § 1-253; *Blades*, 280 N.C. at 544; *Unruh*, 97 N.C. App. at 291. In such an action, the Superior Court is not a court of appellate review; it is a court of *first* review. *Id.*

Most importantly, there is no statutory authority for a “special damages” standard in the DJA or the statute governing judicial review of legislative zoning challenges. N.C.G.S. § 160D-1401, N.C.G.S. § 1-253; *Vill. Creek Prop. Owners Ass’n v. Town of Edenton*, 135 N.C. App. 482, 486 (1999).

Because the zoning statute (the source of the requirement that special damages be alleged in the context of writ of certiorari petitions) does not require parties to be ‘aggrieved’ in order to file a declaratory judgment action and because **the Declaratory Judgment Act does not require a pleading of special damages, we hold it is not required.** Plaintiffs’ complaint should therefore not be dismissed for lack of standing based on plaintiffs’ failure to allege special damages.

(emphasis added).

ii. According to the mandates of stare decisis, this Court must apply a "specific personal and legal interest" standard for standing

Notably, the Supreme Court has *never* required a showing of "special damages" to establish standing to challenge zoning legislation. *E.g.*, *Taylor*, 290 N.C. at 620;

Blades, 280 N.C. at 544; *Zopfi*, 273 N.C. 430; *Good Neighbors of South Davidson v. Town of Denton*, 355 N.C. 254 (2002); *Chrismon v. Guilford Cnty.*, 322 N.C. 611, 614 (1988); *Allgood v. Town of Tarboro*, 281 N.C. 430, 432 (1972).

Indeed, as this Court has observed, to apply the “special injury” standard to challenge zoning legislation would be in violation of statute. *Thrash*, 195 N.C. App. at 731 (“[T]o require a plaintiff to demonstrate a direct injury in order to challenge a zoning regulation would allow counties to make zoning decisions without complying with the statutory requirements of Article 18 of Chapter 153A of the General Statutes.”)

In most cases, this Court has followed Supreme Court precedent on this issue. *Vill. Creek Prop. Owners Ass’n*, 135 N.C. App. at 485-86; *Templeton v. Town of Boone*, 208 N.C. App. 50, 66 (2010); *Northeast Concerned Citizens, Inc. v. City of Hickory*, 143 N.C. App. 272, 276-77 (2001); *Musi*, 200 N.C. App. at 382; *Ring v. Moore Cty.*, 257 N.C. App. 168, 170 (2017).

There are, admittedly, cases where this Court broke with the Supreme Court and its own precedent on this issue, but these cases are of limited to no authority.

Specifically, in *Violette*, 283 N.C. App. 565, Judge Jackson observes that precedent from the Supreme Court and this Court did not require a showing of “special damages” to establish standing to challenge zoning laws. *Id.*, at 569. In these prior cases, the courts applied the “specific personal and legal interest” standard. *Id.*

Nevertheless, Judge Jackson followed a more recent Court of Appeals case and held, “today, neighboring property owners must suffer ‘special damages’ from a zoning decision to have standing to challenge it in an action for a declaratory judgment...” *Violette*, 283 N.C. App. at 569 (citing *Cherry Cmty. Org. v. City of Charlotte*, 257 N.C. App. 579, 584 (2018)) (emphasis added). In other words, Judge Jackson decided that a recent Court of Appeals controlled over prior, binding precedent from the Supreme Court and the Court of Appeals.

This is not how *stare decisis* works. The Court of Appeals cannot decide that the law has changed to contradict Supreme Court precedent. *Martinez v. Wake Cty. Bd. of Educ.*, 258 N.C. App. 466, 478-79 (2018) (“...it is clear that where a prior ruling of this Court is in conflict with binding Supreme Court precedent, we must follow the decision of the Supreme Court rather than that of our own Court.”); *State v. Coria*, 131 N.C. App. 449, 456 (1998) (Court of Appeals bound to follow the reasoning of our Supreme Court.)

Also, one panel of this Court cannot overrule another. *E.g. Respass v. Respass*, 232 N.C. App. 611, 625 (2014). This panel must therefore follow its oldest precedent; it cannot decide that the law has “changed” due to the more recent decisions of other panels – no matter how numerous the recent decisions are. *Id.* (“[O]ur Supreme Court has clarified that, where there is a conflicting line of cases, a panel of [the Court of Appeals] **should follow the older of those two lines.**” (citation omitted, emphasis added)).

Further, in both the *Violette* and *Cherry Cmty* cases, the other two panel judges concurred *in result only*, and did not join the opinions. *Violette*, 283 N.C. App. at 572; *Cherry Cmty*, 257 N.C. App. at 587. A case decided without a majority has no precedential value. *E.g. Townes v. Portfolio Recovery Assocs., LLC*, 382 N.C. 681 (2022). Since there is no majority opinion in *Violette* or *Cherry Cmty*, they are not binding precedents.

Finally, in *Violette* Judge Jackson relied on *Cherry Cmty* which relies, in turn, on two cases that involved standing in *quasi-judicial* decisions – not *zoning legislation* decisions: *Cherry Cmty* relied on *Cherry v. Wiesner*, 245 N.C. App. 339, 344 (2016) and *Heery v. Highlands Zoning Bd. of Adjustment*, 61 N.C. App. 612, 614 (1983). *Violette* and *Cherry Cmty* wrongly relied on inapplicable authority.

In 2023, after the *Comm. to Elect Forest* decision was published, this Court went *back* to recognizing the primacy of the Supreme Court precedent on the general issue of standing. *Pugh v. Howard*, 288 N.C. App. 576, 588 (2023) (“...[O]ur Supreme Court recently rejected the view that a plaintiff must allege an ‘injury in fact’ to establish standing, concluding that alleging either a factual injury or an infringement of a legal right is sufficient to confer standing under North Carolina law.” (citing *Comm. to Elect Forest*, 376 N.C. at 609. So even if the Court is persuaded by the “newest” decisions from the Court of Appeals, it should rely on *Pugh*, not *Violette* and *Cherry Cmty*).

C. Plaintiffs Have Set Forth Sufficient Allegations For Purposes Of Standing Under The Declaratory Judgment Act.

To begin, in North Carolina, a city or county has no inherent power to zone its territory and restrict the use of private property. *Zopfi*, 273 N.C. at 434. The power to zone is the power of the State and has been delegated to cities and counties by the General Assembly. *Id.* at 433-34; *See, also*, General Statute, Article 6, Chapter 160D. Nevertheless, the power to regulate the use of private property can be no greater than that which the General Assembly, itself, possesses which results in limitations on a city or county's exercise of its police powers. *Zopfi*, at 434. Zoning laws, when valid, are a reasonable exercise of the police powers granted by the General Assembly; yet, zoning regulations in excess of the authority granted by statute to a city or county are invalid. *Blades*, 280 N.C. at 551.

Thus, when determining standing related challenges, this Court must consider the fact that the power to zone only arises under statutory authority and any violation of such authority is injury. *Comm. to Elect Forest*, 376 N.C. at 600. As such, access to the courthouse is welcomed where plaintiff has shown a relevant statute confers a cause of action and satisfies the requirement to bring the claim under such statute. *Id.* at 599.

Here, plaintiffs filed their challenge to the Zoning Legislation under the DJA which confers upon any person affected by an ordinance the right to have determined the validity of such ordinance. N.C.G.S. §1-254. Moreover, plaintiffs have each alleged sufficient facts to support how each would be adversely affected by the Zoning Legislation.

All plaintiffs own property which is adjacent to or within 650 feet or less of the affected property, excepting Ms. Anderson (approximately 900 yards away). (R S p 643) (App. 76). According to their evidence, plaintiffs currently enjoy a quiet, safe, and bucolic environment where they provide outdoor therapy for severely ill children, farm, homeschool their children, and enjoy clean well water for drinking, animal care, and agricultural purposes thanks to the current rural zoning restrictions. The Zoning Legislation will significantly liberalize the use restrictions on a 192.74-acre lot in the center of them all. Plaintiffs have presented evidence that the Zoning Legislation threatens to compromise, if not completely ruin, their lifestyles, careers, as well their senses of tranquility, security, privacy, and safety.

Further, plaintiffs do not need to prove that some specific use permitted under the new Zoning Legislation would result in harm to them. It is sufficient for plaintiffs to allege they will suffer harm from *any permissible use* of the rezoned Property. *Hall v. Durham*, 88 N.C. App. 53, 61 (1987) (“...property may not be rezoned in reliance upon any representations of the applicant and that rezoning **must take into account all permitted uses** under the new classification.”) (emphasis added).

The Zoning Legislation would permit any variety of uses that would cause the same problems complained of. For example, because it is zoned as HC, the Property could be used for dry cleaning facilities, car washes, research laboratories, hotels, fairgrounds, hospitals, automotive service and repair stations, multi-family apartments and condominiums, crematoriums, radio stations, and billboards. (R S p 627-28) (App. 46-47).

Under the above cited cases, plaintiffs' evidence is sufficient to show they fall within the class of persons on whom the DJA confers a cause of action and, moreover, have alleged a "specific personal and legal interest" in this Zoning Legislation and how they will be adversely affected sufficient enough to establish standing.⁷ For sure, this Court can be certain that the specific legal problems brought to the attention of the court by plaintiffs will be tested by fire in the crucible of actual controversy. *Wall*, 247 N.C. at 520.

Nevertheless, defendants are attempting to have this Court prematurely determine the merits of the plaintiffs' contentions regarding the validity of the Zoning Legislation. Plaintiffs are entitled to have the applicable laws declared under the pertinent facts and the Zoning Legislation's validity so judged.

D. Plaintiffs Also Have Standing To Challenge The County's Procedural Irregularities In Passing The Zoning Legislation.

"North Carolina's case law makes clear that landowners in the area of a county affected by a zoning ordinance are allowed to challenge the ordinance on the basis of procedural defects in the enactment of such ordinances." *Thrash*, 195 N.C. App. at 730; see e.g., *Godfrey v. Zoning Bd. of Adjustment*, 317 N.C. 51 (1986) ("...owners of property in the adjoining area affected by the ordinance, are parties in interest entitled to maintain the action." (quoting *Blades*, 280 N.C. at 544)) (additional

⁷ Injury also arises wherein plaintiffs seek an adjudication that the Zoning Legislation is void, so as to leave in effect the original zoning designation and permitted uses in the HC district. If such designation and uses would still be applicable to the Property, plaintiffs are proper parties to maintain an action in that any use allowed in the HC which is not allowed in the original RA district would be a unlawful and injure the Plaintiffs. *Zopfi*, 273 N.C. at 433 (citing, *Harrington & Co. v. Renner*, 236 N.C. 321 (1952)).

citations omitted); *Frizzelle*, 106 N.C. App. at 238-39 (allowing challenge by neighboring landowners to zoning ordinance on grounds of inadequate notice); *Lee*, 44 N.C. App. 611 (owners of property adjacent to property that was rezoned successfully challenged rezoning ordinance for lack of proper notice); *Morris Commcn's Corp.*, 356 N.C. at 111 (compliance with protest procedures for zoning is an "affirmative duty," and the failure to comport with them "necessarily renders the enacted ordinance invalid on its face.")

Even if plaintiffs failed to show sufficient injury to their properties, they have standing to challenge the Zoning Legislation based on their allegations that it was passed using defective procedures. For example, plaintiffs alleged the Commission violated the UDO and its own procedures due to the Application being incomplete and deficient (R pp 17-19) (App. 13-15); the Commissioners passing both amendments without the requisite recommendations from the Planning Board (R pp 8-9) (App. 4-5); the Text Amendment being improperly signed (R p 10) (App. 6); the legislation being passed without reference to the "Rockingham Vision Plan" (*id.*); the hearing for the Map Amendment not being properly noticed (R pp 9-10) (App. 5-6); and the public comment period for the Map Amendment hearing being cut short (R p 10) (App. 6).

Defendants contested these claims in the court below to support their motions to dismiss for failure to state a claim. (R S pp 533-45; 660-76). The lower court, however, dismissed the action on standing grounds without reaching the merits of these claims. This means the resolution of these procedural issues is not preserved for this Court's review. N.C. R. App. P. 10.

Accordingly, the Court must assume without deciding that plaintiffs' allegations of procedural irregularity are true when determining the threshold issue of standing. *E.g. United Daughters of the Confederacy*, 383 N.C. at 624 (on a motion to dismiss for lack subject matter jurisdiction, the Court "view[s] the allegations as true and the supporting record in the light most favorable to the nonmoving party..."); *Thrash*, 195 N.C. App. at 681 ("*Thrash I*"); (deciding issue of plaintiff's standing to challenge the procedural enactment of an ordinance based on the plaintiff's *allegations*); *Thrash*, 195 N.C. App. at 730 ("*Thrash II*") (same).

The Court need not decide the procedural issues on the merits to determine the issue of standing. Should the Court disagree, it should remand, allow plaintiffs an opportunity to respond, and have these issues decided first by the court below.

E. In The Alternative, Plaintiffs Have Demonstrated "Special Damages" Sufficient For Standing.

Should the Court agree with defendants that a "special damages" standard should apply here, plaintiffs' evidence is sufficient to meet that threshold as well.

In *Mangum*, 362 N.C. at 644 the Supreme Court held allegations of "increased traffic, increased water runoff, parking, and safety concerns,' as well as the secondary adverse effects on petitioners' businesses..." were sufficient to show "special damages."

In *Sanchez v. Town of Beaufort*, 211 N.C. App. 574 (2011), this Court recognized "special damages" where the plaintiff alleged the construction project would interfere with her view and cause her property values to decrease.

In *Murdock v. Chatham Cty.*, 198 N.C. App. 309 (2009), the plaintiffs alleged “damages distinct from those damages to the public at large,” where they owned property “immediately adjacent to or in close proximity to the subject property,” and “the lights from the building and parking lot and the noise from the loading docks, dumpsters, loudspeakers, roof air conditioning would be a dramatic intrusion into [one plaintiff’s] life,” another plaintiff alleged “her property would be subject to large amounts of polluted run-off,” and another plaintiff alleged “her major concern” was how the drainage and runoff “will adversely affect her vegetation.” *Id.* at 317.

As outlined above, plaintiffs here make many of the same or similar allegations. They are all immediately adjacent or in close proximity to the Property. They have alleged the Zoning Legislation would increase light pollution and noise pollution, disrupting their views and quiet enjoyment of their rural properties. They have alleged water pollution affecting well water that they use to drink, feed livestock, and water their crops, as well as the hygiene of the otherwise swimmable lake water in Camp Carefree. The additional impervious surfaces would result in drainage and erosion issues where there are now healthy ecosystems and farmlands. The higher intensity uses would result in increased traffic around plaintiffs’ properties, raise the probability of traffic accidents, as well as increase crime, safety and trespassing issues in an area without the law enforcement resources to police the larger volume of transient people. This would all also negatively impact how plaintiffs can use their properties for this businesses, farming, homeschooling, and rural retreat camps. It would also ruin Camp Carefree’s ability to have a protected

and safe atmosphere for a population of chronically ill and disabled children, most of whom need more than average rest, and some of whom have neurological disorders that make them sensitive to noise, light, and odors. Finally, all plaintiffs testified that this rezoning would reduce their property values.

At least some of these concerns are not shared by the “community at large.” Not everyone in the community has a camp populated by special needs children who are particularly sensitive to light and noise, and come there specifically to escape these stimuli. Not everyone uses the private lake at Camp Carefree for water recreation, nor do they use well water for drinking, raising livestock, and watering food crops that would be affected by increased pollution in the area water tables. Not everyone would experience the runoff from the increased impervious surfaces directly onto their properties or the streams which abut them, nor would everyone in the community experience the associated disruption to their agricultural activities. Not everyone would be directly proximate to a 200-acre tract of formerly undeveloped land that has suddenly become a vice-oriented tourist destination.

Further, based on their own testimony and the expert opinion of real estate appraiser John Palmer, plaintiffs have established “special damages” through the evidence that the Zoning Legislation would decrease the value of their properties. *Mangum*, 362 N.C. at 643 (“...the owner of adjoining or nearby lands, who will sustain special damage from the proposed use through a reduction in the value of his own property, does have a standing to maintain such proceeding.”) (quotation omitted).

Plaintiffs' allegations are thus sufficient to even meet the "special damages" standards to establish standing.

CONCLUSION

Plaintiffs respectfully request that the Court reverse the decision of the lower court, hold plaintiffs have standing, and remand the case to the lower court to be heard on the merits.

Respectfully submitted this the 30th day of October 2024.

**VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.**

By:  _____

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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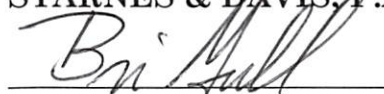
jdunlap@vwlawfirm.com

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Plaintiffs/Appellants certifies that the foregoing brief, contains less than 8,750 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendices).

This the 30th day of October 2024.

**VAN WINKLE, BUCK, WALL,
STARNES & DAVIS, P.A.**



Brian D. Gulden

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **Plaintiffs/Appellants' Brief** was served upon all other parties to the above-cited actions via email and by depositing a copy of same in a postpaid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the attorney(s) of record for all other parties as follows:

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and NC Development Holdings, LLC

This the 30th day of October 2024.

**VAN WINKLE, BUCK, WALL,
STARNES & DAVIS, P.A.**

By: _____

Brian D. Gulden

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

CAMP CAREFREE, INC., MICRIS,
LLC, BRANDON W. LEEBRICK AND
AMY E. LEEBRICK, DONALD DOHM
AND CHRISTINE DOHM, DAVID
FORBES AND WENDY FORBES,
MARY LEA ANDERSON, JEFFREY
DARREN SCOTT, and JILL N. MEIER

Plaintiffs,

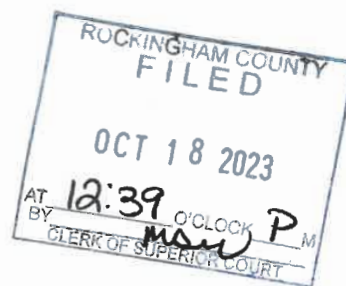
vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and NC
DEVELOPMENT HOLDINGS, LLC

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

COMPLAINT



COME NOW, Plaintiffs, by and through their undersigned counsel, and complaining of Defendants, bring this action for, among other causes, a declaratory judgment pursuant to N.C. Gen. Stat. §§ 1-254 and 160D-1401 for the purpose of declaring Text Amendment 2023-10 and Map Amendment 2023-12, adopted by Defendant Rockingham County, to be void and of no legal effect. In support thereof, Plaintiffs, complaining of Defendants, allege and say as follows:

THE PARTIES

1. Plaintiff, Camp Carefree, Inc. ("Camp Carefree"), is a North Carolina corporation that does business in Rockingham County, North Carolina and owns multiple parcels totaling approximately 69 acres located off Carefree Lane and that are more particularly described in Deed Book 1524, Page 256, Deed Book 1457, Page 1072, Deed Book 1420, Page 1832, and Deed Book 1358, Page 1709 of the Rockingham County Registry and identified by PINs 792303029208, 792303110459, and 792303210848 and Parcel IDs 179782, 177302, and 174029 (the "Camp Carefree Property").

2. Plaintiff, Micris, LLC is a North Carolina limited liability company that does business in Rockingham County, North Carolina and owns property with address 119 Carlton Park Drive, Stokesdale, NC that is more particularly described

in Deed Book 1440, Page 945 of the Rockingham County Registry and identified by PIN 792303323794 and Parcel ID 121656 (the "Micris Property").

3. Plaintiffs, Brandon W. Leebrick and wife, Amy E. Leebrick, (the "Leebricks"), are citizens and residents of Rockingham County, North Carolina and own property with addresses 381 Carefree Lane Stokesdale, NC and 290 Carefree Lane, Stokesdale, NC that is more particularly described in Deed Book 1543, Page 763 of the Rockingham County Registry and identified by PIN 79130091940100 and Parcel ID 177301 (the "Leebrick Property").

4. Plaintiffs, Donald Dohm and wife, Christine Dohm, (the "Dohms"), are citizens and residents of Rockingham County, North Carolina and own property with address 525 Dogwood Acres Lane, Madison, NC that is more particularly described in Deed Book 1245, Page 1683 of the Rockingham County Registry and identified by PIN 791300845562 and Parcel ID 167028 (the "Dohm Property").

5. Plaintiffs, David Forbes and wife, Wendy Forbes (the "Forbes"), are citizens and residents of Rockingham County, North Carolina and own property with the address 650 Dogwood Acres Lane, Madison, NC that is more particularly described in Deed Book 1568, Page 1471 of the Rockingham County Registry and identified by PIN 791300949803 and Parcel ID 169932 (the "Forbes Property").

6. Plaintiff, Mary Lea Anderson ("Anderson"), is a citizen and resident of Rockingham County, North Carolina and owns property with the address 2384 US Highway 220, Madison, NC that is more particularly described in Deed Book 05E, Page 007 of the Rockingham County Registry and identified by PIN 792303134933 and Parcel ID 121576 (the "Anderson Property").

7. Plaintiff, Jeffrey Darren Scott ("Scott"), is a citizen and resident of Rockingham County, North Carolina and owns property with the address 621 Dogwood Acres Lane, Madison, NC that is more particularly described in Deed Book 1557, Page 1546 of the Rockingham County Registry and identified by PIN 791300946418 and Parcel ID 168931 (the "Scott Property").

8. Plaintiff, Jill N. Meier ("Meier"), is a citizen and resident of Rockingham County, North Carolina and owns property with the address 1217 Simpson Road, Stokesdale, NC that is more particularly described in Deed Book 1650, Page 2492 of the Rockingham County Registry and identified by PIN 791200691446 and Parcel ID 174533 (the "Meier Property").

9. Defendant Rockingham County (the "County") is a body politic and corporate organized pursuant to the laws of the State of North Carolina.

10. Defendants Julie J. Sanders, Ellen J. Whitesell, Linda J. Carmichael, and Susan J. Murray f/k/a Susan J. Jones (collectively, the "Property Owners"), together in equal one-quarter (1/4) shares own the land at issue in this matter which

consists of approximately 192.74 acres located in the Huntsville Township of Rockingham County located off US Highway 220 in Stokesdale, NC 27357 (the "Property"). The Property is more particularly described in Deed Book 1549, Page 1411 of the Rockingham County Register of Deeds and with Parcel ID 179781 and PIN 791300938212.

11. Defendant NC Development Holdings, LLC ("NC Development") is, upon information and belief, a Delaware Limited Liability Company, duly organized and existing under the laws of the State of Delaware, is authorized to transact business in the State of North Carolina and is the named applicant on the rezoning request at issue in this matter.

JURISDICTION AND VENUE

12. An actual controversy exists between the Plaintiffs and Defendants with respect to their rights and obligations under two amendments to the UDO adopted by the County, as hereafter described. The Plaintiffs bring this action pursuant to N.C. Gen. Stat. § 160D-1401 and under Chapter 1, Article 26, Declaratory Judgments, as parties in interest, and jurisdiction is proper in Rockingham County.

13. Pursuant to N.C. Gen. Stat. § 1-82, venue is proper in the Superior Court of Rockingham County for all causes of action alleged herein.

14. This action has been filed within the applicable statutes of limitations, as set forth in N.C. Gen. Stat. §§ 160D-1405 and 1-54.1 and all conditions precedent to the filing of this Complaint have been complied with.

BACKGROUND

15. The County adopted the current version of the Rockingham County Unified Development Ordinance (the "UDO") on August 16, 2021, which regulates the use of land within the parts of Rockingham County located outside municipal corporate limits.

16. On June 9, 2023, NC Development submitted an application for a zoning map amendment (the "Application") to the Rockingham County Department of Community Development. The Application requested that the Property be rezoned from Residential Agricultural to Highway Commercial (the "Map Amendment"). A copy of the Application is attached hereto as **Exhibit A**.

17. Pursuant to the UDO, Sect. 33.02(c)(2), an application for a zoning map amendment must, at a minimum, contain a "detailed statement of all other circumstances, factors and reasons including a statement as to the reasonableness of the proposed rezoning, which the applicant offers in support of the proposed amendment".

18. The Application did not contain a statement by NC Development as to the reasonableness of the proposed rezoning.

19. The hearing date for the Rockingham County Planning Board ("Planning Board") to consider the Application was scheduled for July 10, 2023 and the hearing date for the Rockingham County Board of Commissioners (the "Commissioners") to consider the Application was scheduled for August 21, 2023.

20. At its June 12, 2023 meeting, at or near the same time the Application was submitted, the Planning Board, at the request of County Leadership, reviewed a text amendment to the UDO which would allow all uses licensed by the State of North Carolina and State Entities to operate by right in the Highway Commercial districts of Rockingham County (the "Text Amendment").

21. The Text Amendment would also remove the requirement that electronic gaming operations be permitted as a special use in the Highway Commercial districts of Rockingham County and would allow such use by right.

22. At the June 12, 2023 meeting, the Planning Board voted 5-2 in favor of sending a favorable recommendation supporting the Text Amendment to the Commissioners.

23. The meeting minutes that included the Planning Board's recommendation from its June 12, 2023 meeting were not approved by the Planning Board until July 10, 2023.

24. Yet, on June 19, 2023, a mere seven (7) days after the Planning Board reviewed the Text Amendment, the Commissioners, by unanimous vote, approved the Text Amendment.

25. In a rush to adopt the Text Amendment, the Commissioners neglected to follow their own procedures as set forth in Section 33.02 of the UDO for processing text amendments.

26. The Commissioners' agenda packet from their meeting on June 19, 2023, is devoid of any written recommendation from the Planning Board as is required under Sec. 33.02(g)(3)b of the UDO.

27. Nevertheless, the Commissioners considered and approved the Text Amendment without any written recommendation from the Planning Board or the Planning Board's approved meeting minutes.

28. Additionally, the Commissioners did not properly enact the Text Amendment after their vote because the Chairman of the Commissioners ("Chairman") did not sign an ordinance adopting the Text Amendment as is required under N.C. Gen. Stat. 160D-601 nor did the Clerk attest to the Chairman signing any

such ordinance adopting the Text Amendment.

29. In addition to approving the meeting minutes from its June 12, 2023 meeting, the Planning Board, at its July 10, 2023 meeting, considered the Application for the Map Amendment.


30. After consideration of the staff presentation, information presented by NC Development's agent, and public comment, the Planning Board voted 5-2 in favor of recommending denial of the Application.

31. On August 21, 2023, the Commissioners considered the Application for the Map Amendment.

32. The Commissioners' record from their meeting on August 21, 2023, is devoid of any written recommendation from the Planning Board as is required under Sect. 33.02(g)(3)b of the UDO.

33. Further, pursuant to Sect. 33.01(c)(1) of the UDO, notice of a rezoning must summarize the nature of the application and proposed development and invite interested parties to submit oral or written comments on the application at the public hearing of the Commissioners.

34. In this instance, the notice of the Map Amendment sent to neighboring owners of the Property stated the following:



Rockingham County
Community Development
Phone: 336-342-8130 x. 2
planners@co.rockingham.nc.us

A zoning change has been requested for a portion of the property denoted by Tax PIN 7913-00-93-8212, located on Ram Loop and US Highway 220 in the Huntsville Township. The request is to rezone the property from **Residential Agricultural (RA)** to **Highway Commercial (HC)**.

The Rockingham County Board of Commissioners will consider a final determination on this request **08/21/2022 at 6:30 pm** in the Commissioners Chambers at the Rockingham County Governmental Center in Wentworth.

All persons wishing to offer comment regarding this request should appear before the Board. Anyone with questions, feel free to call this office at (336) 342-8130 ext. 2 or email planners@co.rockingham.nc.us.

A. Lynn Cochran, Secretary to the Planning Board
Rockingham County Community Development

35. The zoning notice for the Commissioners' hearing on the Map Amendment (the "Zoning Notice") stated that a change in zoning request had been made for only "a portion" of the Property.

36. However, the entirety of the Property was considered for rezoning under the Application for the Map Amendment.

37. On August 21, 2023, when the Commissioners considered the Application for the Map Amendment, the County Attorney read aloud the Commissioners' procedures for Public Comment Period during its meeting. A copy of the procedures is attached hereto as **Exhibit B**.

38. The Commissioners' procedures call for limited public comment not to exceed thirty (30) minutes total. Time limits for each speaker was to be limited to a maximum of 3 minutes unless additional time is yielded to a speaker but in no event more than 6 minutes.

39. The Commissioners, at the public hearing for the Map Amendment, did not honor the thirty (30) minutes reserved for public comment and instead cut off all speakers at approximately twenty-one (21) minutes.

40. Ultimately, the Commissioners voted unanimously in favor of approving the Application to rezone the Property from Residential Agricultural to Highway Commercial.

EFFECTS OF THE TEXT AND MAP AMENDMENT

41. The foregoing paragraphs are realleged as if fully stated herein.

42. Prior to the approval of the Text Amendment, the County's Permitted Use Table in the UDO only allowed Electronic Gaming Operation in the Highway Commercial district after receiving a Special Use Permit. Further, the Permitted Use Table did not contain a specific use listed as State Licensed Uses.

43. Since adoption of the Text Amendment, Electronic Gaming Operations and State Licensed Uses are now allowed by right in the Highway Commercial district.

44. The result of the Text Amendment is to "allow the use and operation of business licensed by the State" by right in the Highway Commercial district. (UDO, Section 41.04(h)).

45. Prior to the approval of the Map Amendment, the Property was zoned Residential Agricultural.

46. According to the UDO a Residential Agricultural "district is established in areas that are characterized by large lots, clustered subdivisions, agricultural uses and open lands" and "[t]hese areas may include prime farmland and unique topographical or environmental restrictions that are remote from existing developed areas" and there is "limited public water and no public sewer utilities" available.

(UDO, Section 41.01(a)(1)).

47. The Residential Agricultural “district carries forth the principles associated with the preservation and conservation of rural lands throughout the county where low density is desirable in order to protect environmentally sensitive areas, agricultural areas, and viewsheds.” (UDO, Section 41.01(a)(2)).

48. The approval of the Map Amendment has the effect of rezoning the Property to Highway Commercial.

49. According to the UDO a Highway Commercial “district provides areas for more intensive regional highway-oriented business, office, service and civic uses” and “[t]he district regulations are designed to protect and encourage the transitional character of the districts by permitting uses and building forms that are compatible with the surrounding area.” (UDO, Section 41.01(g)(2)).

50. On May 17, 2021, the County adopted the Rockingham Vision Plan 2040 (the “Plan”) with amendments adopted March 21, 2022. The stated purpose of the Plan was to cast a community-led vision to effectively steward County resources and establish targeted growth areas to promote the development of new industry, business and housing all the while ensuring the County maintains its unique character. (Plan, Section 1.1). Along with the Plan, a Future Land Use map (the “Map”) was adopted. This Map depicts generalized land use patterns and is to be used as a guide by the Commissioners when making land use decisions.

51. A straight rezoning, without a concept plan and conditions as part of the Application, cannot ensure any of the policies and goals stated in the Plan will be carried out. Without seeing a concept plan and knowing the intended use of the Property, all subsequent approvals for uses by right in the Highway Commercial district are in the hands of the Community Development Director without input or engagement from the public.

STANDING

52. The foregoing paragraphs are realleged as if fully stated herein.

53. The Camp Carefree Property is located directly south of and immediately adjacent to the Property at issue.

54. Since 1986, during the summer months, Camp Carefree has provided a free, one-week overnight camping experience for kids as young as six (6) with chronic illnesses, well siblings of ill children, and a week for children with a sick parent.

55. Camp Carefree has accommodations for 120 campers, counselors, and medical personnel, and offers the recreational and craft activities of a traditional camping program with the inclusion of medical volunteers from UNC Hospitals,

Moses Cone Health System, Wake Forest University Baptist Medical Center, and other area health facilities to oversee the proper administration of medications and treatments that many of the campers require.

56. Many children with serious health problems live a protected life and spend a good deal of their young lives in hospitals and doctor's offices and Camp Carefree provides them with needed freedom to play, learn, and have fun with others who encounter similar difficulties.

57. Outside of the summer months, when the Camp Carefree Property is not being used for camp activities, Camp Carefree rents out its facilities to churches, businesses, and community and family groups to offset the costs of operating the summer camp.

58. Camp Carefree, through its managing board member, Rhonda Rodenbough, who resides on Camp Carefree Property, offered testimony at the Commissioners' hearing, via affidavit, related to the negative effect the potential uses allowed in the Highway Commercial district would have on the use of Camp Carefree Property as a summer camp. Such negative effects included detrimental impact to the physical and mental wellbeing of its campers related to loud noise, light trespass and over stimulation.

59. As the managing board member, Rodenbough offered additional testimony as to her knowledge of the value of the Camp Carefree Property and the negative impact the Map Amendment would have on its value. Such impact was supported by a real estate appraiser's report.

60. The Micris Property is located less than 650 feet to the east of the Property at issue.

61. The Micris Property is currently occupied by Kalo Food, LLC which is owned and managed by Michael J. Cusato, Jr. who also is the managing member of Micris, LLC. Kalo Food is a bakery specializing in gluten free foods for delivery to its consumers throughout Maryland, Virginia and North Carolina.

62. Micris, through Cusato, offered testimony at the Commissioners' hearing, via affidavit, related to the negative effect the potential uses allowed in the Highway Commercial district would have on the use of its property by Kalo Food. Such negative effects included increased traffic and added exposure to accidents for Kalo Food's trucks and drivers.

63. As the managing member of Micris, Cusato offered additional testimony as to his knowledge of the value of the Micris Property and the negative impact the Map Amendment would have on its value.

64. The Leebrick Property is located approximately 300 feet south of the

Property at issue.

65. The Leebricks operate Still Small Farms, LLC as a small farm on their property. The Leebricks offered testimony at the Commissioners' hearing, via affidavits, related to the negative effect the potential uses allowed in the Highway Commercial district would have on the use of their property, including the operation of their farm. Such negative effects included detrimental impact to the farm operations resulting from water pollution and contamination of private wells and springs located on the Leebrick Property.

66. The Leebricks also operate a homeschool, Lignum Vitae Academy, for three of their four children who are of traditional school age. The Leebricks offered testimony at the Commissioners' hearing, via affidavits, related to the negative effect the potential uses allowed in the Highway Commercial district would have on their ability to operate the school. Such negative effects included noise and light trespass.

67. The Leebricks offered additional testimony as to their knowledge of the value of their property and the negative impact the Map Amendment would have on its value. Such impact was supported by a real estate appraiser's report.

68. The Dohm Property is located directly north of and immediately adjacent to the Property at issue.

69. The Dohms have lived in their home since 2005 and offered testimony at the Commissioners' hearing, via affidavit, related to the negative effect the potential uses allowed in the Highway Commercial district would have on the use and enjoyment of their property for residential purposes. Such negative effects included detrimental impact related to visual intrusiveness, and light and noise trespass.

70. The Dohms offered additional testimony as to their knowledge of the value of their property and the negative impact the Map Amendment would have on its value. Such impact was supported by a real estate appraiser's report.

71. The Forbes Property is located directly north and within 350 feet of the Property at issue.

72. The Forbes have lived in their home since 2019 and offered testimony at the Commissioners' hearing, via affidavits, related to the negative effect the potential uses allowed in the Highway Commercial district would have on the use and enjoyment of their property for residential purposes. Such negative effects included detrimental impact related to visual intrusiveness, and light and noise trespass.

73. The Forbes offered additional testimony as to their knowledge of the value of their property and the negative impact the Map Amendment would have on its value. Such impact was supported by a real estate appraiser's report.

74. The Anderson Property is located directly north and immediately adjacent to the Property at issue.

75. Anderson has held title the Anderson Property since the passing of her mother in 2004. However, the Anderson Property has been in Anderson's family since 1986.

76. Anderson offered testimony at the Commissioners' hearing, via affidavit, related to the negative effect the potential uses allowed in the Highway Commercial district would have on the use and enjoyment of her property for residential purposes. Such negative effects included detrimental impact related to increased traffic and loss of privacy along with visual intrusiveness, and light and noise trespass.

77. Anderson offered additional testimony as to her knowledge of the value of her property and the negative impact the Map Amendment would have on its value. Such impact was supported by a real estate appraiser's report.

78. The Scott Property is located directly north and immediately adjacent to the adjacent to the Property at issue.

79. Scott has lived in the home since 2019 and offered testimony at the Commissioners' hearing, via affidavit, related to the negative effect the potential uses allowed in the Highway Commercial district would have on the use and enjoyment of their property for residential purposes. Such negative effects included detrimental impacts to the safety of his children and loss of privacy along with other impacts related to visual intrusiveness, and light and noise trespass.

80. Scott offered additional testimony as to his knowledge of the value of his property and the negative impact the Map Amendment would have on its value. Such impact was supported by a real estate appraiser's report.

81. The Meier Property is located southwest of the Property at issue.

82. Meier closed on her home on July 11, 2023 and offered testimony at the Commissioners' hearing, via affidavit, related to the negative effect the potential uses allowed in the Highway Commercial district would have on the use and enjoyment of their property for residential purposes. Such negative effects included loss of privacy, increased traffic, and increased dangerous conditions, along with other impacts related to visual intrusiveness, and light and noise trespass.

83. Having lived in a place like New York, Meier moved to Stokesdale, and chose her particular piece of property, because she wanted a small farm in a rural setting without big business, lights, noise, and excess traffic.

84. Meier offered additional testimony as to her knowledge of the value of

his property and the negative impact the Map Amendment would have on its value. Such impact was supported by a real estate appraiser's report.

85. All Plaintiffs, through counsel, submitted the above-referenced affidavits expressing their concerns to the Commissioners at the August 21, 2023 meeting. Along with their affidavits, Plaintiffs submitted the reports of two experts addressing lack of compliance with the Plan and adverse impacts to the value of their property. A copy of the information submitted to the Commissioners at their August 21, 2023 meeting is attached hereto as **Exhibit C**.

86. Additionally, Plaintiff, Brandon Leebrick, had signed up as one of the first 10 community members to speak in opposition to the Application but was denied any opportunity to speak directly to the Commissioners.

87. Collectively, Plaintiffs, as the owners of the properties that surround, abut, or are in close proximity to the Property, will suffer imminent and irreparable harm, including an adverse impact on the fair market value of their property, caused by the approval of the Map Amendment due to:

- a. Many of the higher intensity uses that are allowed by right in the Highway Commercial district lack compatibility with the current surrounding uses;
- b. The potential for water pollution from large scale development contaminating private wells and natural springs in the area and, in particular, Hogan's Creek and the lake on Camp Carefree Property;
- c. Increased traffic and safety issues, at or near the entrance to the Property, related to the significant number of large-scale developments allowed by right in the Highway Commercial district;
- d. The potential for increased criminal activity including trespassers from large scale developments allowed in the Highway Commercial district; and
- e. Increased noise, odor, glare, light trespass, litter, parking and security concerns from large scale development allowed in the Highway Commercial district.

88. If the Text Amendment and Map Amendment are upheld it will adversely affect Plaintiffs' use and enjoyment of their properties and will thereby adversely affect their property values. Among other reasons, Plaintiffs' properties will be adversely affected in the following ways:

- a. Decreased property values for the surrounding or abutting residential, commercial and agricultural properties due to proximity

to the significant number of increased commercial developments allowed by right in the Highway Commercial district;

- b. Increased noise, odor, glare, light trespass, litter, parking and security concerns from the numerous large-scale developments allowed by right in the Highway Commercial district;
- c. Dramatically affect the peace and quiet of the surrounding properties, but most notably of Camp Carefree and the campers who suffer from neurological disorders that are significantly affected by loud noises, light, and over stimulation;
- d. Environmental impacts to the lake at Camp Carefree, the streams on the Property like Hogan's Creek, Plaintiffs' wells/drinking water, and the local watershed; and
- e. Environmental impacts from the addition of acres of paved impervious surfaces creating drainage and erosion issues where there used to be healthy ecosystems and farmland.

89. Each of the Plaintiffs has a specific personal and legal interest in the subject matter affected by the Text Amendment and Map Amendment and are directly and adversely affected thereby.

90. If the Text Amendment and Map Amendment are upheld, future uses of the Property will be an invasion of Plaintiffs' legally protected interest that is concrete, particularized, and actual and imminent.

91. Said injuries are fairly traceable to the Text Amendment and the Map Amendment and it is likely, as opposed to merely speculative, that these injuries will be redressed by a decision in this case that is favorable to Plaintiffs.

FIRST CLAIM FOR RELIEF

Violation of the UDO – Inadequate Planning Board Review of the Text Amendment

92. The foregoing paragraphs are realleged as if fully stated herein.

93. On June 12, 2023 the Planning Board reviewed the Text Amendment, which would allow all uses licensed by the State of North Carolina and State Entities to operate **by right** in the Highway Commercial districts of Rockingham County.

94. The Text Amendment would also remove the requirement that electronic gaming operations be permitted as a special use in the Highway Commercial districts of Rockingham County and would allow such use **by right**.

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SECOND CLAIM FOR RELIEF
Violation of N.C.G.S. § 160D-601

105. The foregoing paragraphs are realleged as if fully stated herein.

106. To adopt an amendment to the UDO, N.C.G.S. § 160D-601(c) requires the governing body to adopt an ordinance codifying such amendment.

107. The Commissioners did not properly enact the Text Amendment nor the Map Amendment after their vote because the Chairman did not sign an ordinance adopting each amendment to the UDO nor did the Clerk attest to the signing of any such ordinance by the Chairman.

108. The failure of the Commissioners to comply with N.C.G.S. § 160D-601 means that their actions in passing the Text Amendment and Map Amendment were invalid and therefore both must be set aside.

THIRD CLAIM FOR RELIEF
Violation of N.C.G.S. § 153A-48

109. The foregoing paragraphs are realleged as if fully stated herein.

110. Per N.C.G.S. § 153A-48 the County's clerk "shall maintain an ordinance book, separate from the minute book of the board of commissioners" and the "ordinance book shall be indexed and shall be available for public inspection in the office of the clerk" and "each county ordinance shall be filed and indexed in the ordinance book."

111. Upon information and belief, the County did not properly file and index any new ordinances that were passed to enact the Text Amendment and Map Amendment.

112. Upon information and belief, the County's failure to comply with N.C.G.S. § 153A-48 means that their actions in passing both amendments were invalid and therefore both amendments must be set aside.

FOURTH CLAIM FOR RELIEF
Violation of the UDO – Inadequate Application

113. The foregoing paragraphs are realleged as if fully stated herein.

114. When applying for a zoning map amendment to the UDO, all applicants must complete an application which, at a minimum, contains a "detailed statement of all other circumstances, factors and reasons including a statement as to the reasonableness of the proposed rezoning, which the applicant offers in support of the proposed amendment". (UDO, Section 33.02(c)(2)c).

115. The Application for the Map Amendment did not include a detailed statement of all other circumstances, factors and reasons including a statement as to the reasonableness of the proposed rezoning.

116. NC Development did not offer any factors or reasons in support of the proposed Map Amendment in the Application.

117. Pursuant to the UDO, an application is only considered complete “when it conforms to all requirements”. (UDO, Section 31.04(a)).

118. Without the required detailed statement of reasonableness by NC Development, the Application was incomplete and not properly before the Commissioners. *See generally, Albemarle v. Nance*, 266 N.C. App. 353, 361, 831 S.E.2d 605, 611 (2019) (before exercising its power, the governing body “must follow the requirements of the . . . ordinances and procedures it established.”); *Kenansville v. Summerlin*, 70 N.C. App. 601, 602, 320 S.E.2d 428, 430 (1984) (“Having exercised this authority by enacting a zoning ordinance, the Town must follow the procedures it has set therein.”).

119. Without a complete application, which must include a detailed statement by the applicant as to the reasonableness of the of the proposed rezoning, the Commissioners were without authority to act, and any action taken by the Commissioners must be set aside. *See, Humble Oil & Refining Co. v. Bd. of Aldermen*, 284 N.C. 458, 467, 202 S.E.2d 129, 136 (1974) (“The failure of the Aldermen to comply with the terms of the ordinance requires that its [action on the] application . . . be set aside.”); *George v. Town of Edenton*, 294 N.C. 679, 687, 242 S.E.2d 877, 882 (1978) (where the Town Council acted in violation of required procedures, the purported rezoning was set aside).

120. The Commissioners did not follow the requirements of the UDO, therefore their actions in rezoning the Property from Residential Agricultural to Highway Commercial were invalid and the Map Amendment must be set aside.

FIFTH CLAIM FOR RELIEF

Violation of the UDO – Inadequate Review of the Application by the Commissioners

121. The foregoing paragraphs are realleged as if fully stated herein.

122. The UDO states that in reviewing an application, in this case for the Map Amendment, the Planning Board shall review the amendment application, staff report, and additional information at a public meeting and “consider whether the proposed amendment is consistent with the land use plan” and “determine if an application is reasonable and in the public interest and otherwise advances or maintains the public health, safety and general welfare.” (UDO, Section 33.02(g)).

123. The Planning Board reviewed the Application at its regularly scheduled July 10, 2023, meeting.

124. The Planning Board's review of the Application, after consideration of the staff presentation, information presented by the Applicant's agent and public comment, resulted in a 5-2 vote to recommend denial of the Application to the Commissioners.

125. The UDO states that the Commissioners "shall receive a report from the Community Development Director . . . along with the written recommendations of the Community Development Director **and planning board**" prior to the Commissioners' public hearing. (UDO, Section 33.02(g)(3)b). (emphasis added).

126. The agenda packet for the Commissioners did not contain information from the Planning Board and, at the August 21, 2023 meeting, the Commissioners did not review any written recommendation nor meeting minutes from the Planning Board regarding the Map Amendment.

127. The requirement that the Planning Board shall provide written recommendations to the Commissioners cannot be dispensed with as inconvenient. The UDO's use of the word "shall" is mandatory in nature and implies an obligation or duty to comply. (UDO, Section 10.10(a)(1)).

128. The Commissioners did not follow the requirements of the UDO, therefore their actions in rezoning the Property from Residential Agricultural to Highway Commercial were invalid and the Map Amendment must be set aside.

SIXTH CLAIM FOR RELIEF

Violation of the UDO – Inadequate Notice and Opportunity to be Heard

129. The foregoing paragraphs are realleged as if fully stated herein.

130. As described in greater detail hereinabove, the County violated its own UDO and Plaintiffs' procedural rights in various ways, including the following:

- a. The Zoning Notice for the Commissioners' hearing on the Map Amendment stated that a change in zoning request had been made for only "a portion" of the Property when in reality it was for the entire Property.
- b. At the hearing on the Map Amendment the Commissioners did not honor the thirty (30) minutes reserved for public comment and instead cut off all speakers at approximately twenty-one (21) minutes.

131. The failure of the County to provide Plaintiffs and the public with

adequate notice and opportunity to be heard, as set forth above, was in violation of the UDO and Plaintiffs' procedural rights and, as a result, Plaintiffs are entitled to a declaratory judgment finding that the Commissioners' action in rezoning the Property from Residential Agricultural to Highway Commercial was invalid and the Map Amendment must be set aside.

SEVENTH CLAIM FOR RELIEF
Violation of the UDO – Procedural Violation

132. The foregoing paragraphs are realleged as if fully stated herein.

133. The UDO requires, at a minimum, that the Commissioners shall consider specific factors as part of the approval criteria for map amendments. Some of the criteria include: "a) the size of the tract in question; b) whether the proposal conforms with and further the goals of any adopted comprehensive plan and the goals and objectives of the Ordinance; . . . ; and d) the zoning districts and existing land uses of the surrounding properties, including a determination of whether the rezoning is compatible with the adjacent neighborhood, especially the residential neighborhood stability and character." (UDO, Section 33.02(h)(1)).

134. The Property has approximately 1,000 feet of frontage on US Highway 220 and the County's twenty (20) year Comprehensive Plan discusses the visions for the US Highway 220 corridor which include using a planned unit development zoning district to promote a mix of housing and commercial uses and encouraging a mix of commercial and mixed uses along the US Highway 220 corridor.

135. The Application for rezoning from Residential Agricultural to Highway Commercial is not consistent with the Comprehensive Plan adopted by the County nor reasonable in light of existing land use of the surrounding properties.

136. Per the Comprehensive Plan, the portion of the Property that is located in the O-2 transect, that being those areas which are undeveloped with prime agricultural and forestry lands and low-density residential land uses, are intended to remain relatively rural for the next 15-25 years.

137. The reasoning for keeping the O-2 transect rural, as stated in the Plan, is to discourage sprawl, while strategically encouraging new growth near existing infrastructure and developed areas.

138. The parcels surrounding the Property are residential, rural, and used for agricultural, outdoor recreation, and outdoor education purposes.

139. The Map Amendment is not compatible with the parcels surrounding the Property and especially does not support residential neighborhood stability and character.

140. In approving the Map Amendment, it is clear the Commissioners did not consider these factors, because if they had they would have found that the Map Amendment was incompatible with the County's Comprehensive Plan and incompatible with the surrounding properties and the character of the neighborhood.

141. Because the County failed to follow the requirements of the UDO and pertinent zoning statutes in approving the Map Amendment, Plaintiffs are entitled to a declaratory judgment that the Map Amendment is void and must be set aside.

EIGHTH CLAIM FOR RELIEF

Failure to Consider all Permissible Uses Allowed by the Highway Commercial Zoning District

142. The foregoing paragraphs are realleged as if fully stated herein.

143. Prior to considering the Map Amendment, the Commissioners, by unanimous vote, approved the Text Amendment to the UDO which would allow all uses licensed by the State of North Carolina and State Entities to operate by right in the Highway Commercial districts of Rockingham County.

144. The Text Amendment also removed the requirement that electronic gaming operations be permitted as a special use in the Highway Commercial districts of Rockingham County and allowed such use by right.

145. Upon information and belief, the Text Amendment to the UDO paved the way to allow the establishment and operation of an additional 900+ businesses and occupations which are issued licenses by the State of North Carolina, including hazardous waste generators, incineration facilities, industrial landfills, liquid animal waste operations and mining, among numerous others. (<https://www.ncbold.com>).

146. After review of the Application, in their statement of reasonableness, the Commissioners found that the Map Amendment was reasonable because it "will allow all uses in the Highway Commercial (HC) district, similar to those uses among adjacent and surrounding tracts."

147. However, the vast majority of "surrounding tracts" are used for residential, agricultural, outdoor recreational, and outdoor educational purposes, which are the antithesis of several uses now permitted by right in a Highway Commercial district as a result of the Text Amendment.

148. The Commissioners' findings do not say that they actually considered all Highway Commercial uses for the Property—which include, but are not limited to hazardous waste generator, incineration facility, industrial landfill, liquid animal waste operation, mining, wastewater sewer collection, etc.—when they considered the Map Amendment.

149. Upon information and belief, the Commissioners approved the Map Amendment without determining that the Property is suitable for all uses permitted in the Highway Commercial zoning district.

150. Therefore, the approval of the Map Amendment is void and of no effect under the doctrine established in *Hall v. City of Durham*, 323 N.C. 293, 372 S.E.2d 564 (1988), which requires a governing board to determine that property subject to a rezoning request from one general use district to another be suitable for all uses permitted in the new district. Failure to do so will invalidate any approval.

151. The Commissioners did not follow the dictates of North Carolina law nor the requirements of the UDO, therefore their actions in rezoning the Property from Residential Agricultural to Highway Commercial were invalid and the Map Amendment must be set aside.

NINTH CLAIM FOR RELIEF

The County's Action Amounts to Illegal Contract Zoning

152. The foregoing paragraphs are realleged as if fully stated herein.

153. NC Development submitted the Application for the zoning map amendment to the Planning Board on June 9, 2023.

154. On that date, and still on the present date, NC Development did not own the Property.

155. The Property Owners own the Property.

156. NC Development is a limited liability company that was incorporated in the State of Delaware on or about August 26, 2021.

157. NC Development was authorized to do business in North Carolina on or about June 13, 2023.

158. Upon information and belief, prior to June 2023, NC Development had connections with North Carolina and began attempting to influence North Carolina politics and policies.

159. On or about April 10, 2023 a Lobbyist Registration Statement was filed so that Zachary Dean Almond could lobby on behalf of Principal, NC Development, on the subject of "[a]musements, games, athletics and sports".

160. On or about June 1, 2023 two separate Lobbyist Registration Statements were filed so that Susan Fetzer and Tom H. Fetzer could lobby on behalf of Principal, NC Development, on the subject of "[a]musements, games, athletics and sports".

161. On or about July 6, 2023 a Lobbyist Registration Statement was filed so that La'Tanta McCrimmon could lobby on behalf of Principal, NC Development, on the subject of "[a]musements, games, athletics and sports".

162. On or about July 17, 2023 three separate Principal Authorization and Lobbyist Authorization Statements were filed so that Zachary Dean Almond, Susan Fetzner, and Tom H. Fetzner could lobby on behalf of NC Development.

163. On or about July 24, 2023 another Principal Authorization and Lobbyist Authorization Statement was filed so that La'Tanta McCrimmon could lobby on behalf of NC Development.

164. According to the aforementioned Lobbyist Registration Statements and Principal Authorization forms, the president of NC Development is Joseph Weinberg.

165. Mr. Weinberg is also the CEO of the Cordish Gaming Group, which as part of the Cordish Companies, has some of the largest commercial gaming, retail, and entertainment destinations in the United States.

166. Upon information and belief, as CEO, Mr. Weinberg has overseen the acquisition, financing, design, development, and management of high-profile hotel, gaming, retail, and entertainment projects worldwide.

167. On or about June 19, 2023 the Commissioners, by unanimous vote, approved the Text Amendment to the UDO which would allow all uses licensed by the State of North Carolina and State Entities to operate by right in the Highway Commercial districts of Rockingham County.

168. The Text Amendment also removed the requirement that electronic gaming operations be permitted as a special use in the Highway Commercial districts of Rockingham County and allowed such use by right.

169. Upon information and belief, the Text Amendment to the UDO paved the way to ultimately allow a Casino to be built in Rockingham County once the draft legislation attached hereto as **Exhibit D** is passed.

170. On or about July 17, 2023, WRAL reported that "[a] holding company connected to a casino developer is seeking to rezone nearly 200 acres in Rockingham County, home to one of the state's most powerful legislators, as lawmakers quietly weigh whether to authorize multiple new casinos across the state."

171. On or about July 18, 2023, Rockingham Now reported that "N.C. Development Holdings Co., which has ties to Baltimore-based The Cordish Companies, a major national developer of branded casinos and entertainment districts, is seeking highway/commercial rezoning of nearly 200 acres of property currently zoned as residential/agricultural."

172. In the same article Rockingham Now reported that “Senate leader Phil Berger, ... [Rockingham] county’s representative in the General Assembly, is in discussions with other state GOP leaders about ‘options for expanding gaming in North Carolina,’ said Lauren Horsch, Deputy Chief of Staff for Communications in Berger’s Raleigh office.”

173. On or about September 15, 2023, WRAL reported that in March of 2023 “a Cordish casino in Maryland hosted a gambling symposium that drew North Carolina lawmakers and other officials, . . . [but] Rockingham County commissioners and other county leaders declined, through county spokeswoman Rebekah Pegram, to say whether they attended.”

174. However, at a recent Rockingham County Commissioners Meeting on October 2, 2023, Commissioner Berger admitted that he and other Rockingham County Commissioners attended the gambling symposium hosted by Cordish in Maryland in March 2023.

175. After their review of the Application for rezoning in their statement of findings the Commissioners found that the Rezoning was reasonable because it “will allow all uses in the Highway Commercial (HC) district, similar to those uses among adjacent and surrounding tracts.”

176. However, the “surrounding tracts” are used for residential, agricultural, outdoor recreational, and outdoor educational purposes, which are the antithesis of several uses now permitted by right in a Highway Commercial district as a result of the Text Amendment.

177. The Commissioners’ findings do not say that they actually considered all Highway Commercial uses for the Property—which include, but are not limited to hazardous waste generator, incineration facility, industrial landfill, liquid animal waste operation, mining, wastewater sewer collection, etc.—when they considered the Application for the Map Amendment.

178. At the August 21, 2023, Commissioners’ hearing, NC Development’s attorney stated, without speaking directly to the type of the development proposed for the Property, the development would be transformational for Rockingham County, that the proximity to a highway would allow for the type of high quality mixed-use development NC Development specializes in and that some uses already allowed in the Highway Commercial district are similar to the uses the NC Development develops, including hotel, restaurants, retail and entertainment centers.

179. At the October 2, 2023 County Commissioner’s meeting, Commissioner Berger explained that the County was “made aware of” an initiative for increased economic development in tourism through the development of an entertainment district that would also include a casino.

180. Commissioner Berger went on to explain that the County “was briefed” by the State after initial media reports and that the County was told a casino would bring a minimum of half a billion dollars to the County as well as a minimum of 1,750 jobs.

181. Upon information and belief, the potential for a Casino was the single use that the Commissioners were considering when they requested County staff to draft an amendment to the UDO modifying what is allowed by right in the Highway Commercial district.

182. Upon information and belief, the Commissioners approved the Map Amendment without determining that the Property is suitable for all uses permitted in the Highway Commercial zoning district.

183. Upon information and belief, the potential for a Casino was the single use the Commissioners considered when they considered the Map Amendment.

184. Therefore, the Map Amendment is void and of no effect under the doctrine established in *Allred v. City of Raleigh*, 277 N.C. 530, 178 S.E.2d 432 (1971) and more recently articulated in *Hall v. City of Durham*, 323 N.C. 293, 372 S.E.2d 564 (1988), which is sometimes referred to as illegal contract zoning.

185. Upon information and belief, the Commissioners engaged in illegal contract zoning when they approved the Map Amendment; therefore, their action in rezoning the Property from Residential Agricultural to Highway Commercial is invalid and the Map Amendment must be set aside.

TENTH CLAIM FOR RELIEF

The County’s Actions were Arbitrary and Capricious

186. The foregoing paragraphs are realleged as if fully stated herein.

187. By approving both the Text Amendment and the Map Amendment, the County acted in an arbitrary and capricious manner, patently in bad faith, and in a manner lacking in fair and careful consideration and impartial, reasoned decision making, as follows:

- a. The County approved the Map Amendment without following its own procedures for a fair and impartial legislative hearing;
- b. The County approved the Text Amendment without following the criteria set out in its own UDO;
- c. The County approved the Map Amendment without considering nor following the criteria of the UDO;

- d. The Map Amendment, when considering all uses permitted in the Highway Commercial district, is entirely incompatible with the character of the surrounding area, Plaintiffs' properties, the adjacent agricultural uses, and especially the rural residential neighborhood stability and character of Plaintiffs' properties; and
- e. The Map Amendment with all of the additional uses permitted in the Highway Commercial district lacks connectivity with the rural, agricultural and residential character of that area of the County.

188. For the reasons set forth above, the adoption of both the Text Amendment and the Map Amendment were arbitrary and capricious, patently in bad faith, and in a manner lacking in fair and careful consideration and impartial, reasoned decision making, and as a result are invalid, null, and void ab initio.

WHEREFORE, Plaintiffs pray the Court as follows:

- 1. That the Court declare that:
 - a. The Commissioners did not follow the requirements of the UDO when they passed the Text Amendment and Map Amendment;
 - b. The Commissioners did not follow the statutory requirements in how they passed and recorded the Text Amendment and Map Amendment;
 - c. The Application for the Map Amendment was incomplete and not properly before the Commissioners on August 21, 2023;
 - d. The Zoning Notice was improper and inadequate to comply with North Carolina law and the requirement of the UDO;
 - e. The Commissioners violated the due process rights of its citizens, including Plaintiffs, when they failed to follow their own procedural processes for public comment during legislative hearings;
 - f. The Commissioners did not follow the requirements of the UDO when rezoning the Property from Residential Agricultural to Highway Commercial by not considering the Comprehensive Plan nor considering all uses allowed in the Highway Commercial district;
 - g. The actions of the Commissioners were arbitrary and capricious; and
 - h. The Commissioners engaged in illegal contract zoning when they rezoned the Property from Residential Agricultural to Highway Commercial.

2. That the Court declare that based on the invalidity of the Commissioners' actions, the Text Amendment must be set aside;

3. That the Court declare that based on the invalidity of the Commissioners' actions, the Map Amendment must be set aside;

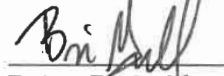
4. That any trial of this matter be a jury trial;

5. That the costs of this action, including reasonable attorney's fees pursuant to N.C. Gen. Stat. § 6-21.7, be taxed against Defendant, Rockingham County; and

6. That Plaintiffs have and recover such other and further relief as the Court deems just and proper.

This the 10th day of October 2023.

VAN WINKLE, BUCK, WALL,
STARNES & DAVIS, P.A.



Brian D. Gulden

NC Bar #29243

P.O. Box 7376

Asheville, NC 28802-7376

Telephone: 828-258-2991

Attorney for Plaintiffs

STATE OF NORTH CAROLINA

COUNTY OF ROCKINGHAM

CAMP CAREFREE, INC., MICRIS, LLC, BRANDON W. LEEBRICK AND AMY E. LEEBRICK, DONALD DOHM AND CHRISTINE DOHM, DAVID FORBES AND WENDY FORBES, MARY LEA ANDERSON, JEFFREY DARREN SCOTT, and JILL N. MEIER

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J. SANDERS, ELLEN J. WHITESELL, LINDA J. CARMICHAEL, SUSAN J. MURRAY f/k/a SUSAN J. JONES, and NC DEVELOPMENT HOLDINGS, LLC

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

VERIFICATION

Rhonda B. Rodenbough, being first duly sworn, deposes and says:

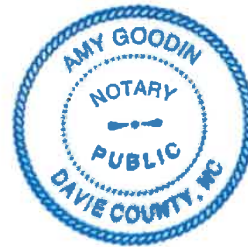
1. That I am the Managing Board Member of Camp Carefree, Inc., a North Carolina non-profit corporation.

2. That I have received a copy of and have read the Complaint and know the contents thereof; that the same are true of my knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things I verily believe them to be true.

Camp Carefree, Inc.

By: Rhonda B Rodenbough

Rhonda B. Rodenbough, Managing Board Member



SWORN TO AND SUBSCRIBED before me this 13th day of October 2023.

[Notary Stamp/Seal]

Amy Goodin
Notary Public

Print Name: Amy Goodin

My Commission Expires: March 14, 2028

STATE OF NORTH CAROLINA

COUNTY OF ROCKINGHAM

CAMP CAREFREE, INC., MICRIS, LLC,
BRANDON W. LEEBRICK AND AMY E.
LEEBRICK, DONALD DOHM AND
CHRISTINE DOHM, DAVID FORBES
AND WENDY FORBES, MARY LEA
ANDERSON, JEFFREY DARREN
SCOTT, and JILL N. MEIER

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS, LLC

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

VERIFICATION

Donald Dohm, being first duly sworn, depose and say:

1. That he has received a copy of and has read the Complaint and knows the contents thereof; that the same are true of his knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things he verily believes them to be true.


Donald Dohm

SWORN TO AND SUBSCRIBED before me this 13th day of October 2023.




Notary Public

Print Name: Angela P Tilley

My Commission Expires: 1-02-2027

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

STATE OF NORTH CAROLINA

COUNTY OF ROCKINGHAM

CAMP CAREFREE, INC., MICRIS,
LLC, BRANDON W. LEEBRICK AND
AMY E. LEEBRICK, DONALD DOHM
AND CHRISTINE DOHM, DAVID
FORBES AND WENDY FORBES,
MARY LEA ANDERSON, JEFFREY
DARREN SCOTT, and JILL N. MEIER

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS, LLC

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

VERIFICATION

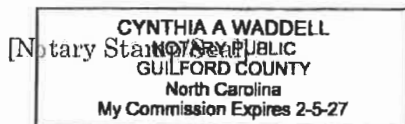
Brandon W. Leebrick and Amy Leebrick, being first duly sworn, depose and say:

1. That they have received a copy of and have read the Complaint and know the contents thereof; that the same are true of their knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things they verily believe them to be true.

Brandon W. Leebrick
Brandon W. Leebrick

Amy E. Leebrick
Amy E. Leebrick

SWORN TO AND SUBSCRIBED before me this 12th day of October, 2023.



Cynthia A. Waddell
Notary Public

Print Name: Cynthia A. Waddell

My Commission Expires: 2/5/27

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

CAMP CAREFREE, INC., MICRIS, LLC,
BRANDON W. LEEBRICK AND AMY E.
LEEBRICK, DONALD DOHM AND
CHRISTINE DOHM, DAVID FORBES
AND WENDY FORBES, MARY LEA
ANDERSON, JEFFREY DARREN
SCOTT, and JILL N. MEIER

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and NC
DEVELOPMENT HOLDINGS, LLC

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

VERIFICATION

Michael John Cusato, Jr., being first duly sworn, deposes and says:

1. That I am the Manager/Member of Micris, LLC, a North Carolina limited liability corporation.

2. That I have received a copy of and have read the Complaint and know the contents thereof; that the same are true of my knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things I verily believe them to be true.

Micris, LLC

By: Michael J. Cusato, Jr.
Michael John Cusato, Jr., Manager/Member

SWORN TO AND SUBSCRIBED before me this 12 day of October, 2023.

[Notary Stamp/Seal]

Shannon C. Robertson
Notary Public

Print Name: Shannon C. Robertson

My Commission Expires: 11/02/2024

STATE OF NORTH CAROLINA

COUNTY OF ROCKINGHAM

CAMP CAREFREE, INC., MICRIS,
LLC, BRANDON W. LEEBRICK AND
AMY E. LEEBRICK, DONALD DOHM
AND CHRISTINE DOHM, DAVID
FORBES AND WENDY FORBES,
MARY LEA ANDERSON, JEFFREY
DARREN SCOTT, and JILL N. MEIER

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS, LLC

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

VERIFICATION

Jill N. Meier, being first duly sworn, deposes and says:

1. That I have received a copy of and have read the Complaint and know the contents thereof; that the same are true of my knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things I verily believe them to be true.

Jill N. Meier
Jill N. Meier

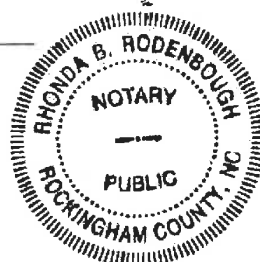
SWORN TO AND SUBSCRIBED before me this 15th day of October 2023.

[Notary Stamp/Seal]

Rhonda B. Rodenbaugh
Notary Public

Print Name: Rhonda B. Rodenbaugh

My Commission Expires: 7/3/2026



STATE OF NORTH CAROLINA

COUNTY OF ROCKINGHAM

CAMP CAREFREE, INC., MICRIS, LLC, BRANDON W. LEEBRICK AND AMY E. LEEBRICK, DONALD DOHM AND CHRISTINE DOHM, DAVID FORBES AND WENDY FORBES, MARY LEA ANDERSON, JEFFREY DARREN SCOTT, and JILL N. MEIER

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J. SANDERS, ELLEN J. WHITESELL, LINDA J. CARMICHAEL, SUSAN J. MURRAY f/k/a SUSAN J. JONES, and NC DEVELOPMENT HOLDINGS, LLC

Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

CASE NO. 23 CVS 2013

VERIFICATION

Mary Lea Anderson, being first duly sworn, deposes and says:

1. That I have received a copy of and have read the Complaint and know the contents thereof; that the same are true of my knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things I verily believe them to be true.

Mary L. Anderson

^{15th}
Rhonda B. Robertson

Rhonda B. Robertson

My Commission Expires: 7/3/2026

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

CAMP CAREFREE, INC., MICRIS, LLC,
BRANDON W. LEEBRICK AND AMY E.
LEEBRICK, DONALD DOHM AND
CHRISTINE DOHM, DAVID FORBES
AND WENDY FORBES, MARY LEA
ANDERSON, JEFFREY DARREN
SCOTT, and JILL N. MEIER

VERIFICATION

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS, LLC

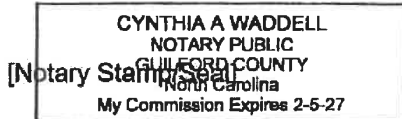
Defendant.

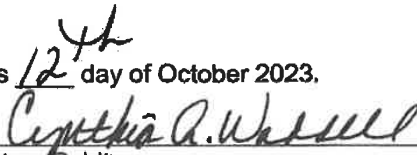
Jeffrey Darren Scott, being first duly sworn, deposes and says:

1. That I have received a copy of and have read the Complaint and know the contents thereof; that the same are true of my knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things I verily believe them to be true.


Jeffrey Darren Scott

SWORN TO AND SUBSCRIBED before me this 12th day of October 2023.




Notary Public

Print Name: Cynthia A. Waddell

My Commission Expires: 2/5/27

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

CAMP CAREFREE, INC., MICRIS,
LLC, BRANDON W. LEEBRICK AND
AMY E. LEEBRICK, DONALD DOHM
AND CHRISTINE DOHM, DAVID
FORBES AND WENDY FORBES,
MARY LEA ANDERSON, JEFFREY
DARREN SCOTT, and JILL N. MEIER

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS, LLC

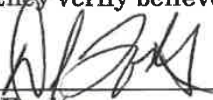
Defendant.

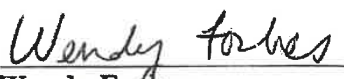
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

VERIFICATION

David Forbes and Wendy Forbes, being first duly sworn, depose and say:

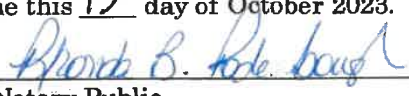
1. That they have received a copy of and have read the Complaint and know the contents thereof; that the same are true of their knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things they verily believe them to be true.


David Forbes


Wendy Forbes

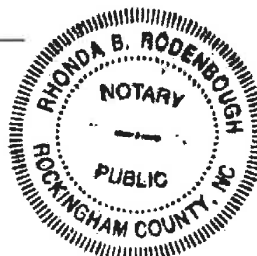
SWORN TO AND SUBSCRIBED before me this 15th day of October 2023.

[Notary Stamp/Seal]


Notary Public

Print Name: Rhonda B. Rodenbough

My Commission Expires: 7/3/2026



COUNTY OF ROCKINGHAM

SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

CAMP CAREFREE, INC., MICRIS, LLC,
BRANDON W. LEEBRICK AND AMY E.
LEEBRICK, DONALD DOHM AND
CHRISTINE DOHM, DAVID FORBES
AND WENDY FORBES, MARY LEA
ANDERSON, JEFFREY DARREN
SCOTT, and JILL N. MEIER

VERIFICATION

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL,
LINDA J. CARMICHAEL, SUSAN J.
MURRAY f/k/a SUSAN J. JONES, and
NC DEVELOPMENT HOLDINGS, LLC

Defendant.

Christine Dohm, being first duly sworn, depose and say:

1. That she has received a copy of and has read the Complaint and knows the contents thereof; that the same are true of her knowledge, except as to the matters and things therein stated to be upon information and belief, and that as to those matters and things she verily believes them to be true.

Christine Dohm

Christine Dohm



WORN TO AND SUBSCRIBED before me this 13th day of October 2023.

Kristy G. Stewart

Notary Public

Print Name: Kristy G. Stewart

My Commission Expires: March 13, 2027

NORTH CAROLINA
ROCKINGHAM COUNTY

FILED
JUN 15 11:17
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT, DIVISION
ROCKINGHAM CO. 23 CVS 2013

CAMP CAREFREE, INC., MICRIS)
LLC, BRANDON W. LEEBRICK and)
AMY E. LEEBRICK, DONALD DOHM)
and CHRISTINE DOHM, DAVID FORBES)
and WENDY FORBES, MARY LEA)
ANDERSON, JEFFREY DARREN SCOTT)
AND JILL N. MEIER)
Plaintiffs,)
vs.)
ROCKINGHAM COUNTY, JULIE J.)
SANDERS, ELLEN J. WHITESELL,)
LINDA J. CARMICHAEL, SUSAN J.)
MURRAY f/k/a SUSAN J. JONES, and)
NC DEVELOPMENT HOLDINGS, LLC.)
Defendants.)

BY _____

DEFENDANT ROCKINGHAM COUNTY'S
MOTION TO DISMISS
and
ANSWER TO COMPLAINT

Now Comes Rockingham County, through counsel, for the purpose of filing this Motion to Dismiss the Complaint for lack of standing pursuant to North Carolina Rule of Civil Procedure 12(b)(1) and for failure to state a claim against Rockingham County pursuant to North Carolina Rule of Civil Procedure 12(b)(6) and Answering the Complaint as follows.

MOTION TO DISMISS

Rockingham County moves to dismiss the Complaint pursuant to the North Carolina Rules of Civil Procedure Rule 12(b)(1) for lack of standing and failure to exhaust administrative remedies; and Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

ANSWER TO THE COMPLAINT

PRELIMINARY STATEMENT

The Plaintiffs bring their claims as a Declaratory Judgment pursuant to N.C.G.S. 160D-1401 rather than as an Appeal in the Nature of Certiorari pursuant to N.C.G.S. 160D-1402. The public hearing in this matter was legislative and the public comments made at the legislative hearing on August 21, 2023, were not made under oath and therefore are not "testimony" as that word is defined in quasi-judicial hearings. Consequently, there is no

record to forward to the Superior Court. This matter is an original civil action rather than an appeal of a decision-making body.

The Plaintiffs complain of two fully independent decisions of the Rockingham County Commissioners. The so-called Text Amendment and Map Amendment were separate matters proposed by separate parties and were considered and voted upon in separate meetings with separate public hearings. A decision for or against one of the Amendments does not validate or invalidate the other. The Amendments are not contingent on each other in any way.

The Defendant Rockingham County without waiving its Motion to Dismiss set forth above and hereby answer the Complaint of the Plaintiff as follows:

THE PARTIES

1. The allegations in this Paragraph do not require a response. To the extent that a response is required, it is **DENIED** that Camp Carefree, Inc. has standing to bring this litigation. It is further **DENIED** that Defendant Rockingham County is liable to Plaintiff Camp Carefree, Inc. in any way.
2. The allegations in this Paragraph do not require a response. To the extent that a response is required, it is **DENIED** that Micris, LLC has standing to bring this litigation. It is further **DENIED** that Defendant Rockingham County is liable to Plaintiff Micris, LLC in any way.
3. The allegations in this Paragraph do not require a response. To the extent that a response is required, it is **DENIED** that Brandon W. Leebrick and wife Amy E. Leebrick have standing to bring this litigation. It is further **DENIED** that Defendant Rockingham County is liable to Plaintiffs Brandon W. Leebrick and wife Amy E. Leebrick in any way.
4. The allegations in this Paragraph do not require a response. To the extent that a response is required, it is **DENIED** that Donald Dohm and wife Christine Dohm have standing to bring this litigation. It is further **DENIED** that Defendant Rockingham County is liable to Plaintiffs Donald Dohm and wife Christine Dohm in any way.
5. The allegations in this Paragraph do not require a response. To the extent that a response is required, it is **DENIED** that David Forbes and wife Wendy Forbes have standing to bring this litigation. It is further **DENIED** that Defendant Rockingham County is liable to Plaintiffs David Forbes and wife Wendy Forbes in any way.
6. The allegations in this Paragraph do not require a response. To the extent that a response is required, it is **DENIED** that Mary Lea Anderson has standing to bring this litigation. It is further **DENIED** that Defendant Rockingham County is liable to Plaintiff Mary Lea Anderson in any way.
7. The allegations in this Paragraph do not require a response. To the extent that a response is required, it is **DENIED** that Jeffrey Darren Scott has standing to bring this litigation. It is further **DENIED** that Defendant Rockingham County is liable to Plaintiff Jeffrey Darren Scott in any way.
8. The allegations in this Paragraph do not require a response. To the extent that a response is required, it is **DENIED** that Jill N. Meier has standing to bring this

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

CAMP CAREFREE, INC, MICRIS, LLC,
BRANDON W. LEEBRICK AND AMY E.
LEEBRICK, DONALD DOHM AND
CHRISTINE DOHM, DAVID FORBES
AND WENDY FORBES, MARY LEA
ANDERSON, JEFFREY DARREN SCOTT,
and JILL N. MEIER,

Plaintiffs,

vs.

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL, LINDA
J. CARMICHAEL, SUSAN J. MURRAY
f/k/a SUSAN J. JONES, and NC
DEVELOPMENT HOLDINGS, LLC,

Defendants.

**MOTION TO DISMISS COMPLAINT IN
LIEU OF ANSWER**

Individual Defendants Julie J. Sanders, Ellen J. Whitesell, Linda J. Carmichael, and Susan J. Murray (collectively "Property Owners") and Defendant NC Development Holdings, LLC ("Developer" and, collectively with Property Owners, "Moving Defendants"), by and through counsel, pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure, and in lieu of answering, move the Court for an order dismissing the Complaint ("Complaint"), filed by Plaintiffs Camp Carefree, Inc., Micris, LLC, Brandon W. Leebrick and Amy E. Leebrick, Donald Dohm and Christine Dohm, David Forbes and Wendy Forbes, Mary Lea Anderson, Jeffrey Darren Scott, and Jill N. Meier (collectively "Plaintiffs") for lack of standing and failure to state a claim upon which relief may be granted.

In support of this Motion, Moving Defendants show the Court the following:

1. On June 9, 2023, Developer, with notarized assent from each of the Property Owners, applied to the Rockingham County Department of Community Development for a zoning map amendment (the "Map Amendment") using the standard form provided by the County. Compl. Ex. A. The application requested a rezoning of approximately 192.74 acres located in the Huntsville Township along U.S. Highway 220 in Stokesdale, North Carolina (the "Property") from Residential Agricultural to Highway Commercial. *Id.*

2. On July 10, 2023, the County Planning Board considered Moving Defendants' application for the Map Amendment. Following a presentation by Developer and public comment period, a motion was made to recommend approval of the Map Amendment to the County Commissioners. This motion failed on a 2-5 vote. Compl. Ex C, at Sub-Ex. 1.

3. Thereafter, on August 21, 2023, the County Board of Commissioners considered the application for the Map Amendment. Following a presentation by Developer and public hearing, the Board of Commissioners voted unanimously in favor of approving the Map Amendment. *Id.* ¶¶ 31 & 40.

4. On or about August 23, 2023, Moving Defendants received written notice of the Board of Commissioners approval of the application for the Map Amendment. The written notice stated the same was filed with the Clerk to the Board of Commissioners on August 23, 2023, and would be filed with the Rockingham County Register of Deeds.

5. As a result of the County's approval, Moving Defendants have distinct and identifiable rights and interests in the Property that has now been rezoned from Residential Agricultural to Highway Commercial.

6. On or about June 12, 2023, the Planning Board reviewed and considered a County initiated text amendment to the Rockingham County Unified Development Ordinance (“UDO”) that proposed three changes: (a) allowing uses licensed by the State of North Carolina to operate by-right in the Highway Commercial District; (b) allowing uses licensed by the State of North Carolina to operate by special use permit in other non-residential districts; and (c) removing the special use permit requirement for electronic gaming operations and associated regulations in UDO Sec. 62.29 (the “Text Amendment”). The Planning Board recommended approval of this County initiated Text Amendment. Compl. ¶ 22.

7. Thereafter, on June 19, 2023, the County Board of Commissioners considered the Text Amendment. The Board of Commissioners voted unanimously in favor of approving the Text Amendment.¹ Compl. ¶ 24.

8. Plaintiffs filed the Complaint on October 18, 2023, alleging ten claims for relief that seek, in toto, a declaratory judgment from the Court invalidating and voiding both the Text and Map Amendments.

9. As an initial matter, no Plaintiff can establish the specific personal and legal interest in the subject matter or direct and adverse effects required to show the distinct standing necessary to challenge the Board of Commissioners’ legislative rezoning decision with respect to the Map Amendment.

¹ Moving Defendants express no position on Plaintiffs’ allegations related to the Text Amendment, except insofar as the arguments also apply as background to their claims relative to the Map Amendment. Nonetheless, Moving Defendants believe that for reasons similar to those stated below with respect to the Map Amendment, Plaintiffs lack standing and fail to state a claim for relief sufficient to challenge the Text Amendment and, in order to seek dismissal of and resolve all issues alleged against Moving Defendants in the Complaint, preserve the right to address the same during briefing or oral argument.

10. “In order to challenge a rezoning ordinance, one must have a specific personal and legal interest in the subject matter affected by the ordinance and must be directly and adversely affected by the ordinance. To have standing, an adjacent or nearby landowner must allege and show special damages distinct from the rest of the community.” *Davis v. City of Archdale*, 81 N.C. App. 505, 508, 344 S.E.2d 369, 371 (1986) (citations omitted); *see also, e.g., Taylor v. City of Raleigh*, 290 N.C. 608, 620, 227 S.E.2d 576, 583 (1976); *Violette v. Town of Cornelius*, 283 N.C. App. 565, 569, 874 S.E.2d 217, 221, *review denied*, 883 S.E.2d 606 (N.C. 2023).

11. Here, Plaintiffs, who are neighboring or nearby property owners merely speculate on potential and vague harms shared with any property in the community that is adjacent to or located near to a property zoned Highway Commercial. For instance, Plaintiffs allege standing based off harms such as (1) potential uses lacking “compatibility with the current surrounding uses,” (2) “potential for water pollution,” (3) “traffic and safety issues,” (4) “increased criminal activity,” and (5) “noise, odor, glare, light trespass, litter, parking and security concerns.” Compl. ¶ 87. Such conclusory allegations are potential concerns shared with anyone in the community who lives or owns property located near a Highway Commercial zoned property, making them insufficient to claim standing.

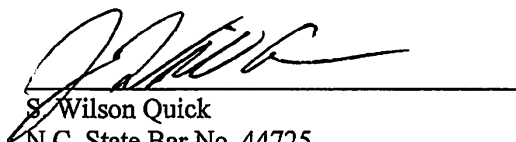
12. Moreover, as was clearly established during the proceedings before the Planning Board and Board of Commissioners, the Property, and thus other properties nearby, are all located in an area along the Highway 220 (future Interstate 73) corridor that already contains several properties zoned as Highway Commercial and Light Industrial. This undeniable fact undermines any argument that a purely legislative change in the zoning of the Property from Residential Agricultural to Highway Commercial has a particularized direct and adverse effect on any of

Plaintiffs' properties as they are already subject to any of the "potential" conditions they complain of with respect to the change in the zoning of the Property.

13. In addition to Plaintiffs' fatal lack of standing, the Complaint fails to state facts sufficient to maintain the relief sought with respect to the challenged zoning amendments.

WHEREFORE, Moving Defendants respectfully request that the Court issue an Order granting their Motion to Dismiss in Lieu of Answer for lack of standing and failure to state a claim upon which relief may be granted.

This the 8th day of January, 2024.



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Jimmy C. Chang
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Facsimile: (336) 232-9214
Attorneys for Defendants Julie J. Sanders, Ellen J. Whitesell, Linda J. Carmichael, Susan J. Murray, and NC Development Holdings, LLC

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 23 CVS 2013

FILED

2024 APR -2 A 8: 35

CAMP CAREFREE, INC, MICRIS, LLC,
BRANDON W. LEEBRICK AND AMY E.
LEEBRICK, DONALD DOHM AND ROCKINGHAM CO., C.S.C.
CHRISTINE DOHM, DAVID FORBES
AND WENDY FORBES, MARY LEA
ANDERSON, JEFFREY DARREN SCOTT,
and JILL N. MEIER,

BY

Plaintiffs,

vs.

**ORDER GRANTING
MOTIONS TO DISMISS**

ROCKINGHAM COUNTY, JULIE J.
SANDERS, ELLEN J. WHITESELL, LINDA
J. CARMICHAEL, SUSAN J. MURRAY
f/k/a SUSAN J. JONES, and NC
DEVELOPMENT HOLDINGS, LLC,

Defendants.

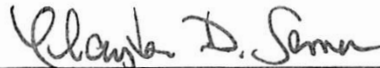
This cause coming on to be heard and being heard at the March 18, 2024, Session of the Rockingham County Superior Court, before the undersigned, on Motions to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure for lack of subject matter jurisdiction by Defendant Rockingham County and by Defendants Julie J. Sanders ("Sanders"), Ellen J. Whitesell ("Whitesell"), Linda J. Carmichael ("Carmichael"), Susan J. Murray f/k/a Susan J. Jones ("Murray"), and NC Development Holdings, LLC, respectively. Counsel for Plaintiffs, Defendant Rockingham County, and Defendants Sanders, Whitesell, Carmichael, Murray, and NC Development Holdings, LLC, were present and presented oral argument.

Having carefully considered the pleadings and memoranda of the parties, the documents and materials submitted by the parties (including the case law and other materials cited therein),

and after hearing and considering the arguments of counsel, the Court has found, concluded, and determined that Defendants' Motions to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) should be granted for lack of subject matter jurisdiction.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendants' Motions to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure for lack of subject matter jurisdiction by Defendant Rockingham County and by Defendants Sanders, Whitesell, Carmichael, Murray, and NC Development Holdings, LLC, respectively, are hereby GRANTED, and all of Plaintiffs' claims are dismissed with prejudice as to all Defendants, such that this entire action is dismissed with prejudice.

SO ORDERED, this the 21st day of March, 2024.



Honorable Clayton D. Somers
Special Superior Court Judge Presiding

- a. Low densities, including large lots or clustered lots that are surrounded by contiguous swaths of natural areas or agricultural land.
 - b. Setbacks and lot characteristics that are consistent with the existing, natural terrain.
 - c. Narrow, winding streets that follow the natural topography.
 - d. Natural or agricultural areas with preponderance of agricultural activities and forested lands.
- (2) The RA district carries forth the principles associated with the preservation and conservation of rural lands throughout the county where low density is desirable in order to protect environmentally sensitive areas, agricultural areas, and viewsheds.
 - (3) Major subdivisions with 100 or more lots are not permitted in RA.

(b) RP Residential Protected District

- (2) The purpose of this district is to provide a place for low density single-family residential uses where manufactured homes and most commercial uses are not allowed.

(c) RM Residential Mixed District

- (1) The purpose of this district is to provide a place for medium to high density residential uses, allowing for a mix of housing types where public water and sewer facilities are available. The RM district carries forth the principles associated with encouraging a mix of housing types within the County's target growth areas where public water and sewer utilities are available. These districts serve as transitional areas between commercial uses and lower density residential uses. RM is not appropriate for large multi-family dwelling complexes or commercial uses, but rather a range of housing types identified as the "missing-middle" within the County's land use plan.

(d) RC Rural Commercial District

- (1) This district provides areas for small offices, services, and retail uses, all designed in scale with surrounding residential and agricultural uses. The district regulations are designed to protect and encourage the transitional character of the district by permitting uses and building forms that are compatible with the rural areas of the county. This district establishes setback and area standards that are compatible with residential neighborhoods.

(e) NC Neighborhood Commercial District

- (1) This district provides a place for low to medium intensity crossroads shopping and neighborhood centered shopping establishments.

(f) OI Office and Institutional District

- (1) Purpose: The OI district provides for office, institutional, civic, or other low intensity commercial uses. This district may buffer single-family residential neighborhoods from higher intensity residential neighborhoods or adjacent commercial districts.

(g) HC Highway Commercial District

- (2) This district provides areas for more intensive regional highway-oriented business, office, service and civic uses. The district regulations are designed to protect and encourage the transitional character of the districts by permitting uses and building forms that are compatible with the surrounding area.

(h) LI Light Industrial District

- (1) The light industrial (LI) district permits light manufacturing, processing and assembly uses, warehousing, distribution and servicing enterprises and limited office activities. This district supports the county's policies to promote economic development opportunities.

(i) HI Heavy Industrial District

- (1) This district provides for intensive manufacturing, processing and assembly uses whose normal operations may include dust, noise, odor, or other emissions. This district promotes the county's policies to promote economic development opportunities. The uses permitted in this district may be very intensive, with their impacts controlled by performance or design standards.

(a) MHD Manufactured Home District

- (1) The purpose of this district is to provide a place for major subdivisions where homes are constructed to federal HUD construction standards rather than to that of the NC Residential Building Code.

Sec. 41.02. - Zoning map

The official zoning map is maintained electronically by the county geographic information systems (GIS) department.

- (a) *Adoption of official zoning map.* The official zoning map is adopted by reference and declared to be part of this chapter. Maps that are so adopted shall be maintained for public inspection by the Community Development Director and in digital format on the County website. Where boundaries and designations are not shown directly on the basic map sheets, they are indicated by overlays to such sheets or as separate maps. Overlays or separate maps have the same force and effect as the basic map sheets.
- (b) *Inset maps.* Where the scale of the basic map sheets or supplemental maps are inadequate for presentation of details in particular areas, such areas may be cross referenced on the basic map sheets or included on supplemental maps or separate inset maps at an appropriate scale.
- (c) *Official zoning map amendment, updating and authentication.* The official zoning map shall be amended, updated and authenticated as follows:
 - (1) *Amendment.* The official zoning map is subject to amendment as outlined in Article III – Procedures, Division 3 – Zoning Procedures. Any proposed amendment shall be identified by reference to the map sheet and/or supplement, and a legal description or other property identification or such other information as is required to make specific the application of the amendment. Following any map amendments, prior zoning maps will be archived and made available for public inspection by the Community Development Director (in conjunction with GIS) pursuant to NCGS 160D-105.
 - (2) *Updating.* Zoning map amendments shall be updated on the official zoning map by the Community Development Director, in conjunction with GIS.
 - (3) *Authentication of amendments.* Amendments shall be authenticated by the Community Development Director on map sheets, supplements, schedule sheets affected, and a record of the nature and date maintained. The entries shall indicate the date the amendment was made, the date the change became effective, if other than the date of the actual approval, the number of the amending chapter, and an indication of the nature of the change sufficient to facilitate specific identification.
 - (4) *Unauthorized changes prohibited.* No changes of any nature shall be made in the official zoning map, except as set forth in this chapter. Any unauthorized changes by any person is a violation of this chapter and punishable as provided by law. This subsection does not preclude action under other applicable criminal state statutes against any person alleged to have made unauthorized changes in this chapter.

USES IN THE RESIDENTIAL AGRICULTURAL ZONING DISTRICT (RA)

Uses permitted by-right within zoning district (zoning permit may be required):

- Agricultural uses (unregulated)
- Agriculture related research and development
- Athletic fields, parks, recreation buildings, playgrounds, swim and racquet clubs (no commercial gain)
- Auction sales, temporary, one-time use
- Club and lodges, private, non-profit
- Community centers, public or private non-profit, for assembly and recreation
- Dwelling, single-family detached
- Dwelling, two-family (duplex)
- Farm supplies sales (feed, seed, fertilizer etc.)
- Golf Courses with or without ranges
- Library, Public
- Lumber yard
- Nursery and plant cultivation
- Places of worship and their customary uses, including childcare on premises
- Poultry Breeding Facility (dry litter)
- Pottery Crafting and Sales
- Produce/Roadside Stand
- Riding academy, commercial stables
- Short-term Rentals
- Sign, on premises
- Use of Open Land (see definitions)

Uses permitted by-right that require development standards:

- Agritourism Activities (regulated, not applicable to exempt farms)
- Animal Facility - Kennel (8 or less domesticated animals)
- Animal Facility – public stable
- Brewery, Winery, Distillery
- Campground / Recreational Vehicle Park
- Care Facility -- Hospice house/palliative
- Cemetery, human (public)
- Cemetery, pet (public)
- Cottage Business
- Dwelling, accessory unit
- Dwelling, Class AA manufactured home
- Dwelling, Class A manufactured home
- Dwelling, manufactured home (Class AA, A or B), temporary use – for Custodial Care
- Dwelling, manufactured housing on lot during construction of new dwelling
- Family care home
- Greenhouse, commercial
- Guest House
- Home Occupations
- Landfill, beneficial fill
- Manufactured home, temporary custodial care

- Manufactured home, temporary during residential construction
- Museum
- Outdoor Storage Area (Residential)
- Public utility, minor
- Recreational Vehicle, temporary stay during new home construction
- Rural Guest Establishment
- Rural Tourism Activities
- Sales Office/Model dwelling unit
- Shipping/Storage Container for Non-Residential Outdoor Storage
- Special Event Permit
- Stand-Alone Storage Unit
- Turkey shoots (associated with non-profit organizations)
- Wireless Telecommunications Facilities, colocation

Uses permitted only as an accessory to another permitted use on same lot:

- Accessory structure
- Greenhouse, private

Temporary use:

- Sawmills, portable
- Temporary buildings, incidental to development
- Temporary Storage Unit

Uses requiring a special use permit:

- Airport/airstrip/runway/taxiway
- Animal Facility - Kennel (more than 8 domesticated animals)
- Bed & Breakfast Home
- Commercial Feeder Operation
- Conference/retreat/event/reception/banquet center
- Group Homes (more than 6 living as a family with manager on-site)
- Landfill, land-clearing and inert debris (LCID)
- Landfill, sanitary/ solid waste
- Mining of earth products (sand, soil, clay)
- Nursery/landscaping business, commercial
- Nursing and rest homes
- Paintball/Airsoft Facility (Outdoor)
- Public utility, major (including public water/sewer plants)
- Schools, academic/ business/trade
- Shooting Range/Shooting Range Complex (Indoor/Outdoor)
- Skeet, Trap, and Sporting Clay Ranges
- Solar energy facility
- Turkey shoots (for profit, year- round)
- Wireless Telecommunications Facilities, new

USES IN THE HIGHWAY COMMERCIAL ZONING DISTRICT (HC)

Uses permitted by-right within zoning district (zoning permit may be required):

- Agricultural uses (unregulated)
- Amusements, indoor commercial (e.g. bowling alleys, skating rinks)
- Amusements, out-of-doors commercial (e.g. roller coasters, fairgrounds)
- Animal Facility - Kennel (more than 8 domesticated animals)
- Apparel and accessory sales
- Athletic fields, parks, recreation buildings, playgrounds, swim and racquet clubs (no commercial gain)
- Auction sales, yards, permanent
- Auction sales, temporary, one-time use
- Automobile car-wash, drive through, requiring vehicle queueing
- Automobile parts sales
- Automobile sales, rentals
- Automobile service/repair stations
- Automobile storage (excluding wrecked & junked vehicles)
- Automobile, truck and trailer (hauling) rental
- Banks & Savings and Loans
- Barber and Beauty Service
- Bed & Breakfast Home
- Beer, wine and liquor store
- Boats, Recreational Vehicles Sales and Service
- Boats, Recreation Vehicles, Outdoor Storage (primary use, short-term)
- Bottling Plants
- Brewery, Winery, Distillery
- Bus Station
- Car Wash
- Car Wash, drive-through
- Club and lodges, private, non-profit
- Clubs and places of entertainment (commercial)
- Clinics, medical, dental
- Coin-operated laundry
- Community centers, public or private non-profit, for assembly and recreation
- Conference/retreat/event/reception/banquet center
- Convenience food stores with or without gas pumps
- Dry Cleaning or laundry (not coin-operated)
- Drive-through window services (banks, laundries, fast-food, etc.) where use is permitted in district
- Dwelling, multi-family triplex, quadplex, and townhomes.
- Dwelling, multi-family apartments, condominiums
- Dwelling, single-family detached
- Dwelling, two-family (duplex)
- Electronic Gaming Operations
- Equipment Rentals
- Exterminating services
- Farm machinery sales and rentals with repair
- Farm supplies sales (feed, seed, fertilizer etc.)
- Farmers markets (may include sale of locally made craft items)
- Fire, sheriff and emergency services
- Flea markets – indoor
- Florists
- Food freezer operations
- Funeral home, crematorium
- Gift Shops
- Golf, Miniature
- Golf ranges
- Government Offices
- Greenhouse, private
- Grain and Grist Mills
- Grocery stores
- Hardware, Paint & Garden Supplies
- Health club, gym
- Home Furnishings & Appliance Sales
- Home health & home care agencies
- Home Improvement Stores
- Hospital/medical facility
- Hotels & Motels
- Industrial Equipment Sales & Service
- Jewelry Store
- Laboratory, Medical & Dental
- Laboratory, Research
- Library, Public
- Locksmith, Gunsmith (not as home occupation)
- Machine shop, welding shop
- Manufactured home, travel trailer, camper, marine, and recreational vehicle sales
- Monument and Cut Stone Manufacture and Sales
- Movie theater, indoor
- Museum
- Nursery and plant cultivation
- Nursery/landscaping business, commercial
- Offices, professional private and public
- Office Supplies Sales
- Pawnshop
- Pet Shop
- Pharmacy and drug store
- Places of worship and their customary uses, including childcare on premises
- Post Office
- Pottery Crafting and Sales
- Printing and Reproduction
- Radio, media, television studio

USES IN THE HIGHWAY COMMERCIAL ZONING DISTRICT (HC)

- Retail shops not exceeding 3,000 square feet of gross floor area and whose primary sales are agriculture related items, antiques, artisan gallery or studio, locally made crafts, items related to rural tourism, outdoor recreation and sporting goods equipment
- Retail sales not listed elsewhere
- Repair, rental and service of products sold at retail in same district where use is permitted
- Restaurant
- Restaurant, excluding drive-in and fast food
- Rural family occupation of nonagricultural nature
- Service establishments including but not limited to barber and beauty shops, small item repair and rental
- Service stations
- Sign, outdoor advertising (off - premises)
- Sign, on premises
- Social Services Centers
- State Licensed Uses*
- Studios for artists, designers, musicians, photographers, sculptors (not as a home occupation)
- Tailor, sewing shop
- Taxi stand, including ride sharing
- Townhomes/condominiums, commercial
- Upholstering and furniture refinishing
- Warehouses, sales or service
- Wholesale sales, not otherwise listed

- Special Event Permit
- Wireless Telecommunications Facilities, colocation

Uses permitted only as an accessory to another permitted use on same lot:

- Accessory structure
- Automated bank teller/ ATM, portable concession stands, ice machines
- Live/work unit

Temporary use:

- Construction Trailer (Class AA, A or B), temporary use
- Sawmills, portable
- Temporary buildings, incidental to development
- Temporary carnivals, rides, amusements
- Temporary Storage Unit

Uses requiring a special use permit:

- Adult uses
- Paintball/Airsoft Facility (Outdoor)
- Public utility, major (including public water/sewer plants)
- Turkey shoots (for profit, year- round)
- Wireless Telecommunications Facilities, new towers

Uses permitted by-right that require development standards:

- Agritourism Activities (regulated, not applicable to exempt farms)
- Animal Facility - Kennel (8 or less domesticated animals)
- Animal Facility - Kennel (more than 8 domesticated animals)
- Animal hospital/ veterinary clinic
- Assembly/theater facility—Outdoor or drive-in
- Campground / Recreational Vehicle Park
- Care Facility, Day – child, adult
- Flea markets – outdoor
- Greenhouse, commercial
- Home Occupations
- Landfill, beneficial fill
- Mini-warehouse
- Mobile Food Vendor, Temporary
- Nursing and rest homes
- Outdoor Display Area (Non-residential)
- Outdoor Storage Area (Non-residential)
- Public utility, minor
- Shipping/Storage Container for Non-Residential Outdoor Storage



COMMERCIAL REAL ESTATE APPRAISERS AND CONSULTANTS

221 S. Plains Drive
Asheville, North Carolina 28803

Phone: 828-280-4520
Email: JPalmer@palmercompanyinc.com

August 20, 2023

Mr. Brian Gulden
The Van Winkle Law Firm
11 N Market St
Asheville, North Carolina 28801

Via email: Brian Gulden - bgulden@vwlawfirm.com

Re: *Potential adverse impacts of the proposed rezoning of Tax PIN #7913-00-93-8212, US Highway 220/ Ram Loop, Huntsville Township, on the fair market values of surrounding property uses.*

Dear Mr. Gulden:

At your request, I have examined the information you supplied and performed preliminary market research concerning potential adverse impacts of the proposed rezoning of Tax PIN #7913-00-93-8212, US Highway 220/ Ram Loop, Huntsville Township, on the fair market values of surrounding property uses.

My preliminary research included identification of surrounding land uses, study of the UDO specifically uses allowed in the current Residential Agricultural Zoning District (RA) and the uses allowed in the proposed Highway Commercial Zoning District (HC), the Rockingham Vision Plan 2040 Comprehensive Land Use Master Plan, Planning Board Staff Report – Case 2023-12: Zoning Map Amendment (Rezoning), general market growth data, preliminary market sales data in the area of the rezoning, and various internet resources.

The subject property is an irregularly shaped parcel of vacant land containing approximately 192.74 acres. The property has rolling topography and is partially wooded. To the north of the property, land uses include a residential subdivision, vacant land, various single family residential parcels, and a commercial parcel in the northeast corner. To the east of the property is US Hwy 220 with various commercial uses along the opposite side of the highway. Located to the south of the property is Camp Carefree, a facility that provides camping experiences for children with chronic illnesses. There is a stream on eastern side of the subject property that appears to empty into a large lake located on the Camp Carefree facility. To the west of the property are single family residential use properties with Hogans Creek running along the western boundary. There is a portion of the property along Hogans Creek that is within a Flood Zone.

The subject property is currently zoned Residential Agricultural Zoning District (RA). A review of the UDO Section 41.01(a) RA Residential Agricultural District indicates that the land uses of the surrounding properties exhibit the similar characteristics outlined in the ordinance in that the surrounding property uses are in conformity with the uses as outlined in the ordinance and are harmonious to similar land uses surrounding the property.

The subject property is proposed to be rezoned to Highway Commercial Zoning District (HC). A review of the UDO Section 41.01(g) HC Highway Commercial District states that this zoning district classification provides areas for more intensive regional highway-oriented business, office, service and civic uses. The district regulations are designed to protect and encourage the transitional character of the districts by permitting uses and building forms that are compatible with the surrounding area. There are many more extensive uses allowed in the proposed zoning, which are much more intensive uses that would be, in my opinion, not compatible with the surrounding area land uses. These uses include restaurants, warehouses, wholesale sales, landfill – beneficial fill, and State Licensed Uses. The footnote reference for State Licensed Uses states "Allow the use and operation of businesses licensed by the State, as defined and authorized by the State of North Carolina through license issued by a state agency, or other

agency or commission designated by the State." This would allow any use or operation of a business licensed by North Carolina or any state entity to be allowed by right in the Highway Commercial Zoning District. Such uses could include uses such as a hazardous waste generator, incineration facility, industrial landfill, liquid animal waste operation, mining, wastewater sewer collection, etc. In my opinion, these types of permitted uses would not be compatible with the surrounding land uses or be harmonious with the land uses surrounding the property.

According to the Rockingham Vision Plan 2040 Comprehensive Land Use Master Plan, the property is located in the G-3 Mixed Use & Corridors Land Class suitable for a wide variety of mixed uses, of mixed intensities, especially where water and sewer services are available, and the western half of the property is located in the O-2 Rural Land Class, characterized by low-density residential and agricultural uses generally where public water and sewer services are unavailable. The size of the property at approximately 192.74 acres would lend itself to being master planned. In my opinion, some more intense uses that would potentially be allowed under the rezoning, especially State Licensed Uses, may not be compatible with the Comprehensive Land Use Master Plan.

In addition, if the property were to be rezoned there may be potential environmental concerns depending on specific development use as it relates to Hogans Creek and the other streams on the property.

Based on the above, it is my opinion that some of the higher intensity uses described above that would be allowed in the proposed Highway Commercial District rezoning, along with associated noise, odor, light, glare, trespass, litter, traffic, parking, and security concerns, would tend to have an adverse impact on the fair market value of surrounding property uses and may not be compatible with the surrounding land uses or be harmonious with the similar land uses surrounding the property.

Please do not hesitate to contact me if I may be of further assistance in the interpretation and application of these observations and comments.

Respectfully submitted,
The Palmer Company, Inc.

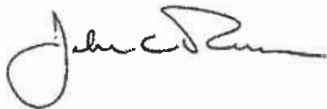


John C. Palmer, MAI, CCIM, CDA
North Carolina State Certified General Real Estate Appraiser - License #A5928
North Carolina Department of Transportation (NCDOT) - Approved General Appraiser
North Carolina RE Broker - License #198326
South Carolina State Certified General Appraiser - License #6808
South Carolina Department of Transportation (SCDOT) - Approved General Appraiser
Virginia State Certified General Real Estate Appraiser - License #4001017039
Virginia Department of Transportation (VDOT) - Senior Appraiser

Certification Statement

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this opinion are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, unbiased professional analyses, opinions, and conclusions.
- I have no present or contemplated future interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this opinion within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this opinion or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this opinion has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I did not make a personal inspection of the property that is the subject of this opinion.
- No one provided significant appraisal assistance to the person(s) signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute.



John C. Palmer, MAI, CCIM, CDA

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General Assumptions and Limiting Conditions

1. Acceptance and/or use of this opinion by the client or any third party constitutes acceptance of all Assumptions and Limiting Conditions; these can only be modified in writing executed by both parties.
2. All necessary licenses, permits, consents, legislative or administrative authority from any local, state or federal government or private entity are assumed to be in place or reasonably obtainable.
3. I am not aware of any zoning violations, easements, encumbrances, or restrictions that would adversely affect value, unless otherwise stated. However, no guarantee is made that the subject property is free of encroachments or easements, and further investigation and survey is recommended. This valuation assumes no adverse easements, encroachments or restrictions and that the subject has a clear and marketable title. For purposes of this appraisal report, typical utility easements are assumed located on the subject property.
4. I assume the property is in compliance with all applicable federal, state and local laws, ordinances, regulations, building standards, use restrictions and zoning unless the lack of compliance is stated in this report. Determining and reporting on such compliance was not part of the scope of work for this assignment.
5. No responsibility is assumed for matters legal in character or nature. No opinion is rendered as to the title, which is presumed to be good and marketable.
6. This report is to be used only for the purpose stated. While distribution of this appraisal in its entirety is at the discretion of the client, individual sections shall not be distributed. Possession of this report, whether original or copy, does not carry with it the right of publication.
7. This appraisal report must be considered and used only as a unit. No part may be used without the whole report, and the report becomes invalid if any part is separated from the whole.
8. The appraiser's liability extends only to the stated client, not subsequent parties or users.
9. The appraiser who signed the report prepared all conclusions and opinions, unless otherwise indicated. No one other than the appraiser may make any changes to this report. The appraiser shall have no responsibility if any unauthorized change is made.
10. No part of this opinion or the identity of the firm or the appraiser may be communicated to the public through advertising, public relations, media sales, or other media without written permission from the appraiser.
11. All files, work papers, documents, formulas, etc. developed in connection with this assignment are intellectual property of The Palmer Company, Inc. and cannot be used without the written consent of The Palmer Company, Inc.. Information, estimates, and opinions were verified where possible, but cannot be guaranteed.
12. I am not required to give testimony in court in connection with this report. If the appraiser is subpoenaed, the client agrees to pay my per diem rate plus expenses.
13. I may not divulge the material contents, analytical findings, or conclusions of the report, or give a copy to anyone other than the client or named designee(s) as specified in writing, except as may be required by The Appraisal Institute for ethics enforcement, or by a court of law or other body with the power of subpoena.
14. I relied on certain representations and accuracy of information supplied by the client, and public records to identify the subject property and to develop my opinions. I do not guarantee the accuracy of the information supplied. The Palmer Company, Inc. does not claim responsibility for any incorrect information that may have been supplied by agencies, organizations, or individuals which may be included in the findings of this report. Should that information be inaccurate, it may have a substantial impact on the enclosed valuations.
15. I do not assume any responsibility for the accuracy of information furnished by others, including the client, any designees, or public records. The market data relied on in this report has been confirmed with one or more parties familiar with the transaction, from affidavit or other source deemed reasonable; all are considered appropriate for inclusion to the best of my judgment. An impractical and uneconomic expenditure of time would be required to furnish unimpeachable verification in all instances, particularly as to engineering and market-related information. The client should consider independent verification as a prerequisite to any transaction involving sale, lease, or other significant commitment of funds for the subject property in this report.
16. I have made no survey and assume no responsibility for the accuracy of any survey, plat, sketches, or other maps contained in this report or on record.
17. This report is based on the data available at the time the assignment is completed. I reserve the right to alter or amend this report should any new information become available after the completion of this appraisal report that

may affect my opinions herein of the subject property. Any such amendments are at the sole discretion of the appraiser and may involve an additional fee.

18. No responsibility is assumed for any hidden or unapparent conditions of the property, subsoil, or structure, which would make the property more (or less) valuable. The appraiser's conclusion of value is based on the assumption that there are no hidden or unapparent conditions that might affect the construction of improvements or any intended use. I recommend that due diligence be conducted through the local building department or municipality to investigate the suitability of planned improvements and intended use.
19. The appraiser has not been supplied with, any biological surveys or studies concerning any flora and or fauna that may or may not be on any Federal or State Endangered Species List for the subject property. This situation is beyond the scope of this appraisal, and no responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired. For the purposes of this appraisal, it is assumed that no adverse biological conditions exist. If such conditions are discovered, it may have a substantial effect on my opinions herein.
20. **AMERICANS WITH DISABILITIES ACT (ADA)** The Americans with Disabilities Act (ADA) became effective January 26, 1992. The appraiser has not made a specific compliance survey or analysis of the property to determine whether the property is conforming to the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal the property does/do not comply with one or more of the ADA requirements. If so, this fact could have a negative effect upon the value of the property. Since the appraiser has no direct evidence relating to this issue, the appraiser did not consider possible non-compliance with the requirements of ADA in estimating the value of the property. For purposes of this appraisal, it is assumed any subject improvements comply, or will comply, with all applicable governmental regulations.
21. This appraisal report is intended to conform with, and is subject to, the requirements of the *Uniform Standards of Professional Appraisal Practice (USPAP)* as set forth by the Appraisal Foundation and the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute and applicable federal and state rules and regulations. The use of this report is subject to the requirements of the Appraisal Institute and federal and state regulatory agencies relating to review by its duly authorized representatives.
22. The appraiser determined the level of analysis designed to meet the needs of the client and to be consistent with the scope of work to be performed by the appraiser. Consideration has been given to the level of risk associated with the subject type, the current and anticipated market conditions, and the intended use of the conclusions contained in this report. The appraiser analyzed the general market area and neighborhood with focus on the social, economic, governmental, and environmental forces that affect property values. This analysis has led to an opinion of highest and best use both as vacant and, if applicable, improved. The highest and best use conclusions have dictated the type and quantity of data gathered and used in the development of this appraisal report.
23. The scope of work in this appraisal is customized for the intended users. This appraisal and report may be inappropriate for other users. Therefore, regardless of the means of possession of this report, this appraisal may not be used or relied on by anyone other than the herein stated intended users. Any parties found in possession of this report who are believed to have obtained it inappropriately can be prosecuted under Federal Statute 18 USCA 2511; and, if misused by breaching its confidential content can be prosecuted under the Gramm-Leach-Bliley Act of 1999. The appraiser, appraiser's firm, and related parties assume no obligation, liability, or accountability for any third party.
24. No environmental reports were supplied. It is assumed that no detrimental structural or environmental conditions exist. If any are discovered, it may have a substantial impact on the conclusions herein. This is a legal matter beyond the Scope of Work and expertise of the appraiser. The client is urged to consult with the appropriate professionals concerning this matter.
25. When possible, the reported size(s) were verified. However, I am not qualified in land surveying. I reserve the right to alter the opinions and estimates of value should more accurate tract size data be made available. Further, in instances in which significant portions of tracts are unusable, and in the absence of surveys identifying net usable areas, reliance was placed on my best estimate.
26. The appraiser made a number of independent investigations as part of this opinion, study, and analysis. Local demographic information was obtained to determine and illustrate the character of the local area. An inspection of the immediate and larger surrounding neighborhood was made to determine local trends and development patterns. Information and records specific to the subject property site locations were obtained from the County Tax Assessor, Mapping Department and GIS, the County Deeds Office and Registry, the County Planning

Department, and internet sources including Google Earth. Information specific to the subject property parcels was provided by client and/or client's representatives.

27. The Client is informed that the appraiser's rationale for how the appraiser arrived at the opinions and conclusions set forth in this report may not be understood properly without additional information in the appraiser's work file. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's work file. The depth of discussion contained in this report is specific to the needs of the client and for the intended users stated herein. The information included in this report is believed to be sufficient for the purpose of this report.
28. As required by USPAP, the appraiser identified the problem to be solved and determined the scope of work required to produce assignment results appropriate to the intended use of this appraisal. The Scope of Work performed is disclosed in this and other sections of the report and in the addendum hereto.

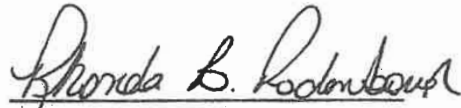
Use of or reliance on this appraisal or appraisal report, regardless of whether such use or reliance is known or authorized by the appraiser, constitutes acknowledgment and acceptance of these general assumptions and limiting conditions, any extraordinary assumptions or hypothetical conditions, and any other terms and conditions stated in this report.

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.
2. I am the managing board member of Camp Carefree, Inc. and reside at 171 Carefree Lane, Stokesdale, North Carolina.
3. Camp Carefree, Inc.'s property adjoins the property to be rezoned. A copy of the deeds are attached as Exhibits "1", "2" and "3".
4. Attached as Exhibit "4" to this affidavit is an aerial showing the relationship of Camp Carefree Inc.'s property in relation to the property to be rezoned.
5. It is obvious to me that this proposed development will dramatically impact the peaceful and quiet enjoyment of Camp Carefree, Inc. in several ways, including but not limited to impacting the physical and mental wellbeing of our campers who suffer from neurological disorders that are significantly affected by loud noises, light and over stimulation.
6. First, I expect a significant increase in traffic along with Ram Loop Road, Simpson Road and U.S. Highway 2200.
7. Also, this development will dramatically impact Camp Carefree Inc.'s property in terms of visual intrusiveness, and noise and light trespass.

8. I am personally familiar with the value of Camp Carefree Inc.'s property and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect Camp Carefree, Inc.'s property values as supported by the report by John Palmer.

FURTHER AFFIANT SAYETH NOT.

This 18 day of August, 2023.

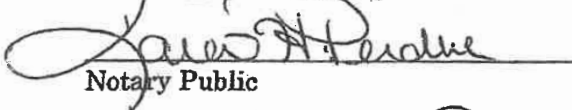


Camp Carefree, Inc.

By: Rhonda B. Rodenbough

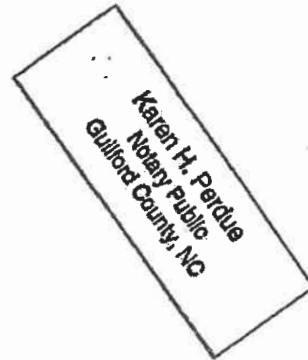
Title: Managing Board Member

SWORN TO AND SUBSCRIBED before
me this 18 day of August 2023.


Notary Public

Print Name: Karen H. Perdue

My Commission Expires: 12-5-2027



In Re: Zoning Map Amendment:)
Rezoning from Residential Agricultural) Case No. 2023-12
(RA) to Highway Commercial (HC); Tax)
PIN: 7913-00-93-8212)

AFFIDAVIT OF AMY E. LEEBRICK

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.
2. I am the owner of and reside at 381 Carefree Lane, Stokesdale, NC 27357 in Rockingham County. I am also the owner of a rental house at 290 Carefree Lane, Stokesdale, NC 27357 which is on the same parcel. The Tax Parcel ID for both residences is 177301 and PIN 79130091940100.
3. I am an owner of Still Small Farms, LLC which operates a farm on a portion of the land at 381 and 290 Carefree Lane, Stokesdale, NC 27357. Attached as Exhibit "1" is the most recent Secretary of State Annual Report.
4. I operate with my husband a homeschool, Lignum Vitae Academy on my property for the education of our children. Attached as Exhibit "2" is the North Carolina Division of Non-Public Education school registration form.
5. My property is located approximately within 300 feet distance from the property to be rezoned. A copy of my deed is attached as Exhibit "3".
6. Attached as Exhibit "4" to this affidavit is an aerial showing the relationship of my property to the property to be rezoned.

7. It is obvious to me that this proposed development will dramatically and detrimentally impact my peaceful and quiet enjoyment of my residence in many ways.

8. It is obvious to me that this proposed development will dramatically and detrimentally impact my ability to rent the residence at 290 Carefree Lane.

9. It is obvious to me that this proposed development will dramatically and detrimentally impact my ability to operate my homeschool and educate my children safely.

10. It is obvious to me that this proposed development will dramatically and detrimentally impact my farm operations and opportunities as well as bring water pollution that may contaminate private wells and natural springs on my property.

11. I expect a significant increase in traffic along with an increase of traffic accidents and incidents of Driving Under the Influence (DUI).

12. I expect there will be increased criminal activity near and on my property as well as trespassers onto my property given the proximity of the rezoned land and the fact that the rezoning application provides for no conditions that would require walls, fences, or other barriers to prevent trespassers onto my property.

13. This development will dramatically and detrimentally impact my property in terms of visual intrusiveness, and noise and light trespass as the rezoned property is within sight of my residence and farm.

14. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values as supported by the report by John Palmer.

FURTHER AFFLIANT SAYETH NOT.

This 18th day of August, 2023.

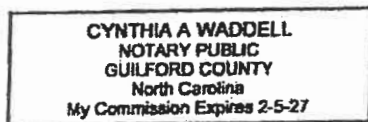
Amy E. Leebrick
Amy E. Leebrick

SWORN TO AND SUBSCRIBED before me this 18th day of August 2023.

Cynthia A. Waddell
Notary Public

Print Name: Cynthia A. Waddell

My Commission Expires: 2/5/27



BEFORE THE ROCKINGHAM COUNTY BOARD OF COMMISSIONERS
ROCKINGHAM COUNTY NORTH CAROLINA

In Re: Zoning Map Amendment:)
Rezoning from Residential Agricultural)
(RA) to Highway Commercial (HC); Tax)
PIN: 7913-00-93-8212 Case No. 2023-12

AFFIDAVIT OF BRANDON WHITT LEEBRICK

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.
2. I am the owner of and reside at 381 Carefree Lane, Stokesdale, NC 27357 in Rockingham County. I am also the owner of a rental house at 290 Carefree Lane, Stokesdale, NC 27357 which is on the same parcel. The Tax Parcel ID for both residences is 177301 and PIN 79130091940100.
3. I am an owner of Still Small Farms, LLC which operates a farm on a portion of the land at 381 and 290 Carefree Lane, Stokesdale, NC 27357. Attached as Exhibit "1" is the most recent Secretary of State Annual Report.
4. I operate with my wife a homeschool, Lignum Vitae Academy on my property for the education of our children. Attached as Exhibit "2" is the North Carolina Division of Non-Public Education school registration form.
5. My property is located approximately within 300 feet distance from the property to be rezoned. A copy of my deed is attached as Exhibit "3".
6. Attached as Exhibit "4" to this affidavit is an aerial showing the relationship of my property to the property to be rezoned.

7. It is obvious to me that this proposed development will dramatically and detrimentally impact my peaceful and quiet enjoyment of my residence in many ways.

8. It is obvious to me that this proposed development will dramatically and detrimentally impact my ability to rent the residence at 290 Carefree Lane.

9. It is obvious to me that this proposed development will dramatically and detrimentally impact my ability to operate my homeschool and educate my children safely.

10. It is obvious to me that this proposed development will dramatically and detrimentally impact my farm operations and opportunities as well as bring water pollution that may contaminate private wells and natural springs on my property.

11. I expect a significant increase in traffic along with an increase of traffic accidents and incidents of Driving Under the Influence (DUI).

12. I expect there will be increased criminal activity near and on my property as well as trespassers onto my property given the proximity of the rezoned land and the fact that the rezoning application provides for no conditions that would require walls, fences, or other barriers to prevent trespassers onto my property.

13. This development will dramatically and detrimentally impact my property in terms of visual intrusiveness, and noise and light trespass as the rezoned property is within sight of my residence and farm.

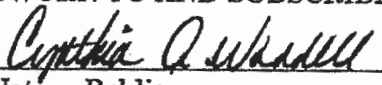
14. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values as supported by the report by John Palmer.

FURTHER AFFIANT SAYETH NOT.

This 18th day of August, 2023.

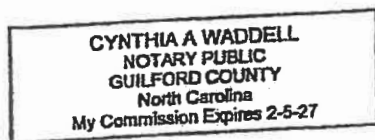

Brandon Whitt Leebrick

SWORN TO AND SUBSCRIBED before me this 18th day of August 2023.


Notary Public

Print Name: Cynthia A. Waddell

My Commission Expires: 2/5/27



7. Also, this development will dramatically and detrimentally impact my property in terms of visual intrusiveness, and noise and light trespass.

8. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values.

FURTHER AFFIANT SAYETH NOT.

This 18th day of August, 2023.

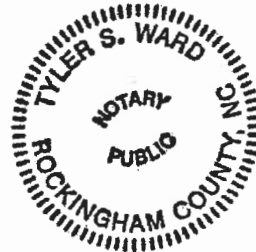
Christine M. Dohm
(Name)

SWORN TO AND SUBSCRIBED before me this 18th day of August 2023.

Tyler S. Ward
Notary Public

Print Name: Tyler S. Ward

My Commission Expires: 10/24/24



BEFORE THE ROCKINGHAM COUNTY BOARD OF COMMISSIONERS
ROCKINGHAM COUNTY NORTH CAROLINA

In Re: Zoning Map Amendment:)
Rezoning from Residential Agricultural)
(RA) to Highway Commercial (HC); Tax)
PIN: 7913-00-93-8212

Case No. 2023-12

AFFIDAVIT OF David Forbes

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.
2. I am the owner of and reside at 650 Dogwood Acres Ln, Madison.
3. My property is located approximately within 100 yds distance from the property to be rezoned. A copy of my deed is attached as Exhibit "1".
4. Attached as Exhibit "2" to this affidavit is an aerial showing the relationship of my property in relation to the property to be rezoned.
5. It is obvious to me that this proposed development will dramatically and detrimentally impact my peaceful and quiet enjoyment of my residence in several ways.
6. First, I expect a significant increase in traffic along with obvious criminal activity threats, fear over local utility problems,
unreversible harm to our areas way of life
7. Also, this development will dramatically and detrimentally impact my property in terms of visual intrusiveness, and noise and light trespass.

8. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values as supported by the report by John Palmer.

FURTHER AFFIANT SAYETH NOT.

This 18th day of August, 2023.

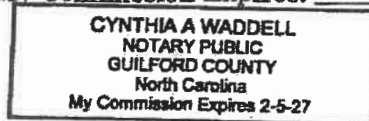
[Signature]
(Name)

SWORN TO AND SUBSCRIBED before me this 18th day of August 2023.

[Signature]
Notary Public

Print Name: Cynthia A. Waddell

My Commission Expires: 2/5/27



BEFORE THE ROCKINGHAM COUNTY BOARD OF COMMISSIONERS
ROCKINGHAM COUNTY NORTH CAROLINA

In Re: Zoning Map Amendment:)
Rezoning from Residential Agricultural)
(RA) to Highway Commercial (HC); Tax)
PIN: 7913-00-93-8212

Case No. 2023-12

AFFIDAVIT OF JEFFREY SCOTT

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.

2. I am the owner of and reside at 621 Dogwood Acres Lane, Madison, NC 27025

3. My property is located approximately within _____ distance from the property to be rezoned. A copy of my deed is attached as Exhibit "1".

4. Attached as Exhibit "2" to this affidavit is an aerial showing the relationship of my property in relation to the property to be rezoned.

5. It is obvious to me that this proposed development will dramatically and detrimentally impact my peaceful and quiet enjoyment of my residence in several ways.

6. First, I expect a significant increase in traffic along with Privacy concerns, safety, noise, light pollution, well water pollution, light pollution, property values, my kids safety on roads and at home!

7. Also, this development will dramatically and detrimentally impact my property in terms of visual intrusiveness, and noise and light trespass.

8. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values as supported by the report by John Palmer.

FURTHER AFFIANT SAYETH NOT.

This 18th day of August, 2023.

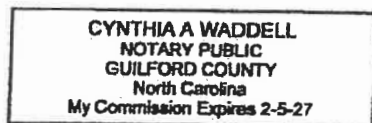
Jeffrey D. Scott
Jeffrey Scott

SWORN TO AND SUBSCRIBED before me this 18th day of August 2023.

Cynthia A. Waddell
Notary Public

Print Name: Cynthia A. Waddell

My Commission Expires: 2/5/27



BEFORE THE ROCKINGHAM COUNTY BOARD OF COMMISSIONERS
ROCKINGHAM COUNTY NORTH CAROLINA

In Re: Zoning Map Amendment:)
Rezoning from Residential Agricultural)
(RA) to Highway Commercial (HC); Tax)
PIN: 7913-00-93-8212

Case No. 2023-12

AFFIDAVIT OF JILL N. MEIER

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.
2. I am the owner of and reside at 1217 Simpson Road, Stokesdale, North Carolina.
3. I moved to Stokesdale from New York, purchased a small farm advertised as a peaceful, rural area in Rockingham County, North Carolina.
4. I closed on my home on July 11, 2023. A copy of my deed is attached hereto as "Exhibit "1".
5. Attached as Exhibit "2" to this affidavit is an aerial showing the relationship of my property in relation to the property to be rezoned.
6. I did not receive notice of rezoning prior to purchasing my property or since that time.
7. I have lived in states with entertainment districts and I have first-hand knowledge of the problems, including high traffic, lights, noise and other intrusions that come with large properties zoned as highway commercial.
8. I moved from New York to Stokesdale, North Carolina because I no longer wanted to live in or near a city.. I chose this particular property because I

wanted a small farm, in a rural setting without big business, lights, noise and excess traffic.

9. Rockingham County held itself out as a rural, peaceful, area which drew me into this community.

10. It is obvious to me that this proposed development will dramatically impact rights to the peaceful and quiet enjoyment of my residence in several ways.

11. First, I expect a significant increase in traffic on Simpson Road. I also expect increased dangerous conditions at the intersection of Simpson Road and U.S. Highway 220. This is already a congested and dangerous intersection.

12. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values as supported by the report by John Palmer.

FURTHER AFFIANT SAYETH NOT.

This 20th day of August, 2023.

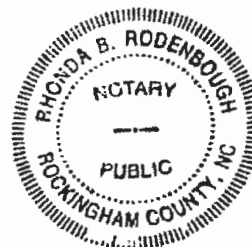
Jill N. Meier
Jill N. Meier

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 20th DAY OF AUGUST 2023.

Rhonda B. Rodenbough
Notary Public

Print Name: Rhonda B. Rodenbough

My Commission Expires: 7/5/2024



BEFORE THE ROCKINGHAM COUNTY BOARD OF COMMISSIONERS
ROCKINGHAM COUNTY NORTH CAROLINA

In Re: Zoning Map Amendment:)
Rezoning from Residential Agricultural)
(RA) to Highway Commercial (HC); Tax)
PIN: 7913-00-93-8212

Case No. 2023-12

AFFIDAVIT OF MARY LEA ANDERSON

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.
2. I am the owner of and reside at 2384 U.S. Highway 220, Stokesdale, North Carolina.
3. My property adjoins the property to be rezoned. A copy of my deed is attached as Exhibit "1".
4. Attached as Exhibit "2" to this affidavit is an aerial showing the relationship of my property in relation to the property to be rezoned.
5. It is obvious to me that this proposed development will dramatically impact my peaceful and quiet enjoyment of my residence in several ways.
6. First, I expect a significant increase in traffic along Highway 220 interfering with my ability to come and go from my property without increased danger. I also expect that me and my family will lose the privacy of our land and home and our ability to enjoying the peacefulness and safety of a rural community.
7. Also, this development will dramatically impact my property in terms of visual intrusiveness, and noise and light trespass.

8. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values as supported by the report by John Palmer.

FURTHER AFFIANT SAYETH NOT.

This 17th day of August, 2023.

Mary L. Anderson
Mary L. Anderson

SWORN TO AND SUBSCRIBED
before me this 17th day of August 2023.

Rhonda B. Rodenbough
Notary Public

Print Name: Rhonda B. Rodenbough

My Commission Expires: 7/3/2026



BEFORE THE ROCKINGHAM COUNTY BOARD OF COMMISSIONERS
ROCKINGHAM COUNTY NORTH CAROLINA

In Re: Zoning Map Amendment:)
Rezoning from Residential Agricultural)
(RA) to Highway Commercial (HC); Tax)
PIN: 7913-00-93-8212 Case No. 2023-12

AFFIDAVIT OF MICHAEL J. CUSATO, JR.

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.

2. I am President and an owner of President of Kalo Foods, LLC which operates and whose principal office at 119 Carlton Park Drive, Stokesdale, NC 27357. I am also an owner of Micris, LLC which owns the property at 119 Carlton Park Drive, Stokesdale, NC 27357. A copy of Secretary of State filings documenting these businesses is attached as Exhibit "1".

3. The property I own and where I operate my business is located approximately less than 1,000 yards from the property to be rezoned. A copy of my deed is attached as Exhibit "2".

4. Attached as Exhibit "3" to this affidavit is an aerial showing the relationship of my property in relation to the property to be rezoned.

5. It is obvious to me that this proposed development will dramatically and detrimentally impact my business in several ways.

6. First, I expect a significant increase in traffic along with a lag in the county and state's ability to adequately construct road infrastructure to mitigate traffic problems and the increased exposure to liability for my trucks and drivers.

7. Also, this development will dramatically and detrimentally impact my property in terms of light trespass. The county has been slow to increase infrastructure support in the county sheriff's office to date and I don't assume this will change.

8. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values.

FURTHER AFFIANT SAYETH NOT.

This 18th day of August, 2023.

Michael Cusato
(Name)

SWORN TO AND SUBSCRIBED before me this 18th day of August 2023.

Ashley S. Wolff
Notary Public

Print Name: Ashley S. Wolff

My Commission Expires: 2-20-28



BEFORE THE ROCKINGHAM COUNTY BOARD OF COMMISSIONERS
ROCKINGHAM COUNTY NORTH CAROLINA

In Re: Zoning Map Amendment:)
Rezoning from Residential Agricultural)
(RA) to Highway Commercial (HC); Tax)
PIN: 7913-00-93-8212

Case No. 2023-12

AFFIDAVIT OF Wendy Forbes

1. I am over the age of 18 and give this affidavit upon my own personal knowledge.
2. I am the owner of and reside at 650 Dogwood Acres Ln., Madison
3. My property is located approximately within 100 yds distance from the property to be rezoned. A copy of my deed is attached as Exhibit "1".
4. Attached as Exhibit "2" to this affidavit is an aerial showing the relationship of my property in relation to the property to be rezoned.
5. It is obvious to me that this proposed development will dramatically and detrimentally impact my peaceful and quiet enjoyment of my residence in several ways.
6. First, I expect a significant increase in traffic along with gang + theft concerns, water/electricity impacts, undesirable change to our area's way of life.
7. Also, this development will dramatically and detrimentally impact my property in terms of visual intrusiveness, and noise and light trespass.

8. I am personally familiar with the value of my property, and I am certain that this rezoning to highway commercial, considering all uses allowed thereunder, will negatively affect my property values as supported by the report by John Palmer.

FURTHER AFFIANT SAYETH NOT.

This 18th day of August, 2023.

Wendy Forbes
(Name)

SWORN TO AND SUBSCRIBED before me this 18th day of August 2023.

Cynthia A. Waddell
Notary Public

Print Name: Cynthia A. Waddell

My Commission Expires: 2/5/27

