

DINNER BRIEFING

The City Council of the City of Charlotte, NC, convened for a Dinner Briefing on Tuesday, January 18, 2011, at 5:25 p.m. in Room CH-14 of the Charlotte-Mecklenburg Government Center with Mayor Pro Tem Patrick Cannon presiding. Councilmembers present were: Michael Barnes, Jason Burgess, Nancy Carter, Warren Cooksey, Andy Dulin, Patsy Kinsey, Warren Turner

ABSENT UNTIL NOTED: Councilmember Edwin Peacock III

ABSENT: Mayor Anthony Foxx, Councilmember James Mitchell

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Tammie Keplinger, Planning, reviewed the deferrals for Council and indicated that many of the items had been deferred due to inclement weather that prevented the Zoning Committee from meeting. Councilmember Carter informed Council of the need to select and vote for a voting member for the upcoming North Carolina League of Municipalities Conference.

Councilmember Peacock arrived at 5:48 p.m.

[Motion was made by Councilmember Barnes and seconded by Councilmember Kinsey to]
[elect Councilmember Nancy Carter be the voting member at the North Carolina League of]
[Municipalities Conference.]

The vote was taken on the motion and recorded as follows:

AYES: Councilmembers Barnes, Burgess, Cannon, Cooksey, Kinsey, Turner

NAYS: Councilmember Dulin

The briefing was recessed at 5:57 p.m. for the Council to move to the Council Meeting Chambers.

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ZONING MEETING

The Council reconvened at 6:04 p.m. in the Council Meeting Chambers of the Charlotte-Mecklenburg Government Center with Mayor Pro Tem Patrick Cannon presiding. Council members present were: Councilmembers Barnes, Burgess, Carter, Cooksey, Dulin, Howard, Kinsey, Peacock, Turner

Mayor Pro Tem Cannon said Mayor Foxx would have been here this evening, but he has an appointment with the Conference of Mayors, so he is taking part in that. Councilmember James Mitchell also is at work on public business and will not be joining us this evening. Other than that, you have all of the members of City Council here to be of service to you this day.

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Mayor Pro Tem Cannon explained the Zoning Meeting rules and procedures. He recognized the chairman of the Zoning Committee and the Planning Commission, Steven Rosenboro, who introduced his committee.

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INVOCATION AND PLEDGE

Councilmember Barnes gave the Invocation and Councilmember Dulin led the Council in the Pledge of Allegiance to the Flag.

DEFERRALS

Mayor Pro Tem Cannon said as many of you will recall we had some inclement weather that kept a few of us at home and not able to attend some of the issues we will look to deal with tonight but others that we will not be working with tonight. That said, of course, Tammie Keplinger is here, who is our staff resource on zoning issues, and there are several items that we will need to defer. What you do need to know today is that we will not be making any decisions per se. We will be pretty much dealing with all hearings this evening. There are several items here that are up for deferral on the decision side, and one is Item No. 3, which is 2010-068, by Lightway Properties, LLC. This one is to be deferred one week, so it will be back on the next agenda on January 24th before the Mayor and City Council. You do need to know that there was a protest petition on this particular item, but that protest petition is no longer valid. What I would like to do, if it's okay with the Council, maybe we could just entertain one vote and approve it that way? We also have after this one week deferral that was made mention of we have several one-month deferrals to February 21st Council meeting: Item No. 1, 2010-051, by Habitat for Humanity; Item No. 2, 2010-067, by Park and Recreation; Item No. 4, 2010-075 by Woodie Enterprise, Inc.; Item No. 5, 2010-076, by Anders Platt; Item No. 6 and Item 7, respectfully 2010-078 and 2010-079, by the Charlotte-Mecklenburg Planning Commission.

We then, of course, have hearing which is up for deferral as well. This will be a two-month deferral up to March 21st, if I'm not mistaken, and that would be Item No. 11, 2011-002, by 521 Partners.

[Motion was made by Councilmember Barnes, seconded by Councilmember Kinsey, and]
[carried unanimously to defer Decision Item No. 3, Petition No. 2010-068, to January 24,]
[2011; Item Nos. 1, Petition No. 2010-051, No. 2, Petition No. 2010-067, No. 4, Petition]
[No. 2010-075, No. 5, Petition No. 2010-076, No. 6, Petition No. 2010-078, and No. 7,]
[Petition No. 2010-079 for one month; and Hearing Item No. 11, Petition No. 2011-002,]
[for one month.]

HEARINGS

ITEM NO. 8: HEARING ON PETITION NO. 2010-069 BY PATRICK N. DILLON FOR A CHANGE IN ZONING OF APPROXIMATELY 13.98 ACRES LOCATED ON THE EAST SIDE OF THE INTERSECTION OF MALLARD CREEK ROAD AND PENNINGER CIRCLE AND LOCATED ACROSS FROM MASON DRIVE FROM R-3 TO INST(CD)

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this petition proposes to rezone from R-3 to INST(CD). This site may look familiar to you as it was up for rezoning and was denied for rezoning in February of 2010. At that time, the petitioner was seeking R-12MF for a similar request. They are asking for rezoning for a 236-unit nursing home with 176 dependent living facilities and 60 independent living facilities. There will be two phases with 118 units in each phase. The buildings will be three stories.

We do have elevations that have been submitted with the petition. The petitioner, in order to comply with CDOT's design for the widening of Mallard Creek Road, is providing a four-foot

planting strip and five-foot sidewalk along Mallard Creek Road. Along Penninger Circle, they will be providing the eight-foot planting strip and five-foot sidewalk. They are proposing the tree-save areas, which are generally located in the setbacks and along the public street frontages. They also have a decorative fence that surrounds the property that will be gated. The building setbacks along Penninger and along Mallard Creek are 40 feet. This petition is inconsistent with the Northeast District Plan. Many of our plans do not tell us where institutional type uses should locate, and in this case, staff does feel that this is an appropriate location, and we are recommending approval once the outstanding issues have been resolved.

[Motion was made by Councilmember Barnes, seconded by Councilmember Turner, and]
[carried unanimously for the hearing to be closed.]

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ITEM NO. 9: HEARING ON PETITION NO. 2010-072 BY QUAIL CORNERS ASSOCIATES, LLC FOR A CC SITE PLAN AMENDMENT OF APPROXIMATELY 14.40 ACRES LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF PARK ROAD AND SHARON ROAD WEST

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this petition proposes to renovate the existing shopping center known as Quail Corners. The current development includes approximately 113,000 square feet with two independent, free-standing parcels and two accessory drive-thru windows. The proposed request is to allow approximately 10,000 square feet of new retail office and restaurant uses through creation of one new out-parcel, the addition of two additional accessory drive-thru service windows, one which will be only for a restaurant and one which will only be associated with a drive-thru pharmacy. All the uses in the CC district will be permitted with the exception of the following: No ABC stores or other businesses that sell distilled liquors, automotive service stations, car washes as a principle or as an accessory use, convenience stores with or without gasoline, funeral homes, hotels, nightclubs, bars, lounges, coin-operated laundries, and tire stores, and again, those will be prohibited.

There are five access points to the site. Three are currently existing. One is a realigned entrance on Park Drive, and the fifth is an optional new right-in, right-out along Sharon Road West. There is a six-foot wide pedestrian refuge area proposed in the existing median at the intersection of Hamlin Park Drive and Park Road. A new eight-foot asphalt greenway trail, which is part of the overland connector, will be on top of the existing berm along Sharon Road West. If I can, I will show you the overland connector is an important connector for parks and greenway. The site in question is here. They are trying to connect Little Sugar Creek Greenway and McMullen Creek Greenway, and that's why this connection is so very important.

There is a potential for the removal of a portion of the existing berm along Sharon Road West and Park Road to allow for driveways, sidewalks, and planting strips. The maximum building heights proposed are 40 feet and one story. Petitioner has submitted building elevations and architectural standards for the existing and the proposed buildings on the site. This area in particular shows a pedestrian area that is proposed. The required completion of all the exterior renovations to Building A and Building B, which are the main buildings in the center shown here, must be completed prior to the issuance of the first certificate of occupancy for a building on either Parcel 3 or Parcel 4. Parcel 3 is located in this area and Parcel 4 in this area. The proposed use, with the exception of the restaurant with the accessory drive-thru window, is consistent with the South District Plan. Staff is recommending approval of the petition upon the resolution of the outstanding issues.

John Carmichael, 214 N. Tryon St., said I am here on behalf of the petitioner, Quail Corners Associates. With me tonight are Peter Pappas and Susan McGuire of Crosland, Scott Wippel, vice president of Harris Teeter, Mike McLaughlin of AMMS, Inc., Crosland security consultant. As Ms. Keplinger said, the site contains approximately 14 acres and is located at the intersection of Sharon Road West and Park Road. Quail Corners Shopping Center is located on the site. Quail Corners opened in 1983, and the long time anchor tenant of this center is Harris Teeter.

Harris Teeter operates a grocery store on the site that is currently open 24 hours a day. The center currently has 113,469 square feet of building area, which includes the existing two free-standing buildings. The site is currently zoned commercial center.

Petitioner is seeking a site plan amendment to accommodate the expansion and renovation of Quail Corners and to add one use that is not permitted under the current zoning. The petitioner desires to expand the center to a maximum of 123,547 square feet. The expansion area would include an expanded vestibule for Harris Teeter. Initially the petitioner was seeking to add four new uses. Now the petitioner is seeking to add only a restaurant with drive-thru windows, a fast food restaurant, as a new use on the site.

Under the conditional rezoning plan, the existing Salsarita's is located about here. It could be demolished, and two new free-standing buildings could be located within each of Building Envelope 3 and Building Envelope 4. Building A here could be divided into two buildings for the purpose of providing a vehicular drive or a vehicular drive and an accessory drive-thru window for a pharmacy use located in the adjacent tenant space. It could only be in connection with an adjacent pharmacy use. In lieu of dividing Building A, the petitioner could divide Building B for the very same purpose, and the ability to divide either Building A or Building B will hopefully help Crosland, the owner of the center, maintain a pharmacy use in the shopping center.

Only one restaurant with drive-thru windows could be located on the site, and that restaurant would have to be located within either Building Envelope 3 or Building Envelope 4. The only use within Building Envelope 2 here at the top that could have a drive-thru window would be a financial institution, and there is currently a financial institution with a drive-thru window on this site. If drive-thru windows are located in Building Envelope 3, then the drive-thru windows could not directly front Hamlin Park Drive or Park Road. They would have to be on this side or that side to internalize the drive-thru window to the center. Likewise, if the driveway use is located within Building Envelope 4, it could not face Park Road. These design requirements are imposed to internalize the drive-thru windows as I previously stated.

The main entrance from Park Road would be relocated to the south to this location. It improves access into the site and improves the visibility of the center. An optional right-in, right-out driveway could be installed on Sharon Road West provided it's 500 feet from the intersection of Sharon Road West and Park Road. The berm located on Sharon Road West and around the corner here would be maintained except in the area that the right-in, right-out driveway is located, if that driveway is installed. A portion of the berm from this point south could be removed, and that would enhance the visibility of the center from Park Road. Finally, at the request of the Park and Recreation Department, the petitioner would install an eight-foot asphalt greenway trail along Sharon Road West on top of the berm.

As part of the revitalization of the center, Crosland would incorporate an outdoor plaza and dining area in the center. The ultimate location and scale of that outdoor plaza could change the design development phase, and talking with the Planning staff today we are going to need to show that alternative location on the plan. It may need to shift in front of Building B because that may be a better location for that use.

As depicted in the architectural perspectives that are part of the plan, there could be exterior renovations to the façade, the storefront elevations of Buildings A and B. The primary exterior building materials for the renovated storefront elevations would be a combination of brick, stucco, and cement board. All other elevations of Buildings A and B would be painted colors that are compatible with the store front elevations. The buildings within Building Envelopes 3 and 4 would feature four-sided architecture and have windows that face public streets. The primary building materials would be the same as for Buildings A and B. The design of the buildings located within Building Envelopes 3 and 4 would have to be approved by the Planning staff prior to the issuance of building permits.

As the plan is currently postured, the exterior renovations to Buildings A and B would have to be substantially completed prior to the issuance of a CO for restaurant with drive-thru windows within either Building Envelope 3 or 4. The prior version restricted the CO for Building on 3 or 4 to the completion of those exterior renovations. Once some of the uses were dropped, the

trigger now is a fast food restaurant with a drive-thru window, and we are going to talk to the Planning staff about that this week. The Planning staff is recommending the approval of this petition upon the resolution of the outstanding site plan issues. We are going to work this week to resolve those issues. We don't think that is going to be an issue. Transportation, CDOT, did not require a traffic study, and their memo provides that they have reached the conclusion that the proposed development plan and additional trips will have a minor impact on the surrounding thoroughfare system.

We have had two community meetings: one on October 18, 2010, and one January 11, 2011, and had several meetings with representatives of neighborhood associations, and there is opposition obviously, and we believe the opposition is centered around the potential fast food use. There may be other concerns, but we think that is kind of the linchpin of the opposition, but we will certainly let them speak to that. I'm going to turn it over to Peter now.

Peter Pappas, 227 W. Trade St., said I'm with Crosland Retail. We are working on Quail Corners on behalf of Mr. John Crosland, who personally owns the shopping center. We are at a place in time where something needs to be done to stop the decline and to stabilize Quail Corners. Our vacancy today stands about 16% or about 18,000 feet. Prospective retailers and restaurants are selecting other centers in spite of our strong in-fill demographics. In developing a list of improvements and uses that we propose, we reflected on changes that had occurred surrounding the center since the initial zoning in 1979 as well as since the 1996 petition. Three items stand out: the road, the households, and the retail landscape. In 1979, Park Road was a two-lane road and most of the surrounding subdivisions were in their infancy. Today, 30 years later, the subdivisions are nearly built out, and Park Road is a six lane major thoroughfare. Within one and a half mile radius of the center, there are almost 21,000 people.

There are restaurants and retailers that should be attracted to this demographic but are either not permitted because of the zoning or they want or expect significant improvements to be undertaken at the center. Why fast food? It introduces another convenience use, which is complimentary to the shopping center. It provides a steady flow of traffic to the center, customers. This is why other retailers find it as a good co-tenant. A non-anchor, single use, such as a fast food in this case, does not change the characteristics of the center nor more importantly does it change the characteristics of an established, stable, demographically sound community.

We would not pursue a change in use if we thought or had clear evidence that it would adversely impact the center, our tenants, or their customers. We do not want to detract from anyone's property value nor will we with this change in use. A vibrant center is surely in the interest of all stakeholders especially our neighbors and existing tenants. We have a history of completing successful renovations and know what changes are needed to put Quail Corners on the right path. Stopping the decline of the center, stabilizing it with improvements and new uses, positioning it to flourish again has been and will continue to be our goal. We work closely with our tenants especially Harris Teeter, and I will turn it over to Scott.

Scott Wippel, 701 Crestdale Road, said he is vice president of Harris Teeter. For more than 27 years, Harris Teeter has been an anchor tenant at Quail Corners, and we look forward to the future, the next 27 years, and support the proposed redevelopment of this shopping center. The updated look and feel of this proposal along with the change in tenant mix will be a positive direction for Quail Corners. Harris Teeter will also participate as well and offer improvements that will meet or exceed the needs of our customers. We have found all of these proposed uses to be complimentary. Many of our 200 stores offer these types of uses, and they are offering the customers another reason to come and shop within our shopping center. Having worked with Crosland since 1969, we have complete confidence in their ability to be a good community leader and developer and a long-term owner, which is unusual and a plus in this situation.

Ginger Aldridge, 2404 Tattersoll Dr., said I live about half a mile from Quail Corners and have been there for about 20 years. I'm here tonight to share that I'm in full support of this project. I think everybody is in agreement that this center is a relic. It's kind of an eyesore for most of us who look at it every day. We are excited and ready for change. I think when we mention change, we need a vision, and any time there is a great vision with a lot of change, along comes fear, so a lot of people seize up with anything that's different and anything that's new, so we all kind of hold our breath and get a little afraid. I have kind of surpassed that fear because when

I'm afraid I kind of go to an expert, and I think we have with us and the person and the people behind this project are experts, and I do think they have the expertise and the track record to listen and more importantly to look at the balance of the tenants, to look at the design aesthetics, and to have projects in their paths that really are working. So, my fears have gone down, and I'm feeling really excited along with some other people that aren't here tonight. So I have trust that they will do an unprecedented job to make sure they are blending in the concerns and put in the standard of excellence – Looking for your leadership. Vote yes.

Mark Matthews, 7042 Quail Hill Rd., said I'm president of Quail Hollow East Homeowners Association and president of Quail Hollow Homeowners Association, the master association, which consists of 269 residences. Quail Hollow Homeowners Association is an active member of the Park Quail Neighborhood Coalition, which consists of approximately 15 neighborhoods, 5,000 residences, and resides in District 6 with over 17,000 voters. An important step in our opposition to the Quail Corner redevelopment project, which included a fast food restaurant with a drive-thru, Quail Hollow Homeowners Association and Hamlin Park filed protest petitions. Along Park Road from Woodlawn to Johnston Road is a residential corridor. When asked why fast food in a recent *South Charlotte Weekly* article, Mr. Pappas responded, and I quote, "It's a use that is not met out there." There are a total of 15 fast food restaurants within a two and a half mile radius of the shopping center. Consider these reasons for Crosland wanting a fast food restaurant. The restaurant chain constructs the building and pays a premium for the lease, even the land; minimum or no capital outlay on Crosland's behalf; an increased property value positioning the property for sale. Rezoning this property will set a precedent in the area not only for this property but for the property across the street owned by the Harris Land Group. As City Council members, your responsibility and obligation is to follow the guidelines set forth by the GDP and South Corridor Plan. Thank you for the opportunity to express our concerns in opposition to this rezoning plan.

Jay Shapiro, 7122 Quail Meadow Ln., said I'm vice president of the Quail Hollow East board of directors, a member of the board of directors of the Quail Hollow Homeowners Association, and a member of the Park Quail Neighborhood Coalition. Why did the Crosland Company agree in 1979 that any rezoning plans for Quail Corners Shopping Center would not provide for a free-standing fast food service location? Why did the 1992 South District Plan for Charlotte specifically prohibit fast food restaurants and drive-thru windows? Why did the South District Plan as amended in 1996 disallow fast food restaurants and drive-thru windows at Quail Corners? Why did the Charlotte-Mecklenburg Planning Division in its January 18, 2011, staff analysis reaffirm that consistent with the South District Plan zoning for a fast food restaurant with drive-thru window at Quail Corners should not be approved by the Charlotte City Council? Quail Corners has been a local retail destination and a community oasis since its inception. It anchors the surrounding two to three square mile corner of Charlotte serving residential neighborhoods, schools, churches, and retirement communities along the residential corridor of Park Road and Sharon Road West. The residents of the Park Quail community, the Charlotte Planning Division, and even the Crosland Company itself in 1979 have all understood that a fast food restaurant with accessory drive-thru window would permanently transform the unique neighborhood based character of our local shopping center into one more link in a commercial corridor that attracts a customer base that is just passing through. The City of Charlotte has many beautiful, quiet, stable, neighborly residential corners. The Park Quail area, one of those corners, is treasured by its residents. With the Council's support and with its decision on this zoning reapplication based on Charlotte's planning guidelines, we hope and we trust that the integrity and character of the Park Quail community will be preserved and protected. Thank you for giving me this opportunity to speak on this matter.

Barbara Harris, 2764 Tiergarten Ln., said I'm representing Hamlin Park, a townhome community of 96 homes. We back up directly to Hamlin Park Drive. One of our main concerns regarding the fast food restaurant is increased traffic and how it will hinder access into our neighborhoods. I encourage you to drive down Park Road around 5:30 any week night, but be careful. Park Road is six lanes wide at the intersection of Hamlin Park with traffic often traveling in excess of 50 miles an hour. The posted speed limit is 35. Hamlin Park Drive is the main entrance to Quail Corners. Brandon Forest and Hamlin Park Drive is a short cut for traffic coming off Sharon Road West. Traffic often backs up the entire length of Hamlin Park. There are five bus stops on three sides of the shopping center. Buses back up traffic on Park Road at our corner and block traffic from turning into our neighborhoods. We already have a lot of

traffic problems. Add to that a fast food restaurant at the corner of Hamlin Park Drive. Fast food restaurants and rush hour go hand in hand. Studies show that popular fast food restaurants produce between 850 and 1,100 trips per day mostly during rush hour. The entrance at Park Road is to be moved closer to our corner. That will mean more cars turning in and out of the shopping in a shorter distance with no entrance or exit lanes planned to ease that logjam. Our shopping center is in desperate need of renovations. We are eager to work with Crosland to return this to the vibrant shopping center that it once was. Let's make Quail Corners a place to come for quality shops and restaurants and not merely to catch the passersby.

Marie Smithson, 3037 Planter's Walk Ct., said I'm the HOA vice president of Cameron Woods, a neighborhood in the Park Quail area of 806 homes. Our gravest concern to the proposed drive-thru restaurant is its proximity to Quail Hollow Middle School. It would sit tantalizingly close directly across six lanes of high speed, busy traffic on Park Road where hundreds of young students go to school, attend after-school activities and athletic events. Tragically several years ago a South Meck student was hit and killed not far from this spot and just last year a Quail Hollow student was hit and seriously injured in the exact location we expect students to attempt to cross if you allow a fast food restaurant to go in at Quail Corners. The PTA presidents of Quail Hollow Middle School, South Mecklenburg High School, and Smithfield Elementary School are all publicly opposed to Crosland's plan. While we would hope that our middle schoolers would not dodge traffic to get to a McDonald's or a Taco Bell, we know reality is they are not going to use common sense. We know the temptation will prove too great. Crosland has provided for a pedestrian island smack in the middle of Park Road somehow thinking this will provide adequate safe passage for students attempting to dodge six lanes of high speed traffic. This twisted logic simply adds to the problem and says to our children "go ahead and cross" with no safeguards to slow traffic or alert it to a child's presence. In legal terms, this is known as an attractive nuisance, which is defined as anything on premises which can attract children into danger or harm. A pedestrian island in the middle of six busy lanes of traffic with no traffic light or crossing signal that draws children to a fast food restaurant placed directly across from a middle school is an attractive nuisance. We ask you please do not put our children in this dangerous situation.

Matt Hucko, 8305 Merrimack Ct., said I'm president of the Homeowners Association for Quail Hollow 4. When Quail Corners was originally built in 1979, John Crosland Company promised the community that in exchange for their support Crosland would not provide for a fast food service location within the entire shopping center. In 1994, Crosland applied to have the site rezoned to include additional square footage and tried to sneak in fast food. The community succeeded in disallowing fast food with a drive-thru on any of the outparcels. Now, in 2011, we find ourselves having the same discussions about increased square footage and fast food. The community did not want fast food 32 years ago, and we still don't want it today. The Park Quail Neighborhood Coalition has negotiated in good faith with Crosland from the very beginning by laying our cards on the table and letting Crosland know what the community was accepting of and what we were opposed to. We were realistic in our negotiations and thought about what was best for Quail Corners and the surrounding community. Crosland, on the other hand, asked for an outrageous number of scenarios knowing full well that they wouldn't be granted but could use them as examples of compromise in good faith with the community. This was pure manipulation on their part and an insult to the community at large. If Crosland was truly concerned about the surrounding community, which they say they are, then they would have included us in the discussions five years ago when they supposedly first began to work on the redevelopment scenarios for Quail Corners. Instead, they decided to engage the community in the last few months when they realized there was strong resistance to their rezoning proposal. The Park Quail Neighborhood Coalition and the community as a whole would like nothing more than Quail Corners to be a vibrant and successful center. We have made numerous suggestions to Crosland that make logical sense and would benefit Crosland, the community, and the existing tenants. Let's be honest here. Fast food will not benefit the community or the existing tenants. It will attract all the issues you have heard here this evening and will only benefit Crosland. We ask City Council to vote against fast food and the rezoning of Quail Corners so that we can all come to a better solution that benefits the existing tenants, Crosland, and the surrounding community.

Mr. Carmichael said, first, in terms of what happened in '79, there is a note on the plan. I wasn't involved in that, but there is a note on the plan that prohibits the use that is requested. My

response to that is zoning is subject to change, and you apply to the City before this body, and this body decides whether it's appropriate or not to rezone the site. I wasn't there in '79, but that's the way zoning works, and in '96, I wasn't involved in that – my firm was – so I can't really speak to that, but a fast food restaurant particularly one that has architectural controls such as this one would have is not inconsistent with a neighborhood center that serves the surrounding community. We have fast food restaurants in nice neighborhoods throughout Charlotte. We have some in the SouthPark area. I live in Cotswold, about two-tenths of a mile from four fast food restaurants. It hasn't negatively impacted the quality of my life or our property values. I can assure you of that.

In terms of children crossing the street, that's a difficult discussion to have in our position because it's as if the use is going to create the problem. I would like to just say that we don't want anybody to get hurt crossing Park Road, but there are a lot of uses in that center now and that could be in that center in the future if this rezoning petition is not approved that are going to attract children. We want to attract customers. We don't want them to cross the street, but it's the truth of the matter. There's a Salsarita's. There's all sorts of uses that could go on there that could attract children. That being said, we think there are some things in the area that can mitigate these risks. There is a traffic light and crosswalk located at the intersection of Park Road and Smithfield Church Road near the middle school. It's about 900 feet from our site according to Polaris and virtual Charlotte. In terms of the pedestrian refuge area in the middle of the Park Road median, that was a request of CDOT. If folks don't want that, we are happy not to put it, but we were honoring a request of CDOT when we agreed to do that. We sincerely hope that children who do want to come to this center and are going to cross the street would use the crosswalk just south of the site.

Councilmember Turner said my concern, and I'm going to express my questions really for staff here. I used to live out there, so I'm very familiar with it. I spent a lot of time in that area. One, you don't have to sell me the fact that there is a traffic problem. I'm very familiar with that, oftentimes caught in it. The concern I have here is not just based on the mere fact of how it was zoned as a wedge and a center for the community back in its original existence when Crosland developed this site. I used to shop there as well as jog up and down that road. The protesters made a good point, but I'm a little concerned why we don't find that to be a concern to us in regards to the traffic pattern with no future improvements to neglect any of these issues which they have brought to our attention. Knowing that there is already a traffic problem there, all one has to do is just go out there during those high peak traffic times. I was very concerned – when was the last time we conducted a traffic count there based on these numbers? Can you provide that information to this Council when that information was submitted and how long ago that has been? If you don't mind, Mayor Pro Tem, I do have a few other things I want to touch on, but if he can answer that for me now.

Mike Davis, Charlotte Department of Transportation, said I'll start with your question about where the numbers came from and sort of dates associated with those. I think what you are referring to is where we included in the report generation that is actually not a count. It's where we estimate based on national data for similar kinds of land uses how much traffic is associated with developments of this size. So, again, it's not an actual count, so there is no data associated with it. In terms of sort of our analysis of those predictions, I think it ends up being about a 6% increase between what we have estimated as proposed versus what is allowed under existing zoning, so again that is not a reflection on any stores that may be vacant or what kinds of tenants are in those stores.

To the question of why we would feel perhaps comfortable or not, look for other kinds of improvements in the area, the petitioner noted that we did not request a traffic study in this case, and that's for two reasons. One is that sort of increment of increase in traffic is not significant in our minds in the context of the overall development, but moreover it gets to the question of whenever we request the petitioner to do a study the question is always to what end, and Park Road is six lanes. It has signalization at nearby intersections. It has turn lanes, and as we had sort of focused our attention on how the site is being developed internally, the initial plan was not to our liking, and we have actually worked with the petitioner to modify access so that whatever operational issues may be associated with the petition could be resolved.

Councilmember Turner said I understand. I wanted you to say that, and I wanted the Council to hear that because you are absolutely correct that your estimation of trips is based on the total footage of space in which there is opportunity for business to come and for people to create that traffic. That is my point. For us to just say we have no issues to me is somewhat negligent on our behalf because if you know the history in that area in my opinion today there is obviously no room in that area if you know how the housing abuts it to both sides of Park Road as well as Sharon Road West to improve that. The road improvements have already taken place. We have gone to three lanes – total of six lanes, and you have several schools. You have South Meck, Quail Hollow in that area. You have a nursing home, all the things that they have just stated to us.

The fact of the matter is I find it very interesting that for whatever ungodly reason we protected Park Road from Woodlawn all the way down to Johnston and 51. There are no fast food restaurants that adjacent Park Road, basically no facilities that entertain where customers would come and go on a normal basis in a short period of time. In saying that, to me at some point we should be able to provide, and I would like to see that – the last time we went out and did a traffic study period just based on the growth that has happened over the past years in that area where we know that traffic count is based on our projection based on future land use – not the current land use and not where we are based on the growth. So I would be very interested still to know what that number currently is if we actually would have had our last data showing when we went out there and had any traffic count study done for that area. I'm saying that because if you know that land site I personally find it very interesting, and I'm going to ask Crosland – Mr. Carmichael – if he could come on up because the next question is going to be directed to them as well. John, Mr. Carmichael, can you tell me that you all looked at any other site or have any other discussion – really my concern is not the build-out of that site but the fast food. Putting it at that particular location to me compromises some things. I think it does. In fact, it impacts because I think the lady made a very excellent point of the shorter distance trying to enter into high traffic congested area already where we have a light, and I know we think the red lights resolve all things, but red lights hold traffic and keeps people from moving, but it regulates the movement. I'm very interested in that you all considered when you met with them and anyone else out there that has this concern to consider putting this inside that facility and not being independent as a stand-alone building on the outside of that parcel.

Mr. Carmichael said, Mr. Turner, did Crosland consider putting the fast food restaurant internally somewhere in here in line?

Councilmember Turner said yes.

Mr. Carmichael said I don't believe that was a consideration. Peter Pappas is telling me it was not. That's a suggestion that I haven't heard. I don't recall ever having that discussion with the neighborhood.

Councilmember Turner said I say that. Let's just be honest about it. I use them. I think we all have and did at some point. Drive-thru's are wonderful, but they are not fast, and they do create in my opinion more traffic, and they also create a lot of other things that we often talk about from this dais. I want to stay on the subject here, and the subject to me is kind of how do we alleviate – do we ever consider or would you consider that with the citizens to in-house that restaurant versus making it an independent, standalone building with a drive-thru window because you are not encouraging people to get out of their cars, and that area is very tight in my opinion. As I said before, I know it very well. I lived there, so could you talk to us about that, if you don't mind, sir?

Mr. Carmichael said, Mr. Turner, when you say move it inside, are you saying eliminate the drive-thru or put it like on an end cap?

Councilmember Turner said talking about putting the restaurant internal of your main stationery building, your retail site, versus having an independent standalone building.

Mr. Carmichael said with or without the drive-thru?

Councilmember Turner said, well, you can't have a drive-thru if it's internal. What you going to drive through the main building?

Mr. Carmichael said, for instance, a proposal here would be to have that drive serve an adjacent pharmacy use, but I wasn't sure what you were asking.

Councilmember Turner said thank you. I'm sorry. No, Mr. Carmichael, I would be suggesting that we consider not having a drive-thru fast food restaurant where it's actually a drive-thru.

Mr. Carmichael said the potential users for the restaurant would be fast food restaurants with drive-thru windows. As we sit here today, they could have numerous restaurants without drive-thru windows under the current zoning, but Crosland felt that that particular use, the fast food restaurant with drive-thru windows, would enhance the center and enable it to accomplish its renovation goals and to have a more diversity of tenants in there because there are in-line restaurants there today, but they were looking for a more diverse mix, bring some new people to the center, make it a more vibrant center, that sort of thing. No, we did not consider moving that particular restaurant user in-line. When I say in-line, in one of the internal buildings.

Councilmember Turner said, John, thank you, you have pretty much answered my question. It appears to me then that the focus point is to have a restaurant that has a drive-thru for the diverse of your customer base that they think would be more attractive to someone that would want to lease that spot for that purpose. I think that is one of their biggest concerns. That is one of their biggest concerns. I understand there are restaurants there. I understand that you could do that, but I think the more we head towards putting outer parcels there, I think where people can actually drive through, drive up, that is the big argument is that you are creating more of a traffic count, more interruptions into a residential area. Let's be honest about this. That entire parcel is surrounded by residential other than when you are facing Park Road. Of course, Quail Corners is on the other side, but the point is it is, so I hope you all would consider that. I'm definitely wanting staff to get me those numbers to see what our traffic count is today – when is the last time we had a study done out there prior to – since we changed it to six lanes.

Mr. Pappas said may I just add in answering part of that, the 18,000 feet of vacant space we have in the shopping center many of the uses in our focus group and the neighbors have shared fast food doesn't preclude that. Said simply, we have plenty of space to attract all those other uses we have talked about – vision centers, sit-down restaurants.

Mayor Pro Tem Cannon said, Mr. Pappas, as a point of procedure, unless there is a direct question because my city attorney just looked at me a little bit cross-eyed. I'm teasing, but we have to maintain the order, so if there is another question per se that a member of the Council has or Mr. Turner we'll have to yield.

Councilmember Turner said thank you, Mayor Pro Tem Cannon. Mr. Carmichael made the point, and I understand what you are getting ready to say, Mr. Pappas. That, of course, would be more attractive to one that is in that business to have a drive-thru and it be a standalone facility. I do understand that, but, again, I think that is one of the things that creates some of your hardship in trying to get this project done.

Councilmember Burgess said I had a question for Mr. Davis. I'm referencing your memorandum from October 15th or October 28th. It's about the trip generation, and it looks like at the current location with the current size the estimate is in between 7,300 trips per weekday and 9,900 per weekend or for Saturday, and then the proposed zoning would be 7,790 or 7,800 and 10,500, so an extra 600 or so trips per day. Considering that this is going to be a fast food, and I have done just a little bit of research in trying to figure out for the fast food when the McDonald's is talking to their franchisees it looks like they are suggesting it is going to be 500 to 1,000 trips just for the restaurant itself. Isn't there other square footage that we are adding here, this other building, and my assumption is are these just estimates and do we take into account whether it's a fast food restaurant or not?

Mr. Davis said the answer is yes. There is actually a couple of different ways it could be done, and to fully answer your question I would need to go back and see how we ran the calculation, but the way we present that information is not to compare what is proposed against what has

been built. It is what is proposed against what is allowed under the zoning, so it could be that the reason for that differential there could be – and, again, this is something I have to check to see how those calculations were produced, but there could be that there is unutilized square footage allowed under the zoning. I would have to look. I don't know.

Councilmember Peacock said the first question is for Tammie. What is our definition of fast food?

Ms. Keplinger said the zoning ordinance actually does not have a definition of a fast food restaurant, but it does have a definition of restaurants with drive-thru services, I believe, and I will ask someone to look that up for me and give you a really good answer on that in just a minute.

Councilmember Peacock said I would just like to know what criteria we are using as fast food, what criteria the petitioner is using as fast food, and what the public understands is fast food. My next question to you, and it could be a question also for Mr. Pappas and Crosland Retail, is Salsarita's fast food? That's a current tenant; isn't that correct?

Mr. Carmichael said it is a current tenant, Mr. Peacock.

Ms. Keplinger said I believe the way we are referring to things as fast food restaurants, and I'll have to ask John to help me with this, but I believe what they have on their site plan refers to restaurants with drive-thru facilities. It doesn't actually use the term "fast food restaurant".

Councilmember Peacock said I will let you all answer that question as well, and I have two questions for both of you as well as Mr. Wippel. If you could come down for Harris Teeter as well.

Mr. Carmichael said this comes right on the zoning plan. It says restaurant with accessory drive-thru windows. You may recall from my presentation I started out saying restaurant with drive-thru windows, but at some point I said fast food because I think that is the nomenclature that more people understand and I didn't want to be perceived to be disingenuous, so that's why I put fast food in there. But in the rezoning, it doesn't say fast food, and I'm not aware of any definition in the ordinance. It's just restaurant with drive-thru window. With respect to the Salsarita's, it doesn't have a drive-thru window, so I wouldn't consider it to be a fast food restaurant. It's probably a quick, casual restaurant, but not a fast food restaurant, but folks in the audience would know.

Councilmember Peacock said I will let Mr. Pappas as well as I'm going to ask Ms. Smithson some questions as well, too, and also reference in my questions as well Ms. Ginger Aldridge, so if they could be on standby as well. My question for Mr. Pappas right now – it's a broader question, and you can answer it just the question I asked Ms. Keplinger as well, too. Can you give us examples of Crosland retail, Harris Teeter retail that has fast food in a combination around this size? Do you have some examples that you know right now where you all have a similar demographic that you do at Quail Corners where you have a fast food restaurant there, and can you give us some examples of that?

Mr. Pappas said sure, and I'm going to broaden it so it's not just Harris Teeter. It would be a comparable grocery store. With Harris Teeter specifically at what we call Rea Village, which is just south of 485 on Providence Road sitting at the east/west circumferential is Rea Village. It has a Harris Teeter in that shopping center. It is a co-branded C store with a Wendy's. In fact, I believe the C store and the Wendy's opened before the Harris Teeter. That's an example of a shopping center, and that center is about 70,000 feet. Quail Corners is 100 and something thousand, so that is an example of a smaller center. It's also on a major thoroughfare, and I believe – CDOT can correct me – but I believe the traffic count on that part of 16 is less – more like 24 to 25,000 cars than that which on Park Road at Quail Corners, which is closer to 36,000.

Another example, not with Harris Teeter, would be Hunters Crossing on 521, which is a Lowe's Food anchored center. It also has a Wendy's. Once again, that center is more 75 or 80,000 square feet. If you combine the adjacent space we built, which were condos for businesses, then it's equivalent. So those are at least two examples of centers that we developed that have a

major grocery store that do have fast food. They are in fact sitting on thoroughfares that carry less traffic than Park Road and they are smaller meaning the larger Quail is expected to have a broader set of uses because of its size. I could go on with some other examples.

Councilmember Peacock said, Mr. Pappas, does Crosland Retail have any shopping centers that do not have fast food in them?

Mr. Pappas said yes, things we have developed –

Councilmember Peacock said I mean of this comparable shopping center type size that would have a large retail attraction like a Harris Teeter anchor tenant or another comparable grocer like that, and I'm asking you questions. You can get back to us with a list of it, but I'm having a hard time just as a citizen and somebody who has visited that shopping center my whole life to think of any shopping center that doesn't have at least some element of fast food component. My question also, too, as well, and this is a question that goes to the broader audience here as well, too, is what is fast food because the definition since 1979 to now has rapidly changed. Let's take for example a popular casual dining experience called Showmars. They have been to us before on many petitions, but their logo is "good food fast". They don't have a drive-thru, but is that acceptable. Is that an acceptable retail tenant mix that would be acceptable to the petitioners whose signs right now say "no fast food".

Another example – Subway. That's fast food. No question. It's in every gas station along all the interstates now, but it doesn't have a drive-thru in all of its locations. My question also is to Harris Teeter, do you all have a shopping center that doesn't have fast food? I'm just trying to find an example first without, and I'll let you all get back to us with what is with, and I'm –

Mr. Pappas said may I give one without so in fairness. Old Towne Village at Quail Hollow and Carmel is a shopping center that was developed by Crosland and renovated. That is an example of a Harris Teeter anchored center that does not have a restaurant with drive-thru – just in fairness to balance that.

Mr. Wippel said to your question I'm sure we do. I couldn't stand up here tonight and tell you which centers we have where there is not a fast food restaurant, but out of 200 stores there would be.

Councilmember Peacock said my next question goes to those that spoke against. Actually before I get to those against, Ms. Aldridge, one of the comments that we read and Council just got this tonight as well, too. You are the only citizen here who is speaking for this. There was a comment at the bottom of the last paragraph of the first page here where this is the headline, "Quail Corners Proposed Rezoning Facts and Information". It says no group of area residents has formed in support of this zoning change and community support for this simply does not exist. Well, you certainly have countered that. I'm just wondering are there any neighborhood organizations that maybe aren't here tonight that this Council is not hearing from. I don't believe you represent any specific homeowners association, do you?

Ms. Aldridge said I'm not a member of our own homeowners association, and I'm not speaking for them. Essentially I do represent some other folks here, and I think if we have a Web site opportunity and an opportunity to speak up a little bit more and get activated. I think a lot of people were excited about the project and a lot of us didn't know there was a stopping point where it was going to be taken off the table, so once a lot of people have found out that this has become an opportunity where this might go away, we have become more interested in it moving forward. So I think with that opportunity of losing that opportunity, there is a lot more people that want to speak up.

Councilmember Peacock said, Ms. Smithson, thank you for bringing to our attention the term "attractive nuisance". I hear you on the public safety component, and certainly this Council is going to take that as priority number one, and the answers from Mike Davis at CDOT are ones that we take seriously here, and Councilmember Burgess has asked about traffic count. It's very important, but to Councilmember Turner's points here, there are all kinds of things that can attract someone to cross that street. I was asking questions about what a fast food establishment

was. Salsarita's, Showmars, Subway, Harris Teeter is really great. I'm just trying to figure out what is going to stop that.

Ms. Smithson said, Councilmember Peacock, when I think of that I'm going to speak personally for a moment as the mother of four children. I have raised two now past middle school age, and the several hundred middle schoolers I think are what we are most concerned about, and I think we all know that is that wonderful age where their brains just fly away for a few years. They also don't have the spending money to necessarily go into Salsarita's where a meal is going to be seven to ten dollars by the time they are done purchasing it. We worry more about a fast food restaurant where they are going to go in and get a shake, you know, ninety nine cent fries, a Coke. That's the kind of fast food restaurant I think we are most concerned about a 12 year old whose buddies are all crossing the street really quickly who is going to want to jump that waist-high fence and join his friends, and he has a couple of bucks in his pocket. I think that is the fear that we all have, and as a parent, I know I can see that scenario happening no matter what the threat of punishment is at home if your child does that. We all know that kids are going to do it. So that's how we are seeing fast food as a threat to the kids.

I think all of us feel like Salsarita's, yes, it is a type of fast food. I think it's probably on the healthier end of the spectrum for fast food. Back to your point about Showmars. Showmars actually does have drive-thru's. They have one very nearby in Pineville. It's within that two and a half mile radius to Quail Corners. I would just like to make a point that Rea Village that was mentioned as something similar to ours where Wendy's is cited is not in an area that is nearly as residential. It is not near schools, and it's not a good example as a comparable to Quail Corners.

Councilmember Peacock said you are just speaking for your particular homeowners association.

Ms. Smithson said all of us together we have a really active coalition of neighborhoods in the area. I am vice president of my homeowners association. All of us are on our various different boards.

Councilmember Peacock said my question is about what type of fast food would be acceptable at a drive-thru or not drive-thru? You just mentioned that comparable there. Have there been any negotiations with the petitioner about what type of retail establishment. I know that maybe perhaps our Code won't allow specificity like that, but it sounds like when you are talking about ninety nine cent meals you are talking about typically a McDonald's or a Wendy's or a Hardee's or something like that.

Ms. Smithson said something like that. We have actually presented – we wanted to work with Crosland as much as we could, so early on we presented them a list of businesses we thought would really be successful, and within that were several establishments – sit down type family restaurants – and different ideas we thought would work in that location.

Councilmember Peacock said such as?

Ms. Smithson said my mind is kind of blank. Like a McAlister's or a Panera or something in a deli-like – some place you can imagine taking the kids for some sandwiches, something that isn't going to draw kids jump a fence and go necessarily hang out there, and, secondly, something that isn't going to cause the massive amount of traffic coming in to just drive through, get a Happy Meal, and head on.

Mayor Pro Tem Cannon said I have Councilmember Dulin, whose district this falls in. Would you like to yield to Councilmember Barnes?

Councilmember Dulin said I would like to yield to Councilmember Barnes.

Councilmember Barnes said I had a question of Mr. Wippel, and that is in light of what you are hearing, could you give us an indication of what, if anything, would happen with your plans if the outparcel for restaurant purposes is not included.

Mr. Wippel said that would not be really our decision. That is up to the developer. The developer if he were to renovate the shopping center we would follow suit. He has indicated that

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they believe they need to renovate the shopping center, and, again, we support it. We think the uses and the things he has proposed are complimentary, and that's really just our opinion.

Councilmember Barnes said, so, if the plan is approved, obviously you guys would be happy. If it's not approved, they won't renovate your –

Mr. Wippel said we won't renovate unless the center renovates; that's true.

Councilmember Barnes said and you would be okay with that.

Mr. Wippel said not renovating?

Councilmember Barnes said, yes, sir.

Mr. Wippel said we would prefer to see it renovated.

Councilmember Barnes said but if it's not would it impact your presence there?

Mr. Wippel said we have made a conscious decision that we need to do this as a whole shopping center. We are not going to do it by ourselves.

Councilmember Howard said I don't think I have a lot to add to the questions that have been asked because I have been to the center and talked to a few people out in that community. My concern is kind of more we got a month now before we have to make a decision, and I kind of understand both sides. I mean it's really clear that the center needs some assistance. It looks pretty old. I mean you want to see what centers look like in the '70s, go by and you get a good shot of what it was like, but at the same time, I think I do understand the concerns of the community. I mean I have heard them loud and clear.

When I talked to one of the folks, they made it clear to me that this is the heart of their community. This is where they meet, this is where they talk, this is where they interact. When you have something that has that much of a strong pull to the community, obviously there is a lot of passion about what happens with it. I'm not adding anything other than saying that I just hope that the folks at Crosland understand that as well as I hope the folks in the neighborhood understand that in order to make this there are some things that the developer is going to have to figure out. You just can't go out there and kind of wish upon a star and make the changes. You have to make the deal work. Between now and next month, I really hope that Crosland – you guys really get how much this community has passion about the center, and it's the heart of it, and the community understands that it can't happen without them making compromises and trying to figure this out, so please continue to talk because I think it is an important project for the community.

Councilmember Kinsey said I have a 15-year-old grandson. Now, granted he is in high school this year, but just been through three years of junior high, and I'm curious as to how many children actually walk to the middle school. When Cooper was in middle school, most of the people unless they lived near where Mr. Dulin does, most of the children rode buses home right after school, and if there are some walkers in the community, which I would guess there are, would there not be a crossing guard? I know there is at AG when they cross Runnymede, so I'm just curious. After school, just the school children. If there are that many who either don't ride the bus or if there is not a crossing guard.

Ms. Smithson said I don't have the numbers on busing, although I know we have some concerns that the number of students that are being bused are going to change with the budget changes that are going to happen with CMS. I can tell you in addition to the busing that happens the field that is directly across from the site that we are all discussing is a field that is used during the better months for soccer and track and all kinds of sporting events and football, so when you come in there during the fall or in the spring, you are going to see hundreds and hundreds of kids there in the afternoons from about – middle school gets out I think from about 3:00 until about 6:00. In addition, right next to that – just go down 50 feet past the property – you have the Park Sharon Athletic Association, which has multiple fields, and they on their Web site claim to serve thousands of children. I think that is probably true. Somewhere in the high hundreds to a

thousand children are on baseball, football, softball, soccer, and cheerleading teams, so right in that immediate vicinity all the way from spring through summer and through fall we are talking thousands of kids.

Councilmember Kinsey said just because I raised three children that participated in those sports I would hope that those children are well supervised like mine were.

Councilmember Carter said mine is a bit of a longer term concern. Looking at this proposal, it is based on a 1979 agreement and ratified in the '90s, and here we are looking at abrogating what was decided between developer and citizens and Council. I'm trying to figure out when does that run out, when does the agreement run out? Why are we looking at coming back on the proposal that has been part of that neighborhood for a long time? That is what really concerns me in this issue. Consistency. I understand changing economics, but there is one other subsidiary concern, and I'm wondering where the air quality measurement is in that area because I think it's somewhere in this region, and if we are adding idling, that's an issue for me. So those are two issues I would love to see addressed down the road for us before we make a decision.

Councilmember Dulin said thank you to my colleagues on Council for how much time you have spent studying this, reading this. Clearly everybody put some time into it, and I appreciate that because this is a big deal, as we all know. As we folks, a lot of neighbors here tonight, and as we, as a Council, move around our city doing these rezoning and trying to find where we can help our community in all four corners get through a recession, come out strong, be in a position to continue to be strong, attract more families, attract jobs to our community, this is the kind of thing we are actually pretty pleased to have the troubles we have tonight. This is a community of neighborhoods that is involved. You have certainly done your homework. You are passionate about your neighbors, your neighborhoods, your homes, your churches, and as one of my colleagues said, I think Mr. Howard, your community center, this Quail Corners Shopping Center that has been there now for decades. There are a bunch of Charlotte folks on this Council. It has been there all our lives in some cases or most of our lives.

To the Crosland folks, I mean I have been sitting in except for the first meeting in October, I have been to, I believe, every meeting, and we have had a couple at the coffee shop, we have had couple – I'm sorry that more folks weren't able to come last week during the snow event, but thank you to the Crosland folks and to the neighbors that were able to get there last Wednesday night. I have got to ask the Crosland folks to continue working on this with these people because in the end they have got a lot of say what's going on up here, and their ability to unite speaks loudly to the folks of us who are sitting up here because we are elected by this community to come up here and listen and do what we are doing here. So, you guys are doing a good job.

I'm sorry that you have had to lose some of the use up in the corner. I didn't know why that had to go away, but it did. I was looking forward to opening up the berm if you are able to do that. I was out there yesterday. I told you last Wednesday when we met in the snow I had just shopped there Saturday at your Harris Teeter, sir, and I was back out there yesterday and took a big, long look at it. I drove in it, I parked, I walked in the back. Again, the only time we ever – it makes no sense to me that either the County or the City has asked you to put an eight-foot greenway on top of the berm. I mean that's nuts that our crowd would make them do that, and there are indeed trees right on top of that berm, and that walking trail could not do this without taking out that berm. Tammie, is that us or the County that is having them do that?

Ms. Keplinger said it was a combination of County, CDOT, and the petitioner all working together to come to a resolution as to how to deal with that overland connector.

Councilmember Dulin said as many good ideas as y'all have collectively that's not one of them. That's just crazy, and it wouldn't bother me one bit if that part of this plan went away. It doesn't make any sense at all. But, that's small potatoes to all what we are doing here. So, to the Crosland folks, I want to thank you for working because every time you sharpen up your pencil that goes to the bottom line, and y'all, what you are trying to do is deliver a three-decades old shopping center to 2012 or 2013 standards, and I applaud you for wanting to do that. You are trying to do it with your money and borrowed money, and the folks that are here in opposition to what you are trying to do they all shop there and they all want what they think is best for their own families and their own neighborhoods. So, don't get your feelings hurt, and they are not

getting their feelings hurt either. So, please, y'all, get together. Don't have a meeting when I can't come between now and next month so I can be there. Nancy, you understand, don't you, and let's keep working on it, and in a month, we'll have a better idea where this thing is going to go, and I appreciate it. Council members, thank you so much for your time and your passion on this, Mayor Pro Tem. And, folks that have taken the time out of their night to come down here, it's no fun to come here, but we see you, and thank you very much for coming.

Mayor Pro Tem Cannon said questions from the Zoning Committee, I believe.

Steven Rosenboro, Chair, Zoning Committee, said I think Council has raised some excellent questions with respect to uses, and when we deliberate this on the 26th, I want to assure Council that we will examine those issues and get answers to the questions raised. I would ask the applicant and staff another issue. Across the street, the Harris property, has certain zoning. We will be asking you what that has with respect to fast food and traffic, so in advance we want to understand the entire corner and those uses. In principle, the Zoning Committee is always encouraged to have retail upgraded for the use by the local community, so we think this is a wonderful move, but we want to assess these issues that have been brought forward by Council and some of the issues discussed by members of the Commission tonight.

Mayor Pro Tem Cannon said it's been good discussion and debate on both sides. We certainly appreciate that. Mike Davis, I know you wish you could go home right now, but I have got one question for you – maybe a couple. I know you talk about what's not significant, but can you define for us what is not significant per se when we talk about traffic increases?

Mr. Davis said there was a time when we tried to put a number to it, and I think that number may have – frankly, I forget the number. We have never been comfortable with saying what – the number has changed over the years because we never have been comfortable with a single number precisely for these reasons. In the context of a large development, again, it's about 6% increase is probably not significant. If this weren't on a six-lane road, this may be significant. In the end, it's a subjective call.

Mayor Pro Tem Cannon said I don't want you to guess at the number, but I do want you to get the number and bring that number back. Also, as it relates to traffic signal, certainly a traffic signal probably by what's required doesn't work at that location with that crossing that has been referenced; correct?

Mr. Davis said actually to my knowledge that question hasn't been answered. The question came in late today about whether or not full signalization may be appropriate. When we started looking back through records, it was not apparent that there had been a request, so one of the things I intend to do is to proceed with, first, determining whether or not that evaluation has been done and what came of it, and if one has not been done to undertake a study for a signal at that location. It does not appear as though it is a good candidate for signalization, but it's worth further study.

Mayor Pro Tem Cannon said Councilmember Burgess brought up the distinction between the current zoning and proposed zoning in terms of the traffic count. On the proposed zoning where it's 7,790, would you be able to come back and tell us in your opinion how many trips that it can stand under that proposed zoning?

Mr. Davis said stand in terms of –

Mayor Pro Tem Cannon said in terms of the actual number – the maximum number of trips that it could be generated under the proposed zoning.

Mr. Davis said I think that is actually what we tried to estimate.

Mayor Pro Tem Cannon said this difference of 450 trips, which is the difference between the two.

Mr. Davis said, yeah, and let me clarify actually. It's not a representation of what the maximum is. It is actually more of a representation of what is typical for a development of that size. Your question is what is the maximum –

Mayor Pro Tem Cannon said exactly.

Mr. Davis said you got it.

Mayor Pro Tem Cannon said if you can bring that back that would be helpful.

Councilmember Burgess said sorry to stretch this out, but I can't think of any high schools or middle schools that have fast food restaurant within walking distance. Are there any? Elementary – there are not going to be unsupervised elementary school aged kids?

Mayor Pro Tem Cannon said across the street, McDonald's and all that. Any more discussion on this? If not, is there a motion to close the hearing?

[Motion was made by Councilmember Barnes, seconded by Councilmember Dulin, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 10: HEARING ON PETITION NO. 2011-001 BY AUTOMOTIVE MANAGEMENT SERVICES, INC. FOR A CHANGE IN ZONING OF APPROXIMATELY 0.451 ACRES LOCATED ALONG THE WEST SIDE OF SOUTH BOULEVARD AND BOUNDED BY INTERSTATE 485 ON THE SOUTH AND THE SOUTHERN RAILWAY ON THE WEST FROM B-1 TO B-2(CD)

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this is a rezoning for half an acre from B-1 to B-2(CD) to allow for the storage of sale inventory for the automotive sales and service facility that is on the adjacent site. There will be a six-foot fence with a covering to screen the inventory. They also have to do the screening as per the zoning ordinance with shrubs. There is an installation of a recycling area with fenced dumpster enclosure. The Sharon/I-485 Transit Station Area Plan recommends a mixed use transit-oriented development for this site, however, when we look at the long-term use of this site, this one plan also talks about the retention and the expansion of the existing uses in the area until they develop as TOD, so for that reason staff is willing to support this petition upon the resolution of the outstanding issues.

Andy Durham, 301 McCullough Dr., Ste. 109, said civil engineer with MH&T, and the petitioner, AMSI, is my client. Just wanted to allow any questions of Council that you might have.

Mayor Pro Tem Cannon said any questions or comments from Council?

[Motion was made by Councilmember Barnes, seconded by Councilmember Dulin, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 12: HEARING ON PETITION NO. 2011-003 BY MUSIC FACTORY CONDOMINIUMS, LLC FOR A CHANGE IN ZONING OF APPROXIMATELY 1.77 ACRES LOCATED ALONG THE EAST SIDE OF HAMILTON STREET BETWEEN SEABOARD STREET AND WEST BROOKSHIRE FREEWAY

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said this petition is for a site plan amendment to an existing MUDD-O. The petitioner is asking to allow an optional provision for a sign that will be a maximum of 1,252 square feet. It will be two-sided and roof mounted. The subject property was part of a larger rezoning in 2005. All of the 2005 conditions were run along with the new petition and will be transformed into the site plan. The square footage of residential units and things of that nature will be prorated for the size of the site. The optional request, as I stated, is to allow the two-sided, roof-mounted sign to be installed on an existing one-story building. The northern phase facing West Brookshire Boulevard is proposed to have a maximum size sign face area of 1,056 square feet. The opposite side of the sign installed on the rear of the support structure for the northern facing sign is proposed to have a maximum sign face area of 96 square feet. Staff does not recommend this request as it is currently proposed as there are no limitations provided regarding what is going to be advertised on the sign and the maximum area of the sign itself. The petition is consistent in terms of use with the Central City 2010 Vision Plan, but staff, as I said, is not recommending approval at this point.

John Carmichael, 214 N. Tryon St., said I represent the petitioner, Music Factory Condominiums, LLC. Mr. Noah Lazes is here tonight and will answer any questions. As Ms. Keplinger said, the site contains about 1.77 acres located on the eastern side of Hamilton Street, north of Seaboard Seaboard Street. It's a portion of the North Carolina Music Factory site, currently zoned MUDD-O, having been rezoned to that classification in 2005 by Council to accommodate essentially the development of the Music Factory site. It has been developed, and it's a wonderful and unique development and entertainment destination.

The sole purpose of this rezoning request is to allow additional signs to be placed on the roof of the building located on the site. This rezoning request does not seek to add any density or any other development rights to the Music Factory site. The staff, in the prehearing staff analysis, does not support the approval of this petition at this point. Since the staff analysis came out or right before, we met with Ms. Campbell, Shad Spencer, Laura Harmon, and others with the Planning staff, and we have come up with restrictions and limitations that based upon my most recent discussion with Shad I think we are there, so I think I can faithfully represent to you that by Friday we are going to have the restrictions in place that give comfort to staff so they can recommend approval of the petition.

The signs sought to be approved are three. One is the historic JFG sign, which would be placed on the roof of the building, the northern side of the building, and would face West Brookshire Freeway. Now, Ms. Keplinger is right, when we filed the petition, I did the math, and I came up with 1,056 square feet. That is not the size of the sign. It is 820 square feet, so that's a pretty big difference. Tells you why I'm a lawyer and not an engineer. But it's 820 square feet, and that limitation would be in the notes, and it is what it is, as John Fox would say. It's an existing structure. So that would face the West Brookshire Freeway. To the rear of the sign on the rear support structure, 100-foot square sign that would advertise the business that's in that building, and that would be in lieu of a wall sign on the wall facing that sign, so you would give up the wall sign for the 100 square foot sign on the rear support structure.

The third sign is a replacement sign if the JFG sign ever goes away. In working with staff and working with Mr. Lazes, the replacement sign would identify the North Carolina Music Factory site. We have submitted elevations to the staff, and it's pretty cool, but the development standards would require staff approval for any sign that is put there. It would identify the music factory and also make folks aware of upcoming events and entertainment opportunities and also 20% of the sign could identify the sponsors of those events. But, once again, the design and appearance of that sign would have to be approved by the Planning staff. The maximum size of that sign would be 500 square feet.

Now, on the development standards, the draft development standards that I submit to the Planning staff, I gave them the option to approve an additional 150 square feet when they are reviewing the sign design. I'm not sure where that is going to take us, but we are going to discuss that with them a little more this week. So there are size limitations, and there are limitations on what can be advertised on the sign. So, we think we are in a position where the staff is going to be comfortable. We are excited about the possibility of the JFG sign being placed on the roof of the building. As someone who grew up in Charlotte, as we were talking about the Quail Corners sign, I remember seeing that sign my whole life. I think JFG is excited

about it, I know Mr. Lazes is excited about it, and we are hopeful that you will consider this thing favorably. Available for any questions.

Councilmember Kinsey said sort of a comment. When I read the material, I thought this is the largest sign. I can't imagine that we would ever put it on top of the building. I couldn't picture. The JFG sign makes me feel a little more comfortable, but does that meet our sign ordinance?

Ms. Keplinger said because this is a MUDD-O it is an optional provision. They are opting out of the sign ordinance requirements and basically writing their own sign ordinance for this particular piece of property. If the Council feels it is acceptable, it would apply only to this property.

Councilmember Kinsey said somebody else could come and ask for the same thing. I like the JFG. That appeals to me a great deal, but it does seem like an awful large sign.

Councilmember Carter said the JFG sign is an historic sign, a landmark sign; is that not designated?

Ms. Keplinger said it is, and I have to look to see if it's either historic or landmark. There is a distinct difference between the two. May I answer your question –

Councilmember Carter said my question then is for Mr. Carmichael. This sign can have a year longevity if someone wants to take it down, and, in essence, destroy it. We are looking at historic buildings, and that one year is all we have to save our buildings. What would happen to it if it were replaced by a Music Factory sign?

Mr. Carmichael said to the sign? Well, there is going to be a lease agreement between JFG and Mr. Lazes, as the owner of the site. I'm not involved in that part of it. I don't know what provisions are in there, but they are going to discuss that. For whatever reason, if JFG didn't renew the lease or – they are not going to do this, but if they didn't pay the rent or what have you. If the lease terminated, JFG they own the sign, so they would do with it I guess what they will. Mr. Lazes, am I correct about this – they own that sign?

Noah Lazes said yes.

Ms. Keplinger said in terms of it being historic or landmark, it is actually neither one. This sign is actually a replica of the original JFG sign, so it falls into neither one of those categories.

Mayor Pro Tem Cannon said you said it was a replica?

Ms. Keplinger said it's a replica.

Councilmember Turner said that gives me two questions. I thought we was talking about the sign that we took down off of 277. Is that the same sign?

Mr. Lazes said it is the sign that came down off 277. Because of the fact that pieces of it have been rebuilt throughout the years, it had been damaged, it doesn't actually classify as historic, but many of the elements are the same pieces that were there from day one. It's just been repaired.

Councilmember Turner said I just want to make sure I get what we are getting ready to consider. First and foremost, we are talking about advertisement, and he is not putting the sign on his building free. He is going to gain something from that. I'm concerned whether or not it violates our billboard ordinance with distance, display, and in the future, based on Mr. Carmichael, if that agreement ends in one year, the sign comes down, they advertise their business and can advertise events. To me, that becomes a billboard based on pretty much what we have now on Brookshire and up and down the boulevard there. So if that be the case, would that sign on that particular building violate the distance we have in place on our current billboard and signage law?

Ms. Keplinger said if that sign were considered a billboard, yes, it would; however, it would not be considered a billboard because it is going through the optional provision of the MUDD ordinance, so it is not going to be considered a billboard sign.

Councilmember Turner said in saying that this is an information sign. It is going to change now – that’s what I heard Mr. Carmichael say – it is going to provide information. Are we creating a loophole for other businesses to do the exact same thing to get around our current policy?

Ms. Keplinger said in any district where we have an optional provision, which are most of our urban districts – the UMUD and the MUDD – this is something that is used. We have used them in other areas of the city especially in the Center City. NASCAR Hall of Fame, the Arena, Knights Theatre are several that we have done in recent years.

Councilmember Turner said I think it’s a great idea. I look forward to seeing that sign up. Like you, John, I have seen that sign all my life up to 77 before they changed it to 277/John Belk. But I look forward to seeing that sign. It will be great to see it back up, and hopefully you will get that worked out and hopefully staff can find a way to get it approved to the point where it does not violate or create any future issues for us.

Councilmember Dulin said I’m for it.

Mayor Pro Tem Cannon said that is a great sign, and I wondered where that sign had gotten. Sounds like you have had it all the time. Will it illuminate as well at night?

Ms. Keplinger said we have some pictures.

Mayor Pro Tem Cannon said you have video? Would you please show that so the general public can see it?

Mr. Carmichael said that is what it would look like, Mr. Cannon, on the building. That would be the rear of it.

Mayor Pro Tem Cannon said I’m glad to know where that sign is now and where it might end up. The Coffee Cup sign had gotten away from us. It sort of grew legs, but then I found out who took it. Thank you so much on this.

[Motion was made by Councilmember Howard, seconded by Councilmember Kinsey, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 13: PETITION NO. 2010-080 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR THE ADOPTION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO REPLACE THE REGULATIONS FOR “OUTDOOR SEASONAL FRESH PRODUCE SALES” WITH A NEW DEFINITION AND REGULATIONS FOR “FRESH PRODUCE MARKETS”

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said I think you covered my presentation. This is a text amendment to deal with fresh produce stands. It will replace what is currently in the ordinance our Outdoor Seasonal Fresh Produce Stands. We plan to add a definition for the fresh produce markets, remove the current regulations for outdoor seasonal fresh produce stands, and add new standards for the fresh produce markets, which will allow them in all districts under prescribed conditions. Specifically in residential districts, office districts, and institutional districts, they will be required to be an accessory use and not be allowed to be free-standing. Staff is recommending approval of this petition.

David White, 2523 E. Providence Dr., said I’m the owner and president of Providence Produce based out of Indian Trail. We are the ones who originally came in front of you guys around 2005 and helped put that ordinance in place. We have since operated under that ordinance with one of our locations on Providence Road. We are not necessarily against this new ordinance that you are proposing. We just feel like the ordinance that we helped write and get in place has worked

well. We have respected the boundaries of that ordinance, and we feel like it doesn't need to go away. What we are proposing is that you go ahead and adopt this new ordinance for fresh produce markets but allow us and others who would like to operate under the old ordinance which has proven to be just fine. My father, Howard White, has come with me this evening, and I think he had a couple of points he wanted to make as well along that nature.

Howard White, 6012 Lancelot Dr., said I'm not as tall as he is, but he is my son; do you know what I mean? He has been running the produce stand at Providence Road since about 2003, and we wrote the ordinance that allowed us to operate for six months with your approval and I recognize faces here among the City Council that was present the day we came and advocated for the ordinance that we succeeded in getting approval on in 2005. It's a good ordinance, folks. It's worked well. There have been no complaints about the ordinance for outdoor seasonal produce stands. It has good regulations on parking and the space required for the stand and all kind of things that make it a well conceived idea when you have one produce stand sharing a spot in one parcel, such as the filling station parcel where the stand is on Providence Road today. The produce stand ordinance really fits the single stand, one-site location, and it's a good ordinance. We are flabbergasted that staff would want to erase that ordinance when all they really apparently want to do is create an ordinance for farmers markets, and there's no reason, we believe, that a farmers market ordinance couldn't be written and given another number. The language already here we would advocate be retained. We have no opposition to the language that is proposed for the produce markets, what they call the fresh produce markets. Just give it another number but don't erase, don't delete the ordinance that was approved in 2005. Both have different purposes. Does everybody have a copy of the write-up, the two-page write-up that we submitted to be distributed? I just want to make sure. I took it downtown a couple of weeks ago. There you go. That covers in some detail our position, and we are friends of what they want to do. We have no problem at all. We are big advocates of more produce being put in the hands of people in Charlotte in every possible way particularly local produce from local farms, local strawberries growers and blueberry growers, peach orchards, and all of that. I don't want to take a lot of time here, but, folks, it's silly. It's downright silly to erase an ordinance that works so well when the only objective appears to be to write an ordinance for fresh produce markets. Just write it, get another number, and we all will be very happy.

Councilmember Howard said if you could, Tammie, because I missed the conversation in the back. What fundamentally is the difference between what you guys are asking and what would change from what the White's are talking about?

Ms. Keplinger said the proposed ordinance is less restrictive. The original ordinance allows the outdoor seasonal fresh produce stands in the URC, the B-1, B-2, and the CC. It limits them to 180 days a year. They can only be 360 square feet, so compare that to the proposed ordinance, which will allow them in all districts. It's an unlimited amount of time. They have to be accessories in the districts we talked about, the residential, office, and the institutional, but it does give a larger range of areas for these stands to be located.

Councilmember Howard said if Mr. White or Mr. White if you could help me understand in what she just described where you have an issue.

Mr. Howard White said we believe that it's best for us to keep the old ordinance in place. We may use the new ordinance at some time. My son's business might use it for some time to establish a location somewhere else, but we just don't feel comfortable at this stage in the game. We are nervous about deleting an ordinance that works so well even though in theory you can sort of say, oh, you know, just file your application under the new ordinance, and everything will be fine. In theory, maybe so; but, in practice, please don't delete the good ordinance that has already been in place. Just add another one. That will be fine for everybody.

Councilmember Howard said the nature of our ordinances, Mr. White, is that occasionally we do amend them and try to make them better. In this situation, it sounds like she is actually saying that you will have more range to do even more. It would be nice to know specifically what parts they are talking about that would make what you are talking about harder because it sounds like it will make it easier. You will have access to even more property, so you are really talking about fear of the unknown; not necessarily any particular point she is talking about changing.

Mr. Howard White said I think, Councilmember Howard, that the unknown is some basis for our fear to some extent. We struggled five years ago. It was quite a battle to win approval for the ordinance that did get approved. We met with Mr. Cannon, we went to TV people, we did quite a campaign, a petition. We made a tremendous effort, and Ms. Carter remembers that to get this ordinance in place, and, thank goodness, by the time you all came together to vote, it was unanimous. We were thrilled. I just don't think the ordinance they are proposing is so broad every Tom, Dick, and Harry can come in and set up something. I'm nervous that will stand the test of time. I feel more secure with keeping the ordinance that has been proven in place at least for a few years. That's all we ask.

Councilmember Howard said can I ask something between now and next month, Mr. White and Mr. White, if you would make sure if you could communicate with at least me and help me – maybe working with Tammie – go point for point to help me understand what your pause is. That would help, and actually we were on Planning Commission, Warren, when this went through, so I voted on this back in '05, too, over there. I understand what you are saying, but I would like to know more than just kind of the fear of it what the points for point are. That would be helpful.

Councilmember Kinsey said I don't want this to be an ordinance like some others we have adopted that has unintended consequences to it, and just as I said in our prior meeting, I want to make sure – I want to see the range of ordinances that cover farmers markets or whatever, and I want to make sure I understand this because I'm not convinced that it makes it better either just based on some of the questions, but I really do want to see the range before I make a decision on this. We apparently have a number of ordinances that cover this type of market or these markets, number of markets, and I want to make sure I understand them all and we don't adopt something that maybe is not necessary.

Ms. Keplinger said staff will be happy to provide that information.

Councilmember Turner said I have several concerns, and one I agree with Ms. Kinsey. I thought our goal was always, if we can, to correct something when we find it to be wrong. Hearing Mr. White tonight says there is nothing with the current policy; it operates very well. I understand from a staff standpoint it appears that we felt we can broaden and allow this to exist throughout our zoning districts. The concern I have is that very well may be not in my best interest and someone else, so I want to make sure I understand this. So let's say we have a vacant Winn-Dixie spot in a mall that's adjacent to a neighborhood. Let's talk about Quail Corners. You are telling me a market now can come in existence on that property under the current new proposal for seven days. It can put a temporary structure there for seven days or until the permit runs out.

You are telling me now you want to control the operation hours from 8:00 a.m. to 9:00 p.m., but under the current one, you are telling us they get to go and start their business one half hour after sunrise and one half hour after sunset. The good and the bad is that affects him in a negative way, in my opinion. Now, I don't know. Mr. White didn't touch on that, but that would be one negative for me that would affect the way he do business today and anyone else that is operating under this current produce policy here. Can you explain to me what put us on this track in the first place because I don't remember any discussion or this coming from Council. How did we get to this?

Ms. Keplinger said we had some requests in recent years especially with everyone trying to live a more healthy lifestyle. We have had more and more requests for these types of fresh produce stands to be located in places that are accessible to people – institutional areas, office areas – and they are not allowed under the current ordinance. So staff took another stab at this. Like you said, we try to make things better and decided that under certain restrictions that these uses would be compatible in those areas. I did want to briefly mention we talked about the hours of operation tonight, and it is different from what is in the current ordinance, and that is something we are going to go back and look at.

Councilmember Turner said I just want the record, Mayor Pro Tem and this Council and staff, that I, too, am a little concerned that are we exposing ourselves to a population of our community that we haven't heard from because on the one hand you are saying there are people that say, hey, we want to do this, we want to have fresh this, we want this; but at the same time, I can see

us when these things start popping in the front entrance of their communities where commercial and residential areas and institutional areas where they would expect not to see that. I can hear them also calling us saying, hey, this is a problem. We don't want the traffic, and we don't want the folks coming in, and we don't want it at the front of our community. So, I hope we would look at that as an overall before we make some decisions.

Councilmember Howard said just following what Councilmember Turner was saying about where it could be allowed. I think saying it's allowed everywhere is a concern for me, too. The fear that just popped into my head as I was sitting here is what about vacant lots in a subdivision. I think under the scenario that Mr. Turner said, the Winn-Dixie, it probably is allowed there now, but what about in residential neighborhoods between houses. I mean there is a vacant lot between me and my neighbor, so I mean the 20 foot or 15 foot – what is it? – the buffer may help, but I mean how do you limit that. I think you do want to pull some reins on that somewhere.

Ms. Keplinger said let me clarify for you, Councilmember Howard. In a residential district, it has to be an accessory to an office or institutional use, so it could not go just in between single family houses unless there was an office or institutional use that already existed.

Councilmember Howard said unless I have a neighborhood that backs up to an office. I guess I'm like him. I definitely want to flush that out just a little bit more to make sure I know where it's allowed and where it's not, and I'm sure you guys have done that, so I would love that knowledge.

Councilmember Turner said let me have one for the example. Let's say the church where I live. There is 20 acres on the other side of that church. That's adjacent. Someone could actually show up there and sell a product off that property with the permission from the landowner.

Ms. Keplinger said they would have to meet all of the prescribed conditions that are listed in the ordinance, and one of the things is that they do have to have permission from the landowner, but if they met those, then yes they could under the proposed ordinance.

Councilmember Turner said that church also could do the very same thing; is that correct?

Ms. Keplinger said if they met the conditions of the ordinance, yes.

Councilmember Turner said I'm looking at it from that perspective. You look at the way we do business now. One of our own concepts from the Planning Department was to develop residential areas to get people out and walk. Today just about every major new development has some type of commercial facility or institution that is adjacent to their development, and all I can see if these things popping up everywhere, and this is what folks have to go through every day that really don't want it, but there is nothing they can do about it because we would have passed a policy that clearly says this is lawful and they can do it through the property procedures, yes.

Councilmember Peacock said, Tammie, on the handout that you gave us, I had a question for you, and maybe you can get me follow-up information. It talks about the current regulations, the proposed, and the rationale. The text amendment connects farmers and growers directly to consumers and encourages greater consumption of fruits and vegetables thereby improving the quality of life, contributing to the nutritional health of our citizens. Earlier you mentioned as well, too, that you all started to see a number of people that have come to Planning staff as I think you defined it as healthy living; is that right?

Ms. Keplinger said healthy lifestyle.

Councilmember Peacock said maybe you don't know the answer now, but I would just like to know a little more because a little bit to Mr. Turner's points I'm seeing this as sort of a pyramid here. I'm trying to look at problem, need, and solution, and I'm having a disconnect between where the problem is right now as to the way the ordinance is currently read. I haven't thoroughly read all through it. My second question, Mr. Mayor Pro Tem, would be to the petitioner, which is have you seen the marked up ordinance as Planning staff has done it, and do you have any specific language that you would like to –

Mr. Howard White said, yes, sir, we have. We met with them, and there may be a mark-up since we met. I'm not aware of that, but we met with them in December, and they changed a couple of words, and that's all they did then. I endorse what Mr. Turner says that there is concern on our part that this ordinance as written right now is so broad that it's going to be attacked. If we take away the ordinance that has been proven – the one that we wrote and got approval for in 2005 – that is an anchor on which we can anchor our ship, and if the storm comes and hits this new ordinance, we still have our anchor, and we like that.

Councilmember Peacock said, Tammie, any reaction? I would ask them. I was talking to you. I didn't know if you had any reaction to that.

Ms. Keplinger said to the question you asked them about the mark-through?

Councilmember Peacock said yes.

Ms. Keplinger said I know that our staff has met with them. I have not met with the White's personally, so I'm not aware of any changes that have occurred since the meeting, but I will check into that.

Councilmember Peacock said if you could just get back to myself or to Council just a little bit more about the rationale, I guess probably expand on that paragraph that y'all put in there would be helpful.

Councilmember Turner said I apologize to staff. I just need to know one other thing, too. There was a conversation about a market going uptown once. Would that make that space, if we passed this new policy, where they could actually do a temporary market there every day in the old Reid's grocery?

Ms. Keplinger said I am not sure, Councilmember Turner. I would have to look into that because I don't know for sure that we have looked at any specific sites in relation to this.

Councilmember Turner said I was just looking based on what you are saying and the zoning requirements – district, commercial, and institution – that exists along the light rail and that exists in that adjacent building area.

Ms. Keplinger said Ms. Harmon just told me because of the zoning that they could do that currently today under the ordinance without this change.

[Motion was made by Councilmember Dulin, seconded by Councilmember Howard, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 14: PETITION NO. 2011-004 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR THE ADOPTION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO COMPLY WITH NC STATUTES AND SESSION LAW 2009-178 REGARDING NEW REQUIREMENTS FOR THIRD PARTY REZONING PETITIONS

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said I just wanted to briefly explain that this is talking about conventional rezoning that do not have site plans where there is a third party person who has actually made application. When we have a third party rezoning, most of you are familiar with the Myers Park third party rezoning, which is still on indefinite deferral. The state law is now requiring special notification, and what it is requiring is that if the person that has applied for the rezoning is not the owner of the property to be rezoned, then the property owner has to be notified by one of three methods: personal delivery, registered or certified mail, delivery by designated delivery service. The exception to this is if it is a third party rezoning that is sponsored by the City.

bvj

I wanted to just kind of let you know that you are actually going to be dealing with one of these third party rezonings next week in dealing with the Lightway Properties case that was deferred tonight. A portion of that property is actually third party, and the petitioner did have to go through the proper procedures even though it isn't in our ordinance yet because it is state law. So, we already have a process in place to implement this text amendment, and staff is recommending approval.

Councilmember Howard said so in a situation where a lot of developers – the property is under contract and they don't own them yet, and right now you just need a joint letter saying that they are in agreement with the rezoning.

Ms. Keplinger said that doesn't change.

Councilmember Howard said in this situation you still have to give them notice by one of these ways in addition to just a joint letter?

Ms. Keplinger said this will apply to the conventional petitions in general, and most of those petitions are usually more of a conditional nature and agreements apply. I believe they would still give this notification as just a matter of procedure.

Councilmember Howard said but if it was a straight-up rezoning, and even if they agree to it, they have to be notified, and you have to have proof they have been notified.

Ms. Keplinger said right.

Councilmember Howard said that will be something we need to make sure the development community is clear on because that will be totally different going forward.

Ms. Keplinger said, yes, sir.

[Motion was made by Councilmember Howard, seconded by Councilmember Barnes, and]
[carried unanimously to close the public hearing.]

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ITEM NO. 15: PETITION NO. 2011-005 BY CHARLOTTE-MECKLENBURG PLANNING COMMISSION FOR THE ADOPTION OF A TEXT AMENDMENT TO THE CITY OF CHARLOTTE ZONING ORDINANCE TO COMPLY WITH NC FAIR HOUSING ACT AND SESSION LAW 2009-533 TO PREVENT DISCRIMINATION AGAINST AFFORDABLE HOUSING

The scheduled public hearing was held on the subject petition.

Tammie Keplinger, Planning, said very briefly. This text amendment will add to the zoning ordinance that the Planning Commission in making its written recommendation to the City Council and then the City Council in making its land use decision on zoning petitions will not discriminate against affordable housing. It also adds new language that permits the Planning Commission and City Council to base their recommendations and/or decisions on considerations of limiting the high concentration areas of affordable housing. Staff is recommending approval.

Councilmember Carter said we had a discussion about this at dinner, and I very much appreciate the staff's position and clarification. However, I think we need to take this issue to our legislators because when we consider – there are two sides of consideration. Either you include or you exclude, and when we are trying to include affordable housing within a project, they are now prohibited from the discussion thereof. I am really frustrated because that is a pertinent part of some of the debates we have, so if we could clarify from our legislature the fact that we could debate inclusion of affordable housing. I'm not sure this can happen, but I am absolutely frustrated that we are now limited in something we do very well to great benefit to our

community. If there is any way we can work with our state legislators to make that distinction, I would be tremendously grateful.

Councilmember Turner said if I may, Mayor Pro Tem. I just want to add my comments as well. I agree with Councilmember Carter. It is a great concern when you know you have done something or you do something in a specific way that has worked, but I think the concern here for me is it removes the ability for us to make sure that the product in which someone is proposing to put in our community is in the best interests of those that are going to be receiving it. It takes away that power from this Council. It definitely puts all the power, in my opinion, back to the developer and it removes that ability from this Council, and I have the same sentiments about that, so I hope it's something we can have further dialogue on going down the road.

Councilmember Kinsey said point of clarification. Does this just apply to rezoning – nothing else – just to rezoning?

Ms. Keplinger said the statute refers to land use decisions and specifically with respect to Council's determinations on land use decisions, so I guess we have interpreted that to mean rezoning.

[Motion was made by Councilmember Howard, seconded by Councilmember Kinsey, and]
[carried unanimously to close the public hearing.]

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MAYOR AND COUNCIL TOPICS

Mr. Rosenboro said, Mayor Pro Tem, I want to compliment Council again on some excellent questions on the market garden text amendment. We dealt with some of these. I apologize. I don't think we dealt with them thoroughly enough, but when we review them in the next Zoning Committee, we will come back with answers that Council members raised.

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ADJOURNMENT

The meeting was adjourned 8:09 p.m.

Ashleigh Martin, Deputy City Clerk

Length of Meeting: 2 Hours, 37 Minutes
Minutes Completed: February 27, 2011