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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, and
The Honorable Alex Kinlaw, Jr., Circuit Court Judges

Appellate Case No. 2023-000025

George C. Hassiotis and Constantinon Hassiotis, ...Appellants,

v.

The City of Greenville, South Carolina, ...Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
George C. Hassiotis and Constantinon Hassiotis,	)	Case No. 2019-CP-23-02041
	)	
Plaintiffs,	)	**ORDER OF JUDGMENT**
	)	
v.	)	
	)	
The City of Greenville, South Carolina,	)	
	)	
Defendant.	)	

INTRODUCTION

This matter was tried by this Court without a jury on August 29 and 30, 2022 in the Court of Common Pleas, Greenville, South Carolina. Plaintiffs were represented by Luke A. Burke of Bannister, Wyatt & Stalvey, LLC. The Defendant City of Greenville was represented by V. Clark Price of Roe Cassidy Coates & Price, P.A.

BACKGROUND

This is a zoning dispute. It concerns the rezoning by the City of Greenville of approximately 103 acres of property along a portion of Pendleton Street, North Memminger Street, South Calhoun Street, and South Academy Street in the City of Greenville. The Plaintiffs are owners of property at 907 Pendleton Street within the area that was re-zoned. The Plaintiffs' property is rented to third parties who operate OJ's Diner, a popular drive-in restaurant there. The restaurant has a drive through window which has been in use for many years. The restaurant has no outside seating. There are residences behind the restaurant property. Plaintiffs have established a natural buffer of plantings that minimizes the effect of light and sound which could emanate from the restaurant, including from the drive through window.

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According to testimony in the case, the rezoning plan, which was given final approval by City Council at a public meeting in February 2019, rezoned much of Pendleton Street, including the Plaintiffs' property, from Regional Commercial (C-3) to Redevelopment District (RDV). The RDV designation is a blend of residential and commercial uses, and would be appropriate for office, retail, residential uses, including restaurants, and is intended to encourage a neighborhood friendly environment.

RDV permits the current use of the Plaintiffs' property as a restaurant but is somewhat more restrictive than C-3. In particular, a restaurant with a drive-through window, which is permitted on a C-3 property, is a nonconforming use which is conditionally allowed on RDV property. The Plaintiffs' property is "grandfathered", which means that so long as the property is in continuous use as a restaurant, the RDV designation does not impact the use of the property, and the drive through window will be unconditionally permitted. Under the zoning plan, this and other nonconforming uses are allowed to continue unless the business ceases to operate for six months or more, or if the existing use is significantly expanded. In such an event, the owner of the property would be able to apply for the continued use of the drive through window. There was testimony at trial that although the City could not absolutely guarantee an application to continue the use would be approved, as a practical matter City planner Virginia Stroud testified that an application to continue the use would likely be approved. Potential factors that could affect the continued use of the drive through window would be the degree of light and sound caused by the use of the window.

The Plaintiffs opposed the rezoning effort and wanted their property to remain C-3. The testimony showed that at public neighborhood meetings that were conducted by the City's planning staff as part of the rezoning application process, Plaintiffs voiced their concerns about the drive through window and their desire that their property remain C-3.

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Plaintiffs were also upset about property owned by a third party, referred to during the testimony in the case as the Enigma Property, or Spinx Property, which is situated within the rezoned area at the northeast corner of the intersection of Pendleton and Academy Streets. The original rezoning map prepared by City staff showed the zoning of the Enigma property was to be changed from C-3, to RDV.

The evidence shows that on August 16, 2018, the City's Planning Commission held a public hearing to consider the plan proposed by the planning staff, and tabled the proposed plan. The Commission requested that a workshop be conducted by staff to consider concerns that had been voiced during public meetings about the plan, and to consult with Urban Design Associates, which was providing planning advice to the City. According to the evidence, this workshop was conducted on September 27, 2018, and a meeting with the consultants took place on November 8. During this timeframe, representatives for Enigma argued that the Enigma property should remain C-3, primarily for two reasons. First, the other three corner properties at the intersection of Academy Street and Pendleton Street were C-3. Second, Academy Street is an arterial street, and research showed that as many as 27,300 cars per day traveled through intersection. Virginia Stroud, a city planner called as a witness by the Plaintiffs, testified that the staff realized they had made an error in recommending the Enigma property be zoned RDV, and that they modified the plan to leave the Enigma Property as C-3. This justification for leaving the Enigma Property as commercial is documented in the Ordinance approving the rezoning plan.

Further regarding the recommendation to leave the Enigma Property as C-3, the final zoning map shows that not only was the Plaintiffs' property changed to RDV, other properties on Pendleton Street within the boundaries of the zoning area were also changed to RDV. The weight of the evidence shows that while the Enigma Property may have been zoned differently from other properties on Pendleton Street in the final plan which was approved by City Council, the City's

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rationale for the different treatment had a rational basis in fact and was not in the Court's view a constitutional deprivation of the Plaintiffs' rights.

At trial, Plaintiffs complained that planning staff made other changes to the proposed plan which benefitted certain property owners, while staff unfairly refused Plaintiffs' request to leave their property as C-3. The Court finds that the weight of the evidence about this alleged disparate treatment fails to demonstrate a Due Process or Equal Protection violation. Instead, the changes about which the Plaintiffs complain appear to be mere "tweaks" to the plan that were consistent with the overall purpose of the rezoning, while the Plaintiffs' request was not. For example, there was testimony from Ms. Stroud that the RDV designation definition was changed to allow funeral homes without crematoriums; that property owned by the Stone Family Trust, which bordered Academy Street, which was originally designated RM-2, was changed at the request of the owners to RDV; that the designation of a parking lot being used by a law firm was modified from RM-1 to OD (Office and Institutional District). Ms. Stroud testified that all these minor changes were consistent with the overall purposes of the rezoning proposal, which purposes are stated in the Ordinance that approved the rezoning. While the Plaintiffs asserted that these changes reflected a pattern of disparate treatment that violated their constitutional rights, the Court finds that based on the applicable law which will be discussed below, the weight of the evidence does not establish a constitutional violation.

The evidence shows that on December 4, 2018, another neighborhood meeting was held by staff to discuss the changes to the original rezoning plan. Constantinon Hassiotis testified that the Plaintiffs did not receive notice of this meeting. However, the City introduced Exhibit 16 without objection, which was a letter to property owners in the area advising of the December 4 meeting that included a copy of the revised proposed zoning map.

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City Exhibit 20 includes the Planning Staff Report to the Planning Commission which was provided to the Commission in anticipation of its December 20 meeting. The report includes the explanation for why the Enigma Property was being left as C-3. This explanation also appears in City Exhibit 4, the Ordinance which gave final approval to the plan.

City Exhibit 22, which contains the minutes of the Planning Commission's December 20, 2018 meeting, shows that the Commission voted to recommend to City Council the revised version of the plan, which included returning the Enigma Property to C-3. The minutes reflect that public comments had been received both in favor of and against the rezoning. The negative comments included concerns made "about current uses becoming nonconforming or requiring Conditional Use permits and Special Exceptions in the future". Planning Commission Chairman Jason Tankersley, who was called as a witness by the Plaintiffs, testified that those comments were attributed to the Plaintiffs. The Planning Commission voted to recommend the plan as revised to City Council during the meeting. The vote was 5 to 2, with Chairman Tankersley being one of the two who voted against the plan. Mr. Tankersley testified that his opposition was based on his professional perspective as a commercial developer, and that in his view, the project was larger than he would have liked. However, Mr. Tankersley also testified that the plan was approved by City Council, and that although he voted against it, the process was fair, and that the plan was reasonable. Finally, Mr. Tankersley testified that no one to his knowledge attempted to improperly influence City Council or the Planning Commission during the rezoning process.

First reading of the proposed ordinance was conducted at City Council's meeting held on January 28, 2019. Minutes of the meeting were introduced as City Exhibit 1. They contain comments by numerous members of the public who commented about the proposed plan. One was a representative of the Plaintiffs, who advised City Council of Plaintiffs' opposition to the rezoning. Plaintiffs argued that the rezoning plan, although the current use of their property was

admittedly grandfathered in, would be rezoned to RDV if the property were ever vacated for more than six months or if there were a capital investment of 25% or more. Plaintiffs argued that this would require the owners of the property to obtain a conditional use permit for the drive through window. The minutes reflect that Mayor White commented that in some circumstances a restaurant might be in close proximity to a residential neighborhood and cause issues with noise and lights, but in the case of the Plaintiffs' property, that would not affect their situation.

The minutes also show that a representative for the Stone Family Trust spoke to Council and requested that his client's property be zoned RDV. The evidence, including the zoning map submitted with the proposed rezoning plan, showed the Stone property fronts Academy Street. The existing zoning for the property was C-2, a commercial designation. Under the proposed plan, the property was downgraded to RM-3 a significant change. The Stone Family Trust representative requested that City Council allow the property to be zoned RDV, which the representative suggested was a reasonable, compromise change. The minutes do not reflect any objection made to the requested change by any Council member or by the public present at the meeting.

According to the City Council Minutes introduced as City Exhibit 3, the rezoning plan came up for second and final reading at City Council's February 11, 2019 meeting. The meeting minutes document that proper notice to the public was given in advance of the meeting. The rezoning plan was unchanged from the plan presented at first reading, with the exception that the request of the Stone Family Trust was included. The minutes indicate that City Council was aware that the change had been made. Again, the minutes show no objections from the public or from City Council about the Stone Family Trust change, and City Council voted unanimously to approve the rezoning plan. The Ordinance was introduced as City Exhibit 4.

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Plaintiffs have alleged three causes of action in their Amended Complaint. In the First Cause of Action Plaintiffs seek a declaratory judgment by this Court that the Ordinance is invalid because it violates their due process rights, and that the Plaintiffs are entitled to own, sell, operate, expand, and maintain a drive through restaurant on their property. In the Second Cause of Action, Plaintiffs allege the Ordinance violates their constitutional rights of substantive due process, procedural due process, and equal protection. In the Third Cause of Action, Plaintiffs seek an award of costs, fees, expenses, including attorney's fees and costs.

For the reasons set forth below, based upon the evidence submitted to the Court and the law applicable to this evidence, this Court finds that Plaintiffs have failed to meet their burden of proof as to all causes of action, and that this case should be dismissed with prejudice.

APPLICABLE LAW

The authority of the City to enact zoning ordinances that restrict the use of privately owned property is founded in the municipality's police power. Harbit v. City of Charleston, 382 S.C. 383, 674 S.E.2d 776 (2009); McMaster v. Columbia Board of Zoning Appeals, 395 S.C. 499, 719 S.E.2d 660 (2011). Rezoning is a legislative matter, and this Court has no power to zone property. Bear Enterprises v. County of Greenville, 319 S.C. 137, 459 S.E.2d 883 (1995).

A municipal ordinance is a legislative enactment and is presumed to be constitutional. In reviewing substantive due process challenges to municipal ordinances, a court must consider whether the ordinance bears a reasonable relationship to *any* legitimate interest of government. McMaster v. Columbia Board of Zoning Appeals, 395 S.C. 499, 719 S.E.2d 660 (2011); Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 737 S.E.2d 601 (2013). Every presumption will be made in favor of the constitutionality of a legislative enactment, and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room

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for reasonable doubt that it violates some provision of the Constitution. Id. An issue regarding the interpretation of a legislative enactment is a question of law. In order to prove a denial of substantive due process, a party must show that they were arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. It is not the function of the Court to pass upon the wisdom or expediency of municipal ordinances or regulations. McMaster.

The burden of proving the invalidity of a zoning ordinance is on the party attacking it, and it is incumbent upon the challenger to show the arbitrary and capricious character of the ordinance through clear and convincing evidence. A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property. McMaster; Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d (Ct. App.2009).

Only where a municipality's zoning action is so unreasonable as to impair or destroy constitutional rights will courts declare a municipality's action unconstitutional, and if the propriety of a municipality's decision is even "fairly debatable," a court cannot inject its judgment into its review of a municipality's decision, but must leave the decision undisturbed. Bear Enterprises v. County of Greenville, 319 S.C. 137, 459 S.E.2d 883 (1995).

Under the rational basis test for equal protection claims, the court must determine (1) whether the law treats similarly situated entities differently; (2) if so, whether the legislative body has a rational basis for the disparate treatment; and (3) whether the disparate treatment bears a rational relationship to a legitimate government purpose. Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 737 S.E.2d 601 (2013). In order to successfully assault a city's zoning decision, a citizen must establish that the decision was arbitrary and unreasonable; and in the context of a zoning action involving property, it must be clear that the state's action has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial

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relation to the public health, the public morals, the public safety or the public welfare in its proper sense. Id.

Regarding the claim that the Plaintiffs' equal protection rights have been violated by the Ordinance, the rational basis standard, rather than strict scrutiny, applies to an equal protection challenge to a rezoning denial because the classification at issue does not affect a fundamental right and does not draw upon inherently suspect distinctions such as race, religion, or alienage. Harbit v. City of Charleston, 382 S.C. 383, 674 S.E.2d 776 (2009). Even assuming a governmental entity is not enforcing an ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of an equal protection violation. Id. Under the rational basis test for equal protection claims, the court must determine: (1) whether the law treats similarly situated entities differently; (2) if so, whether the legislative body has a rational basis for the disparate treatment; and (3) whether the disparate treatment bears a rational relationship to a legitimate government purpose. Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280,737 S.E.2d 601 (2013).

The City has introduced without objection 34 exhibits, which include the Ordinance, the application for rezoning including supporting documentation, and minutes of the meetings of the Planning Commission and City Council. These are public records which taken together represent the City's position in this case. The Court notes that municipal records properly authenticated or verified are competent evidence of the proceedings of the transactions of the governing body. Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceedings of the City Council unless the minutes are incomplete or ambiguous. Otherwise, parol evidence could render official minutes uncertain and unreliable so that the minutes would fail to afford dependable evidence of the proceedings of the municipal body. See Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 417 S.E.2d 579 (1992).

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DECISION

Based upon the evidence presented by both Plaintiffs and Defendant City at trial, the Court finds that the Plaintiffs have not met the burden of proof established by the case law set forth above. As to the Due Process claims, the Plaintiffs have not overcome the legal presumption that the Ordinance approving the rezoning is constitutional, both generally, and as it applies to the Plaintiffs and their property at 907 Pendleton Street. Insufficient evidence has been produced by Plaintiffs to establish an invalidity that appears so clearly as to leave no room for reasonable doubt that the Ordinance or the plan violates the Constitution. Insufficient evidence was introduced to prove that the Ordinance was an arbitrary and capricious act on the part of City Council. Plaintiffs have not shown that the propriety of the Ordinance is not "fairly debatable".

As to the Equal Protection claim, Plaintiffs acknowledged the appropriate standard to review the City's action is the "rational basis" standard, not the "strict scrutiny" standard. The Court finds that the evidence presented establishes that to the extent it can be argued that the Ordinance treats the Plaintiffs' property differently from the Enigma Property, a rational basis for the difference in treatment was established by the fact that the Enigma Property is located at the intersection of Academy Street and Pendleton Street whereas the Plaintiff's property is not, and further by the fact that Academy Street is an "arterial" street with a high volume of automobile traffic. The "tweaks" to the plan made before the final reading of the Ordinance were consistent with the overall goals of the rezoning, while the Plaintiffs' request that 907 Pendleton Street be left as a C-3 property was not. The Court finds that any difference in how the Plaintiffs and their property were treated under the Ordinance had a rational relationship to the purposes of the Ordinance.

The Court is mindful of the testimony of Mr. Hassiotis concerning his opinion that the City "targeted" the Plaintiffs and that the ulterior reason for the rezoning was to hurt them. The Court

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has empathy for the Plaintiffs concerning this opinion but finds that there is insufficient evidence to establish that the reason for the rezoning was to hurt the Plaintiffs. Rather, the evidence in the Court's view establishes that the reasons for the rezoning are those set forth in the Ordinance, and, as succinctly summarized in the summary background language in the Request for Council Action, a part of City Exhibit 4, were "to better align zoning with current uses and encourage development that is compatible with the surrounding neighborhoods", and "to encourage more neighborhood-friendly development".

The Court also finds that the Plaintiffs have failed to establish that the designation of 907 Pendleton Street as RDV has resulted in a diminution of value of the property so profound as to be tantamount to a confiscation. Due Process is not denied merely because a rezoning plan does not permit a property owner to make the most beneficial use of their property. A zoning classification is not unconstitutional simply because a developer is deprived of a more profitable use of his property. A classification of property should be upheld as constitutional, absent evidence that the classification is either unnecessary or confiscatory. Bear Enterprises v. County of Greenville, 319 S.C. 137, 459 S.E.2d 883 (Ct. App. 1995). See also McMaster v. Columbia Board of Zoning Appeals, 395 S.C. 499, 719 S.E.2d 660 (2011). While Mr. Hassiotis testified to his opinion of the zoning change on the value of 907 Pendleton Street, City's expert appraiser Corbin Haskell testified that he could not find any difference in value for a property situated as the Plaintiffs' property whether it was zoned C-3 or RDV. Mr. Haskell testified that a building that has been constructed on the Enigma Property since the rezoning could also have been constructed on that property if it had been rezoned to RDV. Photographs of that building were introduced by the City as Exhibits 28 and 29. It appears that the Enigma Property's zoning designation as C-3 did not ultimately work to its advantage when its property was developed.

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CONCLUSIONS

Based upon the evidence submitted to the Court by Plaintiffs and Defendant City, and on the law applicable to zoning disputes, this Court makes the following findings:

1. That the burden of proof is on the Plaintiffs to prove that the rezoning by the Defendant City was unconstitutional.
2. That the Plaintiffs have failed to meet their burden of proof as to all the causes of action alleged in the Amended Complaint.
3. That the Defendant City of Greenville is entitled to judgment in this case.

It is therefore Ordered that the Plaintiffs' Amended Complaint be dismissed with prejudice, with costs of suit awarded to the Defendant City of Greenville.

AND IT IS SO ORDERED.

_____
The Honorable Alex Kinlaw, Jr.
Judge, Thirteenth Judicial Circuit

Greenville, South Carolina

_____, 2022

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Greenville Common Pleas

Case Caption:	George C Hassiotis , plaintiff, et al vs. Greenville South Carolina City Of
Case Number:	2019CP2302041
Type:	Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

ELECTRONICALLY FILED - 2022 Dec 06 9:01 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
George C. Hassiotis and Constantinon Hassiotis,	)	Case No. 2019-CP-23-02041
	)	
Plaintiffs,	)	**ORDER**
	)	
v.	)	
	)	
The City of Greenville, South Carolina,	)	
	)	
Defendant.	)	

This matter is before the Court pursuant to a Notice of Motion and Motion for New Trial or to Alter and Amend Judgment filed by the Plaintiff's on September 26, 2022. For the reasons stated herein, Plaintiff's Motion is denied.

This matter was tried by this Court without a jury on August 29 and 30, 2022 in the Court of Common Pleas, Greenville, South Carolina. After receiving evidence and hearing the arguments of counsel, this court entered its Order of Judgment on September 14, 2022. That order set forth in detail the factual findings of this Court, the applicable law to the case, and this Court's decision granting judgment to the Defendant.

Rule 59 SCRCP provides that a new trial may be granted "for any of the reasons for which new trials have heretofore been granted." After reviewing Plaintiffs' motion and considering the arguments provided therein, this Court is satisfied that its Order of Judgment is appropriate and should be affirmed. The Court is satisfied that the findings of fact set forth in the Order of Judgment were in fact established during trial and there is no reason to reverse, alter, or amend the order.

It is, therefore, ORDERED that Plaintiffs' motion is denied.

The Honorable Alex Kinlaw, Jr.
Judge, Thirteenth Judicial Circuit

Greenville, South Carolina

_____, 2022

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Greenville Common Pleas

Case Caption: George C Hassiotis , plaintiff, et al vs. Greenville South Carolina City Of

Case Number: 2019CP2302041

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

ELECTRONICALLY FILED - 2019 Apr 11 4:49 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE George C. Hassiotis and Constantinon Hassiotis, Plaintiffs, vs. The City of Greenville, South Carolina, Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NUMBER: 2019-CP-23-_____ **SUMMONS** **(Jury Trial Demanded)**

TO: THE DEFENDANT ABOVE-NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the subscriber at 401 Pettigru Street, Greenville, SC 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Complaint.

BANNISTER, WYATT & STALVEY, LLC

s/Luke A. Burke
Bruce W. Bannister (SC Bar # 15679)
Luke A. Burke (SC Bar # 100033)
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084
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Attorneys for Plaintiffs

April 11, 2019
Greenville, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE George C. Hassiotis and Constantinon Hassiotis, Plaintiffs, vs. The City of Greenville, South Carolina, Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NUMBER: 2019-CP-23-_____ **COMPLAINT** **(Jury Trial Demanded)**

The plaintiffs, George C. Hassiotis and Constantinon Hassiotis, (collectively "Plaintiffs") complaining of the defendant, The City of Greenville, South Carolina, ("City") would respectfully show the Court as follows:

JURISDICTION

1. Plaintiffs are a citizens and residents of Greenville County, South Carolina.

2. Plaintiffs are owners of real property located at 907 Pendleton Street, Greenville, South Carolina ("Subject Property"), which is the subject of this action.

3. City is a municipal corporation organized and existing under the laws of the State of South Carolina.

4. This Court has subject matter jurisdiction pursuant to Article V, § 11 of the South Carolina Constitution and S.C. Code §§ 14-1-80 & 15-53-20.

5. This Court has personal jurisdiction over the parties pursuant to S.C. Code §§ 36-2-802 and -803.

6. Venue is proper pursuant to S.C. Code § 15-7-30 because City is located in Greenville County, because all conduct giving rise to the claims against City occurred in Greenville County, and Subject Property is located in Greenville County.

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FACTUAL BACKGROUND

7. In the late 1980's City planned to revitalize Piazza Bergamo in the heart of City's central business district.

8. Part of City's plan was to demolish a building owned by Plaintiffs' father, Christos Hassiotis, ("Christos") which housed his restaurant, to build a large garden patio.

9. After enduring threats of condemnation, Christos sold the property to City for $106,666.67.

10. City never executed its plan and the building still exists. In 2005, the property was sold to a private company for $1,100,000.00.

The Subject Property

11. Searching for a place to relocate his restaurant, Christos purchased Subject Property on Pendleton Street on June 23, 1992.

12. In 1992, Pendleton Street was not a desirable location for a restaurant.

13. Christos built a drive-thru restaurant at the new location which was allowed by the zoning ordinance in place at that time.

14. Plaintiffs inherited Subject Property on June 14, 2013.

15. At all times relevant to this matter, Subject Property has been zoned C3, which is the most expansive commercial district in City.

City Changes Zoning Ordinance

16. In or around June 2018, City proposed a change to zoning for the Pendleton Street area including Subject Property.

17. The proposed rezoning only affected two existing uses, one of which is Subject Property.

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18. On August 16, 2018, City's Planning Commission voted to table the application to rezone to allow staff to review the request.

19. On December 14, 2018, City staff recommended that the application to rezone be modified to allow four parcels located at the North East corner of South Academy Street and Pendleton Street ("the Enigma Parcels") to remain zoned C3 instead of being rezoned to RDV.

20. There is no rational basis for the decision to allow the Enigma Parcels to remain zoned C3 while rezoning Subject Property to RDV.

21. The Enigma Parcels are directly across Pendleton Street from Subject Property. The parcels are closer to the residential neighborhood than Subject Property. There is no existing use of the Enigma Parcels. Allowing the Enigma Parcels to be used commercially will create traffic issues that will cause vehicles to travel through the residential neighborhood.

22. Plaintiffs requested that City treat Subject Property similarly to the Enigma Parcels because Subject Property was more rationally zoned C3 than the Enigma Parcels and had an existing use allowed under the C3 zoning classification.

23. On December 20, 2018, City's Planning Commission voted 5-2 to recommend the rezoning application to City Council.

24. The ordinance rezoning Subject Property was enacted by the Greenville City Council on February 11, 2019 and recorded as Ordinance No. 2019-19 ("Ordinance").

25. Ordinance does not rezone the Enigma Parcels.

26. Ordinances rezones Subject Property from C3 to RDV.

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27. The value of Subject Property is significantly reduced by Ordinance because it unnecessarily restricts the uses allowed on Subject Property.

28. The value of Subject Property is significantly reduced by being rezoned RDV because Plaintiffs do not have clear expectations of what uses will be allowed on Subject Property.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Deprivation of Civil Rights)

29. Plaintiffs reassert the foregoing allegations to the extent consistent with this cause of action.

30. A real, substantial, and justiciable controversy exists between Plaintiffs and City.

31. Plaintiffs contend Ordinance is facially invalid because it zones Subject Property and other properties in the area RDV. The RDV zoning classification is invalid and arbitrary because it allocates zoning responsibilities to City staff without specific standards guiding their decisions. Ordinance violates the due process rights of Plaintiffs.

32. Plaintiffs contend Ordinance is invalid as applied to Subject Property and unconstitutional.

33. Plaintiffs contend Ordinance violates their right to substantive due process because it does not actually serve the general welfare of the community.

34. Plaintiffs contend Ordinance violates their right to substantive due process because the means adopted to achieve its purpose are not substantially related to it.

35. Plaintiffs contend Ordinance violates their right to substantive due process because it is unduly harsh upon as applied to them.

36. City contends Ordinance is a valid ordinance, applicable to Subject Property.

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37. City contends that Plaintiffs have no vested rights affected by Ordinance.

38. Plaintiffs respectfully request that the Court make the following judicial declarations:

a. Ordinance is facially invalid;

b. Ordinance is invalid as applied to Subject Property;

c. Plaintiffs are entitled to own, sell, operate, expand, and maintain a drive-thru restaurant on Subject Property.

FOR A SECOND CAUSE OF ACTION
(Damages for Deprivation of Civil Rights)

39. Plaintiffs reassert the foregoing allegations to the extent consistent with this cause of action.

40. At all relevant times, City has acted under the color of state law. City acted under color of state law when enacting Ordinance.

41. Ordinance's enactment and enforcement violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. City's enactment and enforcement of Ordinance intentionally treated Plaintiffs differently from others similarly situated under state and local law. No rational basis existed for the difference in treatment. City's unconstitutional conduct in that regard has caused Plaintiffs to sustain damages and will continue to cause Plaintiffs to sustain damages. Accordingly, Plaintiffs are entitled to recover damages from City pursuant to 42 U.S.C. § 1983.

42. Ordinance's enactment and enforcement violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs possessed vested, investment-backed property interests in connection with their rights to own, sell, operate, expand, and maintain a drive-thru restaurant on Subject Property. City has deprived Plaintiffs

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of those rights, or, is attempting to deprived Plaintiffs of those rights. City's conduct violates applicable law and, therefore, falls beyond the outer limits of legitimate government action such that no process could cure the deficiency. City's unconstitutional conduct in this regard has caused Plaintiffs to sustain damages and will continue to cause Plaintiffs to sustain damages. Accordingly, Plaintiffs are entitled to recover damages from City pursuant to 42 U.S.C. § 1983.

43. Ordinance's enactment and enforcement violates the Procedural Due Process Clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs possessed vested, investment-backed property interests in connection with their rights to own, sell, operate, expand, and maintain a drive-thru restaurant on Subject Property. City has deprived Plaintiffs of their rights without due process of law causing Plaintiffs to sustain damages and will cause Plaintiffs to continue to sustain damages. Accordingly, Plaintiffs are entitled to recover damages from City pursuant to 42 U.S.C. § 1983.

44. As a result of City's unconstitutional conduct as set out above, Plaintiffs are entitled to an award of all manner of damages, including actual, direct, compensatory, incidental, and consequential damages, arising from or related to the deprivation of their civil rights.

FOR A THIRD CAUSE OF ACTION
(Recovery of Attorney's Fees)

45. Plaintiffs reassert the foregoing allegations to the extent consistent with this cause of action.

46. Plaintiffs have brought this action to ensure the vindication of their civil rights, which are established under federal and state law.

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47. The lawful exercise of Plaintiffs' civil rights has been specifically compromised by affirmative legislative action taken by City and its officials, as more fully described above.

48. At all relevant times, City and its officials have acted under the authority which has been vested in them by the State of South Carolina, as a political subdivision of the state; and, therefore, under the color of state law.

49. City and its officials have acted without substantial justification in pressing their claims against Plaintiffs.

50. There are no special circumstances that would make the award of attorney's fees in Plaintiffs' favor unjust.

51. Therefore, Plaintiffs request an award of the costs, fees, and expenses associated with the defense of their civil rights, including attorney's fees and expert costs, pursuant to 42 U.S.C. § 1988.

52. Further, Plaintiffs request an award of the costs, fees, and expenses associated with the defense of their civil rights, including attorney's fees, pursuant to S.C. Code § 15-77-300, *et seq.*

WHEREFORE, Plaintiffs respectfully request the following relief:

1) All declaratory relief requested above;
2) A jury trial on all issues so triable;
3) An award of all recoverable damages pursuant to 42 U.S.C. § 1983;
4) An award of attorney's fees, expert fees, and all expenses available pursuant to 42 U.S.C. § 1988 and S.C. Code § 15-77-300; and
5) Such other relief as the Court deems just and proper.

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BANNISTER, WYATT & STALVEY, LLC

s/Luke A. Burke
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401 Pettigru Street (29601)
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Attorney for the Plaintiffs

April 11, 2019
Greenville, South Carolina

ELECTRONICALLY FILED - 2019 Jun 11 9:50 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
George C. Hassiotis and Constantinon Hassiotis,	)	Case No. 2019-CP-23-02041
	)	
Plaintiffs,	)	**ANSWER**
	)	
v.	)	
	)	
The City of Greenville, South Carolina,	)	
	)	
Defendant.	)	

The Defendant City of Greenville, South Carolina ("Defendant" or "City"), answering the Complaint of the Plaintiffs herein, would respectfully allege as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in Plaintiff's Complaint not hereinafter admitted, qualified, or explained, is hereby denied and strict proof demanded thereof.

2. Defendant admits the allegations of Paragraphs 1 and 2.

3. Defendant admits the allegations contained in Paragraph 3.

4. Defendant admits the allegations contained in Paragraph 4.

5. Defendant admits the allegations contained in Paragraph 5.

6. Defendant admits the allegations contained in Paragraph 6.

7. Answering Paragraphs 7 through 10, Defendant denies the allegations therein as stated. These allegations are not relevant to the issues in this case, are immaterial as envisioned by Rule 12(f) of the South Carolina Rules of Civil Procedure, and should be stricken.

8. Defendant admits the allegations contained in Paragraph 11 upon information and belief.

9. Defendant denies the allegations contained in Paragraph 12.

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10. Defendant admits the allegations contained in Paragraph 13.

11. Defendant admits the allegations contained in Paragraph 14 upon information and belief.

12. Defendant admits the allegations contained in Paragraph 15 upon information and belief.

13. Defendant admits the allegations contained in Paragraph 16.

14. Defendant does not have sufficient information to admit or deny the allegations of Paragraph 17 and therefore denies the same.

15. Defendant admits the allegations contained in Paragraph 18 upon information and belief.

16. Defendant admits the allegations contained in Paragraph 19.

17. Defendant denies the allegations contained in Paragraph 20.

18. The Defendant admits the allegations contained in Paragraph 21 to the extent they allege that the Enigma Parcels are directly across Pendleton Street from the Subject Property and are closer to a residential neighborhood than the Subject Property. Defendant denies the remaining allegations of Paragraph 21.

19. Defendant admits that Plaintiff requested its property be reclassified. Defendant denies the remaining allegations contained in Paragraph 22 as stated.

20. Defendant admits the allegations contained in Paragraph 23.

21. Defendant admits the allegations contained in Paragraph 24.

22. Defendant admits the allegations contained in Paragraph 25.

23. Defendant admits the allegations contained in Paragraph 26.

24. Defendant denies the allegations contained in Paragraph 27.

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25. Defendant denies the allegations contained in Paragraph 28.

26. Answering Paragraph 29, Defendant realleges its previous allegations as if fully set forth herein.

27. Defendant denies the allegations contained in Paragraph 30.

28. Defendant denies the allegations contained in Paragraph 31.

29. Defendant denies the allegations contained in Paragraph 32.

30. Defendant denies the allegations contained in Paragraph 33.

31. Defendant denies the allegations contained in Paragraph 34.

32. Defendant denies the allegations contained in Paragraph 35.

33. Defendant denies the allegations contained in Paragraph 36.

34. Defendant denies the allegations contained in Paragraph 37 as stated. Defendant's position as to Plaintiffs' rights as they relate to the Ordinance and to the relief Plaintiffs seek is as stated in this Answer.

35. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 38.

36. Answering Paragraph 39, Defendant realleges its previous allegations as if fully set forth herein.

37. Defendant admits that it acted under color of law when enacting the Ordinance. Defendant denies the remaining allegations of Paragraph 40 as stated.

38. Defendant denies the allegations contained in Paragraph 41.

39. Defendant denies the allegations contained in Paragraph 42.

40. Defendant denies the allegations contained in Paragraph 43.

41. Defendant denies the allegations contained in Paragraph 44.

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42. Answering Paragraph 45, Defendant realleges its previous allegations as if fully set forth herein.

43. Defendant denies the allegations contained in Paragraph 46 as stated.

44. Defendant denies the allegations contained in Paragraph 47.

45. Defendant denies the allegations contained in Paragraph 48 as stated.

46. Defendant denies the allegations contained in Paragraph 49.

47. Defendant denies the allegations contained in Paragraph 50.

48. Defendant denies the allegations contained in Paragraph 51.

49. Defendant denies the allegations contained in Paragraph 52.

50. Defendant denies that Plaintiffs are entitled to any relief requested in the Complaint.

FOR A SECOND DEFENSE
(S.C. R. Civ. P. 12(b)(6))

51. Defendant is informed and believes that Plaintiffs' Complaint fails to state facts sufficient to set forth a cause of action against it and, therefore, Plaintiffs' Complaint should be dismissed.

FOR A THIRD DEFENSE
(Statute of Limitations)

52. One or more of Plaintiffs' claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE
(Tort Claims Defenses)

53. The Defendant asserts all rights and defenses available to it under the South Carolina Tort Claims Act, including but not limited to, S.C. Code Ann. § 15-78-60 subsections 1, 2, and 5, and therefore, Plaintiffs' Complaint seeking damages for tort liability should be dismissed.

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FOR A FIFTH DEFENSE
(Valid Exercise of Police Powers)

54. The ordinance(s) about which the Plaintiffs complain was/were passed in accordance with applicable law, and are reasonable and valid exercise(s) of the Defendant's police powers.

FOR A SIXTH DEFENSE
(No Constitutional Violation(s))

55. The ordinances and their applicability to Plaintiffs' property do not violate Plaintiffs' rights under the Equal Protection Clause of the United States Constitution.

FOR A SEVENTH DEFENSE
(No Taking)

56. The ordinances and their applicability to Plaintiffs' property do not amount to a "taking" of property under the United States Constitution.

FOR AN EIGHTH DEFENSE
(No Entitlement to Injunctive Relief)

57. Plaintiffs are not entitled to injunctive relief in this matter whether or not they can demonstrate a compensable taking of their property.

FOR A NINTH DEFENSE
(Failure to Exhaust Administrative Remedies)

58. Plaintiffs failed to exhaust their available administrative remedies to rectify the alleged harm and/or injury pled under one or more causes of action in the Complaint, and therefore, those claim(s) should be dismissed.

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FOR A TENTH DEFENSE
(Limitations of Damages)

59. The Defendant pleads all rights and defenses available to it under S.C. Code Ann. § 15-78-120, including but not limited to, the statutory caps on damages and prohibition against punitive damages found therein.

FOR AN ELEVENTH DEFENSE
(Good Faith)

60. All actions taken by Defendant have been in good faith.

FOR A TWELFTH DEFENSE
(Failure to Mitigate)

61. Plaintiffs' claims are barred as a result of the Plaintiffs' failure to take such reasonable actions necessary to mitigate their damages as required by South Carolina law.

FOR A THIRTEENTH DEFENSE
(No Damage)

62. Plaintiffs have suffered no cognizable damages and therefore cannot maintain the present action against the Defendant.

FOR A FOURTEENTH DEFENSE
(Reservation)

63. Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, Defendant expressly reserves the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

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WHEREFORE, having fully answered the Complaint, Defendant City of Greenville, respectfully requests that the Complaint be dismissed with costs and for such other and further relief as this Court deems necessary and proper.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ V. Clark Price
V. Clark Price, SC Bar No. 04567
Joseph O. Smith, SC Bar No. 77476
P.O. Box 10529
(1052 North Church Street, 29601)
Greenville, SC 29603
864-349-2600 – Telephone
864-349-0303 – Facsimile
cprice@roecassidy.com
jsmith@roecassidy.com
Attorneys for Defendant City of Greenville

Greenville, South Carolina

June 11, 2019

THIS DEFENDANT DEMANDS A TRIAL BY JURY.

s/ V. Clark Price
V. Clark Price, SC Bar No. 04567
Joseph O. Smith, SC Bar No. 77476

ELECTRONICALLY FILED - 2019 Jun 27 11:18 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE George C. Hassiotis and Constantinon Hassiotis, Plaintiffs, vs. The City of Greenville, South Carolina, Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NUMBER: 2019-CP-23-02041 **SUMMONS TO AMENDED COMPLAINT** **(Jury Trial Demanded)**

TO: THE DEFENDANT ABOVE-NAMED:

You are hereby summoned and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the subscriber at 401 Pettigru Street, Greenville, SC 29601, within fifteen (15) days after the service hereof, exclusive of the day of such service. If you fail to answer within that time, a judgment by default will be entered against you for the relief demanded in the Amended Complaint.

BANNISTER, WYATT & STALVEY, LLC

s/Luke A. Burke
Luke A. Burke (SC Bar # 100033)
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084
Fax: (864) 331-0245
Attorney for the Plaintiffs

June 27, 2019
Greenville, South Carolina

ELECTRONICALLY FILED - 2019 Jun 27 11:18 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE George C. Hassiotis and Constantinon Hassiotis, Plaintiffs, vs. The City of Greenville, South Carolina, Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NUMBER: 2019-CP-23-02041 **AMENDED COMPLAINT** **(Jury Trial Demanded)**

Pursuant to Rule 15(a) and with the consent of Defendant, the plaintiffs, George C. Hassiotis and Constantinon Hassiotis, (collectively "Plaintiffs") amend their complaint and alleges as follows:

JURISDICTION

1. Plaintiffs are a citizens and residents of Greenville County, South Carolina.

2. Plaintiffs are owners of real property located at 907 Pendleton Street, Greenville, South Carolina ("Subject Property"), which is the subject of this action.

3. City is a municipal corporation organized and existing under the laws of the State of South Carolina.

4. This Court has subject matter jurisdiction pursuant to Article V, § 11 of the South Carolina Constitution and S.C. Code §§ 14-1-80 & 15-53-20.

5. This Court has personal jurisdiction over the parties pursuant to S.C. Code §§ 36-2-802 and -803.

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6. Venue is proper pursuant to S.C. Code § 15-7-30 because City is located in Greenville County, because all conduct giving rise to the claims against City occurred in Greenville County, and Subject Property is located in Greenville County.

FACTUAL BACKGROUND

The Subject Property

7. Searching for a place to relocate his restaurant, Christos Hassiotis ("Christos") purchased Subject Property on Pendleton Street on June 23, 1992.

8. In 1992, Pendleton Street was not a desirable location for a restaurant.

9. Christos built a drive-thru restaurant at the new location which was allowed by the zoning ordinance in place at that time.

10. Plaintiffs inherited Subject Property on June 14, 2013.

11. At all times relevant to this matter, Subject Property has been zoned C3, which is the most expansive commercial district in City.

City Changes Zoning Ordinance

12. In or around June 2018, City proposed a change to zoning for the Pendleton Street area including Subject Property.

13. The proposed rezoning only affected two existing uses, one of which is Subject Property.

14. On August 16, 2018, City's Planning Commission voted to table the application to rezone to allow staff to review the request.

15. On December 14, 2018, City staff recommended that the application to rezone be modified to allow four parcels located at the North East corner of South Academy Street

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and Pendleton Street ("the Enigma Parcels") to remain zoned C3 instead of being rezoned to RDV.

16. There is no rational basis for the decision to allow the Enigma Parcels to remain zoned C3 while rezoning Subject Property to RDV.

17. The Enigma Parcels are directly across Pendleton Street from Subject Property. The parcels are closer to the residential neighborhood than Subject Property. There is no existing use of the Enigma Parcels. Allowing the Enigma Parcels to be used commercially will create traffic issues that will cause vehicles to travel through the residential neighborhood.

18. Plaintiffs requested that City treat Subject Property similarly to the Enigma Parcels because Subject Property was more rationally zoned C3 than the Enigma Parcels and had an existing use allowed under the C3 zoning classification.

19. On December 20, 2018, City's Planning Commission voted 5-2 to recommend the rezoning application to City Council.

20. The ordinance rezoning Subject Property was enacted by the Greenville City Council on February 11, 2019 and recorded as Ordinance No. 2019-19 ("Ordinance").

21. Ordinance does not rezone the Enigma Parcels.

22. Ordinances rezones Subject Property from C3 to RDV.

23. The value of Subject Property is significantly reduced by Ordinance because it unnecessarily restricts the uses allowed on Subject Property.

24. The value of Subject Property is significantly reduced by being rezoned RDV because Plaintiffs do not have clear expectations of what uses will be allowed on Subject Property.

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FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Deprivation of Civil Rights)

25. Plaintiffs reassert the foregoing allegations to the extent consistent with this cause of action.

26. A real, substantial, and justiciable controversy exists between Plaintiffs and City.

27. Plaintiffs contend Ordinance is facially invalid because it zones Subject Property and other properties in the area RDV. The RDV zoning classification is invalid and arbitrary because it allocates zoning responsibilities to City staff without specific standards guiding their decisions. Ordinance violates the due process rights of Plaintiffs.

28. Plaintiffs contend Ordinance is invalid as applied to Subject Property and unconstitutional.

29. Plaintiffs contend Ordinance violates their right to substantive due process because it does not actually serve the general welfare of the community.

30. Plaintiffs contend Ordinance violates their right to substantive due process because the means adopted to achieve its purpose are not substantially related to it.

31. Plaintiffs contend Ordinance violates their right to substantive due process because it is unduly harsh upon as applied to them.

32. City contends Ordinance is a valid ordinance, applicable to Subject Property.

33. City contends that Plaintiffs have no vested rights affected by Ordinance.

34. Plaintiffs respectfully request that the Court make the following judicial declarations:

a. Ordinance is facially invalid;

b. Ordinance is invalid as applied to Subject Property;

ELECTRONICALLY FILED - 2019 Jun 27 11:18 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP230241

c. Plaintiffs are entitled to own, sell, operate, expand, and maintain a drive-thru restaurant on Subject Property.

FOR A SECOND CAUSE OF ACTION
(Damages for Deprivation of Civil Rights)

35. Plaintiffs reassert the foregoing allegations to the extent consistent with this cause of action.

36. At all relevant times, City has acted under the color of state law. City acted under color of state law when enacting Ordinance.

37. Ordinance's enactment and enforcement violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. City's enactment and enforcement of Ordinance intentionally treated Plaintiffs differently from others similarly situated under state and local law. No rational basis existed for the difference in treatment. City's unconstitutional conduct in that regard has caused Plaintiffs to sustain damages and will continue to cause Plaintiffs to sustain damages. Accordingly, Plaintiffs are entitled to recover damages from City pursuant to 42 U.S.C. § 1983.

38. Ordinance's enactment and enforcement violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs possessed vested, investment-backed property interests in connection with their rights to own, sell, operate, expand, and maintain a drive-thru restaurant on Subject Property. City has deprived Plaintiffs of those rights, or, is attempting to deprived Plaintiffs of those rights. City's conduct violates applicable law and, therefore, falls beyond the outer limits of legitimate government action such that no process could cure the deficiency. City's unconstitutional conduct in this regard has caused Plaintiffs to sustain damages and will continue to cause Plaintiffs to sustain

ELECTRONICALLY FILED - 2019 Jun 27 11:18 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP230241

damages. Accordingly, Plaintiffs are entitled to recover damages from City pursuant to 42 U.S.C. § 1983.

39. Ordinance's enactment and enforcement violates the Procedural Due Process Clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs possessed vested, investment-backed property interests in connection with their rights to own, sell, operate, expand, and maintain a drive-thru restaurant on Subject Property. City has deprived Plaintiffs of their rights without due process of law causing Plaintiffs to sustain damages and will cause Plaintiffs to continue to sustain damages. Accordingly, Plaintiffs are entitled to recover damages from City pursuant to 42 U.S.C. § 1983.

40. As a result of City's unconstitutional conduct as set out above, Plaintiffs are entitled to an award of all manner of damages, including actual, direct, compensatory, incidental, and consequential damages, arising from or related to the deprivation of their civil rights.

FOR A THIRD CAUSE OF ACTION
(Recovery of Attorney's Fees)

41. Plaintiffs reassert the foregoing allegations to the extent consistent with this cause of action.

42. Plaintiffs have brought this action to ensure the vindication of their civil rights, which are established under federal and state law.

43. The lawful exercise of Plaintiffs' civil rights has been specifically compromised by affirmative legislative action taken by City and its officials, as more fully described above.

ELECTRONICALLY FILED - 2019 Jun 27 11:18 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

44. At all relevant times, City and its officials have acted under the authority which has been vested in them by the State of South Carolina, as a political subdivision of the state; and, therefore, under the color of state law.

45. City and its officials have acted without substantial justification in pressing their claims against Plaintiffs.

46. There are no special circumstances that would make the award of attorney's fees in Plaintiffs' favor unjust.

47. Therefore, Plaintiffs request an award of the costs, fees, and expenses associated with the defense of their civil rights, including attorney's fees and expert costs, pursuant to 42 U.S.C. § 1988.

48. Further, Plaintiffs request an award of the costs, fees, and expenses associated with the defense of their civil rights, including attorney's fees, pursuant to S.C. Code § 15-77-300, *et seq.*

WHEREFORE, Plaintiffs respectfully request the following relief:

1) All declaratory relief requested above;
2) A jury trial on all issues so triable;
3) An award of all recoverable damages pursuant to 42 U.S.C. § 1983;
4) An award of attorney's fees, expert fees, and all expenses available pursuant to 42 U.S.C. § 1988 and S.C. Code § 15-77-300; and
5) Such other relief as the Court deems just and proper.

SIGNATURE ON FOLLOWING PAGE

ELECTRONICALLY FILED - 2019 Jun 27 11:18 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

BANNISTER, WYATT & STALVEY, LLC

s/Luke A. Burke
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Phone: (864) 298-0084
Fax: (864) 298-0146
Attorney for the Plaintiffs

June 27, 2019
Greenville, South Carolina

ELECTRONICALLY FILED - 2019 Jul 11 2:45 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
George C. Hassiotis and Constantinon Hassiotis,	)	Case No. 2019-CP-23-02041
	)	
Plaintiffs,	)	**ANSWER TO AMENDED COMPLAINT**
	)	
v.	)	
	)	
The City of Greenville, South Carolina,	)	
	)	
Defendant.	)	

The Defendant City of Greenville, South Carolina ("Defendant" or "City"), answering the Amended Complaint of the Plaintiffs herein, would respectfully allege as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in Plaintiff's Complaint not hereinafter admitted, qualified, or explained, is hereby denied and strict proof demanded thereof.

2. Defendant admits the allegations of Paragraphs 1 and 2.

3. Defendant admits the allegations contained in Paragraph 3.

4. Defendant admits the allegations contained in Paragraph 4.

5. Defendant admits the allegations contained in Paragraph 5.

6. Defendant admits the allegations contained in Paragraph 6.

7. Defendant admits the allegations contained in Paragraph 7 upon information and belief.

8. Defendant denies the allegations contained in Paragraph 8.

9. Defendant admits the allegations contained in Paragraph 9.

10. Defendant admits the allegations contained in Paragraph 10 upon information and belief.

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11. Defendant admits the allegations contained in Paragraph 11 upon information and belief.

12. Defendant admits the allegations contained in Paragraph 12.

13. Defendant does not have sufficient information to admit or deny the allegations of Paragraph 13 and therefore denies the same.

14. Defendant admits the allegations contained in Paragraph 14 upon information and belief.

15. Defendant admits the allegations contained in Paragraph 15.

16. Defendant denies the allegations contained in Paragraph 16.

17. The Defendant admits the allegations contained in Paragraph 17 to the extent they allege that the Enigma Parcels are directly across Pendleton Street from the Subject Property and are closer to a residential neighborhood than the Subject Property. Defendant denies the remaining allegations of Paragraph 17.

18. Defendant admits that Plaintiff requested its property be reclassified. Defendant denies the remaining allegations contained in Paragraph 18 as stated.

19. Defendant admits the allegations contained in Paragraph 19.

20. Defendant admits the allegations contained in Paragraph 20.

21. Defendant admits the allegations contained in Paragraph 21.

22. Defendant admits the allegations contained in Paragraph 22.

23. Defendant denies the allegations contained in Paragraph 23.

24. Defendant denies the allegations contained in Paragraph 24.

25. Answering Paragraph 25, Defendant realleges its previous allegations as if fully set forth herein.

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26. Defendant denies the allegations contained in Paragraph 26.

27. Defendant denies the allegations contained in Paragraph 27.

28. Defendant denies the allegations contained in Paragraph 28.

29. Defendant denies the allegations contained in Paragraph 29.

30. Defendant denies the allegations contained in Paragraph 30.

31. Defendant admits the allegations contained in Paragraph 31.

32. Defendant admits the allegations contained in Paragraph 32.

33. Defendant denies the allegations contained in Paragraph 33 as stated. Defendant's position as to Plaintiffs' rights as they relate to the Ordinance and to the relief Plaintiffs seek is as stated in this Answer.

34. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 34.

35. Answering Paragraph 35, Defendant realleges its previous allegations as if fully set forth herein.

36. Answering Paragraph 36, Defendant admits that it acted under color of law when enacting the Ordinance. Defendant denies the remaining allegations of Paragraph 36 as stated.

37. Defendant denies the allegations contained in Paragraph 37.

38. Defendant denies the allegations contained in Paragraph 38.

39. Defendant denies the allegations contained in Paragraph 39.

40. Defendant denies the allegations contained in Paragraph 40.

41. Answering Paragraph 41, Defendant realleges its previous allegations as if fully set forth herein.

42. Defendant denies the allegations contained in Paragraph 42 as stated.

43. Defendant denies the allegations contained in Paragraph 43.

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44. Defendant admits the allegations contained in Paragraph 44, but denies its conduct was wrongful.

45. Defendant denies the allegations contained in Paragraph 45.

46. Defendant denies the allegations contained in Paragraph 46.

47. Defendant denies the allegations contained in Paragraph 47.

48. Defendant denies the allegations contained in Paragraph 48.

49. Defendant denies that Plaintiffs are entitled to any relief requested in the Complaint.

FOR A SECOND DEFENSE
(S.C. R. Civ. P. 12(b)(6))

50. Defendant is informed and believes that Plaintiffs' Complaint fails to state facts sufficient to set forth a cause of action against it and, therefore, Plaintiffs' Complaint should be dismissed.

FOR A THIRD DEFENSE
(Statute of Limitations)

51. One or more of Plaintiffs' claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE
(Tort Claims Defenses)

52. The Defendant asserts all rights and defenses available to it under the South Carolina Tort Claims Act, including but not limited to, S.C. Code Ann. § 15-78-60 subsections 1, 2, and 5, and therefore, Plaintiffs' Complaint seeking damages for tort liability should be dismissed.

FOR A FIFTH DEFENSE
(Valid Exercise of Police Powers)

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53. The ordinance(s) about which the Plaintiffs complain was/were passed in accordance with applicable law, and are reasonable and valid exercise(s) of the Defendant's police powers.

FOR A SIXTH DEFENSE
(No Constitutional Violation(s))

54. The ordinances and their applicability to Plaintiffs' property do not violate Plaintiffs' rights under the Equal Protection Clause of the United States Constitution.

FOR A SEVENTH DEFENSE
(No Taking)

55. The ordinances and their applicability to Plaintiffs' property do not amount to a "taking" of property under the United States Constitution.

FOR AN EIGHTH DEFENSE
(No Entitlement to Injunctive Relief)

56. Plaintiffs are not entitled to injunctive relief in this matter whether or not they can demonstrate a compensable taking of their property.

FOR A NINTH DEFENSE
(Failure to Exhaust Administrative Remedies)

57. Plaintiffs failed to exhaust their available administrative remedies to rectify the alleged harm and/or injury pled under one or more causes of action in the Complaint, and therefore, those claim(s) should be dismissed.

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FOR A TENTH DEFENSE
(Limitations of Damages)

58. The Defendant pleads all rights and defenses available to it under S.C. Code Ann. § 15-78-120, including but not limited to, the statutory caps on damages and prohibition against punitive damages found therein.

FOR AN ELEVENTH DEFENSE
(Good Faith)

59. All actions taken by Defendant have been in good faith.

FOR A TWELFTH DEFENSE
(Failure to Mitigate)

60. Plaintiffs' claims are barred as a result of the Plaintiffs' failure to take such reasonable actions necessary to mitigate their damages as required by South Carolina law.

FOR A THIRTEENTH DEFENSE
(No Damage)

61. Plaintiffs have suffered no cognizable damages and therefore cannot maintain the present action against the Defendant.

FOR A FOURTEENTH DEFENSE
(Reservation)

62. Defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, Defendant expressly reserves the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

WHEREFORE, having fully answered the Amended Complaint, Defendant City of

Greenville, respectfully requests that the Complaint be dismissed with costs and for such other and further relief as this Court deems necessary and proper.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ V. Clark Price
V. Clark Price, SC Bar No. 04567
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Attorneys for Defendant City of Greenville

Greenville, South Carolina

July 11, 2019

THIS DEFENDANT DEMANDS A TRIAL BY JURY.

s/ V. Clark Price
V. Clark Price, SC Bar No. 04567
Joseph O. Smith, SC Bar No. 77476

ELECTRONICALLY FILED - 2019 Jul 11 2:45 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

ELECTRONICALLY FILED - 2019 Jun 11 9:44 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
George C. Hassiotis and Constantinon Hassiotis,	)	Case No. 2019-CP-23-02041
	)	
Plaintiffs,	)	**MOTION TO STRIKE**
	)	
v.	)	
	)	
The City of Greenville, South Carolina,	)	
	)	
Defendant.	)	

The Defendant City of Greenville, South Carolina ("Defendant" or "City"), hereby submits this Rule 12(f) Motion to Strike the allegations contained in Paragraphs 7-10 of the Complaint. The City would respectfully allege the following as the grounds for its Motion:

1. Paragraphs 7 through 10 contain allegations concerning the City's alleged plans for part of the Central Business District over thirty years ago and the purported history of the City's purchase and 2005 sale of property formerly owned by Plaintiff's father.

2. Those allegations are not relevant to the legal issues in this action, and are immaterial to the action.

WHEREFORE, Defendant respectfully requests that Paragraphs 7 through 10 of the Complaint be stricken pursuant to Rule 12(f) and an Amended Complaint refiled in the public record without such allegations.

The motion is based on this notice and Motion; the pleadings, documents, records, and files in this action; the statutory and case law of the State of South Carolina; any subsequent memoranda of law or other evidence which may be submitted prior to the hearing on this motion; as well as any oral argument and documentary evidence which may be presented at the hearing on this matter.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/ V. Clark Price
V. Clark Price, SC Bar No. 04567
Joseph O. Smith, SC Bar No. 77476
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Greenville, South Carolina

June 11, 2019

ELECTRONICALLY FILED - 2019 Jun 11 9:44 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

ELECTRONICALLY FILED - 2022 Sep 26 9:46 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE George C. Hassiotis and Constantinon Hassiotis, Plaintiffs, v. The City of Greenville, South Carolina, Defendant.	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Case No. 2019-CP-23-02041 **NOTICE OF MOTION AND MOTION FOR NEW TRIAL OR TO ALTER AND AMEND JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, George C. Hassiotis and Constantinon Hassiotis ("Plaintiffs") by and through their undersigned counsel, shall at such time and place as the Court may direct, move for an Order granting a new trial, or in the alternative to alter or amend the Court's Order of Judgment ("Order"). This motion is based upon Rule 59 of the South Carolina Rules of Civil Procedure. The Order was filed on September 14, 2022, and this motion is timely. This motion is without prejudice to Plaintiffs' position and rights on further appeal.

I. Right to Jury Trial to determine whether the City violated Plaintiffs' Equal Protection Rights

This case was tried over the course of August 29th and 30th. At the call of the case, the City moved to bifurcate the trial wherein the Court would first decide whether Plaintiffs' constitutional rights had been deprived, and then, if the Court decided a constitutional deprivation had occurred, the jury would decide what damages Plaintiffs had resulted from the City's unconstitutional actions. Plaintiffs agreed that this was the proper procedure for trial of the Due Process violation but objected to Plaintiffs being denied a jury trial on their Equal Protection claim. The Court ruled that the case would be bifurcated as requested by the City; however, this ruling is not included in the Order.

ELECTRONICALLY FILED - 2022 Sep 26 9:46 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP230241

II. Plaintiffs proved their allegations of constitutional deprivations and their claim for damages should have been presented to the jury

Further, even if the Court decides that Plaintiffs were not entitled to a jury trial on their Equal Protection claims, Plaintiffs presented evidence proving the following allegations by clear and convincing evidence:

A. The RDV zoning classification is invalid

The RDV zoning classification is invalid and arbitrary as applied to Plaintiffs' property because it allocates zoning responsibilities to City staff through "conditional uses" without specific standards guiding their decisions; and, therefore, the zoning ordinance violates Plaintiffs' due process rights. (Am. Comp. 27-28).

B. The City's actions violated Plaintiffs' Equal Protection Clause rights

The City's enactment and enforcement of Ordinance violated the Equal Protection Clause of the Fourteenth Amendment because it intentionally treated Plaintiffs differently from others similarly situated under state and local law without any rational basis for this difference in treatment; and, that City's unconstitutional conduct caused Plaintiffs to sustain damages. (Am. Comp 37).

C. The City's actions violated Plaintiffs' Due Process rights

The City's enactment and enforcement of Ordinance violated the Due Process Clause of the Fourteenth Amendment by depriving Plaintiffs of their vested, investment-backed property interests in connection with their right to sell, operate, expand, and maintain a drive-thru restaurant on their property; and, that City's unconstitutional conduct caused Plaintiffs to sustain damages. (Am. Comp. 38-39).

III. Attorney's Fees and Costs

Finally, based on the foregoing, Plaintiffs were entitled to be reimbursed for their costs, fees, and expenses associated with the defense of their civil rights, including attorney's fees and expert costs, pursuant to 42 U.S.C. § 1988 and S.C. Code § 15-77-300, *et seq.*

Respectfully submitted,
BANNISTER, WYATT & STALVEY, LLC

s/Luke A. Burke
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Attorney for the Plaintiffs

September 26, 2022
Greenville, South Carolina

ELECTRONICALLY FILED - 2022 Sep 26 9:46 AM - GREENVILLE - COMMON PLEAS - CASE#2019CP230241

State of South Carolina)
) Court of General Sessions
County of Greenville)
2022-CP-23-02041

George C. Hassiotis and)
Constantinon Hassiotis,)
)
Plaintiffs)
vs.) Transcript of Record
)
)
The City of Greenville, South)
Carolina)
Defendant)

August 29, 2022
Greenville, South Carolina

B E F O R E:

Honorable Alex Kinlaw, Judge

A P P E A R A N C E S:

Luke A. Burke, Esq.
Attorney for the Plaintiffs

V. Clark Price, Esq.
Attorney for the Defendant

Proceedings by Court Reporter-Holly Jenkins
Transcribed by Joy E. Holston

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(PW) - Denotes Defense Witness
(DW) - Denotes State's Witness

(PW) Jason Tankersley

Direct examination by Mr. Burke:	49
Cross-examination by Mr. Price:	68
Examination by the Court:	81
Continue cross-examination by Mr. Price:	86
Examination by the Court:	91
Redirect examination by Mr. Burke:	93
Examination by the Court:	96

(PW) Virgina Stroud

Direct examination by Mr. Burke:	98
Examination by the Court:	111
Continue direct examination by Mr. Burke:	112
Cross-examination by Mr. Price:	123
Redirect examination by Mr. Burke:	133
Recross examination by Mr. Price:	135

(PW) Constantinon Hassiotis

Direct examination by Mr. Burke: 137

Proffer testimony by Mr. Burke: 162

Proffer testimony by Mr. Price: 164

Cross-examination by Mr. Price: 171

Redirect examination by Mr. Burke: 192

Recross examination by Mr. Price: 194

(PW) Corbin Haskell

Direct examination by Mr. Burke: 225

Cross-examination by Mr. Price: 229

Opening Remarks by Mr. Burke: 39

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Closing Remarks by Mr. Burke: 246

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Ruling by The Court: 252

Certificate of Reporter: 270

E X H I B I T S

Plaintiffs

NO.	DESCRIPTION	ID	EV	PAGE#
1	Comparison of Uses in Zoning District		X	
2	Letter dated 4/19/18		X	
3	Applicant/Owner Information		X	
4	Proposed Re-Zoning Comments		X	
5	Email dated 8/13/18		X	
6	Letter dated 11/26/18		X	
7	Email dated 11/7/18		X	
8	Email dated 11/7/18		X	
9	Planning Staff Report		X	
10	Email dated 8/24/18		X	
11	Meeting Notice		X	
12	Ordinance		X	
13	Existing Zoning		X	
14	Existing Zoning		X	
15	Email dated 11/7/18		X	

Defendant's

NO.	DESCRIPTION	ID	EV	PAGE#
1	City Council Minutes First Reading 1/28/19		X	
2	Council Meeting Agenda 2/11/19		X	
3	Council Meeting Second Reading 2/11/19		X	
4	Second Reading Rezoning Ordinance 2/11/19		X	
5	2/11/19 Zoning Map		X	
6	Stroud Letter 4/19/18		X	
7	Comment Open House Event 4/30/18		X	
8	Open House Sign-in Sheets 4/30/18		X	
9	Committee Minutes 5/21/18		X	
10	Planning Staff Report 8/8/18		X	
11	Planning Commission Minutes 8/16/18		X	
12	Existing Zoning 8/18/18		X	
13	Agenda 9/27/18		X	45
14	Planning Committee Minutes 9/27/18		X	
16	Proposed Zoning Map Notes 11/20/18		X	
17	Proposed Zoning Map 11/20/18		X	
18	Proposed Zoning Map 11/26/18		X	
19	Stroud Letter 11/26/18		X	
20	Report & Application for Rezoning 12/14/18		X	
21	Handwritten Notes 12/20/18		X	
22	Planning Commission Minutes 12/20/18		X	
23	Photograph			
24	Photograph			

Defendant's

NO.	DESCRIPTION	ID	EV	PAGE#
25	Photograph			
26	Print Off from OJ's Website			
27	Pendleton Zoning			
28	Photograph			
29	Photograph			
30	Real Property Details			
31	Tax Notice			
32	Tax Notice			
33	Excerpts from George Hassiotis Deposition		X	225

Court's

NO.	DESCRIPTION	ID	EV	PAGE#
1	Brief		X	9
2	Excerpts from Trial Brief		X	199

(Exhibits are added to this Exhibit Page as shown on the Exhibit sheets signed by the Court Reporter, Holly Jenkins and the Clerk of Court for Greenville County.)

THE COURT: I am going to put this on the record. This is a housekeeping matter. I don't want to go through the entire trial not pronouncing this name right. So I am going to take a stab at it, Mr. Burke. Is it Hassiotis?

MR. BURKE: Yes, Your Honor.

THE COURT: Hassiotis. Got it. Okay. I spent all weekend practicing how to pronounce that name. Let's go on the record, Madam Clerk, I mean Court Reporter. George C. Hassiotis and Constantinon Hassiotis, Plaintiff; versus City of Greenville. This is case number 2019-CP-23-02041. I have, both of the Plaintiffs are present with their attorney, Mr. Luke Burke. Mr. Bruce Bannister is also listed as Counsel. It is my understanding, based upon what I have heard from Counsel, Mr. Burke, you will be proceeding on behalf of the Plaintiffs today. Is that correct?

MR. BURKE: That is correct, Your Honor.

THE COURT: Alright. And representing the City of Greenville, Mr. Price is here. The young lady that is sitting behind, yes ma'am.

MS. PAOLETTI: Yes sir, Your Honor. May it please the Court. I am Leigh Paoletti, the City Attorney for Greenville.

THE COURT: Leigh what now?

MS. PAOLETTI: Paoletti.

THE COURT: I think I have seen you before.

MS. PAOLETTI: You have.

THE COURT: And the young lady I can't see behind.

MR. PRICE: Your Honor, this is my paralegal, Traci. T-R-A-C-I Larkins.

THE COURT: Traci Larkins. Counsel, I have, I benefited from the, what we call pretrial conference a week ago. We talked about the issues and so I know a little bit about it. And I appreciate the pretrial briefs that were sent to me, I think they are very helpful to me as well as my Law Clerk. I have in hand voir dire questions from the Plaintiff as well as the Defendant and also a list of witnesses. Is there, is there anything that we need to cover, I think we are going to have a panel up here pretty soon.

CLERK OF COURT: Hopefully.

THE COURT: Hopefully. Anything we need to cover before or are we just anticipating getting the panel in.

MR. BURKE: Not from the Plaintiff, Your Honor.

MR. PRICE: Your Honor, I do want to address --

THE COURT: Yes, sir.

MR. PRICE: --an issue that I raised in pretrial and that I referenced to in my pretrial brief. And that is the position of the City that because this is a zoning case, the burden of proof on the Plaintiffs would be to

prove that the zoning ordinance in this case is unconstitutional. And the complaint says that, it says that. They are alleging due process violations, equal protection violations, all based on the premise that the zoning ordinance that was passed in January of 2019 by City Counsel is unconstitutional either by its language or by its application. Your Honor, I have, I say this, well, my position is stated in the pretrial brief has not changed. In fact, it has strengthened. I have another brief, I only added one case to it but I would like to make that a Court's exhibit for the purposes of the record.

THE COURT: Okay. Is it a case that I do not have?

MR. PRICE: Yes, sir. And I have a copy for you if you want it.

THE COURT: Yes.

MR. PRICE: So let me, first thing is first. I would like to mark this as Court's exhibit.

THE COURT: You have seen it, Mr. Burke?

MR. BURKE: I have not seen it.

MR. PRICE: I have got a copy for you.

(Whereupon, Court's Exhibit 1 was marked.)

MR. PRICE: Judge, the case that I have added to the brief is the McMaster case. It is a Supreme Court case. I add it for the purposes of setting out what appears to

be black letter law. And that is, McMaster holds that the issue of Legislation is for the Court and not for the jury. So we informally discussed at the pretrial conference, I would like for the record to make a formal motion to have the issue of the legality, the constitutionality of the ordinance as it applies in this case heard by Your Honor as opposed to the jury. And that depending on Your Honor's decisions about the constitutionality of the ordinance, then the jury may be called to decide the main issues as it relates to the interest. The Court's exhibit that I have handed up, in addition to McMaster, has a number of cases that we have found and cited that we believe stand for the proposition that I just stated as well as establishing the high bar in a zoning case faced by the Plaintiffs. I tried to put together jury requests in the event that Your Honor rules that the jury should hear all the issues in this case. And I found it impossible because when I look at the law as stated in those cases that I cite in the brief, those cases repeatedly leave it to the Court to decide whether an ordinance has violated due process, equal protection; whether the ordinance is an arbitrary and capricious decision on the part of the Government. And so I just couldn't do it. And I say this, I say this in good humor but it is serious. I went to Judge Anderson's book on

jury charges. The chapters as I recall are established in alphabetical order, I went to the end. But long story short, there are no jury charges in that book on zoning. So I believe, respectfully --

THE COURT: Let me ask you this.

MR. PRICE: Yes, sir.

THE COURT: I am just flipping through these pages. I saw, I was trying to see the specific language in McMaster but I couldn't, which page is --

MR. PRICE: I am sorry, it is going to be --

THE COURT: I see where the case is cited but I don't see the language that you are talking about.

MR. PRICE: On page five.

THE COURT: Let me go to that. That language in here states specifically that an issue regarding the interpretation of the legislative enactment is a question of law, for the Court and not a jury to determine whether the zoning ordinance in its application violated constitutional rights of the Plaintiff. That language is right out of McMaster.

MR. PRICE: Yes, sir. I have got a copy of the case here. Now, in fairness, it may not be a verbatim quote but it came from the digest summary of the case. But for the Court's benefit I will hand up McMaster and I will copy --

THE COURT: It appears, I looked at those cases after we had the pretrial conference. It does appear, a couple of the other cases, in Bear Enterprises v. County of Greenville. That is another case but also confirms that particular position. Is that right?

MR. PRICE: Yes, sir. And one of my concerns, I guess we take it or leave it. One of my concerns is that we get into the heart of the case, the jury makes a decision, may be adverse to one party and to the other, we automatically, I think, have an issue for the Appellate Courts to have to decide.

THE COURT: Right.

MR. BURKE: Your Honor, if I may.

THE COURT: Yes, sir.

MR. BURKE: I think Mr. Price is correct on due process issues and I think on interpreting the statute is the Court's duty. And I actually think the due process cause of action and the declaratory judgment cause of action is for the Court to decide. But the equal protection cause of action requires factual findings from the jury about how my clients were treated or not treated differently from their, from other people. And the due process part of it is pretty clear in inverse condemnation cases, due process violations. The Court is the one that makes that decision because it is such a procedural

decision to make. But on the equal protection clause, I still think that is a jury issue or at least to make findings to assist the Court in making the final decision. And I also think, this is not the type of case where we can try a bench trial, you make a decision. I mean we could do that but you make a decision and then we go to the jury. Because all the same facts are both for you, are the same facts that will go before the jury so it is basically trying the case twice. And so I think it makes more sense to move forward and I am sure Mr. Price is going to raise a directed verdict also and make a decision once the Plaintiffs case is in.

MR. PRICE: One comment in response. In the trial brief, page seven. There is a discussion from case law about the standard that applies in an equal protection part of the case. At the top of that page you see the Harbit case cited. About half way down is something that I pulled from the case of Dunes West. And that basically says, under the rational basis test for equal protection claims, the Court must determine and then it gives the three factors for that test. So our position is unchanged. We think it applies to the equal protection claim as well as due process. And should the Court, after taking the matter under consideration, reviewing the law and the facts as presented by the Plaintiffs who have the

burden of proof, again, as stated in the trial brief, it is a very high burden to declare an ordinance unconstitutional or unconstitutionally implied. It is a clear and present evidence standard. The phrase, fairly debatable, is used repeatedly in those cases in which the Appellate Courts have said, the burden of proof on the property owner in this case will be to establish so clearly that the City's logic in passing the ordinance and applying it, is not even fairly debatable. Flipping that, if the evidence shows that it is even fairly debatable, that is in the Plaintiffs case, then as I understand the case law, the City wins the case in the matter of law. So I think that equal protection issue is also for the Court. And it is a fair question that Mr. Burke raises. So what is left for the jury to do. Our argument is that if the Court finds that the burden of proof for the Plaintiffs in this case is met then the jury should be asked to consider damages in the case, the value that they contend that they have lost in their use of the property is caused by the zoning. And although there are also some legal issues about that, I think that that is the way the case should properly be bifurcated. And I haven't found a case, I have not found a case that says otherwise than what I asserted in our trial brief. And for that I believe we should start with the Plaintiffs putting up their case

before the Court on the issue of unconstitutionality in the ordinance in its language or its application.

MR. BURKE: I guess our only disagreement. I still think the equal protection clause is something for the jury to decide.

THE COURT: Looking at -- does that coincide with that case that I just heard?

MR. BURKE: The Harbit case, Your Honor?

THE COURT: Yes or even Dunes West Golf Club case. I am on page seven of the pretrial brief, on the third paragraph.

MR. BURKE: Yes, Your Honor. I think, I do think the Court would be the person, the Court ultimately decided that decision, yes, whether it was unconstitutional as applied to my clients. But I do think the jury is, I think our main disagreement with Mr. Price is whether the case should be bifurcated or whether just the decision should be bifurcated. All the same evidence or most of the evidence that goes towards, as to you, as to the decider on whether it is unconstitutional, the same evidence is to give to the jury to decide on damages. And so to try, ultimately that would be the result of trying the case twice if you decided that the is, unconstitutional application or the zoning ordinance is facially unconstitutional.

THE COURT: What if I decide it is constitutional as indicated?

MR. BURKE: Yes, Your Honor.

MR. PRICE: I agree.

THE COURT: The same witness says that you would place in the, present in the case-in-chief, would be the same witness you would present in making the determination of the constitutionality.

MR. BURKE: Three of them would be, yes. I think there would be one witness that doesn't really have anything to do with constitutionality.

THE COURT: I think the Harbit case and even the McMaster and then this last case, Dunes puts it in my lap to hear the testimony of both sides on that issue. That is the State's, City's position?

MR. PRICE: It is, Your Honor. And given that, if that is your decision or if you are on the fence about it, I would say that having the jury hear all of these issues, appear to be for the Court, would at the least confuse them. But worse, perhaps unduly bias them against the City when the issue appears to be for the Court as opposed to the jury.

THE COURT: Mr. Burke, how do you fathom a request to charge. You just submit all of this to the jury, how do you do it at least on the issue of constitutionality and

equal protection. How do you fathom a charge to the jury, how do you do it?

MR. BURKE: So that, the jury charge that I have been working on comes out of the actual amendment to the constitution filed by case law interpreting, it would be the same as a negligence claim. You instruct them on the law and they make a decision about whether it applies in this circumstance or not.

THE COURT: You are asking the jury to make a decision whether something is constitutional.

MR. BURKE: Yes, Your Honor. On the equal protection clause that is our position but I think I have been convinced by Mr. Price that you are to decide what is constitutional.

THE COURT: The cases are to do --

MR. BURKE: -- yes, Your Honor. But the, but the, I don't agree with the City's position that hearing the facts would be prejudicial because of the extent of the constitutional deprivation is part of the damages. So I mean, it would be prejudicial but it is not incorrectly prejudicial to their case to present the extensive constitutional deprivation to the jury.

THE COURT: But there is a high burden, Mr. Burke.

MR. BURKE: It is a high burden.

THE COURT: You have got a high burden and if you

move forward in that regard the burden is pretty high.

MR. BURKE: I agree, Your Honor.

THE COURT: In that first case the, the McMaster case, I see, this came directly out of the case. Your Municipal ordinance of the legislative enactment is presumed to be the Constitution so the burden is pretty high. I don't want to get into that because obviously that is part of your, you know, your burden on your side. I don't want to talk about it. But I think that Mr. Price, what he has done, since our pretrial conferences he has spent most of his days in the library, apparently, the law library looking for some cases that he can come up here and throw out. Apparently he and his paralegal, the City Attorney back there, she is looking down, she is, somebody has come up with these cases. Specifically saying, what I am obligated to do, I think it is in my, it is in my house to determine that. So if I, so you are asking, what am I saying. First of all, I agree with Mr. Price. I think that I have got to make a determination of that whether it be the constitutionality issue and I also, the equal protection and due process, the whole thing. I just got to do that. And then depending upon what I hear and then we go from there. Unless I am hearing something differently. Am I hearing something different?

MR. PRICE: No, Your Honor, I think that is the way

it has to be.

THE COURT: I think that, I think the case law points in that direction and I don't think Mr. Burke will disagree with me, I think that is what it says. I have got to do it.

MR. BURKE: Your Honor, just to be clear on the record. Our position that we do not agree, the jury should not decide the equal protection issue, just in case that becomes an issue later.

THE COURT: Correct, that is noted for the record, your objection to that. And the basis of the Court's decision to move in that direction, is supported by the cases that Counsel presented, the McMaster case as well as Bear Enterprises and also that Harbit case. Those are the cases, all the citations, and just for the purposes of the record, the McMaster case, for the Court Reporter is cited at 305, 395 SC 499, it is a 2011 case. And the second case which the Court relies on is Bear Enterprises versus the County of Greenville. And that case is 319 SC 137, that is a Court of Appeals case, 1995 Court of Appeals. And I think we also referenced the Harbit versus the City of Charleston case and that case is found in 382 SC 383, that is also a Court of Appeals case, 2009 case. And lastly, there was some reference to the Dunes West Golf Club, LLC versus the Town of Mt. Pleasant, 401 SC 280 and

that is a 2013 case. And I think those are the cases that was presented. Since the Court is going to move in that direction, as far as the panel, they just going to sit until we finish it, I guess.

MR. PRICE: I would suggest that the time of day, that we go ahead and pick the jury and then have them, have the Plaintiffs put up their case on the issue of the constitutionality this afternoon, perhaps ask the jury to come back in the morning?

THE COURT: That sounds, what do you think?

MR. BURKE: I don't think we would get through with our case today.

THE COURT: That is a fair plan. Alright. See where they are.

MR. PRICE: By way of housekeeping, Mr. Burke and I have worked hard to agree on the admissibility of a number of exhibits in the case. In fact, there is only one exhibit we don't agree on and rather than talk to you about it now, we will wait until it is proffered and then consider it then. But we have agreed as to the admissibility of a number of exhibits. We have an exhibit index on our side and I think there are maybe five.

THE COURT: Are they marked?

MR. BURKE: They are not premarked, that would be great if we can go ahead and do that.

THE COURT: Alright, how many have you got?

MR. BURKE: Ten.

MR. PRICE: We have 32.

THE COURT: Okay. We will just mark them as we go, I think we will have time to do that.

MR. PRICE: Okay.

(Whereupon, the jury came into open court.)

THE COURT: Ladies and gentlemen, how are you. Everyone doing well. I knew that last night when you went to bed you couldn't sleep. You know why you couldn't sleep? Because you were anxious to come serve on jury duty. I see it all in your eyes. But on a serious note, I want to thank you, I am pretty sure Judge Morgan did that downstairs. And I want to thank you, I am Judge Kinlaw. If you are chosen to serve on this jury you will be spending some time with me. To my right is my Law Clerk, Ms. Watson, she is a recent graduate of the infamous University of South Carolina Law School. So she will be sitting next to me, that is why she is here. I tell jury's all over the State that there is not a better thing you can do than serve on a jury, as a juror. As a matter of fact, it is right there with your, kids birthday, you know, on the refrigerator. But anyway, so thank you for your willingness to serve and if you ever get an opportunity to serve on a jury whether it is in

this court, whether it is in Municipal court or whether it is in Federal court, no matter where it is, don't turn down the opportunity to go, that is an excellent opportunity for you to give back to your community by way of jury service. But anyway, we have or I have a matter that is before the Court this week. And this case, I am going to announce the case, Madam Court Reporter. So I can tell you, it is a zoning dispute case, it is a zoning dispute case. That is what kind of case it is. And the case caption is George C. Hassiotis and I am going to ask, Mr. Hassiotis, would you stand for me, please. He is one of the Plaintiffs in the matter. And Constantinon Hassiotis, will you stand, he is the other Plaintiff, versus the City of Greenville. Of course, the City is here in spirit but they have Counsel here that I am going to introduce to you in just a minute once we go through. So I am going to ask you a series of questions and then we will proceed to selection. And I will start with the lawyers first. The young man, he jumped up, I said young man, he jumped up. The young man representing the Plaintiff is Mr. Luke Burke. Mr. Burke is Plaintiffs Counsel. Is any member of the jury panel know Mr. Burke, you have been represented by Mr. Burke, you go to church with him, you shop with him at the Publix, you ever seen him before.

(No response.)

THE COURT: Ever seen him before. Okay. No one is standing. Now, we are going to go to the other side. The City is represented by another young man, Mr. Clark will you stand, Clark Price. Anybody know Mr. Price, have any dealings with him, ever see him before.

(No response.)

THE COURT: Okay. And also next to Mr. Price is his paralegal, Ms. Traci Larkins. Ms. Larkins, will you stand. Does anybody know Ms. Larkins, ever seen her before.

(No response.

THE COURT: Alright. And these are the Counsel, Counsel for the Defendant, the City of Greenville and his paralegal. Alright, now, I am going to ask a series of questions. And any of these apply to you and you stand, what I need you to do for me, give me your juror number and name. That keeps the Court Reporter clear on who is talking. Okay and speak loud enough so I can hear you. I am sure everybody can hear me, I am pretty sure. Has any member of the jury ever submitted an application to a Planning Commission or had property that was the subject of an application to a Planning Commission. Any juror, again, has any member of the jury ever submitted an application to a Planning Commission or have property that

was the subject of an application to a Planning Commission. If so please stand.

(No response.)

THE COURT: If any member of the jury is a small business owner or closely related to a small business owner, you are a small business owner. Everybody stand up to who that applies to and I will start on my left, your right. First, gentleman, what is your juror number and name.

JUROR: 39, Robert Curtis.

THE COURT: You are a small business owner?

JUROR: Yes, I am.

THE COURT: What kind of business owner are you?

JUROR: A CPA Firm.

THE COURT: A CPA Firm. Alright. Here in Greenville?

JUROR: Yes, sir.

THE COURT: By virtue of that would you still be able to be fair and impartial in the trial of this case and listen to both sides?

JUROR: Yes.

THE COURT: Very good. You can have a seat. Juror number and name.

JUROR: 15, David Bell.

THE COURT: What kind of business, you are a small

business owner, Mr. Bell?

JUROR: Yes, sir.

THE COURT: What kind of business?

JUROR: I have got a wrecking service.

THE COURT: A wrecking service. You nod your head so that means yes. Make sure you speak up for me. Can you still be fair and impartial in the trial of this case and listen attentively to both sides?

JUROR: Yes.

THE COURT: Very good. You can have a seat. The gentleman in the blue shirt. Juror number and name.

JUROR: Juror number 47, Jonathan Duvall.

THE COURT: You are a small business owner?

JUROR: No, sir. My mother is an owner.

THE COURT: What kind of a business?

JUROR: A mom and pop restaurant.

THE COURT: Alright. Located where?

JUROR: It is in Anderson.

THE COURT: Anderson, you think you can be fair and impartial in the trial of this case?

JUROR: Yes, sir.

THE COURT: Yes, sir.

JUROR: Juror number 59, Bryce Ellsworth.

THE COURT: What kind of business. You are a small business owner?

JUROR: Yes, sir.
THE COURT: What kind?
JUROR: I have two LLC's, one is a property management company and one is a property, (inaudible).
THE COURT: Both in Greenville County?
JUROR: Yes, sir.
THE COURT: You think you still can be fair and impartial in the trial of this case?
JUROR: Yes, sir.
THE COURT: Listen to both sides?
JUROR: Yes, sir.
THE COURT: Very good. The gentleman in the blue in the front.
JUROR: Donald Odom, juror 157. I look at crime scenes. So I guess not this week.
THE COURT: Okay. Do you think you can be fair and impartial in the trial of this case and listen to both sides?
JUROR: Absolutely.
THE COURT: Thank you so much. Yes sir, juror number and name.
JUROR: Juror number 106, Jermaine Johnson.
THE COURT: Jermaine Johnson, you are a small business owner?
JUROR: I am not, my wife has a small business.

THE COURT: You can be fair and impartial even though your wife is the head of a small business?

JUROR: I do, may I add one thing?

THE COURT: What's that.

JUROR: Relates to your first question. Are these, for the, I was on the Planning Commission.

THE COURT: When were you on the Planning Commission, how long ago?

JUROR: I wasn't, my wife was on about a year ago. I was on the one that, property, (inaudible), ending about maybe two years ago.

THE COURT: You still think you can be fair and impartial in the trial of this case?

JUROR: Yes, sir.

THE COURT: Listen to both sides?

JUROR: Yes, sir.

THE COURT: What is your juror number and name?

JUROR: 106, Jermaine Johnson.

THE COURT: Alright. Anyone else. Is there any member of the jury, the next question is, is there any member of the jury a small business owner or a close related small business owner. I think we have already answered that question. Is there any member of the jury a real estate appraiser or closely related to a real estate appraiser. If you are a real estate appraiser and you

know someone that is a real estate appraiser that you have a relationship with.

(No response.)

THE COURT: Is there any member of the jury a realtor or real estate agent or closely related to a realtor or real estate agent. If you are a real estate agent or you know a real estate agent. Yes sir, juror name and number.

JUROR: 59, Bryce Ellsworth.

THE COURT: You are a real estate agent?

JUROR: A broker, yes sir.

THE COURT: A broker, which company?

JUROR: (Inaudible).

THE COURT: You still think you can be fair and impartial to the trial in this case?

JUROR: Yes, sir.

THE COURT: Listen to both sides?

JUROR: Yes, sir.

THE COURT: Anyone else. Does any member of the jury own a commercial building or a commercial property either personally or through their business. I will say that again. Is there any member of the jury own a commercial building or commercial property either personally or through their business, anyone. Juror number and name.

JUROR: 15, David Bell.

THE COURT: You own a commercial business, where your

business is currently housed?

JUROR: Yes, I do.

THE COURT: Where is that located?

JUROR: White Horse Road.

THE COURT: White Horse Road here in Greenville County, is that correct?

JUROR: Right.

THE COURT: You can still listen to both sides and be fair and impartial?

JUROR: Yes, sir.

THE COURT: Thank you, sir. Anyone else. Juror name and number.

JUROR: Juror 59, Bryce Ellsworth. I don't know if this applies but I own an interest in Delaware Statutory Trust which owns commercial buildings. A partnership with them.

THE COURT: You can still be fair and impartial?

JUROR: Yes, sir.

THE COURT: Anyone else. Now I am going to, before I get to the questions under the business side. I have already asked whether anyone was or introduced you to Mr. Hassiotis and Mr. Hassiotis, to both of them. Does anyone know these Plaintiffs, ever seen them before, have any idea who they are?

(No response.)

THE COURT: Okay. And another potential witness on the Plaintiffs side is Jason Tankersley, he is the former Chairman of the City of Greenville Planning Commission. Anybody know Mr. Tankersley, have any relationship with him?

(No response.)

THE COURT: Another potential witness on the Plaintiffs side is Virginia Ginny Stroud, former member of the Planning Staff for the City of Greenville. Anybody know Ms. Stroud, have a relationship, ever seen them before?

(No response.)

THE COURT: Potential witness on the Plaintiffs side, Ian, I-A-N, Thomas, President of the West End Neighborhood Association. Anyone know Mr. Thomas.

(No response.)

THE COURT: Claire Billingsley, she is the former editor for the Greenville Journal. Anybody know Ms. Billingsley. If so please stand.

(No response.)

THE COURT: Now going over to voir dire by the Defense. Has any member of the jury panel read any article or seen any information on any type media, including social media about a dispute between the Plaintiffs and the City of Greenville regarding property

at 907 Pendleton Street, Greenville, South Carolina. Read anything about that, heard anything about that, know anything about that.

(No response.)

THE COURT: Has any member of the jury panel been involved in an issue with the City of Greenville, City of Greenville concerning zoning and use of property or any other matter, any other interaction with Greenville, the City of Greenville concerning any zoning issue. If so please stand.

(No response.)

THE COURT: Has any member of the jury panel familiar with OJ's Diner at 907 Pendleton Street, please stand. Alright. Okay. I am not going to ask you what you eat. Let's start on my left.

JUROR: Angela Burnside, number 25.

THE COURT: I assume you frequent there a couple of times?

JUROR: I have.

THE COURT: You can still be fair and impartial in the trial of this case?

JUROR: Yes, sir.

THE COURT: You can be seated. Yes ma'am, juror number and name.

JUROR: Comiller Wimberly, juror 231. I have been

there.

THE COURT: You have been there a few times and you still can be fair and impartial?

JUROR: Yes.

THE COURT: Alright, behind you. Juror number and name.

JUROR: Lauren Craine Davis, juror number 38. And I used to eat there.

THE COURT: You still can be fair and impartial?

JUROR: Absolutely.

THE COURT: Yes, ma'am.

JUROR: Juror number 71, Kellie Freeman. And I have eaten there.

THE COURT: You have been there before?

JUROR: Yes.

THE COURT: You can still be fair and impartial?

JUROR: Yes.

THE COURT: Juror number and name.

JUROR: Donald Odom, 157. Good place to eat.

THE COURT: I am sure he would like to hear that. You can still be fair and impartial?

JUROR: Sure.

THE COURT: Yes, sir. Juror number and name.

JUROR: 143, Ephraim Moody. And, yes I can.

THE COURT: You can be fair and impartial?

JUROR: Yes.

THE COURT: Yes, sir. Juror number and name.

JUROR: Jermaine Johnson, juror number 106. I have eaten there before and I live about three blocks from there.

THE COURT: So you can still be fair and impartial?

JUROR: Yes, sir.

THE COURT: Very good. Alright. Has any member of the jury ever been involved in litigation, any kind of lawsuit, any kind with the City of Greenville. Ever been involved in any litigation with the City of Greenville. If so, please stand. Juror number and name.

JUROR: Jermaine Johnson, juror number 106. I used to work at Womble, Carlyle, Sandridge and Rice, before they changed names. And I think we have got a few cases with the City a long time ago.

THE COURT: Alright. You can still be fair and impartial?

JUROR: Yes, sir.

THE COURT: Okay. The issues in this case involve zoning of property by the City of Greenville. Has any member of the jury panel ever been involved in a dispute involving zoning plans or a decision by any City or County Government, not necessarily Greenville, any City or County Government, no matter where.

(No response.)

THE COURT: Does any member of the jury panel have an opinion about the right of a Government entity to zone property that could affect your ability to serve fairly as a juror in this case.

(No response.)

THE COURT: Has any member of the jury panel ever served on or currently served on City or County Council, no matter where it is.

(No response.)

THE COURT: Alright. Does any member of the jury panel know a Shannon Lavrin, L-A-V-R-I-N. She is the, with the City of Greenville Planning Commission. Anybody know her.

(No response.)

THE COURT: Anybody familiar with a Corbin Haskell. He is with Valbridge Property Advisers here in Greenville, South Carolina. Anybody know him please stand.

(No response.)

THE COURT: Okay. Anything additional from the Plaintiff?

MR. BURKE: No, Your Honor.

THE COURT: Anything additional from the Defendant?

MR. PRICE: No, Your Honor.

THE COURT: Okay. Both sides ready to proceed with

selection, jury selection?

MR. BURKE: Could I have one minute to look over the sheet.

THE COURT: Sure, I will give you probably two and a half minutes.

MR. BURKE: Thank you, Your Honor.

THE COURT: Ladies and gentlemen, two and a half minutes will pass pretty good. So y'all can go spend two and a half minutes looking at me. Just be at ease.

(Whereupon, a short break was taken.)

THE COURT: Alright.

CLERK OF COURT: Using the numbers on the left, 1 through 20, four strikes each. Plaintiff strikes first.

MR. BURKE: Plaintiff strikes number 10.

CLERK OF COURT: Plaintiff strikes 10.

MR. PRICE: Defendant strikes 20.

CLERK OF COURT: Defendant strikes 20.

MR. BURKE: Plaintiff strikes 2.

CLERK OF COURT: Plaintiff strikes 2.

MR. PRICE: Defendant strikes 18.

CLERK OF COURT: Defendant strikes 18.

MR. BURKE: Plaintiff strikes 13.

CLERK OF COURT: Plaintiff strikes 13.

MR. PRICE: Defendant strikes 16.

CLERK OF COURT: Defendant strikes 16.

MR. BURKE: Plaintiff strikes 4.

CLERK OF COURT: Plaintiff strikes 4.

MR. PRICE: Defendant strikes 15.

CLERK OF COURT: Defendant strikes 15. We will get our alternates, 21, 22 and 23.

MR. BURKE: Plaintiff strikes 21.

CLERK OF COURT: Plaintiff strikes 21.

MR. PRICE: Defendant strikes 23.

CLERK OF COURT: Defendant strikes 23. Gentlemen, I will call these back to you. Plaintiff strikes 2, 4, 10, 13 and 21. Defendant strikes 15, 16, 18, 20 and 23.

MR. BURKE: That's correct.

MR. PRICE: That's right.

CLERK OF COURT: Ladies and gentlemen, when I call your name please bring your things and have a seat in our jury box. David Walters, Ephraim Moody, Robert Curtis, Bryce Ellsworth, Jonathan Devall, John Cochran, Jared Irish, Darlene Hansen, Kellie Freeman, Comiller Wimberly, Deana Simpson, Charmaine Whitby. And our alternate is Robert Dilly.

THE COURT: To the remaining persons in the pool, I am going to send you back downstairs and I am very disappointed that you are not going to spend any time with me, it is written all of your faces, even behind the masks. But I will let you go back downstairs and you will

still have an opportunity to serve. Thank you, take care of yourself.

(Whereupon, the remaining jury panel was excused from the courtroom.)

THE COURT: Juror number 59. Is that you, sir?

JUROR: Yes, sir.

THE COURT: I need you to stay seated next to this gentleman right here. Congratulations, you have been chosen to be the Foreperson of this jury. It will be your responsibility to keep all of these other folks in line.

JUROR: I have seven kids so will be no problem.

THE COURT: Alright. Okay. Good enough. And I will talk a little bit more about your responsibilities tomorrow. Madam Clerk, will you go ahead and swear this jury.

(Whereupon, the jury was sworn.)

THE COURT: Ladies and gentlemen of the jury panel, what I am going to do, I am going to let you go home. But you cannot and must not talk about the case to anyone at your house, seven kids, whatever, you can't talk about the case with anyone at all. And I need you to report back tomorrow morning, I will let you report back at 10:00, 10:00 o'clock tomorrow morning. Just be in the jury room around 10:00. Have a good evening, please ma'am, please sir, do not talk about the case with anyone until I see

you. Take care.

(Whereupon, the jury was excused from open court for the day at approximately 12:56 p.m.

THE COURT: Alright, gentlemen, it looks like we are going to convene at 2:00. Is that correct?

MR. BURKE: Yes, Your Honor.

MR. PRICE: Yes.

THE COURT: And then we will go until about 5:00, if we need to. I won't go past that. Any problem with that?

MR. BURKE: That is fine, Your Honor.

MR. PRICE: That is fine, Your Honor.

THE COURT: Okay. So we will stand down until 2:00 o'clock.

(Whereupon, a break was taken.)

THE COURT: Let's see. Let's go back on the record in the interest of the George C. Hassiotis and Constantinon Hassiotis, Plaintiffs, versus the City of Greenville. Case number 2019-CP-23-02041. Is the Plaintiffs ready to proceed?

MR. BURKE: Yes, Your Honor.

THE COURT: Is the Defendant ready to proceed?

MR. PRICE: Yes, sir.

THE COURT: Alright. Call your first witness.

MR. BURKE: I was going to give you a little background if I could, Your Honor. And I am not sure how

to get control to this thing to show you exhibits.

(Whereupon, Clerk helps with showing exhibits on screen.)

THE COURT: Yes, sir.

MR. BURKE: Thank you, Your Honor. My clients are Constantinon and George Hassiotis. Constantinon actually goes by Dino which makes it a lot easier so that is what I will be calling him during the trial. They own the property, 907 Pendleton Street where they housed OJ's for the last decade or so. Before that it was, a few other restaurants, including a restaurant called Boston Lunch that was run by my clients parents first and then they kind of took it over. In 2018 the City decided to move forward with rezoning 103 acres on Pendleton Street and that is why we are here today. The main thing I wanted to share with you, because we are going to be talking about this a lot and I am not sure how much you know about zoning. But basically what happened, this is a comparison of use table. And essentially my clients property was zoned C3 at the beginning and moved to RDV, C3 is up there in pink, RDV is in yellow. My clients run a drive-thru restaurant. That is what their building has been built as. And if you just take a cross-hatch, you know it is permitted as right in C3, it is conditional use in RDV. A conditional use causes some issues because it essentially

allows staff to make decisions about what goes there. If my clients want to put a drive-thru in and it is like OJ's, Staff probably allows it. If they decide to put a drive-thru in and it is like Cook Out or Chic-fil-A, they might not. And it is kind of up to Staff whether it is left in that building or not.

THE COURT: Staff being who?

MR. BURKE: City Staff.

THE COURT: City Staff.

MR. BURKE: So it doesn't go to like an elective official or my clients making a decision. It is a Staff member who reviews and makes a decision on that. And that's, that is concerning to my clients as they have one of two only existing uses that were allowed by right under the old zoning and allowed only as conditional use under RDV.

THE COURT: I think for purposes of the record, I know that you know everything that you are talking about but make sure that you identify RDV in all things. Let's be clear. That is like a clean record.

MR. BURKE: Thank you, Your Honor. So the three zoning classifications that essentially come up in this case are RM2 which is single family and multi-family residential district. That district is intended to encourage a mixture of medium density housing types

including multi-family units, town homes, single family attached, single family attached dwellings. Essentially it is a residential district, there is some complimentary uses like churches and stuff like that but it is all residential. The second classification that will come up is C3 which is what is called a regional commercial district. A C3 district is intended to establish and preserve distinct areas for regional retail shopping centers. Essentially C4 is a special district for the downtown business district. But C3, other than that, C3 is the most intense commercial district in the City. And then RDV is a redeveloping district. The purpose of that is to redevelop a district is to promote appropriate investment and development in areas that are depressed or undeveloped. The new development is intended to enhance and support adjacent communities by providing housing job opportunities as well as convenient access to necessary goods and services. The new development should improve the quality of life who all who live, work or shop in the area. It is intended to create gatherings, place for adjacent neighborhoods, upgrade and improve the physical, social and economic character of the area and for mixed use development. Essentially RDV, in my mind, is a buffer zone in-between commercial and residential. So it is kind of a mix of both, you know, allows the places where maybe

the first floor is retail and then the second two floors are people living on it. That is what I think when I think of a RDV zone. Also, because we are going to be talking about a lot of these maps. I just want to point out kind of where, there we go, where kind of the important, my clients think is the important properties. Okay. And this is the map of the existing zoning prior to the rezone going through. So this is what was back in 2018. This right here is my clients property and it has an existing building on there, marked OJ on there. This corner that I am circling now is the Enigma property. That is owned by Enigma which is a land holding company for the Spinx Corporation. I will mark that with an E.

THE COURT: It is almost directly across the street, isn't it.

MR. BURKE: It is, it is essentially across the street.

THE COURT: On the corner.

MR. BURKE: On the corner, yes. This property here is a Family Dollar store.

THE COURT: Yes.

MR. BURKE: And that is two doors down from my clients property and two doors down from Academy. This property here that I will mark with an S is owned by the Stone Family Trust and that also will come up during our

discussions.

THE COURT: Can you go back, just for the Court's clarification, since I need to know. Where does the old banker's, Bank of America Building, now Burger King, where does that sit on that map?

MR. BURKE: I believe that is over here, Your Honor.

MR. HASSIOTIS: That building beside it.

THE COURT: I appreciate, Mr. Hassiotis that. But the only problem is, when everybody talks like that the Court Reporter doesn't know whether it is you, whether it is him. Just, all I am just trying to get a clarification of where the old buildings were that I was asking about. And there is also, there is also a building on the corner that is a house, that is a law office on the corner belonging to a Darren Haley. And that is directly next to the Family Dollar store, am I correct?

MR. BURKE: Correct, Your Honor. That would be between the Family Dollar store and Academy Street.

THE COURT: Okay. And the Family Dollar store, was that Family Dollar store there before the OJ building or sometime after that?

MR. BURKE: It was, the building I believe was there but it was a flower shop, not a Family Dollar.

THE COURT: Alright. Go ahead. Is the carwash still across the street from the Family, from OJ's?

MR. BURKE: Yes, Your Honor. Is it open?

THE COURT: Yes.

MR. BURKE: It is not open. But it is still existing. I think that the rest of this, now that you know the background, we have two witnesses, Your Honor.

THE COURT: The current, the current, businesses that are on that map, Family Dollar store, Enigma, Burger King is a C3?

MR. BURKE: Yes, those three are C3's. So all the red there at the bottom were C3 in the existing zoning. The three, the Family Dollar, the Burger King and the Enigma are still C3; OJ's is now RDV. And the orange at the top was actually C2, slightly less intense commercial. And Stone Family property was changed to RDV. Would you like for me to mark this as a Court exhibit or just an Exhibit so we can have it for the record.

THE COURT: An Exhibit just for the record. The green legend on there, what is the green legend.

MR. BURKE: The green is RM2 which is the residential classification I talked about.

THE COURT: Multiuse?

MR. BURKE: Yes. Single and multi-family residential district.

THE COURT: Okay.

MR. BURKE: And that will be Plaintiff's 13, Your

Honor.

THE COURT: Plaintiff's 13, any objection.

MR. PRICE: No, Your Honor.

THE COURT: Without objection Plaintiff's 13 is so entered.

MR. BURKE: Thank you, Your Honor.

(Whereupon, Plaintiff's Exhibit 13 was admitted into evidence.)

THE COURT: Okay.

MR. PRICE: Your Honor, just by way of a very brief opening.

THE COURT: Yes, go ahead.

MR. PRICE: I would remind the Court of my comments and the trial brief that I referred to.

THE COURT: Yes.

MR. PRICE: The City's position is that and I guess the two, the two biggest issues that seem to pop up, the time that this zoning plan was being considered and then passed, from the perspective of the Hassiotis' is number one, the drive-thru window on the side of OJ's restaurant. And number two, the fact that the Enigma property, that corner property at Academy and Pendleton was changed during the process. Originally the City had assigned and argued this status to end as well as all the other properties on Pendleton Street. During the planning

process there was a workshop because of comments that were made by various property owners in the area.

THE COURT: Was it a hearing, a zoning hearing?

MR. PRICE: It was a workshop by the Planning Commission.

THE COURT: That residents could attend?

MR. PRICE: I don't believe residents were at that one. They were responding to what the residents were saying. And a representative from Enigma, the Spinx --

THE COURT: They were responding to what the residents were saying. How did the residents get to voice their opinion, I mean was it a survey, was it a zoning hearing. I mean, how did they do that?

MR. PRICE: I can show you that. This is an outline of what was done in relation to the property, Your Honor. The City began exploring, actually in 2015 redoing this property. In 2018 the planning process began in earnest, the 103 acres that was described by Mr. Burke was examined. And the City, among other things, to answer your specific question, conducted five neighborhood meetings during the process. And during those meetings property owners like Mr. Hassiotis came and commented. Now the majority of the comments were positive. But some of the business owners of the property in the area did have reservations. So the Planning Commission took that

into account and importantly, during this fact gathering the Enigma owners pointed out to the planning staff that the other three properties at the intersection of Academy and Pendleton were always commercial, they were zoned commercial. And what they were doing, they were down-zoning the fourth corner of the intersection between Academy and Pendleton. Research showed that Academy Street, unlike Pendleton, was an arterial way. Where as many as 27,000 vehicles a day were using Academy Street. Those two factors, when brought to the attention of the Planning Staff, convinced them to say it is fair for the Enigma property to be left as commercial because they are a corner property at the intersection and the other corner properties are all commericial and because of the fact that Academy has so much traffic. That it was consistent with the planning principles of the City and of the master plan that they were following. And that that property should remain commercial as opposed to RDV like the other properties on Pendleton Street.

THE COURT: How much pressure did Enigma apply to get that done?

MR. PRICE: They had an attorney who appeared at a neighborhood meeting and they had an attorney who appeared at a City Council meeting, and I believe may have attended one of the Planning Commission meetings.

THE COURT: So absent the attendance of the attorneys and these representatives, absent those attendees, nothing would have been changed.

MR. PRICE: I can't say that but the fact that they brought this to the attention of the Planning Commission was a factor and the Planning Commission adopting a plan that left the Enigma properties as commercial. There is no evidence that we have found of any untorn, illegal, arm twisting, money paying, improper conduct on the part of anybody that persuaded --

THE COURT: Enigma property initially was C3, correct?

MR. PRICE: It was C3. The initial plan was going to convert it to RDV just like the other properties on Pendleton Street. A new version, after the information was given to the Planning, they confirmed, two things I said about what set this property apart from the other Pendleton Street properties led Staff to recommend that it be changed to RDV.

THE COURT: So with traffic flow and I think you called it arterial --

MR. PRICE: Arterial.

THE COURT: Traffic flow is a significant factor by the Planning Commission?

MR. PRICE: Yes, it was. And also, most importantly

in the eyes of City Council and it is set forth in the ordinance.

THE COURT: Is that the primary?

MR. PRICE: The two primary reasons for the Spinx property being moved back to commercial is what I said, those two things.

MR. BURKE: Your Honor, we call Jason Tankersley, is our first witness.

THE COURT: Yes sir, come around.

Jason Tankersley, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Burke:

Q Mr. Tankersley?

A Yes.

Q Thank you for your patience. What do you do for a living?

A I am a commercial developer.

Q And how long have you been a commercial developer?

A About 17 years.

Q And in addition to being a commercial developer did you also work on the Planning Commission?

A I served on the Planning Commission, I want to say seven years but that could be wrong. I didn't have an accurate record, I went back and looked for those years as

Chairman.
Q And were you Chairman when the Pendleton Street rezoning came up?
A I was. It was in my last term.
Q As a commercial developer, would you rather have a property zoned for the specific use you are looking to use it for or would you rather have to go for a rezoning?
A Always prefer to have a zone exactly like you want it to. But the risk of zoning is on the developer, not on the owner.
Q Why would you rather have it zoned, the use you are trying to use it for?
A Generally that streamlines the process of getting building permits.
Q And that will make your project take less time?
A Time is money.
Q So to kind of educate the Court a little bit on zoning, in general. You know a lot about zoning as a commercial developer and with the Planning Commission, right?
A Well, not a planner by a training but I have had a lot on the job.
Q You have learned a lot?
A Yes.
Q Generally in the beginning, as we say, was it

industrial commercial, residential, the kind of the three pillars?

A And they still sort of are. A lot of the blended uses have come into effect when the onset of modern planning techniques to bridge communities together which created things like the RDV that we are talking about today. There is a few others as well. There is one that you left out which is called the Service District which in the case of Greenville County is the most wide open, you can, basically you can build a nuclear plant in a Service District.

Q Okay. Is industrial considered the most intense use?

A Industrial is a covenant use, I don't know that it is the most intense because there are plenty of pro, (inaudible), in industrial just because its intended use is for manufacturing, warehousing, like massive warehousing; Amazon warehousing company, not like mini-storage or anything like that. So industrial has a very special covenant use that's very different than anything else. I don't deal with it a lot.

Q Is C3, I know C4 District is kind of its own thing?

A It is its own thing.

Q Is C3 the most intense City of Greenville commercial district?

A I would say, yes.

Q And are you allowed to use, are you allowed to build some residences in C3?
A I think multi-families are allowed there, greater than ten units but I am not one-hundred percent sure. I haven't examined the table uses in a while for the City of, or for Greenville County. But it may be, maybe you have to, it probably has to do with the size of the complex than anything else.
Q Well, if you look at Plaintiff's 1 in front of you. I think it is up there. It will be one of those pages in front of you, I think.
A I have got C1, C2, C3. Okay. So only a group home or group assisted living is prohibited. The rest of what we would consider normal, residential is included, even single family.
Q And RM2 wouldn't allow any commercial uses, correct?
A RM2 does not, as far as I know.
Q So C3 is less restrictive than RM2?
A RM2 is the first level of residential restriction in the City.
Q And what is redevelopment for RDV?
A Well, the objective that Ms. Stroud had and the neighborhood, at the time if I remember correctly, and as clarification for the workshop, Judge, it was open to the public. It was just nobody came. I mean, you can't do

anything about that. But the, the purpose of what they were trying to accomplish was to create what you had mentioned earlier, that blending from C4 which is a unique thing to moving out to just residential even though Greenville is not really feeling that way anyways.

Q It is kind of a bridge between the commercial district and --

A Right, right, right.

Q So it sits in between --

A Sure, sure.

Q What is a conditional use?

A A conditional use in most municipalities is, it is an application to Staff, in the case of the City of Greenville, it may make a determination on their vision of the use. And then it comes to Planning Commission with a full vote in front of the public, with the public being able to weigh in on how they feel about the conditional use or special exception, both items. They do get a public forum.

Q And for a conditional use or special exception, are those voted on by City Council?

A No. That stops at Planning Commission.

Q Okay. And how is the Planning Commission, how do you get a job at the Planning Commission?

A There is a requisite application to serve as a

citizen, volunteer that anyone can fill out. And then you go through a screening process, generally with a couple of Council folks, usually where you live. And if there is a Board opening that fits your skill set they will put you on, if you are willing to do it. Because it is a, it is not an easy thing to do because you have to leave work early and sometimes stay late. Actually my first appointment was on the Transit Authority Board, before I was on Planning Commission.

Q So you know where my clients property is, 907 Pendleton?

A Oh, yeah, yeah. I am sure if it wasn't OJ's it would be some sort of --

Q Is it your understanding that they would not be required to apply for conditional use currently?

A No. Because it is an operating restaurant.

Q Okay. Explain that, so it is grandfathered in?

A As long as the property, it remains in use as its current use or even changes what kind of restaurant it is then still would be able to have a drive-thru.

Q But they would need to stay, okay, so let's explore some of the exceptions to that.

A Okay.

Q If they stop operating for six months, does that lose the grandfather status?

A Yes. I think it is six months and I think it reverts, it would revert, yes.
Q What if they wanted to change the footprint building and add another thousand square feet?
A I don't think that would change as long as they stay opened during the renovation.
Q If they made a significant, you know, payment to up-fit or remodel the building?
A No, that wouldn't change at all, as long as it is not greater than fifty percent. That would require, greater than fifty percent of the value of the property in the building does create a need to go back through the planning process. But the use is the same so it wouldn't change anything. It was just, it would create a level permitting that he didn't have before.
Q Okay. So when anybody wants to come and change the zoning map, how does that get to the Planning Committee?
A Well, usually zoning is done based off a developer's need. Like when we did Whole Foods years ago out on Bush Road, (phonetic), it was in a zoning district in the County at the time which we did annex, that was not conducive to having a shopping center. So we rezoned it to C3 so we could have a shopping center. I can't remember who we bought that from. But the zoning risk is always on the developer.

Q So the normal process is you buy a property or get under a contract and you try to get rezoned and you build something?
A Sure. You find a place that you want to be first.
Q Is the applicant required to have neighborhood meetings?
A Yes.
Q And that is in the ordinance?
A Yes. Not the favorite part of my job.
Q And then before the Planning Commission meeting what do you get from the City Staff?
A We get a report from City Staff on either recommending to approve or deny based off of the reading of the master plan which is adopted every ten years by the City or is it 20, one of the two. We are on 20/40 now so it must be every 20 years. And they use that as their primary guide which is usually written by a third party consultant, it is not done internally. And they make analysis on growth patterns of the City and the County to some degree, annexation patterns and those kinds of things. And then the Staff will then take a look at what the developer wants to do and how it would impact the community around it. And then once their recommendation is made they bring that to us and we have a hearing, it is scheduled monthly. We hear from the applicant and then we

hear from people who are for it and then people who are against it.

Q And your monthly meetings are on Thursdays?

A Thursdays at 4:00.

Q Do you receive input from City Council members regarding --

A No.

Q Would that be improper for them to try to influence you on that?

A Yes, that would be improper. That actually is against the, I think it is against the State law that creates the ability to have a Planning Commission.

Q Would it also be inappropriate for City Council members to try to influence Staff to change their report?

A I would assume so, yes. I don't, obviously I don't work for Staff so I don't know but I would assume that would be against the ordinance as well.

Q But you are relying on a Staff report to kind of tell you what is going on?

A Yeah, I have to. I don't have a way of contrarying it.

Q When did the Planning Commission first consider the Pendleton Street rezoning plan?

A Since we did the workshop, I want to say maybe in August of the year, may have been the August meeting. And

I raised several questions, a couple of others I think raised some questions. And we tabled it and scheduled a workshop. And then we had the workshop, I think in September or October. I didn't make a timeline for myself. And then we had, I think we had a final vote in December of '18. Maybe I am wrong, but I think --

Q I think that is right, I think that is right.

A It is close.

Q What were your concerns about that be?

A Like you said, it is 103 acres. I thought that was a big chunk of Greenville rezone at one time. And that is really one of my primary issues was the fact that, you know, we are taking a big piece of the City and we are changing it not necessarily for the bad, we are just, it is just a big wholesale change. And I voiced that, you know, I said stuff about that. And it is an opinion, it is not policy, it is not any kind of code or anything, it is my opinion. And it comes from the fact of my job. We were pretty effective, Planning Commission, but we didn't always agree and in this case I think it was a five, two, if I remember correctly. And there are times when you just don't agree. That is, it was a transparent process. I mean, they had five meetings. I usually try to hold it to the one that is required.

Q At that August meeting, did you also consider a text

amendment to allow funeral homes into RDV?
A I don't remember saying that but I might have. Did I say that?
Q I will help you refresh your memory. These are the minutes from August of 2018.
MR. PRICE: Let me just interject. That would be the City's Exhibit number 11.
Q It looks like it is the 17th page.
A 17th page, wow, this is one of those late nights. Application by the City of Greenville for a text amendment. So that would have been proposed by the Staff or the City, not me personally.
Q I am sorry, I didn't mean to imply that you, did you consider it at the Planning Commission, that text amendment?
A Yes. It would appear we did.
Q And do you know why that text amendment was necessary?
A I do not, I do not. That, no, I do not. There was no public comment either.
Q Let's look at, in front of you you have an email marked Plaintiff's 10.
A Yes.
Q Can you identify that document?
A Yes. It is, I think, me, Melanie and Courtney and

the rest of the Commission, primary, I think it is mostly Commission, expressing my personal views on this. It was post workshop and then I was just expressing my personal views on the decision to move forward.

Q So if you turn to page two, what did you ask Ms. Dubois in your email?

A Who is really pushing this, can you say.

Q And if you turn to the next page, she didn't have any answer, did she?

A No.

Q Did you ever get an answer to that question from anybody?

A No, no. And there may not have been anyone. I just, I was just asking the question because Staff was really gun-hoe and generally they are not gun-hoe about virtually anything.

THE COURT: What does that mean, when it says --

A That is something I said.

THE COURT: What do you mean by that?

A Well, not that it is drastic. It is just, you know, it just seemed like because of the size of the scope of the rezoning that, and you know, we hadn't heard, at least to my knowledge we hadn't heard from the C3 owners. I was like, what do they think. That was really my thought process in that, is that I just didn't know how they were

reacting. Because it wasn't, nothing from a C3 owner was presented, at least not from any of the public meetings. And I don't remember anyone speaking at, any of the opportunities at public meetings.

Q And, Mr. Tankersley, did Staff give you any comments from C3 people prior --

A No, not to my knowledge, no. I didn't see anything and I didn't hear anything.

Q And I think, then you had the Planning Commission workshop, it looks like it is in September of 2018.

A Yes.

Q What is discussed at that workshop?

A Well, we were, basically it was a review of the neighborhood's position of some of the uses they wanted, that they were concerned about. Not any of the uses that were there but some of the use table of C3 that could be there. For example, a nightclub. Nobody wanted to live next door to a nightclub. The funeral home thing, I never understood that one. It seems insignificant to me but, and then basically, it was more about the prohibited uses than anything else.

Q Was any decision made at that workshop to change, let me show you this. You should have this in front of you as Plaintiff's 13, I think, as part of that packet.

A Yes, it is right here.

Q The second page of that, I believe it is a map.
A That is the first one.
MR. BURKE: May I approach, Your Honor?
THE COURT: Yes.
A The one where the Enigma piece was changed. This one?
Q Yes.
A Okay.
Q So the second page of Plaintiff's 13, is this the initial map that came before the Planning Commission's office?
A I believe it is.
Q Were any decisions made at the workshop to change this proposed zoning?
A No. Those should be available as well. But to my knowledge, no, there was no decisions made about changing anything. It was more about learning about what the neighborhood meetings had gleamed.
Q Were the objections from C3 folks addressed at the workshop?
A Not to my knowledge.
Q So in December, did the application come back in front of the Planning Commission?
A It did.
Q Was the zoning at that meeting the same as this

proposed zoning?
A It is.
Q So this is the map that the Planning Commission recommended to City Council?
A It is.
Q By a five/two vote?
A Yes.
Q You should have the minutes from the December meeting in front of you.
A Yes.
Q Can you read me what the Exhibit sticker says on that?
A All business A.
Q I am sorry, I am just trying to make sure I identify it correctly for the --
A Oh, yes, December 20, 4:00 p.m. Notice was posted December 5.
MR. BURKE: And that is Plaintiff's 11, Your Honor.
THE COURT: Alright.
Q If you turn to page two.
A Yes.
Q Is that where you considered the rezoning again?
A It is.
Q And it list the public comments on the application. Is one that the people believe the properties were cherry

picked for various zoning designations.
A That is what Staff said, yes.
Q Do you know who voiced those concerns?
A I may have been quoted in the media saying that.
Q In general, what do you mean by cherry picked?
A Sometimes there are pet projects that everyone has and you sometimes have some cherry picking going on, particularly when you, because RDV to me is a very broad, it is more broad than a lot of zonings because there are fewer prohibitions. Just, you know, some minor special exceptions and conditional uses. So, yes, to me it seemed like the neighborhood had made a very good stand with the City about their concerns for the Court order. I am not saying they were wrong, I was just voicing a personal opinion. I think I was quoted in the media saying that. But there was also the same, there was also the same quotes that you get from everyone else about justification and all of those things too. There is a lot in that.
Q Do you expect that when you are rezoning such a big area?
A Yes.
Q That there would be a lot of concerns that might not fit everybody?
A Yes, exactly. Well, and then, I think we talked about this in the conference the other day. The parcel

that has like the big H building, the previous zoning map, the original zoning map which would be I guess the page before. That parcel is in a split zone situation which is bad because nobody can develop a parcel that is in a split zoning situation. So there was going to have to --

Q This parcel right here?

A Yes. You were going to have to do something about that one anyway. And then, and you couldn't just like zone it one thing because you couldn't have, spot zoning is against policy and it is bad planning. So that was one of the other concerns that I actually agreed with on this, we had to correct that problem. But overall, you know, there was, overall I think the comments against where these were compiled from, I am not one-hundred percent sure, but they were taking into account in vote.

Q Okay. Did you follow what happened to the plan after it left, after it was approved?

A No, I did not. I was off the Planning Commission within a couple of months and quite frankly I was tired.

Q That is fair, that is fair. If City Council took your recommendation and amended the proposed map to allow more intense users some of the parcels prior to passing the ordinance, would that be a problem?

A No because our, the Planning Commission does not rezone anything. We make a recommendation to City

Council. City Council is the only body that can rezone property. So if they make changes it is because they want them. And that is okay because they are the ones who are ultimately making the decision. We just make a recommendation. There are, on any given parcel or parcels there are 28 votes cast sat in on the Planning Commission. And then 21 during the three readings at City Council.

MR. BURKE: If I may approach, Your Honor?

THE COURT: Yes, sir.

Q I hand you a copy of the City Ordinance. Can you turn to the third page of that document. And section two on that page, could you read the part that says, if the City Council chooses to consider rezoning.

A In consideration of amendments to the zoning district map, in consideration, in considering a rezoning City Council may adopt a change for part, for only part of the area requested or for the less intense zoning district than requested by the applicant or both. If the City chooses to consider rezoning any, an area larger other than requested or a more intense zoning district the matter shall be referred to the Planning Commission for public hearing and recommendation consent with the provision of this Chapter in determining whether or not to adopt or disapprove the proposed amendment in the City Council and consider and weigh irrelevance of the

following factors. Shall I continue?
Q That is good. If City Council approved a map, so we said that Planning Commission approved the area, this area, the Enigma Corporation area was RDV, correct?
A Yes.
Q If City Council up-zoned that to C3, is that a more intense district?
A Well, see, you are talking about the difference between a recommendation and what the existing zoning on the property was.
Q But is C3 more intense than RDV?
A Yes.
Q If this property, which, I will tell you, it is owned by the Stone Family Trust. Your recommendation, the Planning Commission's recommendation was for that to be RM2?
A Point to it again, please. Oh, yes. It is the one with the X, yeah, okay. They obviously agreed, or yes, they agreed that City Council, that that should be RDV which is more intense than the residential.
Q This is the final, the ordinance has actually passed as a RDV which is a more intense use?
A Yes, that is correct. It does abut Academy, yes.
MR. BURKE: Nothing further, Your Honor.
THE COURT: Cross-examination.

MR. PRICE: Thank you, Your Honor.

CROSS-EXAMINATION

By Mr. Price:

Q Mr. Tankersley, you are subpoenaed to be here by the Hassiotis Family, correct?

A That's correct.

Q The RDV designation, as I understand it, represents a blending of two more extremes?

A That's correct.

Q Which is kind of the middle ground between a pure residential area and the pure commercially, fair?

A That is a fair, that is a fair analysis.

Q Okay. And without going through all of these details, the Planning Staff submitted an application for the area down by Academy, Pendleton, Memminger and there are some other streets. That is really the subject to this lawsuit, right?

A Correct.

Q And the general thrust of what was going on on Pendleton Street was to change the existing zoning on Pendleton Street from a commercial designation to the RDV, more of the blending kind of property, correct?

A That is the way it was presented.

Q Okay. I will represent to you, Mr. Tankersley, that, that is right, you have already looked at this before so

you have got a copy in your hand. The existing zoning shown on that document was the zoning that was in place before this plan was presented to your Commission and ultimately to City Council, correct?

A That's correct.

Q Now, you can use the ledge at the bottom, we are not seeing right there. But there is a ledge in there that defines the colors. But is it fair to say that the property going down Pendleton Street, prior to this plan, was more or less consistent with commercial development?

A Yes. And it is mostly commercially developed.

Q Okay. And the, what has been described as the Enigma property is right there, correct?

A Yes.

Q And in general the recommendation to the Planning Staff to Commission was to downzone or I don't know if that is the right term, but to change the zoning here to RDV?

A That's correct.

Q The blend between commercial and residential. Now, we get into this area there, if you will just take a look where my finger is pointing. A lot of residential area there, correct?

A Yes, it is almost one-hundred percent houses and it is almost all residential.

Q And is it your understanding that the major impetus for this big plan came from the neighborhood itself?
A Yes. The neighborhood had, I guess, over the last, this started, like you said or someone said, like in 2015 or something. I think they had really started to organize, not as well as maybe like Nickletown or North Main or Alta Vista but they were starting to organize and started seeing changes near them. The sale, the Pendleton Street Church, some of those things. And they wanted to take control and rightfully so, of their area from a standpoint of being able to make sure that they could have a say in what went on.
Q And generally speaking, by changing the zoning along Pendleton Street to RDV, from your perspective would be consistent with the neighborhood's view that the neighborhood as a whole would benefit from such a change. Is that right?
A Yes. That's, the indication we got from the neighborhood association at the public meeting.
Q And was it your impression that the neighborhood representatives wanted their community area to have businesses as well as residents?
A Yes. They cited, you know, it is funny. Everybody cites the way North Main transformation is and some of the other businesses that are located within residential. And

as I may have mentioned before in our conference, because of those businesses that are moving inside neighborhoods, we had to make a new parking ordinance because people weren't being able to get into their driveways. So, yes, there is a lot of, when we are blending commercial establishments and residences, they like to take, they like to have opportunities to have a setting. And usually they do that through, you know, this was a rather large scale, version of that. But a lot of times it is through annexation discussions and things like that.

Q Now, I think you told us a few minutes ago that the process, as you understand it, requires at least one neighborhood meeting so that input can be gathered from the neighborhood residents and then supplied with the Planning Commission which takes that into consideration, right?

A That is correct.

Q And you seemed pretty impressed, if I was reading you correctly, at the number of neighborhood meetings that was held in this process. Did I read you right?

A Yes, you read me absolutely correct considering how much I don't like to do them, yes. Not that I don't like residents, it is just, they can be cumbersome. You want to have them at a church so no one swears.

Q Now, as part of this, a written application for the

proposed plan was submitted to the Planning Commission, is that right?

A That's correct. And everyone has to do that, whether it is the City or an individual.

MR. PRICE: Your Honor, I am not going to show you that but just so you will know, the application for this project is contained in the ordinance documentation where the plan was eventually approved.

A And the application is a part of our packet that we get when we are preparing for our meeting.

Q Okay. Thank you for that. So I will represent to you that the dates that I put on this poster board here, which is not an exhibit, merely just demonstrative to help us see our way through this process. It shows that in April of 2018 there was a West End Neighborhood Association meeting related to this project. Do you see that?

A Yes.

Q And it was the West End Neighborhood Association that was very interested in transforming the zoning of the neighborhood, correct?

A That is my understanding.

Q And so a neighborhood meeting was conducted in April of 2018. It looks like on April 30th and May 1st, there were two open houses at St. Andrews Episcopal Church.

That is over in that area, correct?
A Yes, it is down near the baseball stadium, Markley and South Main.
Q And is the parking lot away from where the big church used to be?
A Yes, next to the parking lot, yes.
Q So two open houses where the documentation shows that neighborhoods, residents, business owners were made aware of the meetings, they came and this proposed rezoning was discussed?
A Yes. The process of notifying is the City has, they have a radius around the rezoning and within the rezoning that they mail letters to, whether you are a business or an individual.
Q Okay. And looking at this timeline we see that on May 10th there was a Sterling Neighborhood Association meeting. Was the Sterling neighborhood affected by this rezoning proposal?
A Not necessarily, no. I would consider the Sterling neighborhood would be interested in it but they were not directly impacted by it.
Q Okay. To your knowledge, I am just asking.
A Sure.
Q Are you aware of how the Sterling Neighborhood Association felt about this process?

A I do not. No, I don't remember anyone from Sterling, I usually do, speaking at any of the public meetings. But I could be one-hundred percent wrong about that. I don't remember who the Chairman was at the time.
Q All right. And then we see that down the road, after some revisions, which I will ask you about; there was another meeting, West End Neighborhood Association in December before the Planning Commission voted to recommend the rezoning. Right?
A Correct. In all fairness, I did not attend any of the public meetings. Well, frankly, some of them I didn't know about. But it usually would probably cause more problems to solve.
Q Now, you told us and I want to make sure I understand this, that you had reservations about the rezoning?
A That is a personal opinion.
Q And the personal opinion is because of what you do when you are not involved or were not involved with the Planning Commission, right?
A That is correct.
Q You work for a company that works across the Country, don't you?
A Yes. I have stuff in Reno to McCallan, Texas; Tulsa, Oklahoma; everywhere we go.
Q And as part of your business interests the company

that you work for, nationwide, are looking at changing zoning or getting proposals, projects that you have approved by zoning authorities, right?

A Almost all.

Q So and you have acknowledged this freely in your deposition. Your prospective is that of a developer as opposed to a resident in a neighborhood in the context of this plan, right?

A Right. And then, quite frankly, I think that is what made me personally a good person for Planning Commission. You know, we had a couple of architects, a couple of lawyers, no offense, me and a banker. So we had a good mix of disciplines but I was the only developer and if I had something in front of the Commission that was in the City of Greenville I would have to, you know, recuse myself, like physically leave the building or the room. So, yes, you know, I do bring a piece of my job, I did bring a piece of my job into the meeting. I don't know how you cannot.

Q Now, I think you have told us that, ultimately when the Planning Commission voted to recommend this to City Council you and one other member of the Commission voted against it, correct?

A That is correct.

Q And I am not going to ask you to look into the brain

of the other person but as far as your concern, are you telling the Court that your voting against the plan was the result of your perspective as a commercial developer?
A That is correct.
Q Was your vote intended by you to communicate a concern, the process that led to this plan was illegal, unlawful or improperly put together?
A No.
Q Alright. Do you have any, I will ask you a lawyerly like question. Do you have any evidence that anyone attempted to improperly influence the Planning Commission, including yourself, to do something that would not be consistent with the City's master plan and would not be consistent with planning, with planning regulations?
A No.
Q Okay.
A Everyone was professional.
Q To put another way, from your perspective, although you voted against this, did you believe that the process was on the up and up?
A Yes.
Q Back to that map there. Let's take a look at this corner property. The Enigma property, the Spinx property, that property is on the corner and it is on the intersection of Academy Street and Pendleton Street,

correct?
A That's correct.
Q Is it your understanding that the other three corners of that intersection were then and are now commercial?
A Correct.
Q And none of them is RDV?
A Correct.
Q Is it also your understanding that at the time that this rezoning process took place and began, the Enigma property was zoned commercial?
A Correct.
Q Okay. Now, during the, during this process we know that there was a modification, well, let's do this first. So just to make sure. Alright, here is your original, this is the original zoning, existing zoning and we talked about all of that red stuff over there at Pendleton is commercial?
A Correct.
Q Including the Enigma property as well as 907 which is where OJ's is?
A Yes.
Q So let's turn the page. This is the proposed zoning that was initially presented to the Planning Commission and this was tabled by the Commission?
A That's correct.

Q Now, all the colors are slightly different. We have got, along Pendleton Street, the proposal was that all of those properties showing, I would say purple, were going to the RDV, correct?
A Yes. Although we disagree on the color.
Q Okay. So am I right that in addition to 907 where OJ's is, all of those other spaces with what looks like buildings are businesses whose zoning by this proposal would have been changed from commercial to RDV?
A That's correct.
Q And did that, in fact, happen?
A The recommendation from the Planning Commission did happen.
Q Okay. Now, turn the page again. We know that there was a Planning Commission workshop after the Commission tabled the initial proposal, correct?
A Correct.
Q And after that another proposal was made and does this appear to be that next proposal?
A Someone will have to confirm with me that this is the map that was included in our packet for the 20th, I don't, I don't know the answer to the question.
Q That is fair. I want to assume that in the records that the Court will have, this is submitted and that it was the amended plan.

A Okay. Then I would agree with you. I cannot say, without a shadow of a doubt, in my mind that this is what I saw on the 20th. But it could be.
Q Okay. So let's take a look at it. We, for the most part the change from commercial to RDV is present on Pendleton Street?
A Correct.
Q But when we go to the Enigma property on the corner it now is a different color?
A That is correct.
Q And that proposed color would be --
A C3.
Q That's right, commercial. I want to show you a portion of the City's Exhibit 20, you don't have that in front of you so I am going to put it down on this screen so you can take a look at it. And I will tell you that this is from your deposition, the Defendant's or City's Exhibit 1. And I will further tell you that this is a portion of the Planning Staff report to the Planning Commission that was done in December of 2018, just before the meeting when the Planning Commission recommended approval.
A Okay. I remember this from the other day.
Q Alright. I am going to put my finger on Planning Commission's justification --

A Planning Staff?
Q Planning Staff, excuse me. Planning Staff's recommendation for why the Enigma properties were going to be changed. Do you see that?
A I do.
Q Okay, I am going to read it. Staff recommends the four parcels located at the Northeast corner of South Academy Street and Pendleton Street should remain C3. Staff believes the C3 zoning is consistent for two reasons. First, South Academy Street is an arterial road carrying large volumes of traffic between 20,200 and 27,300 cars per day. According to the City Code of Ordinances, C3 zoning districts are typically located along major arterials. And it cite's the statute. Second, Staff believes the C3 zoning is consistent with the other three corners located at the intersection of South Academy Street and Pendleton Street. Did I read that correctly?
A Yes.
Q From your perspective as the former Chairman of the Planning Commission, does that appear to be, I am sorry, does that appear to be a reasonable justification for treating the corner property, notice the Enigma property differently from the others on Pendleton Street?
A Yes.

THE COURT: Since I am the Judge I am going to ask a question. Why did you vote against them?

EXAMINATION BY THE COURT

A Because of the size.

THE COURT: Why?

A It just, in zoning, usually you like to see it happen in increments instead of 103 acres at once. It is, it is akin to, you know, sort of biting off more than you can chew. It just seemed like a big decision for a lot of area to be done at one time. I had, I had thought that it might be a better process to go down the street and do incremental changes as opposed to this giant change that they made. And it really goes to the scope of it, not the individual properties themselves, although the split zoning to get that corrected is a great thing. But it was just so big, it just, that was really, that is why I said that I felt like that it was too big. I just really thought it was too big.

THE COURT: I guess my question is, is that --

A It was no one individual.

THE COURT: My question may be a little disjointed but I am going to try to get, I am trying to get an answer. The Enigma property was, along with all the other properties on Pendleton, was C3?

A Correct.

THE COURT: There was series of meetings, a series of decisions made to change those properties to RDV?
A That's correct.
THE COURT: Alright. My question is, apparently somebody said, look, all this traffic is coming down Academy, on that intersection where the Burker King is, Enigma is on the corner, Spinx across the street; 20 some odd cars a day, right?
A That's correct, sir.
THE COURT: Why didn't somebody think of that before they zoned it out, why didn't somebody think of that before they included Enigma in that RDV zoning. Why didn't, a smart person in the room, why didn't you think of that?
A I wish I would have been that smart person in the room.
THE COURT: Do you understand my question?
A I do understand your question. Why didn't someone go ahead and say --
THE COURT: Every business on Pendleton, we are going to do RDV but we are going to exclude Enigma because this traffic, they are on the corner, Burger King across the street, Enigma. I mean, somebody made a mistake.
A I understand your question and --
THE COURT: Did somebody make a mistake?

A That is quite possibly the answer to the question. I don't know it but overlooking what probably was an aggressive move, like I said, the scope of it; an aggressive move by the neighborhood with, participated some Staff members, they thought, hey yes, let's take it all the way to the end of the road.

THE COURT: I know Mr. Price asked you a question. He asked you a question. Was your answer that of a, the developer mode, just sitting there and you just answered, yes. Is that true?

A It's true. But I did, again, as you pointed out, even though they changed it and I don't know why, I don't remember hearing why. I still voted against it. And it wasn't because I didn't think that property shouldn't still be C3. It is just that I thought this was an audacious plan that needed, I guess, more --

THE COURT: Alright, the office that is on the corner, the only thing I know is an attorney's office.

A Yes.

THE COURT: That is on the corner directly across the street from the Spinx.

A Correct.

THE COURT: Okay. What is that zoned?

A C3.

THE COURT: C3. Even though that is a corner, "half

residential, half commercial property". That is a house, half commercial, half residential which fits into RDV?
A Yes, it does.
THE COURT: So why is that commericial? I am assuming you can't build any houses on Pendleton Street, I am assuming you are trying to accommodate those buildings where you put a business downstairs and you got a condo on the top. That is what you are really trying to do because you can't build any houses down there.
A No. The land would be too expensive.
THE COURT: Let's go to my question. That little white building on the corner. That's zoned C3 and that is an accommodation of a residence and a business.
A I didn't know anyone lived there.
THE COURT: I am just asking you, you know, I am not on the Planning Commission, I just hear cases, that is all I do. I am just asking a question.
A Yes. That is one of those, that is probably one of those parcels that happens a lot, particularly on the edges of the City.
THE COURT: Is this also, right next to that building, if I am standing in front of that building right next to the building, there is another little small building that is just a house, just a little ole house building right next to that building, directly across the

street from the Spinx.
A Is it in the City?
THE COURT: I am just going, I am just going on that intersection --
A Yes, I understand.
THE COURT: You said, commercial, I am just asking.
A I don't know what the little house is because, as you can see, right behind the Family Dollar and all of that there is a lot of residential. Some of that is remnants of old plans that were implemented by the City years ago.
THE COURT: Those houses right behind the Family Dollar, that would be residential, RM2.
A Yes, probably RM2's.
THE COURT: And you don't get to C4 until you get past the service building, that is when you get to C4, doesn't it?
A Actually C4 might start at Market. I haven't looked at a zoning map in the City of Greenville in a long time. But I believe, the baseball stadium we built, actually my company built the baseball stadium.
THE COURT: Your company did?
A Yes, we did. And the office building in front of it. And I think we did get everything, we made a deal with the City for the old lumber yard, we had them incorporate it into C4.

THE COURT: Since you were developing you requested what you wanted.
A Well, I went through the process, but yes.
THE COURT: But you requested what you wanted.
A Absolutely.
THE COURT: You just said that earlier. You are a developer, you request what you want.
A The zoning is all the development.
THE COURT: All right. I am sorry, Counsel.
MR. PRICE: That's alright. This is your courtroom.

CONTINUE CROSS-EXAMINATION

By Mr. Price:
Q Mr. Tankersley, I am trying to make sure I understand, from the testimony. If someone made a mistake, whatever that means. Ultimately it is City Counsel to decide what to do, right?
A Yes. Like I said, we only make recommendations.
Q And if there was a mistake on the front-end, that mistake would have been allowing the Enigma property to, to be RDV when it was more appropriately commercial?
A Well, I think they cited the statute, so.
Q Right, but isn't that a fair assessment of it?
A Yes, I would say it is a fair assessment.
Q So after the Planning Commission tabled the first proposal in August and then the new proposal was May, the

action as it related to the Enigma property --
A -- was made public.
Q And resolved the mistake?
A Yes. It was made public and it was part, it was a part of the discourse.
Q Let me ask you a couple of practical questions. Practical impact zoning as it currently relates to 907 Pendleton Street. OJ's Restaurant, OJ's Diner was there before the zoning went into effect, a new zone, right?
A Correct.
Q OJ's Diner is still there operating full-time, right, as far as you know?
A Yes, I haven't heard about anybody fighting over it yet.
Q Okay. OJ's Diner had a drive-thru window before the rezoning plan, correct?
A Correct.
Q OJ's Diner has a drive-thru window today, right?
A Yes.
Q Okay. The comparison of uses that you were shown a few minutes ago. That is information that is provided to you by Staff, correct?
A Correct.
Q But you are aware of those generally?
A Generally, yes.

Q And they show the comparison of uses for properties, if they are zoned different ways, including C3 commercial, RDV. Right?
A Correct.
Q Is a restaurant with indoor seating acceptable under the commercial or C3 zoning?
A Yes.
Q Is a restaurant with indoor seating also acceptable under the RDV?
A Yes.
Q And the conditional use is applying to the drive-thru window, right?
A Yes, yes.
Q So if I am understanding your testimony, although the property, 907 Pendleton Street is now zoned RDV, its prior use is still acceptable?
A That's correct.
Q Theoretically, unless buildings were shut down or whatever for six months, that business can operate or a successor business can operate there?
A Same use.
Q Same use.
A Correct.
Q For eternity?
A Yes. Unless the City comes up with something new.

But, yes, that is correct.
Q So if Mr. Olin Johnson sold the restaurant to another person and they open a new restaurant on site, within six months after or before or after OJ's closed down, that restaurant could be operated the same?
A Yes. I don't think OJ's is closing down. And I will, as an aside, one of the uses that went away, became prohibited which is surprising me a little bit, is you can't have a five-story multi-family dwelling.
Q Can you have multi-story buildings in RDV?
A It doesn't say, that is the only one that talks about five-stories or more.
Q Okay. Let me ask you a question about spot zoning. In generally, summarizing, spot zoning is not a good thing?
A No. And actually I think, I don't know if there is an ordinance against it but there is definitely policy against it.
Q Okay. So if Council wished to tweak the plan that is presented before it and change 907 Pendleton Street to commercial but leave the rest of the properties on Pendleton Street that had been, recommended to be RDV and left them as RDV, that would be spot zoning, wouldn't it?
A That would be what is called spot zoning, yes.
Q So by leaving the plan as it was proposed, the final

proposal, the Planning Staff was avoiding the possibility of spot zoning, correct?
A Yes.
Q And the Enigma property, although it is zoned C3 as opposed to RDV, that is not spot zoning, is it?
A No. Because rights-of-way do not count in the sense of being continuous. Rights-of-way, that doesn't matter. You might as well not be there.
Q If I understand you correctly, the zoning of the Enigma properties in C3 was reasonable and appropriate?
A Yes, according to the ordinance and probably the lawmaker's plan for arterials, based on the link you read to me.
Q Solicitor actually just asked a final point. Although, for the reasons you described, you voted against the plan.
A I did.
Q You have no objection that City Council approved the plan, do you?
A No.
Q And as to the concept, although you didn't like it particularly because of the size of the area, it did represent kind of a commonsense compromise between extremes and commercial in pure residential?
A Yes.

Q Alright, sir.
A I will agree with that.
Q Thank you, no further questions.

EXAMINATION BY THE COURT

THE COURT: I have a few questions. Spot zoning, the buildings on Pendleton, all of them are zoned RDV, correct?
A Yes, sir.
THE COURT: There was a meeting held and the Enigma property was changed to C3?
A Yes, sir. Right's-of-way, basically if you cross the street from something, the road doesn't count.
THE COURT: Okay, the road doesn't count.
A It might as well be --
THE COURT: -- I just wanted you to enlighten me.
A It is a quirk of land law that I don't understand necessarily. But rights-of-way don't count. And honestly that is probably why they stopped the zoning process on the other side of the street, across from the Family Dollar, because that's a right-of-way street. And they would of had to incorporate that other corner into it and it would have caused the same problem that they corrected after the workshop. Does that make sense? I mean it may not make sense but it follows the same, they didn't have a right-of-way to stop at, at the corner of Pendleton and

Academy.

THE COURT: I understand what you said, but I am still not, your answer to my question about the building, the white house building, it is on that intersection between Pendleton and Academy. I am not quite understanding your answer to that because that is, that is zoned C3 and that's a combination of a residential building and an office building. And it is zoned C3 as opposed to RDV. But anyway, you answered the question. I mean, I mean, it is up to me whether or not I accept your answer. That is just problematic.

A Yes, there are parcels all over the City that you have things like that happen.

THE COURT: But this one sits directly at the intersection that we are talking about.

A Yes, sir.

THE COURT: We are talking about the intersection of Academy and Pendleton and the Burger King is across, I mean the Spinx is across the street from the building I am talking about. Burger King is on the other side and Enigma is on the other side.

A I totally understand what you are saying, I totally understand what you are saying.

MR. BURKE: Just a few follow-up questions, Your Honor.

REDIRECT EXAMINATION

By Mr. Burke:

Q This is a final zoning map that was passed by the City Counsel. How many neighborhood meetings occurred after they decided to change the zoning, this to a C3, the Enigma property?

A I guess based off of the timeline, one or two; no, one.

Q And how many neighborhood meetings happened when they decided to change this to RDV?

A Five.

Q When City Council overturned your recommendation for the Stone property and changed it from RM2 to RDV, did they have any neighborhood meetings between your, Planning Commission's recommendation and then passing that?

A Not that I am aware of.

Q So the public didn't have a chance to weigh in on that issue?

A I guess not, unless they came to, (inaudible), which that is a public meeting. It may be three meetings or two.

Q I think that is correct. And just so to confirm, you heard a lot of stuff from the neighborhood in support of this rezoning?

A Correct.

Q If my clients voice concerns, that was not brought to you by Staff?
A Not until after the, not until the second meeting because it does have, I guess in that, I would assume that in the old business section of the Staff report the public comments against the application, I am assuming their concerns, concerns about current uses becoming non-conforming and requiring conditional use permits especially permits in the future. The last bullet point, I am assuming that is their's.
Q This area, Mr. Price asked you about, if we just rezone OJ's to C3, that would be spot zoning, correct?
A That is correct.
Q What if you just rezone the entire side of the street to C3?
A That would not be because you could move it to the right-of-way and make that work.
Q And you know how many other properties, businesses on my client's side of the street are now disallowed by the zoning, by RDV?
A I do not.
Q Do you know that my clients is the only one?
A Well, no, I didn't know that. I don't know what all the businesses are along there.
Q Okay. So the reason for the Staff zoning this C3,

recommending zoning this C3, was that arterial road, right, Academy?
A Uh-huh.
Q And it is a, the four corners rule only one being -- why is the Family Dollar C3, either of these things apply to that property?
A Because they stopped the line there.
Q Okay. So conceivably they could have stopped the line over here?
A Yes.
Q And who makes that decision?
A Well, at the time I assume it was a part, a part of a workshop the Staff had with the neighborhood. I wasn't present for the drawing of the line.
Q One last question. Do you, there are a lot of concessions of different landowners, do you think that would have been necessary if the size of the project was more, I guess, I don't know, bite size?
A Rephrase that.
Q Let me ask you a different way.
A Ask that in a different way.
Q Is it easier if you had a smaller zoning plan, is it more likely that the people in that zoning plan would have similar concerns than if you had 103 acres you are trying to rezone at the same time?

A That could go either way. If you would have taken the line and drawn it differently to where it just covered the commercial that would have been much more problematic. But incorporating the neighborhood because that is what they wanted into it, that made it, that is what made sort of the homogenization appealing to the neighborhood. But if you had just singled out Pendleton Street itself, no, that would have been a problem. I think that would have been a problem for everyone.

Q Okay. Thank you.

EXAMINATION BY THE COURT

THE COURT: Let me ask you, let me make sure I understand. Family Dollar is zoned C3?

A Correct, sir.

THE COURT: The entrance, the Family Dollar is on Pendleton Street?

A I am not sure.

THE COURT: I am just telling you that.

A Oh, it is. Okay.

THE COURT: But OJ's is the only one on that side of the street zoned, any business on that side of the street is zoned RDV, even though Family Dollar is right next door. The entrance of Family Dollar is on Pendleton Street.

A I think there is one parcel between but --

THE COURT: So you say there is a line, I am just --
A I think there is a parcel between the two if I am not mistaken.
THE COURT: You mentioned in an answer to Mr. Burke's question, that you knew where the line was drawn. So is there is a line, I am trying to follow you. Is there a line somewhere between Family Dollar and OJ's, where the Family Dollar would be C3 and OJ's would be RDV?
A What I am saying is, there is a parcel --
THE COURT: In between there?
A Between OJ's and the Family Dollar.
THE COURT: Okay. Nothing is on it, it is just a parcel?
A Looks like there is a building on it based on this.
THE COURT: A residential?
A I don't even know. I don't even know what is next door. But it looks like it.
THE COURT: But to the Family Dollar Store, the entrance is on Pendleton and zoned C3.
A Okay.
THE COURT: Interesting, that is interesting. Okay. Any more questions?
MR. PRICE: No, Your Honor.
MR. BURKE: No, Your Honor.
THE COURT: You can step down. Leave the exhibits up

here. We are going to take about a 10 to 13 minute break.

(Whereupon, a short break was taken.)

MR. BURKE: Call Virginia Stroud.

Virginia Stroud, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Burke:

Q Good afternoon, Ms. Stroud. What was your position with the City?

A Community Development Manager.

Q And how long were you in that position?

A A little over 19 years.

Q As Community Development Manager did you have a chance to do rezoning applications?

A We work very closely with the Planning Staff to make that happen because as a part of our work at the City, we worked with neighborhoods like the Sterling neighborhood and like the West End neighborhood. So we were a part of any type of neighborhood planning effort. And so we heard firsthand from neighborhood associations, neighborhood residents about requests that they wanted us to become involved in. So, yes, we worked very closely with the Planning Staff.

Q What is your understanding of C3 zoning?

A C3 zoning is one of the most intense zoning

classifications in the City's code ordinances or code of zoning classification.
Q Is that because it allows a lot of different stuff commercial, residential?
A Different types of commercial, yes.
Q What is RM2 zoning?
A I am sorry, what?
Q What is RM2 zoning?
A It is a residential multi-family zoning that allows 20 units per acre. That is RM2, allows 20 residential units per acre.
Q And is RDV suppose to be a bridge between those two?
A I would think so, yes. The RDV zoning was developed to, to encourage office uses, retail, residential uses; all being neighborhood friendly type of office and retail and residential. It was also developed to create walkable pedestrian friendly communities and neighborhood friendly businesses.
Q There is a stack of exhibits in front of you, if you could find Exhibit number 3 in there.
A Yes.
Q Is that the application for rezoning?
A Yes.
Q And who is the applicant?
A The City of Greenville.

Q And that is your email address on there?
A That's correct.
Q Okay. Turning to Exhibit 2, what is this document?
A This was a letter that went out to all the property owners in the study area notifying them of the open house meetings that were planned for April 30th and May 1st, 2018.
Q If you will turn to the next couple of pages. The second page is existing zoning?
A That's correct.
Q And then the third page is what the City was proposing, correct?
A That's correct.
Q And is this the first proposal, at least with this application?
A Well, this is the first, when you say first proposal, what do you mean?
Q I mean, for this 2018 rezoning plan, was this the first proposed zoning map created?
A Yes.
Q Okay. What is the black line throughout the map?
A That was the study area, the boundaries of the study area.
Q And how did you come up with that study area?
A Well, we looked at, we looked at the Pendleton Street

corridor, we looked at the Academy Street corridor. There were a lot of good things happening in the West End neighborhood, the Sterling neighborhood. But there was some pressures, I guess, redevelopment pressures. And so we wanted to make sure that the study area was inclusive of the properties where those changes were occurring. We had also just, we had also finished the Sterling neighborhood master plan in 2010. And so a portion of this study area was a part of the Sterling neighborhood master plan.

Q And when you say the Sterling neighborhood, where is that on the map?

A So the Sterling neighborhood, the boundary is Pendleton Street, I guess that would be South towards Arlington Avenue, Hamilton Avenue, South Leach Street.

Q So if you look at the screen, this area over here?

A Yes.

Q Okay. And then would this be the West End neighborhood?

A That's correct.

Q In general?

A Yes.

Q Why didn't you include the Family Dollar in this corner in the study area?

A Well, we felt like the Family Dollar and the

properties along Academy Street were already appropriately zoned C3 because of their proximity to Academy Street. The other reason, I think, was because Sumner Street just provided a natural end to the study area. And if we had continued along it would have been difficult, we would have probably had to have expanded the study area down to Arlington Avenue all the way down to St. Francis Drive and then out to Academy Street. So it is just kind of a natural boundary.

Q And when you say, we determined the study area, who are you talking about?

A Staff, City Staff.

Q City Staff?

A That's correct.

Q Could the black line have been on Pendleton Street and just say everything this way and the West End neighborhood is what we are studying?

A It could have been, yes.

Q And you said there was reasons for not putting it over, extending it a little bit this way but you could have done that and done a bigger study area, right?

A We could have.

Q And just, since you weren't here earlier I just want to make sure we identify where everything is. This is my clients property, OJ's, correct?

A Yes, it is.
Q And over here is the Family Dollar?
A The Family Dollar is at the corner of Pendleton and Sumner Street.
Q Is there a parcel in between the Family Dollar and Academy?
A A parcel between the Family Dollar and Academy?
Q Yes.
A Yes.
Q And this is the Enigma property on this side?
A That's correct.
Q And then this is the Stone Family Trust property, this triangle?
A Yes, that's correct.
Q If you can find Exhibit 12, should be the last one probably. And turn to the last page of that Exhibit.
A The last page?
Q Yes, Exhibit D.
A Yes.
Q What is this a list of?
A This is the list of the open house meetings, the neighborhood association meetings that were held as a part of the zoning update for the study area.
Q And did all of these meetings take place?
A Yes, it is.

Q And how far along of this process of these meetings was it before you decided, the Staff decided to recommend zoning Enigma property C3 instead of RDV?
A It was after the first Planning Commission meeting that was held in August.
Q Was it immediately after that meeting or just in between the two Planning meetings?
A Well, we were asked by the Planning Commission, the Planning Commission tabled the application at the August meeting. And they asked us to conduct a workshop. And so, as you can see on the timeline, we held a workshop for the Planning Commission at the end of September. And at that time we were asked to, since UDA which is a planning consulting firm, Urban Designs Associates, they were working on the downtown master plan at the time. And so we were asked to meet with UDA to discuss proposed changes to the zoning recommendations.
Q And you agree with the timeline that the revised Pendleton Street proposal was done on November 26th?
A Yes.
Q So there was just one meeting after that, right?
A Correct, it was on December 4th with the West End Neighborhood Association.
Q Okay. Are you required to have a meeting, a neighborhood meeting for a rezoning?

A Yes.
Q And if you change the rezoning at the proposal, you have to have a meeting after you change it?
A I don't know if that is required or not. I don't know the answer to that question, if there are changes that are made. But we had one anyway, whether it was required or not. That was the December 4th meeting.
Q If you look at Plaintiff's 4. What is this a list of?
A This was a list of the comments that we received from property owners that had concerns with the zoning, the zoning update and recommendations.
Q And if you turn to page 2, one of those comments is from my client, correct?
A That's correct.
Q So did you create this document?
A I did.
Q And did you share this document with the Planning Commission?
A Yes, it was part of the application packet.
Q The application in August or the application in December?
A We, as you can see on the front page, it was updated November 15th. So it was a part of the packet that went to the Planning Commission for the August meeting and then

it was updated for the December 20th Planning Commission meeting.
Q Okay. So the first person on that list is Brandon Brown. What was he concerned about?
A He was concerned that, that funeral homes were considered non-conforming in the RDV zoning.
Q And did you address those concerns?
A We did. The Upstate Family Funeral Services does not perform cremations and so we made a change to the RDV zoning to allow for funeral homes without crematoriums.
Q Specifically for Mr. Brown? Was any other funeral home director expressing concerns about that other than Mr. Brown?
A No.
Q If you will look at Plaintiff's 9. You sent an application for a text amendment to change the table of uses for them, right?
A That's correct.
Q And that was ultimately included in RDV?
A Yes.
Q That was approved?
A It was.
Q Back on 4, Michanna Tate, what was she concerned about. And I am sorry if I hacked that name.
A Her father is Michael Talley and own the Michael

Talley Law Firm that is located at Green Avenue, at 206 Green Avenue. I think under the proposed zoning, we had proposed to recommend RM1 for that property. But after speaking with Ms. Tate who is Michael Talley's daughter and we didn't realize when we made the zoning recommendation that the parcel next door to Mr. Talley's Law Firm was used for parking. So we were able to go back in and extend the OD zoning to that property to make sure that the parking was allowed for.

Q So that was a change to the zoning map, the proposed zoning map?

A Yes.

Q And David Stone, what was he concerned about?

A He wanted to maintain the current zoning for his parcels along Calhoun Street and Academy Street.

Q And if you look at Plaintiff's 5, is that an email you received from Mr. Stone?

A Yes.

Q Did the Staff recommend a solution for Mr. Stone?

A We recommended, I believe we recommended RM2 but we also thought to consider RDV for all the parcels, given the location along Calhoun, I mean, I am sorry, Calhoun Street.

Q And eventually Mr. Stone came to agree with you, didn't he, that RDV is what he wanted?

A That is correct, yes.
Q And ultimately when the City passed the ordinance, his property is RDV, right?
A That's correct.
Q Greg Minton on the bottom, Enigma Corporation, what is his concern?
A His concern was that the, he was not supportive of RDV and wanted to maintain the current zoning that was C3.
Q And eventually did Staff change their recommendation regarding the Enigma Corporation parcel?
A We did, yes.
Q And you recommended C3?
A Correct.
Q What were my clients concerns?
A They were concerned that the drive-thru restaurant is a conditional use in RDV.
Q Were they one of only two commercial uses that were going to be grandfathered into this rezoning in the entire 103 acres?
A I am sorry, you said one of two or I am sorry.
Q Were there, what I am asking you, are there two commercial properties out there that were the only two that were actually affected by the rezoning, as an existing use?
A I am not sure I know the answer to that question, Mr.

Burke. I would have to go through each parcel and try to remember what is there. So I --

Q That is fine. What solutions did Staff recommend for my clients issues?

A We explained to both Mr. Hassiotis' that a drive-thru is allowed in RDV, it is just considered a conditional use. And so we explained the conditions which are to protect the adjacent residential uses. And they are fairly easy to work through. Just with the drive-thru being so close to a residential area we wanted to make sure that the sound coming from the drive-thru speaker was at a level that wouldn't disturb the nearby residents; lighting. Those are primarily the two conditions that we would look at in considering a conditional use.

Q What is the process for having conditional use approved?

A So the applicant or the property owner; well, first of all the current use of the drive-thru is allowed and it was grandfathered in, as you said, as a part of the zoning update. If OJ's or if the drive-thru use ceased after six months, after a six-month period then the new zoning would go into effect. So as long as OJ's doesn't go out of business for longer than six months then the drive-thru is allowed. But if there was a different use or a different tenant in the building then the property owner would make

an application to the Board of Zoning Appeals to request conditional use.

Q And you said the two things the Board would consider are, what were they, sorry.

A Well, there might be others. I don't have them memorized, it has been four years since I was involved in this project. Two of them immediately come to mind are the noise that comes from the, the drive-thru window or the speaker system; and then lighting.

Q And all of those conditions they have for conditional use, if my clients were tenants, fulfills those conditions, are they guaranteed approval of their conditional use permit?

A Well, I can't speak for the Board of Zoning Appeals. But I have never known anyone to not be approved.

Q But it could happen?

A It could happen.

Q Okay. So it isn't like, they don't have a right to do it as long as they fulfill on those conditions?

A They, well, as long as they meet the conditions and get Board of Zoning approval, then yes, they have a right to have the drive-thru.

Q Was there any discussion about amending RDV to make a drive-thru a permitted use similar to the action you took for Mr. Brown?

A No, there wasn't.

EXAMINATION BY THE COURT

THE COURT: But that could have happened?

A I am sorry?

THE COURT: But that could have happened, they could have approved permitted use?

A It could have been but it, if I may, Your Honor. It would, it would be kind of, it wouldn't be consistent with RDV zoning and the type of environment that we were trying to create on Pendleton Street because of the residential uses right behind the restaurant. And so we were trying to create a neighborhood friendly corridor. And so if we had removed or if we had allowed drive-thru's then we wouldn't have had the type of, without, let me back up, I am sorry. Again, it has been four years since I have even looked at this and I don't even work for the City anymore. So I think without the conditional use we, we were possibly in danger of having a drive-thru that might have a speaker system that would be too loud for the residents behind the restaurant. That would have been the primary concern with allowing a drive-thru restaurant in the RDV zoning.

THE COURT: Which in essence, follow-up with Mr. Burke's question was, taking it out a little further. OJ closed down for six months, another vendor came there and

opened up a restaurant. And then made an application for a conditional use to have a drive-thru. Given the scrutiny given to OJ's and their drive-thru, it is highly unlikely that the conditional use would be approved with another restaurant having a drive-thru.

A Well, I don't think --

THE COURT: I know you don't go there but.

A I don't know the answer to that question but there really hasn't been any scrutiny for Mr. Johnson and his drive-thru. It's used a lot.

THE COURT: I just don't remember seeing any residents behind the drive-thru. I just don't remember seeing.

A Well, along, if you look at the property directly behind along Arlington Avenue. It is just to protect the neighborhood, yes.

THE COURT: Thank you. Go ahead, Mr. Burke.

CONTINUE DIRECT EXAMINATION

Q Do you know when those houses were built back there behind OJ's? Was it after OJ's was there and they came to it or before?

A There was some new construction and some of them have been there for a while.

Q I think you were here for part of Mr. Tankersley's testimony and he testified, I think, and I don't want to

misrepresent. But that right-of-way's don't count on that, is that the fair. The actual road does not separate the two parcels that are on the road next to each other essentially. Is that your understanding?
A The road doesn't separate the parcels with, I am sorry.
Q Well, in the context we are talking in was that it is not, he testified it was not spot zoning to zone this to C3 because this is already C3 here and the road doesn't separate them in terms of zoning.
A Correct.
Q Okay. Was there any discussion about extending this C3 Family Dollar down the road, since it is essentially right next to an empty lot and then OJ's?
A No, there wasn't any discussion about extending the C3 down Pendleton Street.
Q Look at Plaintiff's 6. Can you tell me what that document is.
A Yes. This is the letter that went to the property owners informing them about the December 4th neighborhood meeting.
Q And this was sent on November 26th?
A Yes, it was.
Q Turn to the third page. Does this proposed include the revisions that we were talking about earlier, the

Enigma Corporation into Michael Talley's lot?
A Yes, it does.
Q Let me go back to Exhibit 5, I am sorry, I forgot my question I was going to ask. This is the email from Mr. Stone that you saw earlier?
A Yes.
Q After Staff got this email did they change the recommendation to propose an RDV zoning for Mr. Stone's property?
A Let's see, this was sent August the 13th, so that would have been before the Planning Commission meeting. So your question was --
Q So between when you received this email and the Planning Commission meeting, did Staff ever change their recommendation to propose RDV for Mr. Stone's property?
A So between August the 13th and August the 16th?
Q I am sorry. August the 13th and December 20th, 2018?
A Oh, okay. No, we did not make any recommendations to change the zoning for the Stone property.
Q Did you, after December 20th did you make any recommendations to change the proposed zoning for the Stone property?
A No, it was, the change in the zoning was made between the first and second readings of City Council in January and February of 2019.

Q So that was never sent to you to consider between the first and second reading?
A It may have been, Mr. Burke, it may have been, I don't recall.
Q But your recollection, at least four years later, is that Staff recommendations stayed the same, that it should be RM2?
A I would have to go back and read the minutes of the City Council meeting before I answer that question.
Q I hand you Defendant's Exhibit 1. Are those the minutes from the January 28th City Council meeting?
A Yes.
Q And that was when they first considered this plan, after the Planning Commission meeting?
A I think this was when the Stone family appeared the, before City Council, yes.
Q Who appeared on behalf of the Stone family?
A It would have been the, I believe it was counsel, the Stone family, their legal counsel.
Q I think it is in the minutes, isn't it.
A Okay, let me look for it then.
Q Page six.
A Yes, it was Rivers Stilwell.
Q Okay. Is he the same attorney that represents the Enigma Corporation?

A I believe he did speak on behalf of Enigma Corporation, yes. But I can't speak to whether he represents them.
Q Okay, at a previous meeting at some point?
A Yes, that is correct.
Q Does it say in those minutes if City Council ask Planning Staff to do anything regarding, after the first reading?
A It looks like Council Member Doyle requested information regarding the Planning Commission's meeting on the item and requested that the Planning Commission then be included in Council's agenda packet for the second and final reading. Mr. Graham, who was the Planning Director at the time stated the final vote was 5-2 for approval. Mayor White ask that the Planning Commission could reconsider Mr. Stilwell's request. And Mr. Graham responded that arguments have been presented that have not been made prior to this meeting and stated he would be open to meeting and reviewing the request. Council Member Doyle then requested that, oh, I am sorry. That looks like it is a different matter.
Q Matter.
A Yes.
Q So did, was there another Planning Commission meeting held after that on this issue?

A No.
Q During this whole process, at least starting in April of 2018 through the second reading when the ordinance passed; did any City Council members try to influence Staff on the rezoning?
A No.
Q Did any of them have a conversation with you about the rezoning?
A I am sure we did have conversations about it, yes, inquiring about the rezoning, the zoning update, yes.
Q I am going to hand you Plaintiff's Exhibit 15. Do you recognize that document?
A Yes, it was an email.
Q That you received?
A Yes. It looks like it was one I received and one I responded to.
Q Turn to the second page of that email, where Council Fleming is stating something.
A Yes.
MR. BURKE: May I approach, Your Honor.
THE COURT: Yes.
Q Can you just read the first paragraph of Council and Fleming's email?
A Yes. She addressed this to Mayor, Council, City Manager and Planning. I attended the West End

Neighborhood Association meeting and the attendance was good. But I was disheartened to hear the sadness of the residents as they fail to understand how eleven commercial businesses could hold the RDV zoning hostage, that the residents of the community affected do not seem to matter.

Q Did you take that as Council Member Fleming's concern that the process was not moving forward quickly enough?

A No.

Q What was Mayor White's response to that?

A Well, I responded to Council Member Fleming and then it looks like from this that Mayor White sent me a note and said this is all news to me. I would like to know more about who and what opposition is about. I do support a reason.

Q So did you take that as Mayor White trying to get you to, that he wanted to push the rezone forward?

A No, I did not take that as any type of influence. And I think, you know, as has been discussed, Staff doesn't make the decisions, Staff makes recommendations, Council makes decisions.

Q But the Planning Commission does rely on your Staff report, correct?

A Sure, yes.

Q Give a recommendation?

A That's correct, they do.

Q Would you consider it improper for City Council to try to influence your Staff report?
A Yes, I would think that it would be improper.
Q What was your response to Mayor White. I am sorry, that might not be on that.
MR. BURKE: This is Plaintiff's 8, Your Honor.
THE COURT: Yes.
A So your question is, what was my response to Mayor White?
Q Yes, ma'am.
A Well, he and I were scheduled with some folks about financing through Woodside Mill and I agreed to talk with him for a few minutes after the meeting just to bring him up-to-date.
Q If you look at Plaintiff's 7, all of this was happening on November 7th of 2018 but there, it looks like it is split off in two email threads. Was the Mayor asking whether it was on the City Council agenda for that Monday?
A It appears that he asked if it was on the Monday's agenda which I assume would have been the November 13th. And then he sent or his assistant sent a note saying, when is this planned to be discussed. And then I responded, it was discussed at the September meeting and the Planning Commission asked for additional information. It will be

on the December agenda for the Planning Commission.
Q Are City Council meetings, they have it on Monday, right?
A That's correct.
Q So the Mayor thought this was already decided and come before City Council?
A I don't, I can't infer what the Mayor was thinking. He may have just been confused by the date. I don't know, I am sorry.
Q But you did not take that as an attempt, the Mayor and Council Member Fleming expressing concern about how long the zoning was taking. You didn't take that as an attempt to push things forward?
A No. Because I think, Mayor and Council have always been very adamant about Staff doing as much as is needed with neighborhoods, businesses. So they never reached out to say that we were moving too slowly. They were always very open to all of the meetings and open houses that we held as part of this reason.
Q Let's go back to Plaintiff's D. Is the reason you wanted to meet with him face to face because you have emails from, (phonetic)?
A No, that is not the reason that I wanted to meet face to face.
Q What was the reason?

A Well, because we already had this meeting scheduled with the Woodside Mill developers. And I thought it would just be a good opportunity to bring him up-to-date on all the things. And we usually talked about a lot of different things, it wasn't just one item. So it was, we probably talked about a lot of different things when we were finally able to talk.
Q Do you remember that meeting at all?
A Not at all.
Q If City Council, City Council changed the proposed rezoning between first and second reading, correct?
A There was one change made between the two readings, between first reading and second reading.
Q And that was, to change the zoning of the Stone property?
A That's correct.
Q If City Council decides to amend at second reading, are they required to send it back to the Planning Commission for review and recommendation?
A No. City Council has the final say.
Q I am going to hand you a section of the City Ordinance. Turn to page three and paragraph two there. It says, if the City Council chooses to consider rezoning an area larger than requested or more than, for a more intense zoning district, the matter shall be referred to

the Planning Commission for public hearing and recommendation consistent with provisions of this Chapter. What does that mean to you?

A Well, it looks like, what this says, the Code of Ordinance says that City Council can make a change for only part of the area requested or for less than an intense zoning district, requested by the applicant or both. The City chooses, if Council chooses to consider rezoning an area larger than requested or a more intense zoning district the matter shall be referred to the Planning Commission for a public hearing and recommendation consistent with provisions of this Chapter.

Q And the City, you are the applicant, right?

A Correct.

Q And you applied to zone the Stone property RM2?

A That's correct.

Q And the City decided to zone it, City Council decided to zone it RDV?

A That's correct.

Q So I ask you again, do you think they should have sent that back to the Planning Commission?

A I don't, I don't know.

Q Okay. You were here for some of Mr. Tankersley testimony when he testified that the original decision to propose RDV for the Enigma property was a mistake. Do you

agree with that assessment?
A I think it was a Staff error, yes.
Q Do you think the Staff would have made that mistake if this was not such a large project with, and people were pushing for it to go faster?
A Well, no, I don't think so. I think Staff had already determined what study area was going to be. Staff had already put together the zoning of the updated map. So I don't think that anything would have, I don't think that going faster or slower would have impacted the way that the original zoning, updated zoning map was presented.
Q Thank you.
THE COURT: Alright.

CROSS-EXAMINATION

By Mr. Price:
Q Ms. Stroud, you no longer work for the City, is that correct?
A That is correct.
Q And did you retire from the City?
A I did.
Q I think you said, 19 years?
A Well, actually a little over 28 years with the State retirement system.
Q Where do you currently work?

A By United Bank.
Q And what do you do for them?
A I am a part of their community reinvestment team. So all banks are required to make donations, investments into the communities where they have branches. And so I am a part of a team that helps the portable housing development; community development activities; supporting non-profitable organizations. Also help advise lending staff on lending opportunities to support housing development.
Q Okay. I want to show you a portion of the final ordinance approved for the rezoning. Ms. Stroud, this is a portion of the ordinance, it is part of City's Exhibit number 4. I have highlighted a few things just to kind of bring into perspective what this ordinance was intended to do. So at the top you see, just generally, to rezone that area that we have been talking about, correct?
A Yes.
Q Right here, a couple of findings by City Council. And some of the history that took place here. So using that as a guide and in your position at the time with the City, the West End Neighborhood Association approached the City and asked them to look into this rezoning, correct?
A That's correct.
Q And the Sterling neighborhood master plan included a

recommendation to update the zoning along Pendleton Street, is that right?
A That's correct.
Q Why was the Sterling neighborhood interested in it?
A Well, it was a recommendation in their master plan that was completed in 2010. So, you know, we had the West End Neighborhood Association asking, it had been a part of the Sterling neighborhood master plan. So that elevated, that elevated the zoning update to a level that Staff felt like it could get, needs to be updated.
Q And in there at the bottom of this page is the finding that City Council made that RDV was the appropriate zoning area to accomplish the plan. Is that right?
A That's correct.
Q Of course, they came to that decision with the assistance of the work that the Staff did in preparing the application, having the public meetings conducted, taking input and them reporting?
A That's correct.
Q Turning the page here. This is still in Exhibit 4 which is a part of the ordinance. And you mentioned some of these at the beginning of your testimony. But this area right here and this area right here, when you take those two background documents together the purpose of the

rezoning of this area was to enhance and encourage things like grocery stores, speciality stores, community libraries, medical offices, midsize -- community parks and residential uses. And to serve as a transition between downtown and the single family neighborhoods.

A Yes, that is correct.

Q So put in less formal language. The purpose of this plan was to help this neighborhood blend into a combination of residential uses, small business uses to create a community.

A That is correct. This portion of Pendleton Street is an important link between downtown and the Village of West Greenville.

Q And that plan and what you did, that is the basic function of the zoning, is it not?

A That's correct.

Q Now, we have been talking about and you heard some of this when Mr. Tankersley was testifying. But the fact that the Enigma property was originally intended under the plan to move to RDV, as you said, that was basically a Staff error, was it not?

A Correct, yes.

Q And is it true that Staff was provided information, sought information and got information to confirm that the property line on the corner of Academy and Pendleton

Street should be zoned C3?
A That's correct. As I think Mr. Tankersley mentioned or you may have mentioned that the volume of traffic down Academy Street and that being there on the corner was, that is why it was recommended for C3.
Q And that is exactly what City Council found in this part of the ordinance, is that true?
A That is correct.
MR. PRICE: Your Honor, I apologize for the delay. I thought I was going to be calling Ms. Stroud as my witness. Let me make sure I am not repeating some things.
Q You referred to the timeline that is on the poster board over here. And, so just very quickly. Y'all began exploring this zoning change at the behest of the West End Neighborhood Association and began in earnest in 2018?
A Correct.
Q You had multiple neighborhood meetings to discuss the plans?
A Yes and open house meetings.
Q And open house meetings where folks, both for and against --
A -- correct.
Q Came in. Including, the Hassiotis' folks were there. You made your initial application to the Planning Commission which they considered in August but tabled that

in order they can get some more information based on comments and concerns that were raised at the neighborhood meetings and reported to them by you?
A That's correct.
Q Workshop was held in September where these issues were discussed and Planning Commission asked Staff to meet with Urban Design Associates, the big planners, the people that the City is counting on and consulting for the overall community plan?
A Yes.
Q And consulting with them, UDA was in favor of the RDV designation along Pendleton Street corridor?
A Yes.
Q Okay. After those meetings the plan was changed to address the Enigma property?
A That is correct. And that was part of the UDA discussion as well, was, you mentioned RDV on Pendleton Street. But we also talked specifically about the Enigma property.
Q And the Court has heard about the reasons for those changes and those changes were put into a revised plan?
A That's correct.
Q That plan was approved by the Planning Commission in December?
A Yes.

Q And at the first City Council meeting, as you have read, the plan is presented. But there were a lot of people who spoke, both for and against, the proposed ordinance at that hearing. Is that correct?
A That is correct.
Q And a representative of the Enigma properties testified there?
A Yes.
Q Representatives for Stone Family Trust spoke there.
A That's correct.
Q And in response to that, Councilman Doyle suggested that their request be revisited and I think there was a representative there at that Council meeting that spoke on behalf of the Hassiotis'. Is that correct?
A That's correct.
Q Now, back to Mr. Stone's recommendation or proposal. From standing, from the standpoint of planning practices with which you are familiar?
A Yes.
Q Was the suggestion and request made on behalf of the Stone Family Trust consistent with good planning principles?
A It was.
Q Explain to the Court why that is. Explain to the Judge what we mean by that.

A Good planning practice?
Q Yes. Well, why the proposal for his property to be zoned RDV as opposed to RM2 was reasonable under the proposed plan.
A Well, because his property was located along Academy Street and we have already talked about the volume of traffic along Academy Street. And so it made good planning sense to rezone it RDV because of the location along Academy Street, the volume of traffic and the uses that were along Academy Street.
Q And that suggestion that was made, was made in an open Council meeting?
A Correct.
Q And it was the first reading, I believe?
A Yes.
Q Okay. And the change to RDV ironically moved the Stone Family Property to exactly the same zoning designation as the Pendleton Street corridor?
A Correct.
Q And that would include the Hassiotis property?
A That's correct.
Q Okay. I don't know if you were in here when I was talking to Mr. Tankersley or not, but were you familiar with the comparison of uses chart that was prepared and submitted as part of the application for this rezoning?

A Yes, sir.
Q Am I right that a restaurant with indoor seating is acceptable under RDV?
A That's correct.
Q And, so the only change, the only potential change that would come into effect if that property were shut down, as we have heard, would be that the drive-thru window, rather than being a permitted use would be a conditional use?
A That's correct.
Q Now, I know you can't guarantee future results, no one can. But from your practical experience in working with the City in planning for all of these years, what is the practical, the practical impact of RDV on the drive-thru window right for that property?
A Really none at all. I mean, again, it is an allowed use with conditions. And again, those conditions are to protect the adjacent residential uses, as we said, was the intent of the RDV zoning. Those conditions have to do with the sound from the PA system, from the drive-thru PA system, lighting. And those are really the two that immediately come to mind. I am sure there are others but those are the two that were the most important.
Q Let me ask you a question too about communications with Council members, if I may. It is obvious that City

Council members have interest in their constituents and their constituencies and from time to time will come and ask questions about various projects. Has that been your experience?
A They are very concerned about their constituents.
Q That would include the Mayor too from time to time?
A That's correct.
Q Is there anything wrong with these communications?
A No.
Q Did anybody, to your knowledge, on behalf of Council or the Mayor try to strongarm you or other Staff to try and twist the application into a product that was deliberately unfair to anybody?
A Not at all.
Q Was this plan ever intended in whole or in part to hurt the Hassiotis family?
A Not at all.
Q Are you aware of any improper influence, exerted or attempted to be exerted by any third party on your Staff, Planning Commission or City Council?
A No.
Q In your view, based on your experience with the City as community planner, was this, was this zoning plan a good one?
A Yes.

Q Okay. Thank you.

THE COURT: Alright. Mr. Burke, we are going to resume in the morning. Ma'am, you can step down. Please, ma'am, don't discuss your case with anybody. I will see you first thing in the morning. Do you have anything on redirect? I am assuming you did.

MR. BURKE: I have three questions, I can probably go now.

THE COURT: If you have got three questions, go ahead.

REDIRECT EXAMINATION

By Mr. Burke:

Q The Family Dollar, if that had been inside the study zone, would Staff had recommended RDV since it was not on an arterial road?

A No.

Q Why not?

A Because if you look at the property line for the Family Dollar property, they are so close to Academy Street. It is just, it is right there on Academy Street. I don't know if you can see the property line. But, no, we would not, so the property line is just past your pen, Mr. Burke. It is right on the, just to the right of that structure.

Q Okay. When you say good zoning practices and then

have rules like it has got to be an arterial road, it is got to be on an arterial road or near one. So there aren't hard and fast rules necessarily?
A Well, I think we do have rules but, I mean, no. I think the Family Dollar property was so close to Academy Street. And, you know, it was outside the study area as well.
Q The UDA meeting, did you bring my clients concerns about the rezoning at the UDA meeting and ask them about it?
A Yes. We talked about all of the property owners who had concerns.
Q You said there is really no practical impact of RDV on a drive-thru. So why not just include it in this permit use?
A Well, I think, when the Judge asked me that question before, if we allow a drive-thru in RDV zoning then we run the risk of business owners maybe not as wonderful as Mr. Johnson, Greg Johnson of OJ's; not necessarily being respectful of the residential, the neighbors that live nearby. So I think having the conditional use is just a way of making sure that all businesses or all restaurant owners with drive-thru's are respectful of the neighbors that live nearby.
Q So it is kind of based on who is going to be the one

opening the restaurant and whether they are respectful to the neighborhood.

A Well, I don't mean it that way. I mean, it is just kind of a, it is a precaution that allows City Staff to make sure that the drive-thru, the business, the restaurant with the drive-thru is a good neighbor.

Q So is there a reason you just don't take that list of conditions and put them in the ordinance and say, drive-thru restaurant has to do all of these things, rather than making it a conditional use and then have people, have my clients not know what they are allowed to do?

A I don't know that I know the answer to that question, Mr. Burke.

Q Thank you.

MR. BURKE: Nothing further, Your Honor.

MR. PRICE: In response to that and I haven't been to zoning school.

RECROSS-EXAMINATION

By Mr. Price:

Q Zoning obviously looks to the future, correct?

A Correct.

Q Looks to the future. Theoretically, if along the Pendleton Street corridor, five, six or seven restaurant businesses apply to put in restaurants with drive-thru

windows, what impact do you think that would have on traffic on Pendleton Street?

A Would probably have, five or six restaurants on Pendleton. It might have an impact.

Q Aren't those the sorts of things that conditional use designation helps to protect the community and the existing property owners like Mr. Hassiotis, the Hassiotis brothers?

A It is, it protects everybody and, yes.

Q Thank you.

MR. BURKE: Nothing further, Your Honor. I may need to call Ms. Stroud if we proceed to the damage sections. So she is still under subpoena.

THE COURT: Ma'am, you are still under subpoena and Counsel may revisit you by calling you. Look for Mr. Burke's phone number, if he calls you, contacts you.

A Thank you.

THE COURT: You can leave everything in here if you so desire. You can take some stuff with you. And we will convene at 9:30 tomorrow morning. And we will go from there.

(Whereupon, the trial will resume the next morning at 9:30 a.m.)

August 30, 2022

THE COURT: Let's go on the record. George C.

Hassiotis and Constantinon Hassiotis, Plaintiffs versus City of Greenville. It is case number 2019-CP-23-02041. Alright. Is Counsel ready to proceed?

MR. BURKE: Yes, Your Honor.

MR. PRICE: Yes, Your Honor.

THE COURT: Call your next witness.

MR. BURKE: I call Constantinon Hassiotis.

THE COURT: Alright.

Constantinon Hassiotis, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Burke:

Q Good morning.

A Good morning.

Q Your given name is Constantinon but you go by Dino, is that correct?

A Yes.

Q Is it okay if I call you that?

A Yes.

Q Along with your brother, George, you own the property at 907 Pendleton Street?

A That's correct.

Q And who is the current tenant of that building?

A OJ's Diner.

Q Where are you from?

A I was born here in Greenville, South Carolina but my family is originally from Greece.
Q And who are your parents?
A Christos and Sophia Hassiotis, but they are both deceased.
Q What did your dad do for a living?
A My dad owned and operated All So Much in the Coffee Street Mall which is the (inaudible).
Q And then did he move back over to, 907 Pendleton Street?
A He did.
Q When was the building constructed over there?
A 1991, 1992 range.
Q And did you work in that building also?
A Yes, I did.
Q For how long?
A Four years.
Q What is the expected life span of that building?
A If you look at comparable buildings, I mean, that building could, in theory, last a hundred years.
Q And it has been around 30 years now?
A 30 years, yes sir.
Q And your dad decided to build it as a drive-thru?
A Yes, he did. The reason for that was we served alcohol at our previous location. The drive-thru was

meant to take up some of the losses that we had incurred by not serving alcohol in the new location.
Q Explain that to the Judge. Why is the drive-thru necessary?
A The drive-thru makes additional income for the business. The drive-thru was intended to approximately be one-third of the traffic incurred by the business. If we were to lose one-third of the traffic it would make a severe impact on the revenue generated by the business.
Q And Mr. Price was asking people about a sit-down restaurant, that is allowed in RDV. Does a sit-down restaurant to make the same revenue, meaning higher per table?
A It does.
Q And you get that usually by serving alcohol, correct?
A That's correct.
Q So to replace that revenue you need pickup and drive-thru orders?
A Drive-thru orders and pickup orders and dining are the three basis of our type of restaurant.
Q Since 1993 has the building been continuously operated as a drive-thru restaurant?
A It has.
Q Were there times that it took more than six months to find a new tenant?

A Yes, there were.
Q It sat vacant for a year or two?
A That's correct.
Q When was that?
A In the late 1990's. We had a succession of about three or four tenants. Some would stay six months, some would stay eight, ten months. Between every tenant there would be several months, sometimes a year before we could find another tenant.
Q And was OJ's shut down for a period of time during the pandemic?
A OJ's never shut down because they had a drive-thru window and they could generate income that they have lost by not being able to open their dining room.
Q Had they not had that drive-thru window they would have been forced to shut down.
A More than likely, they could have still had carry-out, walk-outs to the cars. But, I mean, that is generally inefficient. I mean, I am sure they did that as well, having the drive-thru. But a lot of restaurants tried that and it didn't work.
Q And you heard the testimony of the first two witnesses, does the neighborhood generally support OJ's?
A Yes, I believe they did.
Q But you are not OJ's, right?

A I am just the landlord.
Q Given the testimony that you heard, if you decided to evict OJ's, do you think the City would look fondly on that?
A I do not believe so.
Q Do you think they would grant your conditional use if you had to evict OJ's?
A If I were, spoken it, I don't think so.
Q If you negotiated a new lease with OJ's and the owner decided that he wanted to pay less than market rent, and you had to, you know, get a new tenant, do you think the City would look kindly on that?
A I don't think so.
Q Do you think they would grant the new tenant a conditional use for that drive-thru?
A They may, they may not; I have no guarantee.
Q A couple of questions about this and this is Plaintiff's Exhibit 13. You can see that in there.
A Yes.
Q This is your building, correct?
A Yes, it is.
Q Between your building and the Family Dollar, is there anything built there?
A It is a empty lot that once was a car repair.
Q Speak up a little bit, we can't hear you.

A I am sorry, it was a break shop, it was a car repair shop there, it is a vacant lot.
Q And then these houses behind OJ's, when were those built?
A The three there in green were there originally. The two there in the pinkish area were built after we built our building.
Q Those were built after, your dad built the building?
A That's correct.
Q There is an Exhibit in front of you, Plaintiff's 12. Will you turn to the last page. Did you attend any of these meetings?
A Yes, I did.
Q Which ones?
A It would have been the first three.
Q The first three, you said?
A Yes, sir.
Q Did you receive notice about the December 4th meeting?
A We never got any notice about that meeting.
Q And that is the meeting where they discussed Enigma Corporation, is that correct?
A I believe so.
Q Did you voice any concerns at those meetings?
A Yes, I did.

Q And what were your objections?
A That if we were to lose our tenants that we would have difficulty finding another tenant under RDV.
Q And that continues to be your objections today, correct?
A That is correct.
Q Did anybody at the City make any revisions or recommendations to address your concerns?
A No, sir.
Q And the property owned by the Enigma Corporation, how far away is that from your building?
A I mean, it is across the four-lane road and kind of, I mean if you look at the map, we are directly across from them. But if you look slightly diagonally, right there.
Q And I think I mismarked this originally. The Enigma Corporation actually includes this --
A That was the original building which is now the three-story building. At that point it was just a single-story building.
Q And was that building being used when the rezoning happened?
A It was a vacant building at that point in time.
Q And the area next to it, at least when the rezoned happened, what was there?
A Empty lots.

Q So there was no use going at the Enigma Corporation?
A They had no use, I mean that property was vacant and 20 lots were vacant.
Q Did they voice objections to the original proposed zoning?
A Yes, they did.
Q What were their objections, if you remember.
A They said if they didn't have C3 it would be difficult for them to find future tenants.
Q So the exact same objections you raised?
A That's correct.
Q At the end of the rezoning process how many active commercial businesses were affected?
A Just us and the car wash directly across the street from us.
Q And is that car wash still operating?
A The car wash is not operating at the moment, it hasn't been for a while, as I recall. It has been for sale for quite a long time, apparently you can't find a buyer for the property.
Q So your building is about 30 years old, correct?
A Yes, it is.
Q Under RDV zoning, can you make a large capital contribution into the building?
A No, I can't.

Q If you fix it up you need to go apply for conditional use?
A Anything that is more than fifty percent of the value I would have to go get a conditional use.
THE COURT: Bring your voice up just a little bit.
A I am sorry. Anything more than fifty percent value of the building I would have to reapply for zoning and conditional use.
Q Is it your understanding if you expand the size of the building you will need to apply for conditional use?
A That's correct.
Q And in your experience owning this building, have tenants ever asked for a renovation as part of a lease negotiation?
A Tenants would like to have a larger dining room.
Q When you negotiated a lease in 2016 did they ask for anything?
A They really didn't --
MR. PRICE: Objection, Your Honor. I think we are getting into some hearsay.
THE COURT: I am going to sustain the objection. Rephrase your question, Mr. Burke.
MR. BURKE: Thank you, Your Honor.
Q When you renewed your lease in 2016 did you make any renovations to the building?

A We did not.
Q Did you put a new roof on the building?
A I mean, the tenant put a new roof on it. But we did make some building, it had to be done because the roof was leaking.
Q Okay.
A It wasn't an improvement, it was just a necessary part of the building.
Q Did you make accommodations to the tenant so they would make those?
A Well, the tenant paid for the roof because it was easier for them to do and then we gave rental concessions.
Q To update the building affect the amount of rent you can charge a tenant?
A Yes, it would.
Q Okay. So if the building was still zoned C3 how much would it be worth?
A C3 --
Q Let me rephrase that. If the building was still zoned C3 how much would the property be worth?
A We were made an offer for $600,000.00 dollars and that was just for the land. The guy that made us an offer and had no interest in the building because it was not conditional. We had no guarantee. We feel the building is worth considerably more, the building and the land is

worth considerably more than just the land.
Q And just to clarify, that offer was made after it was rezoned?
A That's correct.
Q Okay. How much do you think the building and the land is worth if it was zoned C3 then?
MR. PRICE: Objection. Speculate.
MR. BURKE: Your Honor, the owner of the property is allowed to testify to his opinion about it.
THE COURT: I am going to overrule the objection. I think he can, he can give his opinion as to what he thinks the value might be.
A At $1.5 million dollars.
Q And what do you base that on?
A Other comps that we have looked at.
Q What comps are those?
A Carolina Fine Foods is a principle comp that we use --
MR. PRICE: Now I object, Your Honor, on basis of a hearsay. Although he can give an opinion as the owner, he can't talk like an expert to justify --
THE COURT: And I agree with that. Mr. Burke, I think he can give an opinion of what he thinks the building is worth. When he gets into things like comps and all of that, it is put out of his shoes and putting

into an appraiser's shoes or a realtor shoes, so to speak.

MR. BURKE: Your Honor, if I may. A property owner is allowed to give the basis for his opinion just like an expert witness. It is my understanding of the law.

THE COURT: He indicates that he thought it was worth $1.5 million dollars based upon what Carolina Fine Foods, is that what?

A Yes, Your Honor.

THE COURT: And that is the one --

A That is the principle one. I mean, the Burger King right across the street from, it is obviously another comp. But, you know, that was --

THE COURT: You looked up the value?

A Yes, that one cost a little bit more to build than --

THE COURT: I will go ahead and allow that subject to your objection, Mr. Price.

MR. BURKE: Thank you, Your Honor.

Q And when you are talking about comps you are talking about how much it costs, what are you talking about in comps?

A In comps, I am talking about the land and put up the building.

Q Prior to the property being rezoned did you ever have people just unsolicited come by and ask you about the property?

A Yes.
Q And you don't need to get into what they offered you or anything like that. People come by and --
A Very frequently, almost monthly.
Q Has anybody done that since it was rezoned?
A Not a single one.
MR. BURKE: Your Honor, I beg your indulgence for a second.
THE COURT: Okay.
Q Have you learned a lot of information after the rezoning happened?
A Yes, I have.
Q And prior to the Planning Commission meeting on December 20th, 2018, did you try to get information about the Enigma Corporation or the rezoning?
A There was never information to be had. We did filed an application for documents from the City and we paid for them. But we didn't get them.
Q And by application, Freedom of Information request?
A That's correct.
Q When did you ask for that, those documents?
A In between August and December, in between those meetings.
Q Subsequently did I file the Freedom of Information request on your behalf?

A No, we did. You, but in effect you did. But, yes, it was you.
Q But we got 4,000; 5,000 some pages of documents, right?
A We didn't get anything.
Q Well, I will let you know I got 4,000; 5,000 documents?
A We didn't get a single page.
Q Okay. But through this process and through taking people's depositions and all of this, have you learned more about the rezoning than you knew before that Planning Commission meeting?
A Yes.
Q Based on all of that information do you believe the City was targeting you?
MR. PRICE: Your Honor, I object. That is an opinion of a lay person that is irrelevant and based on evidence that is not in the record.
MR. BURKE: Your Honor, I think he is allowed to testify to what he believes first. It is relevant because it is directly related to the equal protection argument. I have to prove that he has been singled out, I think.
THE COURT: I will allow it, subject to the objection.
A We were targeted for having a drive-thru speaker,

lights on. And something they didn't mention yesterday, was smells. Our drive-thru operates from 7:00 a.m to 5:00 p.m., so there is no noise after 5:00 p.m. with the drive-thru speaker. There is no lights on after 5:00 p.m. There is no smells after 5:00 p.m. All the drive-thru is triggering at the moment is noise during normal business hours. And there are no lights on during the day hours.

Q Why did you and your brother not wait to see if you got denied for conditional use before bringing this lawsuit?

A We have had some history with the City and we felt that we had to take this action at this time to defend our rights. We had no choice.

Q Were you concerned you would lose your rights if you didn't defend at this time?

A Yes, we did.

Q And what is your families history with the City?

MR. PRICE: Objection, Your Honor, relevance.

MR. BURKE: Your Honor, again, it is necessary to prove that the City is targeting the Hassiotis' in order to prove the equal protection clause argument. So the families history, if you allow him to answer, the families history with the City goes toward proving that.

THE COURT: As it relates to this case?

MR. BURKE: Yes, Your Honor. Their history with the

City is the reason the City has targeted them for, and now, and made changes and revisions for every other commercial business out here except for OJ's.

MR. PRICE: Your Honor, how they may feel about what the City did or did not do does not go to establishing the elements of an equal protection claim. There are three elements that I put in my trial brief. And that opinion doesn't go to the opinion of the elements.

THE COURT: Before we continue, Mr. Burke, let me ask you something. The litmus (phonetic) test for an equal protection claim, the Court must determine whether the law treats similar entities differently. Two, if so whether the legislative body has a rational basis for the fair treatment. Third, whether this fair treatment, there is a rational relationship to a legitimate governmental purpose. Is that what you are referring to. I think came directly out of Dunes Best Golf Club case.

MR. BURKE: That is my point, Your Honor.

THE COURT: So go to that three-prong litmus (phonetic) test and tell me how it fits into that, Mr. Burke.

MR. BURKE: Your Honor, so I am referring and I can hand this up. Sylvia Dev. Corp. versus Calvert County. And this was cited by the South Carolina Supreme Court as Seabrook versus Knox which is 369 SC 191 for the, it is

premise that to establish equal protection violation the Plaintiffs must demonstrate they were intentionally and purposefully subjected to treatment different from others similarly situated. His families history with the City goes towards whether he was intentionally targeted or intentionally, intentionally and purposefully subjected to treatment different. And that is at Sylvia Dev. Corp. versus Calvert County.

THE COURT: You got a copy of that case?

MR. BURKE: Yes. 48 F.3d 810, at 818.

THE COURT: Go ahead. What is the premise?

MR. BURKE: I am trying to find the page, Your Honor. So it states, to establish an equal protection violation Plaintiffs must demonstrate they were intentionally and purposefully subjected to treatment different than others similarly situated. And I think we have shown through previous testimony --

THE COURT: Which page are you on?

MR. BURKE: 818, Your Honor.

THE COURT: 818.

MR. BURKE: I am sorry, I am going to need to. Let me hand up Seabrook versus Knox.

THE COURT: So it is not this case?

MR. BURKE: So it is referring to this case for that premise, Your Honor. But the actual language I am quoting

is from Seabrook versus Knox.

THE COURT: Do you have a copy of that case for me?

MR. BURKE: Yes.

THE COURT: Have you given Mr. Price a copy of it?

MR. BURKE: I do not have a copy of that.

THE COURT: Alright. I am assuming you are reading out of the section of equal protection?

MR. BURKE: Yes, Your Honor.

THE COURT: You go ahead and read it and I will share with Mr. Price. It says, to establish equal protection violation the Plaintiffs will demonstrate that they were intentionally and purposely subjected to treatment different from others similarly situated. And this language is also cited in the case you just gave me, Sylvia Development Corporation versus Calvert County. And in this case the, the Seabrook versus Knox case, the trial Court found that the City treated respondents differently from similarly situated property owners and that the City imposed a zoning designation on respondent's property outside the legislative process. Is that where you are?

MR. BURKE: Yes, Your Honor.

THE COURT: You want to see this?

MR. PRICE: I believe I can tell right now what it says and what it says doesn't apply to our factual situation. I think the case law that I have provided to

the Court is consistent with that. Although I haven't read the Seabrook case, in our case we are talking about not how Mr. Hassiotis feels how his family has been treated in the past by the City, it is whether the ordinance that has been passed by City Council treats his property rights differently than similarly situated people who are involved in the neighborhood, own property in the neighborhood. That is the issue, not what may have happened a generation ago between his family and the City. I don't think Seabrook is telling you anything different.

THE COURT: So what you are saying, Mr. Price, is that any apparent, for lack of a better word, difficulty or friction between these parties in the City in the past has absolutely nothing to do with this.

MR. PRICE: That is what I am saying. I don't know the Seabrook case, I don't know if it involves the constitutionally protected right other than property. If it is racial, sexual, or anything like that. But, of course, there is a different standard, complete, and we are dealing with the rational basis standard for property. And I don't think that the testimony, the anticipated testimony from Mr. Hassiotis, about how he feels he and his family has been treated by the City goes to the proof of any of those elements.

THE COURT: Alright. And I just saw the case,

Counsel, and you just gave it to me. So, Mr. Burke, how does the facts in the Seabrook case or even in the Sylvia Development Corporation case mirror the facts in this case, if at all.

MR. BURKE: Okay. So in both cases it was a situation where, well, in the Sylvia case it was a situation where the, one landowner was given a certain zoning and another landowner was from, I believe Czechoslovakia and was given a different zoning because they were an outsider. It doesn't mirror them directly. But I would disagree somewhat with Mr. Price's characterization about what, where the equal protection issue is. It is not just, does the ordinance treat my clients differently. Did the City treat my clients differently. And the City Staff have testified that they treated different businesses differently. They cared to certain businesses concerns and denied my clients concerns. So that part, I believe, has been established, that they were treated differently. This testimony goes towards, was that different treatment intentional and purposeful. And I understand the State's position, is it wasn't. But my client is allowed to testify to facts that make it, that establish evidence that it was. And part of that is, their families, ongoing friction with the City. And it started 30 years ago.

THE COURT: Let me ask you this, Mr. Burke. I remember the chart where the, there was some property owners that the City made some concessions for, the Planning Commission made some concessions for, the Planning Commission made some concessions for but they were legitimate reasons. I think one of them was a law office and use of the old parking lot, they made a concession. Is that the list that we are coming from and I think it was a funeral home that needed a concession. Is that the list we are talking about?

MR. BURKE: Yes, Your Honor.

THE COURT: All of these instances were things that, I know it was an instance where the lawyers at the parking lot, they had just used that for, for overflow parking and the City accommodated them. So you said they treated other people differently. What persons are you specifically talking about.

MR. BURKE: So I am talking about, you know, one funeral home director, they carved out a RDV for him. A lawyer was using, was using the parking lot just like my clients had a use, an existing use of the drive-thru and they helped him out. And Enigma Corporation, they changed their zoning to C3. The Stone Family Trust, they changed their proposed zoning to RDV. And so I am, I understand the City's position, is they had rational reasons for

doing all of those things. Our position is that they could have done the same thing for my clients, absent a, this grudge that the City holds against their family. And I understand the City is going to say, we don't hold a grudge but that's like if I go out to General Sessions, I am representing somebody and they say, I didn't steal it. And, you know, okay, well, you can leave. I think I am allowed to present the evidence that tries to prove that they do hold a grudge against the Hassiotis'.

MR. PRICE: Your Honor, I beg your pardon. I think that is outside the scope of the complaint. There is no allegation of some internal conspiracy by Staff members to conspire against the Hassiotis family. I think the ordinance frankly speaks for itself and that is not the case. I can address every one of the examples that Mr. Burke has raised to try and argue that there is some nefarious intent on the part of the City. This is all, this is all in the record through the Exhibits in the City, by the way. The funeral home, the owner of the funeral home that wanted to maintain a funeral home on his property did not have a crematorium attached. And anybody who drives by Henry's Barbecue knows what a crematorium looks like and what it does. What the City did, the Staff, not City Council, I have got to remember that. City Council made this decision, not Staff. The minutes

of City Council are the best evidence of what they did and why they did it. And what happened at the Staff level I don't think is the best evidence of what City Council did. However, Staff listened and here is the point, they are listening to everybody. Staff listens to a man who had a funeral home and under the definition of RDV at the time, whether or not it had a crematorium, it couldn't be there, it couldn't be RDV. Well, they listened and as an accommodation, I make no bones about that, they are trying to help out these property owners, help all of these property owners. They changed the definition to take out crematorium. So the fact that he did not have a crematorium meant that he could continue his business where he was on Pendleton. You had mentioned the Talley Law Firm, that is exactly right. They reached out, they go to Staff, they say here is what this property is used for. Staff looks at it and they say, you know what, you are right. Enigma, Spinx, we covered that very much yesterday. Spinx and Staff realized that that property was on an arterial street with thousands of vehicles a day going by and was on one of four corners of that intersection, the other three of which were C3. So they said, you are right, and they left Enigma as C3, a rational basis for all of those changes. So why not treat the Hassiotis' by changing their property from RDV to C3.

Because that would be spot zoning and that would defeat the purpose of the whole ordinance which is to make this a more neighborhood friendly, small business friendly environment. So actually there is no evidence of grudge, other than an opinion that Mr. Hassiotis was trying to express. But even if there had been, even if there were, what the City did in treating these other property owners was consistent with the plan, was consistent with, with what often had been done under the plan and was not intended to hurt the Hassiotis'. On the other hand, they, the Hassiotis' had their property as RDV like everybody else on Pendleton Street and quite frankly, the conditional use allows the drive-thru window, as we know. If the City wanted to get at the Hassiotis' they would have taken out, they would have made, no, you can't ever use a drive-thru window on 907 Pendleton Street. That is not what this is about. There is a rational basis for everything that they did including keeping the Hassiotis property as RDV and tweaking the plans related to these other properties. The Stone property, same thing. Mr. Stone, it is an apartment complex on Academy. Mr. Stone simply went to them and said, look, under your plan we are RM2. Would you consider doing something else. And they said, well, we will be glad to make it RDV if that works for you because it works with the plan. RDV is the same

as 907 Pendleton Street. So all of these tweaks that are being argued as some nefarious plot is nothing other than good zoning practicing. And the reason that 907 is RDV and a drive-thru window is a conditional use is that it is consistent with this plan. And there is no evidence whatsoever of an improper or nefarious purpose behind it. But I would say, even if someone secretly harmed such a family like that, of which there is no evidence, what they did meets the elements that protect this ordinance under South Carolina law.

THE COURT: Alright. Even though there is testimony from this witness that Enigma indicated, but didn't say anything about traffic. They indicated that they would lose, they wouldn't be able to have additional, having tenants going in or getting tenants.

MR. BURKE: That they would have difficulty getting future tenants if they were zoned RDV. Your Honor, and I appreciate Mr. Price arguing, jumping to the end and arguing his case. But this objection is an evidentiary objection. He is saying there is no evidence of a grudge. I am trying to get that evidence in.

MR. PRICE: And the evidence is irrelevant, that is my fundamental decision.

THE COURT: I am going to, I am going to take about a ten minute break and I need to peep at this Sylvia

Development Corporation case and the other cases just for a second.

MR. PRICE: Can I have a copy of that case.

THE COURT: Seabrook case? I will get my law clerk to make a copy.

MR. PRICE: Thank you.

(Whereupon, a short break was taken.)

THE COURT: What I would like to do, Counsel, I want to proffer the testimony. Just ask him the question and then I am going to rule on Counsel's objection. But I want to hear, proffer the question that you would ask regarding, so we are going to proffer the position at this time. Go ahead.

DIRECT EXAMINATION (Proffer)

MR. BURKE: Thank you, Your Honor.

Q Did your family have a history of issues with the City?

A My father owned the restaurant, of what was the Coffee Street which is another, (inaudible). At that time he was individually targeted. The City initially threatened to condemn his property. After that didn't work out they used them, made to buy his property. They gave him $190,000.00 dollars for the property. After we broke ground for a new property, on our new property for our new building on Pendleton Street, had reinvested our

money, they put our former property up for sale.
Q Now much had it sold for?
A It wasn't sold immediately but they sold it for $1.1 million dollars.
THE COURT: That is what the City received.
Q What did that do to your family?
A My dad had a stroke during the process of building the building. My mom got sick, had Crohn's disease. When our balloon payment came up in 1995, we weren't making enough money for them to renew our balloon payment. So we had to sell our house to give to the bank for them to renew our loan. And in effect my dad lost his business, his health and his house because of the City.
Q When this process started were you concerned that you were being targeted again?
A Yes, we did.
Q Were there any instances at these meetings where you were individually targeted?
A We were escorted out of a meeting because they said we were too loud. We went to the Council meeting and my brother had a police escort following up to the meeting.
Q And do you think that affected the City Staff's willingness to work with you?
A I think that and the, I was in an article printed by the Greenville Journal and I expressed my opinions. I

think the City took offense to that and they used that against us in effect, once again.

Q Did you ever try to challenge or did your father ever try to challenge the imminent domain sale?

A My father had an attorney that we feel did not represent him in the correct manner. He had the opportunity to not sell that building but I think his attorney pushed him into selling it.

Q But did you try to challenge that later, at a later time?

A No. I mean, dad got sick. The imminent domain, I mean, not imminent but the statute of limitations expired and we couldn't go back and pursue that.

Q But that statute of limitations expired, is that why you didn't feel like you could sit on your rights at this time?

A That's correct.

Q Nothing further, Your Honor.

THE COURT: We are still in proffer, you want to ask him any questions, Mr. Price.

CROSS-EXAMINATION - (Proffer)

By Mr. Price:

Q Mr. Hassiotis, how old were you when the property on Calhoun Street was sold to the City?

A I would have been 22 years old.

Q Were you involved in the negotiations and the sale?
A I was not but I did make my opinion to my father. And my opinion was not to sell the building at that point in time.
Q So you, your recommendation as a 22-year-old, to your father was not to sale the building to the City?
A That's correct.
Q Your father chose to not follow your advice and voluntarily sold the property to the City?
A My dad had been pressured by the City for maybe four or five years.
Q And you were present every time the City pressured your father?
A No, I wasn't.
Q Okay. But I guess, the big point I just heard from you is that you recommended to your father that he not sell to the City, is that right?
A I mean, as a 22-year-old, my dad had his own opinions and my dad came from a different place than I did. My dad came from Greece and my dad built a business, owned the business. And at that point in time he only had a sixth grade education. So I think my dad was manipulated and used. And I think that he, after being pressured for so long.
Q Well, that is what you think. But your father did

not sue the City after he sold the property to the City, correct?
A My dad had a stroke 15 months after he sold the building to the City.
Q Well, did you step in and try to sue the City on his behalf?
A Our money was completely tied up in building our new building. We had no resources to pursue a legal case at that point in time.
Q But you allowed the legal case to go away based on the statute of limitations because whether you had the assets or not, you didn't bring a lawsuit within the time that the statute of limitations required. Is that correct?
A We weren't aware of the statute of limitations at that point in time.
Q My question was, you did not bring the claim within the statute of limitations. And your answer is?
A That's correct.
Q Okay. So we are talking about things that you perceive as a 22-year-old that happened when, back in the early 1990's?
A 1998.
Q But based on --
A I mean 1980, I am sorry.

Q So based on what you are saying, the City paid, in return for a deed of the property, $199,000.00 dollars, correct?
A That's correct.
Q And your father took that money and invested it in 907 Pendleton Street?
A That's correct.
Q And enjoyed the fruits of selling the property on Coffee Street with his investment that you and George have even today, correct?
A The City, my dad had no intention of selling the property on Coffee Street. That was a paid building. His intention was my brother and I to run that property as owner/operators of that building at the Coffee Street.
Q Mr. Hassiotis, your father chose to sell the property to the City, didn't he?
A He was pressured to sell the property to the City.
Q You pressured him not to sell the property to the City, correct?
A When the City does an imminent domain, my dad thought his property was going to be used for public purposes. That property was suppose to be torn down and the Coffee Street Mall, the Piazzo Rigada (phonetic) was supposed to be enlarged. That was my dad's thought at the time that they took his property. If my dad had the mental capacity

after his stroke, once he found out that he put his former property up for sale, he, I am sure would have sued the City.
Q But he didn't, did he?
A My dad was incapacitated.
Q You did not sue the City?
A I had no funds to sue the City.
Q And nobody in your family sued the City because of that transaction?
A Nobody in my family sued the City because we were completely tied up with building our new building.
Q As far as you know, are there any witnesses who can be called today from 2022 to talk about the perspective of either the City or your father --
A -- one person.
Q Who is that?
A Knox White.
Q Is he called as a witness in this case?
A I have heard he could not.
Q Aright. So you told us why you think that in 2019 City Council passed an ordinance that rezoned 103 acres in Greenville and it was intended to get at you?
A I think it was intended to get at me and the others.
Q That is a lot of effort to get at you, why in the world would they have allowed you to keep conditional use

on that property for a drive-thru window?
A Why wouldn't they have just drawn the line one block further over.
Q Thank you.
THE COURT: Anything else before I decide regarding Counsel's objection?
MR. BURKE: No, Your Honor.
MR. PRICE: No sir, I have got nothing.
THE COURT: I am going to allow the testimony subject to your objection.
MR. PRICE: Alright. Sir, I would like to comment for the record.
THE COURT: Yes, sir.
MR. PRICE: I have had an opportunity to look at the two cases that were handed up as authority for this testimony. The Seabrook case --
THE COURT: The issue was moot, I understand.
MR. PRICE: Right. So the trial Judge ruled as a equal protection violation. The appellate court said, no way. In their discussion they refer to the Sylvia case.
THE COURT: Okay.
MR. PRICE: As I suspected, the Sylvia case was a strict scrutiny equal protection case based on the race and citizenship of the complainant from Czechoslovakia. And that is what the Court says. It is a strict scrutiny

case. We are not dealing with a strict scrutiny equal protection issue. It is a rational basis issue and so this case does not apply.

THE COURT: I understand that, Counsel. But the Court has the, obviously the opportunity to look at the test for the determination in a equal protection argument which Counsel has argued. And I go back to both those three prongs components. Litness, (phonetic) test, and I use the word, litness, it says rational test. For equal protection the Court must determine whether law treats similarly situated entities differently. That is the first prong. And the second is obviously, whether the legislative body has a rational basis for the fair treatment. And thirdly, whether the fair treatment be a rational relationship to a legitimate governmental purpose. I think I have heard enough, Counsel, I understand your objection but I have heard enough where I am going to allow the testimony in. And I am relying primarily on this Court's analysis of the rational test for equal protection claim. That is prong one, whether the law treats similarly situated entities differently. And I have heard testimony and I am going to allow it subject to your objection.

MR. PRICE: Thank you, Your Honor.

THE COURT: Okay. So go ahead, Mr. Burke, I heard

the testimony and I have ruled where you can continue if you have got any more questions you want to ask.

MR. BURKE: I have no other questions for this witness, Your Honor.

THE COURT: All right, cross-examination, if any.

CROSS-EXAMINATION

By Mr. Price:

Q Mr. Hassiotis, let me see if I can figure this out, bear with me. This is Defendant's Exhibit 26, Mr. Hassiotis, which I represent to you is the website for OJ's Diner, your tenant. Can you see that on the screen you are looking at?

A Yes, I can.

Q On the first page, do you see any reference to a drive-thru window?

A No, I don't.

Q I am going to turn to the next page which comes from the website, complete copy. It talks about where the locations are, 907 Pendleton Street and Calhoun Highway, Easley, correct?

A Yes, sir.

Q It says one of the top restaurants in Greenville and now in Easley, right?

A I have not seen this document before but if that is what it says, that is what it says.

Q Okay. And if you catch me misstating something you tell me.
A I really can't read this document on that.
THE COURT: Turn around and look at it.
Q Let me do better than that, I am sorry. Let me give you a paper copy so you can look. On the second page of the website, do you see any reference to a drive-thru window?
A No, I don't.
Q Let's take a look at the next page then. Here is a reference to menu and catering and has a staff there. No reference to drive-thru window?
A That's correct.
Q And then the last page of the website are reviews, what people have to say about the food. Any reference to a drive-thru window?
A No, no reference to it.
Q No reference to a drive-thru window in there advertising the web.
A No.
Q Thank you. And I apologize in advance, I may be jumping around a little bit with my questions. What evidence do you have, firsthand evidence do you have that the City would not approve a conditional use for that drive-thru window if your property ever lost its

grandfather status?
A I don't have any direct evidence but I believe that, that the RDV is going to cost me issues, to get another tenant.
Q But today you have no evidence?
A I have no evidence but I am stating the same issues that other property owners in the area have.
Q And you are bringing how many of them to testify in this case?
A Well, everything that they have stated is in documentation. So but there is no necessity to bring people in.
Q We are looking at Plaintiff's 13 that you were shown a little while ago. I am going to come up behind you. I just want to point at this so we can see at the same time. When you were testifying on direct you were asked and help me here, this is your property here?
A That's correct.
Q Okay. And this green area here are residences?
A Yes.
Q Now, between --
A On the left side there are residences. On the right side it is the free medical clinic.
Q Okay. Thank you. So these residents over here, is there a buffer of trees, bushes, or whatnot between their

property and your property?
A Yes, there is. We have got a dead space behind our building that extends to about 15 feet with thickly brush and ground trees.
Q You can turn around. I am sorry for moving around like this. So there is a green buffer between --
A -- about a 15 to 20 foot buffer back there. Yes, sir. And it is thick with trees that would absorb any noises.
Q Okay.
A And I believe the two new houses that were built after we were there, does not have a buffer.
Q But if I understand you correctly, based on the buffer and where these two properties, yours and these residences are located; there is a buffer as for, and it is for --
A -- we made that buffer to accommodate that intentionally. We left that area as a dead zone to not impose on our neighbors.
Q Okay, very good. And the buffer is on your property, correct?
A Yes.
Q And using the term, buffer, in its commonsense way, that helps to protect neighborhoods from light, sound, that might be coming from your drive-thru window. Isn't

that right?
A We wanted to be good neighbors.
Q Sure. How long has OJ's been leasing the property from you?
A OJ worked for Ms. Macmey, (phonetic). Ms. Macmey leased the building from us in 2000, at the end of 2001, right there around Christmas time, she opened up an operation in 2002. Her husband had a stroke, approximately three or four years after that. She wanted to take care of her husband so in effect she gave the business lock and stock and barrel to OJ who maintained the employees jobs.
Q And when was that?
A That was --
Q 2005? Did you and your brother enter into a lease agreement with the people at OJ's?
A I think they may have had a little time still left over on their lease. But, yes, we did have -- on the lease with OJ's.
Q And is there still a lease between you and Mr. Johnson for OJ's?
A Yes, there is.
Q And is OJ's, I say OJ's meaning, of course, the owner of the property, the owner of the business. So are they still paying you rent?

A Yes, they are.
Q What is the amount of the rent they pay monthly?
A $4,000.00 dollars.
Q Okay. Are they good at paying the rent?
A Yes, they are. They are one of the best tenants we have ever had.
Q Do you remember when we were looking at the jury panel yesterday, one of the potential jurors volunteered to us that OJ's is a good restaurant and has good food. Did you hear that?
A Yes, sir.
Q Okay. Do you eat at OJ's?
A I have a medical condition that does not allow me to eat certain foods so they don't offer any food that I can eat.
Q They offer the good southern food?
A I can't eat that type of food, I have colitis and it affects what I eat.
Q Well, is there anything, is there any dispute to whether OJ's is a popular restaurant in that area?
A Not that I know of.
Q Okay. I just want to make clear that we know whether or not you have experience or training as a real estate appraiser, do you?
A No.

Q Have you ever been called as a witness before in a case to testify about comparable sales and value of property?
A No, I haven't.
Q You told us your opinion that the City targeted you and your brother and that that is the reason that this zoning proposal went before City Council, correct?
A I believe the City approached the owners of the association and they discussed what they wanted from Pendleton Street. And what they did not want was bad businesses. And I don't see how our business qualified as a bad business.
Q Has anyone from the City made a statement that appears in the minutes of either the Planning Commission or City Council that says the City believes that your business is a bad business?
A Not by the City but there are other forms that people in the West End Homeowners Association have made those.
Q Well, you were here yesterday so you understand what the RDV zoning classification is and its purpose, don't you?
A I cannot agree that RDV is a legal zoning classification.
Q Okay. And so by the way, not only are you not an appraiser, you are not a lawyer either, are you?

A I am not.
Q Okay. So do you have any evidence or witnesses who will testify in this case that the RDV classification is illegal?
A We don't have anybody that would, in our effect to testify other than us.
Q Alright, sir. You attended at least one, more than one of the public meetings that were held to discuss the proposed rezoning, correct?
A That's correct.
Q And either you or your brother expressed opinions which are in the minutes of these meetings, in which you stated your opposition to the plan. There are reasons for your opposition in those meetings. Is that right?
A That's correct.
Q Isn't it true that at those meetings the concern that you expressed about your opposition was focused on the drive-thru window?
A That is correct.
Q And your concern that if the zoning plan went into effect and your property was zoned RDV that you might not, under certain circumstances, be guaranteed that a drive-thru window use would continue?
A My property is more valuable as a C3 because it is a guaranteed use.

Q But my question was a little more specific. Your concern was that the drive-thru window might not remain?
A There is no guarantee that I would keep that conditional use.
Q Did anybody from the City tell you that you would not get or continued to use the drive-thru window?
A They said that I could use it forever as long as my tenant didn't leave.
Q Okay. And are you aware that under the ordinance you can use it forever no matter who your tenant is?
A Unless my building is vacated for six months.
Q And at that point in time, based on your understanding on what the City ordinance says, will the right to have a drive-thru window be eliminated?
A I don't know what City Council is going to say.
Q Well, does the zoning ordinance say that it will be eliminated?
A It says it will be a conditional use.
Q Okay. And isn't that because that, at least in part, the City listened to you and George and your concerns about the drive-thru window?
A No.
Q You deny that?
A Under the RDV zoning the drive-thru window was always a conditional use.

Q And that is not only for 907 Pendleton Street, it is for every RDV property in that 103 acre tract, isn't that true?
A And additional tracts throughout the City.
Q Right. So the question I have for you is, where do you come up with this idea that the City intended to target you and hurt you by making the use conditional when it happens all over the City?
A We feel that RDV is the zoning classification.
Q What evidence do you have to support what you just said?
A Because we believe it is arbitrary and capricious.
Q What evidence do you have to justify what you just said?
MR. BURKE: Your Honor, objection, he has already testified that he is not a lawyer, he is asking about legal conclusions about RDV. That is going to be something we argue in the directed verdict motion, but that is not something for Mr. Hassiotis to answer.
THE COURT: I think so. I will sustain the objection. Of course, you can rephrase your question, Counsel.
Q Do you have any evidence, other than your opinion you have expressed that the RDV classification was established by the City, City wide, because they wanted to target you?

A They wanted to target our use.
Q But do you have any evidence?
A Yes.
Q What is it?
A That they took a C3 zoning where I had full property rights and condensed it down to a RDV zoning where my full property rights were taken away.
Q Mr. Hassiotis, this is a part of the application for, the rezoning. It has been made an Exhibit, a Plaintiff's Exhibit I believe. Plaintiff's Exhibit number 1, I am sorry, you can turn back and look at this. And this is your Exhibit, Mr. Hassiotis, and this is the comparison of the usage under this zoning plan where we have got C2, C3 and RDV. So, I guess the first point I want to make is, there are a lot of things that a property owner, a RDV property can do with their property if they choose to. Do you agree with that?
A There are a lot of things they can't do.
Q That wasn't the question.
A There is a lot of things they can do, yes.
Q Okay. Single family dwellings, right?
A That's correct.
Q Duplex dwellings, right?
A That's correct.
Q Multi-family dwellings?

A That's correct.
Q Schools?
A I don't see schools.
Q Requires a special exception but not prohibited. But most significantly for us, a restaurant with a drive-thru is permitted, drive-thru is conditional use, correct?
A Yes, that is correct.
Q Restaurant with indoor seating only is permitted under the RDV, correct?
A No, it is conditional use, indoor and outdoor seating, only indoor seating is permitted.
Q Is there outdoor seating at OJ's?
A It could be.
Q Is there?
A No.
Q I am going to show you Defendant's 28. Do you see that on your screen?
A Yes, I do.
Q Do you recognize that building?
A Yes, I do.
Q What is that building?
A Trail, (inaudible).
Q Where is it located?
A Almost directly across the street from us.
Q Do you know who owned that property as of January,

2019?
A Enigma Corporation.
Q Is this the corner property we have been talking about?
A It is now.
Q And you realize, don't you, that that building could be built on that property even if it was zoned RDV? Did you know that?
A It would have been conditional use, I think.
Q RDV?
A I don't know. But I know that the initial footprint of that building was only where that white truck is. All of that is additional building.
Q Do you recognize that?
A Yes, I do.
Q That is the same building, isn't it?
A It is the same building, yes.
Q That is what the building looks like from across Pendleton Street, doesn't it?
A I am a little further on down so that would be kind of looking at it in a little bit of a different, that would be looking at it directly across the street from the empty lot there.
Q That is a pretty nice looking building, isn't it?
A Trail built (inaudible).

Q Do you think that is something that the whole community benefits from, having a building like that on the corner there?
A It benefits Trail and the Carter Corporation. It benefits people that want their hair done.
Q Let's talk about Enigma for a minute. If Enigma built that building there and had the right to do so in a RDV designation. Then what is your beef about having their property as a C3?
A If Enigma Corporation had been left on that RDV, we probably wouldn't be here.
THE COURT: What was your last answer?
A I said, if the Enigma Corporation was left on that RDV plan that was initially proposed by the City and not taken off that zoning we probably would not be here.
Q That's, that really got under your skin, didn't it? When Enigma went back in public, asked and explained why they thought the property should be zoned C3?
A We don't feel that their argument is correct. Because the three properties that it joins on Academy Street were vacant lots.
Q Zone C3?
A They were zoned C3 but they were vacant lots. And the Burker King was a vacant lot, had a restaurant built on it but after us.

Q But what we have been saying, on the City side, is that, it was a factor to consider when considering, when deciding whether to recommend the Enigma Property stay a C3. It was a factor to consider that the other three corner properties at that intersection were also C3. Do you agree with that. At least, you don't have to agree with what they did. But don't you agree that that was a factor that was taken into consideration?
A I mean it makes sense to have all four properties zoned C3. But I don't see why my property across the street is not also C3.
Q Well, your property is on Pendleton Street but it is not on Academy Street, correct?
A This building faces Pendleton Street. The address is Pendleton Street. It does not face Academy.
Q But I am talking about your property now. Your property does not front on Academy or bound, it is not bound by Academy Street, correct. That makes your property different from, not only the Enigma Property, but the other three corners of the intersection, doesn't it?
A When the Planning Commission drew that black line, I mean it was almost arbitrary. I mean, they could have drawn it one block further over and left us the C3.
Q But the plan that the Planning Commission put into effect did not come along until City Council approved it,

isn't that right?
A That's correct.
Q And the basis for the Enigma property being zoned C3 as opposed to RDV, is because the other three corners were C3. And that Academy Street was an arterial road that had over 20,000 vehicles a day. Isn't that right?
A Well, the City had to come up with some type of argument to support their claim.
Q And they did, didn't they?
A They did.
Q Thank you.
THE COURT: Counsel, let me just ask this question. I want to make sure my notes reflect what was stated earlier listening to your line of questioning. The Family Dollar store is located right next to OJ's and a vacant lot in between there. That store, Family Dollar store does not, the entrance to that Family Dollar store faces Pendleton Street and does not abut Academy Street for zoning C3, is that right?
A That's correct.
THE COURT: I just want to make, did my notes reflect correctly?
MR. PRICE: They do and the reason that they are different is that they are not a part of the 103 acres that was rezoned.

THE COURT: There is a line in there.

MR. PRICE: Yes, sir.

THE COURT: And by virtue that line, however big it is, they just didn't make the cut.

MR. PRICE: Yes, and I think the Planning Commission would say, when we draw lines there has to be an end of the line somewhere and that is where it was.

THE COURT: So, well, I guess my question. Of course, I can ask this. But where is the, I don't know where Ms. Stroud testified, to that question. She talked about where the lines were. But where is the element of fundamental fairness in that in terms,-- because the Planning Commission did the line. So you are talking about equal protection and fundamental fairness. I am just questioning that OJ's interest, entrance to OJ's faces Pendleton Street. Family Dollar's entrance faces Pendleton Street. Neither one of these businesses abut Academy. One is zoned RDV and the other one is zoned C3. Only because the 103 acres. My question is and I think Mr. Tankersley, he was one of the person's that voted against this and he gave his perspective from that of being a development. I mean, he was in the developer mode, at least is my understanding as to why he voted that way. But apparently he saw an issue as well. Am I right?

MR. PRICE: What he testified to was that, from his

perspective as a commercial developer, he didn't like it. But from his perspective as a member of the Planning Commission, the Commission's decision is appropriate. He didn't like it, he voted against it. But as he said, and you remember, he kept score. He said it was almost like a baseball game. He said at the end of the day the votes were 28 in favor, when you include City Council and the Planning Commission, two against. And he was one of the two against. But he said that the plan was approved, it was a good plan, he just didn't like the --

THE COURT: -- I understand that Counsel. So the Family Dollar store, if they went out of business and whoever owns that building or site, they put up a restaurant with a drive-thru window, loud as all get out, they would have the ability to do that because they are C3.

MR. PRICE: I can't follow everything that you just said but they are C3 so they can do things that are differently than the property that is already there. I acknowledge that and my point to that, if I may.

THE COURT: Yes, sir.

MR. PRICE: Is that and I don't want to get the Judge mad at me.

THE COURT: No, I don't get mad.

MR. PRICE: The phrase, fundamental fairness, is not

the same as rational basis. From the City's perspective and the minutes of City Council and the ordinance itself says that the reasons for the rezoning of this area were multiple. But they were invited by the West End Neighborhood Association to come look, what the neighborhoods association and the neighbors there wanted was consistent with the Sterling master plan and with the 2009 City wide plan. And that was the starting point. Ultimately there is a rational basis that we may not all agree with to explain the difference between how C3 applied to Enigma and not to 907 Pendleton Street. Respectfully the fact that Family Dollar is C3, from a legal standpoint, this is just my argument; from a legal standpoint, given the fact that an ordinance like this is presumed valid and from an equal protection standpoint need only have a rational basis for which a reason can be given for zoning property differently inside the zoning area. I realize I am rambling. But ultimately what I am saying in a shorter sentence is, with all due respect, how the Family Dollar store is treated is not relevant to the analysis because it is not a part of the area that was rezoned. If it were, yes. The City would have a challenge to explain why they would allow them as C3 and 907 as RDV. But they are not.

THE COURT: Okay.

CONTINUE CROSS EXAMINATION

Q Mr. Hassiotis, I am going to put up, this is Defendant's Exhibit 31 and this is a tax notice for the property for tax year 2021. And you see I have marked the taxable market value for that year, for the property, $322,840.00 dollars. Did I read that correctly?

A That is correct.

Q I am going to put down now Exhibit 32 which is the tax notice for 2019 and I had circled the taxable market value there and that is $280,740.00 dollars. Did I read that correctly?

A That is correct.

Q I am not good at math but the taxable market value has increased from 2019 to 2021. Is that correct?

A Yes, it has.

Q Okay. Isn't it true that one of the reasons OJ's is thriving at 907 Pendleton Street is because of its proximity to the West End neighborhood?

A I think they are striving is because they are a good restaurant and have good food.

Q And it is a restaurant that is within walking distance of many residential properties across Pendleton Street. Is that correct?

A It is but I don't think that that is their principle customer basis.

Q Okay. OJ's certainly doesn't hurt the neighborhood, does it?
A By the ordinance they claim to make smells, noises, and light pollution.
Q Where in the ordinance?
A In the zoning, that was the argument made to change us from C3 to RDV.
Q It is not in the ordinance, is it?
A It is the reason that we were changed from C3 to RDV.
Q My question relates to the ordinance. Since it is the law that you are challenging, the ordinance does not say anything about your property's smell or sounds, does it?
A Not directly, no.
Q No, it doesn't. As far as the highest and best use of the property at 907, you are not calling a licensed real estate appraiser to offer an opinion as to the impact of the rezoning on the value of your property, are you?
A No.
Q And you will agree with me that OJ's Diner provides a benefit, economic benefit to you and your brother, does it not?
A It provides an economic benefit to me and my brother, it provides an economic benefit to their employees and to Greg Johnson.

Q Those are all the questions that I have. Thank you.

THE COURT: Anything else?

MR. BURKE: Just a few follow-up's, Your Honor.

REDIRECT EXAMINATION

By Mr. Burke:

Q If OJ's stop paying the rent do you come back here and challenge the ordinance?

A No.

Q So how much, how good OJ's is doing right now doesn't really have anything to do with this, does it?

A OJ's could leave tomorrow, I can't keep them in there.

Q Has anybody at the City told you you can have conditional use if your tenant leaves?

A No.

Q In fact, you heard Ms. Stroud's testimony yesterday, what did she say about who gets conditional uses?

A Conditional uses are conditional use. You have to go to the City and apply and they can say, yes, you can use it; they can say, no, you can't use it. But I still have no guarantee that they would guarantee my usage.

Q And it depends on what tenant shows up?

A It could. I mean if I was to bring in a big national chain that stayed open until 2:00 a.m. the City would probably deny that. That would cause light pollution,

noise and smells, way after dark. But those are the type of people that could pay me more money for my property in the future.
Q And those people would be allowed to do that in a C3 zoning?
A Under C3 they would have complete land use, rights to, they could have a double drop there if they wanted.
Q Mr. Price went through some of the uses you could use in the RDV. Would you have to tear down your building for most of those uses?
A Yes.
Q To build something new?
A Yes.
Q And you said your building could last another 70 years?
A I mean, the building, I mean if you look at the Clock down the Street, it's built in the 50's and still operating as a restaurant. 75 years, 100 years for a restaurant is not unusual. But if the City makes it functionally obsolete by zoning then it is not the current use that that potential buyer in the future would consider because they would go somewhere else and not have to jump through the hoops.
Q If your, if your business is not a bad business, as they say, has anybody in the City told you why they made a

conditional use in the rezoning ordinance?
A No. Nobody from the City approached me. I talked to Lilian and Brock Fleming for about five minutes on the phone. And that is all the time she would give me and never approached me.
Q That is all I have.
THE COURT: Anything else?
MR. PRICE: Just briefly.

RECROSS-EXAMINATION

By Mr. Price:
Q You agree with me that, that from the time OJ's began leasing that property to the present time, the use of that property as a restaurant has been a good use?
A Yes.
Q The highest and best use?
A That was our intention.
Q Thank you.
THE COURT: Thank you, sir, you can step down. Any other witnesses, Mr. Burke?
MR. BURKE: Your Honor, that is the Plaintiff's case, Your Honor.
THE COURT: Alright. Mr. Price?
MR. PRICE: Your Honor, the City would move for a directed verdict at this time. The argument should track the trial brief I set up to the Court at the beginning of

this case. But the burden of proof is on the property owner, it is not a typical burden of proof, it is an extraordinarily high burden of proof as indicated by the case law. This ordinance is presumed to be a valid legislative enactment and is presumed to be constitutional. According to the case law, every presumption will be made in favor of the constitutionality in this ordinance and it would be declared unconstitutional only when its validity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the constitution. That is just from that McMaster case. In order to meet the burden of proving this ordinance is invalid, the Plaintiffs have had to show by clear and convincing evidence the arbitrary and capricious nature of the ordinance. That is from Bear Enterprises. Only where the City's zoning action is so unreasonable as to impair or destroy constitutional rights can the Court declare the action unconstitutional. If the propriety of the decision of the City is even fairly debatable, the Court cannot inject its judgment into its review of the City's decision and must leave the decision undisturbed. The City does not deny due process to the Plaintiffs in this case merely because the rezoning plan does not permit them to make the most beneficial use of their property. Their allegations are two, substantive

due process; and equal protection. To prove a violation of substantive due process the City's deprivation of a property interest, in this case, grandfathering in but rezoning the property to RDV must fall so far beyond the outer boundaries of legitimate governmental authority, that no process could remedy the deficiency. A legislative body in this case, City Council, does not deny substantive due process simply because it does not permit a landowner to make the most beneficial use of the property. From an equal protection standpoint, again, the law establishes a high burden. The equal protection clause does not prohibit different treatment of people in different circumstances under the law. Instead, the classification must be reasonable, not arbitrary and must rest upon some ground of difference, having a fair and substantial relation to the object of the legislation so that all person's similarly circumstance shall be treated alike. To this point, the most important document in this case is the ordinance. It is the final say of the City; it is the best evidence of what the City did; it is the best evidence of why the City did what it did. The ordinance sets out in great detail the history that is just summarized on these posters. But the history of why they decided to rezone this property and no where in that ordinance is there any reference, specifically to the

Hassiotis' and it is because this ordinance was not passed to hurt them in any way. In fact, although they disagree with us, the ordinance helps them as well as the other property owners in the area to the extent that it makes that area more attractive on any number of different levels. And even though they are at the outer boundary of the area, they are going to benefit, and I say they are benefiting by the passing of that ordinance. So, it was not, there is no evidence that it was targeted against them, to hurt them. But the best evidence of what the City did and what lies in the ordinance itself. The equal protection claim is not based on anything that would give rise to a strict scrutiny standard. No. It is going to be the rational basis standard. And as to that the Court must determine whether the law treats similarly situated entities and we have to read into that within the zoning area differently, and if so whether they had a rational basis for the treatment. All we are talking about really is the Enigma property. And the Enigma property, I don't even tell you anymore what I have told you too many times already about why the Enigma property was differently than the Hassiotis property. Why are they C3, they are C3 because they were before, they are C3 because they are on this intersection. All of that is set forth in the ordinance which I repeat, is the best evidence of what

they did and why they did it. As to the Stone Family Trust. Actually that, that has really nothing to do with the Hassiotis family. But in that case the Family Trust felt and asked that the City take another look at what they had been zoned, RM2 I believe, and asked if they would consider RDV. The City looked at it and they said, you know, it is consistent with our plan. So, yes, we will do that. Every other example that we talked about today, where tweaks were made in the ordinance or tweaks were made in the plan were based on request made by property owners in the area for tweaks or changes that made sense with the overall plan. The Hassiotis request simply did not and that is not that they are targeted, it is not that it is illegal, it is not that it is arbitrary or capricious. It simply is, they were on that stretch of property where everybody else within the area, the zoning area, was going to be zoned RDV. There is plenty of things that a prudent property owner can do with an RDV, it is in the record. All of the uses that are available. And the bottom line on that is that there is just no evidence that allows the Plaintiffs to climb that high bar, to establish either a substantive due process or equal protection violation. And as a part of that and it is a part of that, what we have seen most recently, is that the property has been leased for years to a good

tenant, it is a popular tenant. The taxable value of this property has gone up since the rezoning took place. There is no evidence in the record that the Hassiotis Family has been robbed of all value of that property. It has not been confiscated in any way. That too is an element that they have to show. So we are moving for a directed verdict because taking all the evidence into account, the Plaintiffs have failed to meet a very high bar that the law establishes, not the City, the law. And we feel like it is the obligation of this Court to grant the City's motion for directed verdict as to the claims in this case.

THE COURT: Alright. Thank you, Mr. Price. Mr. Burke. Just so the record will be clear. We are citing these cases but I don't think we gave citations on all of them so the Court Reporter will have where those cases are. We talked about a number of cases. So, Counsel, if you have those citations can you just read them into the record so my Court Reporter would have those citations.

MR. BURKE: Yes, Your Honor. In fact, I will make my notes a Court's exhibit.

THE COURT: Will that be okay?

MR. PRICE: That's fine.

THE COURT: All right. Let's go ahead and make that a court's exhibit since that has all of the cases. On the record, will be as plain as possible.

(Whereupon, Court's Exhibit 1 was marked.)

THE COURT: Go ahead, Mr. Burke.

MR. BURKE: Your Honor, initially we have shown that the testimony that we have gotten in from Ms. Stroud and Mr. Tankersley is that, based on the law, RDV as applies to my clients property is an invalid zoning classification. Conditional uses allow unelected officials to essentially make zoning decisions, Staff and Planning Commission, that should be left to elected officials and let the City Counsel is the one who is suppose to pass ordinances related to zoning. Instead they have given that ability to the Planning Commission to effectively, like Ms. Stroud testified, decide who is allowed to have a drive-thru restaurant based on who that person is. And for that reason alone, I believe you could overturn RDV as applied to drive-thru restaurants. They have given away their executive function to a unelected, to unelected officials to make final decisions. And so RDV, as applied to my clients is invalid. Secondly, and I am going to follow along with the Harbit case because that was the one that explained it the best. But and Harbit v City of Charleston; well that is in the record. Anyway, I think Mr. Price left out one of our arguments which is procedural due process and that is in our second cause of action, ordinance is an enactment, the enforcement

violates the procedural due process clause. And that is paragraph 39 of the complaint, Your Honor. Harbit states the fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice and opportunity to be heard in a meaningful way, in judicial review. The reason that the Stone Family Trust property is important is because of the City's own ordinances which we have pointed out a couple of times, state that if you up-zone a property to a more intense use, you have to go back to the Planning Commission and allow people to make, to have input and for the Planning Commission to make another recommendation. The proposed zoning for the Stone Family Trust was RM2. The ordinance and I have a copy for the Court, if you would like a copy, Your Honor. It might be easier to read. So the proposed, the requested zoning by the applicant, which was the City, was RM2. It states in relevant part, if the City chooses to consider rezoning in an area larger than requested, which they didn't do, or a more intense zoning district. And that more intense zoning district refers back to the request that is in that line by statutory interpretation, the matter shall be referred to the Planning Commission for public hearing and recommendation consistent with the provisions of this chapter. That is specifically so there is procedural due

process so that people can show up and say, I don't think you should get rid of residences and put in something that allows commercial use. And that is exactly what happened when the City amended the proposal to change the proposed zoning for the Stone Family Trust from RM2 to RDV. That alone, I think you could give declaratory judgment that the ordinance is invalid and send it back to the City. But that is not the only procedural due process issues. Ms. Stroud and Mr. Tankersley both got on the stand and said it would be entirely improper for City Council to try to get Staff to make a different recommendation or get the Planning Commission to make a different recommendation because that is not what the process is. They have given those people the authority to make recommendations. City Council is suppose to act on recommendations. Instead we sought evidence that, Knox White was pushing it along, he thought it was already on the City Council agenda and that was related to Ginny Stroud who is making the recommendation. Knox White, this is all news to me, I would like to know about who and what opposition is about, I do support a reason. The idea that Ms. Stroud, who is the, at the time was the community development manager, doesn't feel some effect when the Mayor of the City says, hey, I support the rezone. Who is in opposition because I want to know what that is about. By the way, my clients

are here, the ones in opposition. And Ms. Stroud says, hey, we have got a meeting later, let's talk about that. Let's not put it in an email. We have an email from Fleming, also relayed to Ms. Stroud. I attended the West End Neighborhood Association meeting and the attendance was good but I was starting to hear the sadness of the residents and they failed to understand how 11 commercial businesses, including my clients, could hold the RDV zoning hostage but the residents in the communities affected do not seem to matter. The question is, if they were holding it hostage who paid the ransom and to whom. And the reality is, is that they paid the ransom to the Stone Family Trust by giving them the zoning classification they wanted; they paid the ransom to Enigma Corporation by giving them the zoning classification they wanted. And those are, we are at the directed verdict stage and so this is, is there any evidence to, and I understand it is a high burden, but is there any evidence to support that claim. There are three emails that support that, besides the fact they didn't send it back after the Stone revision. Three emails supporting that they, that City Council was trying to effect what was going on in the zoning ordinance. Secondly, or thirdly I guess, I will go to substantive due process. Again, quoting the Harbit case, a party must show he was

arbitrarily or capriciously deprived of a cognizable property interest rooted in State law. I agree with Mr Price that they only had to show a rational basis for that claim. But you have heard from Ms. Stroud. Now looking at the second page of Plaintiff's 2, just so we have the map to look at, well, look at the third page. We ask Ms. Stroud, how did you come up with this zone, how did you draw this line. And she said, well, we had to draw it somewhere. You know, we looked at several plans and we decided that this is where the study zone is going to be. If she had drawn it a little bit over, Family Dollar would have been in there. I mean you can see the line down here where they just kind of arbitrarily chose to put in some residences down here but not these residences over here. If they had drawn it on Pendleton Street, I asked her, could you have just drawn it on Pendleton Street. Yes, we could have done that. That is the definition of arbitrary and here is, is the reason why this case is not like any of these other cases that Mr. Price cited. All of those cases, it was a landowner coming with one parcel and saying, will you rezone my parcel. And the City saying or the County saying, yes or no. And then an appeal happened. This is the City going to the City and saying, I want to rezone 103 acres. And trying to define where the zoning outline is is inherently an arbitrary and

capricious decision to which the City has not shown any rational basis for why that line is there as opposed to somewhere else. The City said, well, we rezoned, we looked at Enigma again and we made a mistake, that should be C3 because it is on an arterial road. I asked Ms. Stroud, well, what about the Family Dollar, would that be zoned RDV, had been included in the zoning area. She said, no, it is close enough. That right there, another arbitrary and capricious decision. Well, this is the only reason we have for Enigma being C3 but then, Family Dollar is close enough so we would have zoned that C3 also. That would have changed our decision. And for those reasons, on substantive due process, I would say we have met our burden of showing that the City has acted arbitrary and capriciously. And I do think that Mr. Tankersley's concerns, he was just putting them in a different way as we put it as lawyers. He was saying, look, it is too big, this isn't how zoning is done. And the reason zoning is not done that way is because by trying to rezone this much, this much space you are going to have, you are going to have to treat people differently. You are going to have all of this, these issues injected into the rezoning. You are going to have challenges from a bunch of people. That doesn't happen when you rezone one parcel or two parcels or one residential neighborhood. All of these

people have disparaged interest. So just the fact that they tried to rezone 103 acres at once is what caused all of these issues. Finally, equal protection which is really my clients biggest issue. Harbit states the Equal Protection Clause requires that State's apply each law within its scope, equally to persons similarly situation and that any differences or applications must be justified by law's purpose. It does not prohibit different treatment of people in different circumstances under the law. Instead the classification must be reasonable, not arbitrary and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike. In a case such as this the rational basis standard applies. That is an accurate, that is the law. We have a rational basis for treating one business differently from all of the other businesses. And I understand that Mr. Price wants to constrain it to two things. One is, only look at the ordinance, not the process that led up to the ordinance. It is the entire process that creates this ordinance, not just what is written in the end. Otherwise, the City could just paper over all of these substantially, equal protection issues and substantive due process issues by writing a good ordinance. Obviously the City Council did

not draw that line, the City Council did not decide to allow funeral homes without crematoriums. The City Council did not, I know they did pass the ordinance to do that, but they did not decide to propose C3 for the Enigma Corporation instead of RDV. They did decide to change RM2, the Stone Family Trust from RM2 to RDV. But the issue here is, did my clients have an equal, were they protected equally under the law as the other business interest in this district or outside this district. They weren't treated the same as the Family Dollar which is C3. They weren't treated the same as the Enigma Corporation who asked the, you heard testimony, asked the exact same thing. They said, I can't find any tenants, by the way they found tenants apparently who don't need C3; but I can't find any tenants if you rezone the RDV. My clients say the exact same thing and get, no. And the reason why is because the City targeted them, if they didn't target them because they had issues with their family they definitely targeted them after my clients went to the press and after my clients objected at the meetings. And after all of that they said, well, don't do what these guys want because they are trouble makers. That is not a rational basis for making that decision, that is a targeted equal protection violation. Finally, we have presented evidence of --

THE COURT: Is there anything in the record saying that they are viewed as trouble makers, is there anything in the testimony to that?

MR. BURKE: So Mr. Hassiotis testified that they had a police escort for his brother to one of the meetings and that he was, and they brought police in when he was speaking at one of the meetings at one time.

THE COURT: They said he was speaking loudly, too loud. That is what he testified to.

MR. BURKE: And he testified, I don't know if he said the next meeting, but another meeting when George Hassiotis showed up, and both of them showed up they had a police escort waiting to take them to the meeting.

THE COURT: But there was no testimony that they were trouble makers.

MR. BURKE: No, that's my word, Your Honor. There was no, that's my word, yes.

THE COURT: Okay.

MR. BURKE: Okay. Finally, we have presented evidence of damages. At least enough to get over the directed verdict stage. My client testified that the issue with RDV is not whether OJ's continues to operate there and pay rent every month and be a good tenant. The issue with the RDV classification as abided to my clients property is what happens if OJ's isn't there anymore.

What happens if OJ's decided to stop paying. My client, the uncertainty of what my clients can do with the property is what causes the value of the property to decrease. And right now it is zoned as conditional use. The testimony is that it decreased $900,000.00 dollars.

THE COURT: That is the testimony that came from --

MR. BURKE: Mr. Hassiotis.

THE COURT: Mr. Hassiotis. Did he testify to that?

MR. BURKE: He testified that --

THE COURT: Did he give a number?

MR. BURKE: He did. Well, he gave two numbers. He said that, under C3 it would be worth $1.5 million dollars. And under RDV it is worth $600,000.00 dollars.

THE COURT: Somebody offered him $600,000.00 dollars.

MR. BURKE: Yes, Your Honor.

THE COURT: That was an offer for $600,000.00 dollars. It wasn't a evaluation, I don't think. Go ahead.

MR. BURKE: So in closing I would just submit that this rezoning plan was bogged in the beginning. The area to be rezoned was so large and the pressure on the City was from the City Council was too much. They did things they wouldn't normally do and those things included procedural and substantive process violations that caused my clients, and equal protection violations that caused my

clients damage and therefore directed verdict should be denied. Thank you, Your Honor.

THE COURT: I have got some questions. Go ahead.

MR. PRICE: Yes sir, briefly. Well, I guess a global response to this argument that the process that led to the ordinance is enough to get them past a directed verdict stage, I respectfully disagree. And for the umpteenth time I turn the Court to a trial brief, to cite Seawall. Page eight of the trial brief, it states our position with regard to the minutes of City Council and their evidentiary weight, keeping in mind, the City doesn't even have the burden of proof. However, the minutes, the ordinance are in the record. What our Courts say about that is this. First of all, the code requires public bodies to keep written minutes of their meetings. That is South Carolina Code section 30-4-90 (a)(3). And specifically the municipal corporations, South Carolina Code section 57-7-50 requires the City to provide for keeping minutes which shall be a public record. Now, here is the important part that I will cite to the Court. It is from the case of Berkeley Electric Coop. versus Town of Mt. Pleasant. This is not verbatim quote, I don't remember being that but it is verbatim and it is what the law is. The municipal records properly authenticated or verified, which are admitted in this case, are the only

competent evidence of the proceedings of the transaction of the governing body. Parol evidence cannot be admitted to explain, enlarge or contradict minutes of the proceeding of the City Council unless the minutes are incomplete or ambiguous. So, that is why I said repeatedly, the best evidence in this case is the ordinance itself which answers the questions, I believe, that are posed about the City's case. It tells you why they did it, it tells you what data they relied on to adopt a plan, it talks about the meetings that were held; it contains evidence of the first reading of the ordinance before City Council, where the Plaintiffs had a full opportunity to express to City Council their concerns and reservations and objections to the proposed plan. They had their procedural due process, they were there, they argued. It is reflected in the minutes several paragraphs long. As to the, as to the argument that the statute, 19-2.3.2 is violated by the City as it relates to the Stone property. The statute actually says that this would apply and they would need to send it back to the Planning Commission if the Council chooses to consider a more intense zoning district. That is not what happened in this case. What happened in this case was one segment property within the zoning district that was at issue. And the minutes of City Council reflect that this was

raised in open forum, that the City Council asked that the Stone Family Trust request be considered and put in the ordinance. And that is what happened, in the second and final reading. All of that is shown in minutes. But the point is, the Plaintiffs read that statute too strictly or too broadly rather. It is not talking about every little thing that goes on in the process. It is talking about whether the zoning district itself is made more, what is the word, intense and that is not the case here. It would be if the statute said, a more intense zoning district or any part thereof. But it doesn't say that. If it had then they would have gone, taken it back to the Planning Commission. And from all the evidence we have heard in this case, the Planning Commission would have said, okay, and they would send it back to Council. But I am saying Council didn't have to do that because this isn't a situation where a more intense zoning district is happened as a result of a tweaking of the plan as it related to the Stone Family Trust. The reference to the three emails is interesting to me because the testimony in this case included a recognition that County Council was interested in this claim. They asked questions about this plan. The Mayor was interested in the plan. The Mayor said he was in favor of the plan. That does not mean that, either the Planning Commission or City Council was unduly influenced

or pressured or paid off to target the Hassiotis'. And Mr. Tankersley and Ms. Stroud testified to that, there was no, there was no attempt to influence Council improperly. I stand by my position on Harbit as it relates to equal protection. And if I didn't say it before, the argument about the damages in this case do not apply in the light of the case law about the burden of proof as it relates to the impact of zoning on a person's property. This property hasn't been confiscated, it is still in use. The highest and best use of this property as admitted by Mr. Hassiotis as the use, its current use, the restaurant, as it has been for years. And to try to look into a crystal ball and predict what may happen in the future, I respectfully say is not what we are suppose to be doing here. The issue is, as a result of the ordinance, did that property lose all of its value. That is basically what the proper focus is and it obviously did not. And obviously, it increased the value since the zoning plan went into effect. So I stand by my position on behalf of the City, we think that this case is appropriate for a directed verdict.

THE COURT: All right. Mr. Burke, can you address Counsel's argument regarding the procedural due process?

MR. BURKE: Sure. Well --

THE COURT: You referenced the minutes.

MR. BURKE: Yes. So the rule from Berkeley Electric, Your Honor, is that the minutes are the best evidence of that meeting. So the City Council minutes, or the Planning Commission minutes or the minutes of any of these meetings, if you try to go behind and say, well, the City Council approved the minutes at the next meeting but I heard so and so say, X. Then he would be completely right but that is not what we are talking about. It doesn't, the minutes don't take over the entire process which is where the procedural due process issues are not, at the one end, the Stone Family Trust is and I will get to that in a second. But the procedural due process issues didn't happen at the City Council meeting, they happened during the process of bringing this up to the City Council meeting. And so that, that case does not apply to what I am talking about, in my opinion. Would you like me to go on?

THE COURT: Go ahead.

MR. BURKE: You know, the argument with the 19.2.3.2, kind of goes to what, the whole issue here. The statute is set up to rezone one zoning district at a time. A zoning district is something that is zoned RM2 and you want to change it to RDV. And so, to say, well, we are doing the entire 103 acres and so you have to make a total change to all of those 103 acres to allow a Planning

Commission meeting for people to give public comments. That is not the intent of this section. The intent of this section is, is I come in and say, I want to rezone from RM2 to RDV and then I didn't. And I approach Council and I say, actually I would like C3. And the City Council says, okay, we will zone you C3 without having any public input. And that is exactly what they did with the Stone Family Trust district. Each one of those is a separate rezoning. Just because they put it in all one ordinance doesn't mean that this doesn't apply. That is actually all unless you have any questions.

THE COURT: Well, let me just, let's go through, I have two questions. And I am referencing, Counsel, to the complaint filed, go to paragraph 21 in the complaint. And paragraph 21, the complaint and I will just read it into the record. The Enigma parcel and this is on page four of the complaint. The Enigma parcels are directly across Pendleton Street from the subject property. The parcels are closer to the residential neighborhood than the subject property. There is no existing use of the Enigma parcel, allowing the Enigma parcel to be used for commercially will create traffic issues that will cause vehicles to travel through the residential neighborhood. And tell me what you mean by this.

MR. BURKE: Sure, Your Honor. And sometimes things

become less relevant or more relevant as you go through discovery. But if I could get the camera. Thank you. Essentially it is, the Enigma parcel empties onto Pendleton Street. It is almost impossible to go this way to get out of there, to go towards Academy. And so what is likely to happen, or at least what we alleged happened is that people who travel down Pendleton Street and cut back through here, through the neighborhood, come out here and make a right over here. And that is what we are alleging there. And honestly it was an argument against the rational basis of rezoning that to C3. But it really is irrelevant, what we are talking about here. But that is what we were, that is what we were alleging, that people would travel through these residences. By making it a C3 you would actually increase traffic through the neighborhood.

THE COURT: Alright.

MR. BURKE: And just to, not to correct you. So we did file an amended complaint in this case and the paragraph you were quoting is paragraph 17 of the amended.

THE COURT: In the McMaster case, it states in order to meet the burden of quoting the zoning ordinance invalid the Plaintiffs must show by clear and convincing evidence the arbitrary and capricious nature of the ordinance. And I think the words that I rely on that case is clear,

convincing evidence. Do you want to talk a little bit about that.

MR. BURKE: Yes, and I think that the, I agree that is the standard for the equal protection issue.

THE COURT: Of course the bar is high in that regard.

MR. BURKE: Correct.

THE COURT: And then I will read the next part that says, only where the City zoning action is so unreasonable as to impair or destroy constitutional rights can the Court declare the action unconstitutional. So the whole idea of astounding upon the Plaintiffs position, of showing that the ordinance was so arbitrary and capricious, I need you to talk a little bit about that. And where ever the City zoning actions are so unreasonable as to impair or destroy the constitutional right can the Court declare the action unconstitutional. Talk about that right there. I am trying to see where you are.

MR. BURKE: Okay. So our position is that the real protection issues occurred because, when the City Staff heard the exact same argument from two different companies, that zoning into RDV would cause them to lose tenants and treated one company one way, Enigma; and treated my clients a different way because they just didn't like them. And that is what my client has testified to, that he feels or he believes he was singled

out for treatment that the other businesses in the area were not. And the final map shows that. My clients have the only business that was existing when this rezoned happen that is not allowed by right in this zoning area, in the area map. There is, they are the only ones. And so every other, we went down all of those objections, all the different business owners had, and the City Staff made all that work. And I think we have shown that they, the only one that they didn't listen to was Hassiotis'.

THE COURT: How do you address the, the issue of whether or not, and I think there was some testimony that the Planning Commission or someone made a mistake as it relates to the Enigma because of the traffic. Because they came back and they had this legitimate or alleged legitimate purpose to change the Enigma property from RDV, which they originally had along with your clients property. So they went back and said, listen, this is an arterial along Academy where there is certain amount of cars going back and forth. And the reason for the change and I know there has been some testimony about that Enigma or at least a representative of Enigma had a conversation with Mr. Hassiotis, that they wanted it changed because they would lose tenants. But, ultimately, the reason was because of the traffic.

MR. BURKE: So the City's stated reason for giving

the Enigma Corporation what they wanted was the traffic along the arterial road and the four corners rule, that all four corners have the same zoning. But Ms. Stroud's own testimony shows that that's an arbitrary decision because it wouldn't be applied to the Family Dollar across the street. And that it enters on Pendleton and is not part of that corner. And so I guess the question is, is that a rational basis for something if it is just an arbitrary decision that they just made to create a reason for giving somebody what they asked for, which is what they did.

THE COURT: I think you, I think there was something you indicated earlier was that you thought that the Planning Commission regarding the whole 103 acres, for everybody, making that provision was arbitrary and capricious.

MR. BURKE: Yes, I think, yes. Our position is that the decisions of what to zone, when it is this large and spans over multiple commericial districts and residential districts, it is impossible for the City to make a decision about where that line is without it being arbitrary and capricious. And you can see from the line that it cuts out some residences, brings in others. It is just a made up study area and it has a real effect on the people who are included in the zoning district as opposed

to people outside the zoning district. And Ms. Stroud testified, it could have been, we might not be here today if they had just drew the line down Pendleton Street. So everything on the other side of that line, it is going to stay the way it is. And she said they could have done that but they just decided not to and she didn't give any reason for that.

THE COURT: So is it your position that the rational basis test for an equal protection plan is dissatisfied?

MR. BURKE: Yes, because the lack of rational basis. Yes, Your Honor.

THE COURT: And you probably already talked about but I am looking at paragraph 33 and 34 of your first cause of action on page five. And paragraph 33, Plaintiffs contend that the ordinance violates their rights to substantive due process. And going back to that due process argument, because it does not actually serve the general welfare. Tell me about this.

MR. BURKE: Yes. And so the allegation there is just want we talked about. It does not have a rational basis because it, it does not actually help the community in the way the City intends it does.

THE COURT: Explain.

MR. BURKE: So for example, the communities goals, as to my understanding from the West End meeting, the

community goals were to increase residential. And to, and to increase walkability to the commercial district. The City actually went directly against that goal by rezoning the Stone Family Trust lot from RM2 to RDV, allowing. It also went against that goal by rezoning or allowing the Enigma Corporation to stay C3 on that corner which is as we stated, in the other paragraph you read, would cause increased traffic for the residents as opposed to decreased traffic. And at the end of the day the number of residential areas really did not increase. And so the stated rational basis for passing the ordinance was never accomplished.

THE COURT: Okay. I don't think I have anything else. Anything else, Mr. Price?

MR. PRICE: No, Your Honor.

THE COURT: Alright. You know, I always read this into the record because I think it is important that the standard for a directed verdict as granted to the record and this is what the Court relies on. And I think this language is very important. And looking at the standard and I will read it into the record. A motion for a directed verdict should be granted only where no view of the evidence or inference made therefrom could support a verdict for the non-moving party. In considering a motion for directed verdict the Court must evaluate the testimony

in the light most favorable to the non-moving party in every reasonable inference produced from the evidence. This is very similar to the, as a matter of fact, that is the standard, the Court mirrors the Federal standard. And utilizing that standard, Counsel, I am going to deny your motion for directed verdict. Your objection is noted for the record.

MR. PRICE: Thank you, Your Honor.

THE COURT: Alright. Having said that, this case has a different posture since we bifurcated the case. So in terms of where we are, I am assuming that the next thing is to involve the jury, okay. Counsel, just tell me how you want to proceed. I am willing to listen.

MR. BURKE: I mean, that is our understanding, the next step. Well, we have put forth the Plaintiffs case to you, Your Honor. The Defendants are entitled to put forward a case if they want to in this section as well for the jury. So I don't know if they have any witnesses, Your Honor.

MR. PRICE: I think he is correct. I recognize, this is an odd case.

THE COURT: It is an odd --

MR. PRICE: -- an unusual case and as it is the City's position that the Court is the decision maker as to the constitutional issue.

THE COURT: Right.

MR. PRICE: I can do one of two things. I could simply say, we also rest at this point and then turn it back over to you to make a decision as to whether the constitutional deprivation has taken place. Or I could put up some testimony and then make the same motion. And then depending on the Court's ruling go to the next phase. I think the jury phase appears to be the last phase in this.

THE COURT: And the thing about it, if the jury, depending upon where the Court rules, the Defense, you would have to put up almost the same exact testimony, wouldn't you? You would have to present some of the same witnesses.

MR. BURKE: Yes, Your Honor.

MR. PRICE: I don't know what to say about that. I mean, my thought was, and it is just a thought, that if you make a ruling that the ordinance and its application result in a constitutional deprivation then the only issue for the jury would be, what are the damages that flow from that. So they basically would be advised, your role, members of the jury is to determine the facts on the Plaintiffs property of the ordinance and it leaves them with an RDV property.

THE COURT: If you get to that point, Counsel, you

still almost have to put up almost the same testimony or some of the same testimony that I heard already, I would think.

MR. BURKE: I think we would have to put up Ms. Stroud again.

THE COURT: So having said that, Mr. Price, have you got a case to put up?

MR. PRICE: Yes, sir. But it will be pretty brief. I have one witness. The appraiser, Mr. Haskell.

THE COURT: Is the Court, it is quarter to 1:00. We still have got, let's go off the record for a second.

(Whereupon, a short break was taken.)

MR. PRICE: Your Honor, I will publish that portion of Mr. Hassiotis testimony at this time.

Question: You agree with me that the highest and best use of that property is to be used as a restaurant.

Answer: That's, that's a subjective opinion so that's an appraiser type question. I am not a real estate appraiser so there could be different opinions on that. I don't, I believe for me right now, for my personal use, we spent a lot of money in getting it approved and having an architect design it, getting all of the, doing all the landscaping and everything to bring it up to code and all of that stuff. So for me, I would be, it would be silly of me to use it as anything else for redevelop a property

that is profitable and very popular. So there is no, there is no reason for me to change it in any way.

THE COURT: Alright. That is in the record and the Court's, Defense exhibit. All right. You have already marked that. So you want to call your witness?

(Whereupon, Defendant's Exhibit 33 was admitted into evidence.)

MR. PRICE: Yes, sir.

THE COURT: Sir, come on up.

MR. PRICE: The City would call Corbin Haskell.

Corbin Haskell, being first duly sworn, testified as follows:

MR. PRICE: Your Honor, I believe that Counsel for the Plaintiffs has stipulated the expert qualifications for Mr. Haskell.

THE COURT: You have?

MR. BURKE: That is correct, Your Honor.

THE COURT: So noted for the record.

MR. PRICE: Thank you.

DIRECT EXAMINATION

By Mr. Price:

Q Mr. Haskell, you were asked by me to, to look at the property at 907 Pendleton Street, Greenville, South Carolina?

A That's correct.

Q And my request was focused on the economic or financial impact on the value of that property as it may have been affected by a rezoning plan put into place in February 2019 by the City of Greenville. Is that correct?
A Yes, sir.
Q Specifically did I ask you to use your experience and expertise to determine the financial impact of the fair market value of that property related to the rezoning of the property from commercial, C3, to residential development district, RDV?
A Yes, sir.
Q And did you do the research in order to allow you to form it and give an opinion to us today?
A I did.
Q Is the opinion that you have something that you hold to a reasonable degree of certainty giving your experience and expertise?
A Yes, sir.
Q Tell us then what you did in order to answer the question.
A Well, in order to answer the question we had to form an opinion of the highest and best use of the property. And I went by and looked at the property, I have been there numerous times so I am very, I am familiar with it. It does have, it has frontage on Pendleton Street, it has

an access road and an exit, the drive goes around the building. It has frontage only on Pendleton Street. In order to determine the highest and best use, we looked at legally permissible, physically possible, financial feasible and actually productive. And this issue appeared to involve around the legality of the site. What we did was, we did research in the area to try and determine whether there was a evaluation difference between properties that had transferred for that commericial zoning versus properties that transferred with an RDV zoning. And we were not able to establish a measurable difference in value between these sales.

Q So put it another way, is it your opinion that you hold to a reasonable degree of certainty, that the, the transition of 907 Pendleton Street, from commericial to RDV had no impact on fair market value of the property?

A We do not feel, that based on the highest and best use there is any measurable diminution in value or appreciating in value as of the day of the ordinance, February 2019.

Q What is the highest and best use that you arrived at?

A My opinion, it is secondary commericial, similar to the way it is being used, based on development along Pendleton Street; a possible transition to professional office if it were to be redeveloped.

Q Alright, sir. In arriving at your opinion what did you look at in terms of, you told us the properties use. What else, if anything, do you look at?
A We researched the area for a transaction, primarily focusing on Pendleton Street, properties that we thought would compete with the subject. And we found, you know, a couple of sales on Pendleton Street. There was a sale, Family Legacy which sold for about $13.69 a foot. It was zoned RDV, it is zoned RDV now. It is within the overlay. The Montessori School, it sold at the other end that fronted on Academy Street, sold for $10.24, it is zoned C2. We really weren't able to extract any difference based on zoning. What it does appear to us, after we did our research, the transactions that have occurred, is more locational in nature than it is in zoning. There are a lot of properties that are zoned for commericial that are developed for more of a residential use or for an office use. So to my opinion it is more of a locational use, we don't feel like it is a primary commercial site so we didn't use those sales.
Q Okay. As part of your research into this area at 907 Pendleton Street, did you become aware of the property that is currently on the intersection of Pendleton Street and Academy Street, where I think it is called the Trail Building?

A Yes, sir.
Q In your research were you able to determine whether the building that is there now is a building that would be approved under the RDV designation of property, if that property was, in fact, RDV?
A It would be allowed under the zoning, any restrictions that would apply would be by the size of the lot.
Q Alright, sir. Those are all the questions that I have.
THE COURT: Cross-examination, Mr. Burke.
MR. BURKE: Thank you, Your Honor.

CROSS-EXAMINATION

By Mr. Burke:
Q Mr. Haskell, good afternoon. In order to find highest and best use you have to look at what is legally permissible?
A Yes, sir.
Q And is, as my clients are using their lot right now, is that legally permissible?
A It is legally permissible as a sitdown restaurant, the, in fact that it has a drive-thru makes it an existing non-conforming use.
Q Would you say it is an obsolete use, as that is defined. But is that not, the term for appraisers?

A The term of what?
Q An obsolete use?
A I don't feel it is an obsolete use. It appears to still be contributing to the value of the land.
Q What is the definition of an obsolete use?
A I would define it, we don't use that term but I would assume you are asking if the building has any remaining contributory value to the land.
Q Okay.
A And if it doesn't have any contributory value to the land I would assume that means it is obsolete.
Q And in your opinion it continues to have value to the land?
A Based on the underlying land value and the rent, supplied with a lease that indicates that they pay $4,000.00 dollars a month. Just doing a quick calculation on that, it appears to remain in interim use. I wouldn't raise it at this point.
Q You said your highest and best use or your opinion of the highest and best use is secondary commericial?
A That's correct.
Q Possibly a professional office?
A That has been the development on the street, any redevelopment has been for professional office. Several of these structures out there, a couple of businesses

raised for new office buildings. We have had some other older buildings renovated and updated for office.
Q Is the demand for office buildings still as high as it was before COVID?
A For smaller professional offices, yes.
Q But in order to make this a new professional office, they would need to raise the building, correct?
A You would.
Q They are not going to be able to turn OJ's into a law office?
A No, I wouldn't at this time. I think the underlying land and contributory value, the improvements, are pretty much at equilibrium right now.
Q And that would cost, that would cost the developer money to do that?
A That is right, once you start raising improvements of a new building it wouldn't be financial feasible.
Q You said you looked at the Family Legacy comparable?
A That's correct.
Q What was that zone?
A It is now zoned RVD, RDV, excuse me. I believe it may have been part of the commericial zoned at the time it was sold.
Q Was it on Pendleton Street?
A It is on Pendleton Street, on the corner of Pendleton

and I believe Leach.
Q And the Montessori School, that was zoned C2?
A Yes, it was.
Q Did you find any comparables that were zoned C3?
A There have not been, in this area?
Q Yes.
A No, sir. We went in, understanding the question had to do with the primary or secondary commericial. We did try and research other lands and competing, what we thought would be competing fast-food restaurants. Other than the Burger King that was constructed on the other side of Academy, there have not been any downtown. You have to go over to Rutherford before it turns into Poinsett Highway, that strip over there where Tommy's Ham House is. In that area didn't find any fast-food sales.
Q Did you use the Burger King as a C3, as a comparable?
A The, which one?
Q The one that was built right there across the street from OJ's?
A Well, it is really not across from OJ's, it is across Academy Street.
Q One street. Did you use that as a comparable at all or research that?
A There is a substantial difference. Yes, we did look at that, I have got that, I looked at that on the price

per square foot basis. I was trying to measure if there was any diminution, that sold for $12.57 a foot.
Q And what is your opinion of the value of my clients property as it is zoned now?
A I was not asked to specifically assign a value to that property but I would, at this point I would say it is based on these other sales. It is probably in the range of $14.00 to $15.00 dollars a foot, somewhere in that range.
Q What is your opinion of value of the Burger King as it sits today, of that property?
A I haven't formed an opinion on that.
Q Would it be higher or lower than my clients property?
A I would think it would be higher at this point.
Q Okay. Are you aware that my clients property, prior to this rezoning, was zoned C3?
A I am.
Q And they could have built that Burger King over there, couldn't they?
A If it were the highest and best use, which is not.
Q In your opinion?
A Well, it is what I do.
Q Sure. Did you find any properties where they were sold under a C3 zoning and then sold later under a RDV zoning?

A I did.
Q What properties were those?
A Well, most of the properties that were in Tommy's Ham House location were formally zoned commercial and now are RDV. And those typically were in the, let's see, they were in the $15.00 dollar range per foot. What we did find, I felt those locations were all better, they were already, they are on a major thoroughfare, Rutherford which then turns into Poinsett Highway. The other major difference that fast-food restaurants are looking for is the dual access. If you will look at all of these sales, they are all corner locations. They have access on Rutherford as well as a side street that comes in off of Pete Hollis, off of the backside. All of these properties have dual access.
Q When you say $15.00 dollars per square foot, that was what they sold under RDV?
A No, well, these were, let's see, Carolina Drive-True sold as a C3, it is now RDV. Arby's sold under the RDV and both of those sold for around $15.00 dollars a foot and they are located across the street from each other. As a matter of fact, they have secondary access off of Echols Street. So that right there is a match paired, there is a date difference but they are pretty close in value.

Q What is the date difference?
A Is that a question?
Q I am sorry. What is the date difference between those two transactions?
A Let's see, Arby's was May of '20; and the Carolina Drive-Thru is March of 2015.
Q So five years later the Arby's sold for the same amount as Carolina Drive-thru?
A Approximate and you have to keep in mind there was several years of COVID in the middle of that which we experienced a pretty serious drop in values in how business, we have not been making time adjustments, sometimes negative adjustments and sometimes depending on the dates involved we have brought them back up to where they ought to be. But that would be mitigated fairly strongly by the COVID.
Q Do you take market time into consideration when doing an appraisal?
A I do.
Q And why do you do that?
A Well, typically, historically there is an appreciation involved. Generally depending on the economy you will hear people quote that there, things are depreciated at two percent or three percent or whatever. But that is not always the case. They average, perhaps

two percent or three percent. But on an annual basis that is not what happens. They may have no appreciation for several years and then the demand for that type of product may go up. So basically that is an average over, typically a four or five year period.

Q In the Greenville area, have you seen land costs go up generally over the last five years?

A I would say over the last, they went up and then they went down, how about that.

Q When did they go down, after COVID?

A COVID affected certain property types. Some property types it didn't affect. There was a period of time when there was really very little activity.

Q And do you take into account how long it would take to sell a property when determining its value?

A At the appraisal process you assume a typical marketing time.

Q Does the typical marketing time assume that you are selling to somebody who wants to use the property for what it is zoned for?

A Well, yes. And that is what we did when we appraise something based on its highest and best use. We take into account how it could be used.

Q So if my clients wanted to sell their drive-thru to somebody, drive-thru restaurant to somebody and it is not

zoned for that, that would cause an issue, wouldn't it?
A Can you give an example?
Q Well, if they were zoned C3 and they were selling to somebody who wanted to use it as a drive-thru, he said the building is not obsolete, then they would have no issue with that. They could say, okay, I can use it for what it is zoned for and that is in your assumption of highest and best use, right, or in your assumption of the appraisal?
A Well, it is based on the highest and best use. Right now, it is the existing nonconforming use. If Mr. Hassiotis wanted to sell his building, he could sell his building, he does have a drive-thru. If the building were not there the highest and best use would not be for a building with a drive-thru.
Q And if you are zoned for the building that is currently there, does that increase the value of the property?
A It could, not necessarily.
MR. BURKE: Nothing further, Your Honor. Thank you.
THE COURT: Anything else?
MR. PRICE: No, Your Honor.
THE COURT: You can step down. Mr. Price, that is your only witness, is that correct?
MR. PRICE: Yes, sir.
THE COURT: What we are going to do, I am pretty sure

there is going to be some argument from both sides. I have got to give everybody a break of some sort. So we have got a jury coming in at 2:00. They will probably sit for a minute, I will let them sit for 15 or 20 minutes. Hopefully they won't sit for that long, once they come in at 2:00 o'clock. We are going to reconvene, it is ten minutes after 1:00 now. We are going to take about an hour, about 2:10 we will come back. The jury should be back and we will entertain some arguments on both sides and then we will see where we are. We will reconvene about 2:10 or 2:15, something like that. It may be closer to 2:15, depending on how I feel.

(Whereupon, a lunch break was taken.)

THE COURT: Okay, Counsel, it is my understanding, this is on the record, let's go back on the record in George C. Hassiotis and Constantinon Hassiotis versus the City of Greenville. Case 2019-CP-23-02041. It is my understanding from the Plaintiffs side as well as the Defendant's side that this is all the testimony that is going to be presented to the Court on the issue of constitutionality of the ordnance. Is that correct?

MR. PRICE: Yes, Your Honor.

MR. BURKE: That is correct, Your Honor.

THE COURT: Alright. So the Court will hear closing arguments from both sides and of course the denial of the

Defendant's motion for directed verdict is noted in the record.

MR. PRICE: I have another motion.

THE COURT: You have another motion. Go ahead, Mr. Price.

MR. PRICE: Well, if I understand the Court correctly, in addition to the initial motion for directed verdict, the City renews its motion for directed verdict on the basis of all the evidence now that is in for the same grounds that I argued.

THE COURT: Alright.

MR. PRICE: And that is denied?

THE COURT: Yes.

MR. PRICE: And that is what you would say, okay. I have another motion and this relates to what I believe is the Court's responsibility to determine whether the burden of proof has now been met, severing, (phonetic), the statement for directed verdict.

THE COURT: I understand.

MR. PRICE: And I also apologize for being a bit redundant about my position.

THE COURT: Okay.

MR. PRICE: Well, thank you. Just, it is the City's position that for the constitutional issues the Court, and not the jury, is the finder of fact and the decider of

whether the burden of proof has been met. In effect, this is a non-jury trial on the issue of the constitutionality of the ordinance and the causes of action related to that ordinance. The City moves or would argue that this Court should grant the City judgment on the basis that given that high bar that I have discussed on several occasions, have put in a Court brief and a second Court Exhibit entitled excerpts from the City's trial brief. The City's position is that, after hearing all of the evidence, the Plaintiffs have not met their burden of proof. They have not established evidence to overcome the high burden as it relates to due process claims or the equal protection claims. So for the three causes of action in this case, one for a declaratory judgment that due process and equal protection were violated, we believe the Court should rule in favor of the City as a matter of law; or and/or, based on all the evidence in the case. We also believe that the remaining causes of action would seek damages flowing from the alleged constitutional violation, also being decided in favor of the City. And finally, the claim for attorneys fees, cost and expenses, be denied and that the City have judgment against the Plaintiffs on all the causes of action. This Court has heard a lot of testimony from the witnesses, this Court also has had in possession documents of the City which we believe served to assist

the Court in finding that the Plaintiffs have not met their burden of proof. The, I don't want to say the most important but the very important part of this case is the ordinance itself. The application for that ordinance and the zoning maps. Your Honor is now familiar with all of those and, and the City relies on that as well as the other Exhibits we have put into the record to take the position that the burden of proof has not been met. And as I have relied on in terms of the directed verdict motions, I continue to rely on the law that we have cited that would include the McMaster case; it would include the Harbit case; the Bear Enterprises case; the Dunes West case and other cases that were cited in our trial brief which is a Court's exhibit. Simply put, Your Honor, after we have got all the evidence in the record and taking it all into account, as this Court weighs the evidence against the very high burden of proof that they must meet we respectfully argue that that burden of proof has not been met. Specifically as to the due process claim, we have got an ordinance that is presumed to be constitutional; the burden of proof must be by clear and convincing evidence; that due process has been violated; that the action is so unreasonable as to impair or destroy constitutional rights. We believe that taking into account all the evidence in the case the decision of the

City to approve the ordinance was fairly debatable. And we take the position that that is enough, although there is more, that is enough for the City to prevail in the case. The equal protection case similarly has a very high bar and we believe that the evidence in the case has shown that when you apply the rational basis test to the decision of the City to zone the Hassiotis property RDV as opposed to commercial, the Plaintiffs do not have enough evidence to jump over that high bar. And that the weight of the evidence falls toward the City and we should have judgment about that too. And I will just kind of briefly wrap up now. The property of Mr. George and Dino Hassiotis is RDV now, it was changed as a result of the ordinance. But they are in a grandfather status as long as that property is used in the way that is is used there is no impact on the property. And if the property is ever not used for a period of more than six months then and only then does the conditional use as it relates to the drive-thru window come into play. But from an equal protection standpoint the evidence of the City overcomes the, the evidence of the Hassiotis, purely and simply there is a rational basis for why it was done the way it was done and why the Hassiotis property along with the other property along Pendleton Street is RDV. It is stated in the ordinance and I know that the Court will

take notice, it is in evidence; but just a few highlights. What the City's evidence shows is that, is that they consider this area, the Pendleton Street corridor to be an important link that connected downtown, West End and Village to West Greenville and that was a starting point. They were approached by the West End Neighborhood Association who asked for a friendlier type of zoning to apply to the entire area. The Planning Commission examined it and came up with a proposal, it was an application for rezoning, to encompass those wishes of the neighborhood. But in doing so they found things that are set forth in the ordinance itself and I will give you just a few examples. The Sterling neighborhood master plan included a recommendation to update the zoning along Pendleton Street to encourage more mixed use in a neighborhood friendly developed. So that is an impetus for the change. Concerns were expressed by the residents in the West End neighborhood that it would enhance their quality of life by improving the area by changing the zoning and thereby preventing the possibility of unlimited commercial development along the Pendleton Street corridor. Studies were undertaken by the City Staff and as a result of those studies Staff recommended that the most appropriate zoning designation for the Pendleton Street area where the Hassiotis property is, was RDV. A

blend of residential and commercial to encourage the growth of the community within a reasonable way; to allow businesses, friendly businesses, neighborhood friendly businesses, to increase walkability and other purposes as set forth in the final plan in the ordinance. The City found that the RDV designation was compatible and met the standards set forth in the 2009 comprehensive plan and the urban residential designation that the RDV designation was compatible with the urban residential designation that was in those plans. As a practical matter, what the City found was making that zoning change encouraged grocery stores, speciality stores, community libraires, medical offices, mix-size employers, community parks and residential usage. The starting point for the analysis of the Court, because I don't know that I have said this yet, is based on the police power of the City. The City has the power to make zoning plans even if those zoning plans negatively impact some of the property users. That in a way is an essence of zoning. And so the law, in addition to setting the high bar, and burden of proof includes the law, includes the fact that the mere fact that a homeowner or a property owner's property may suffer some diminution of value as a result of zoning does not render the zoning unlawful. Case law in a trial brief, we will refer to that. So the diminution in value should not be

compensative. And that is because, what the Courts tell us, is in the context of zoning, a property owner is not necessarily entitled to the highest and best value of its property. Now, as we say, I didn't make the law, it is what it is and it is what the Courts, the Appellate Courts have told us to guide you in your decision today. So the records in this case establish that the City spent a great deal of effort in developing the plan, entertaining public comment about the plan, both pro and con, that they considered the pro's and con's including comments and objections made by the Hassiotis' and came up with their plan. Now, we know that the initial plan that had the Enigma property zoned, zoned RDV was changed. And we know from the evidence and the City acknowledges, they made a mistake on that. They should never have made the Enigma property RDV. And as the evidence has shown, it is the location of that property, at the intersection of Academy and Pendleton and the arterial nature of Academy Street that justify the decision. Now, under the law the City does not have to prove that their plan was the best plan written. It doesn't have to prove that the plan was even an average type of zoning plan. In fact, it doesn't have the burden of proof. It is the other side of this case that must prove all of those things we talked about in the cases that the City is relying on. And respectfully, as

you weigh this evidence we believe that you will find that this high burden of proof simply has not been met. And so when you take into account the evidence that you have heard and the evidence that is in the record and you take into account the complaints and criticisms and the concerns of the Hassiotis family, put it all together, it does not establish enough evidence to comply with the requirements of the matter of Bear, of Dunes West, of Harbit and the other cases that we rely on. So, Your Honor, it is, it's our position that now that we have all the evidence in the record, and now that we look at the case law that we believe governs this situation, the only verdict that we can see coming out of this trial is the verdict in favor of the City. Thank you.

THE COURT: Thank you, Mr. Price. Mr. Burke.

MR. BURKE: Thank you, Your Honor. I am not going to rehash all the arguments that we made on directed verdict but I did want to address the standard. And Mr. Price and I agree on the rational basis standard, if the City has a rational basis to do the things they did then it stands. What we disagreed on is which part of the City's actions you are allowed to look at. The City applied for this zoning change and the City Staff or members of the City took several actions that were against my clients constitutional rights. So it just isn't the ordinance at

the end of the road but is all the actions of the City in getting to that ordinance. I also, you know, both the McMaster and Harbit case say the same thing. The burden of proving the invalidity of a zoning ordinance is on the party attacking it and it is incompetent upon the challenger to show the arbitrary and capricious character of the ordinance through clear and convincing evidence. That is from McMaster. In order to prove a denial of substantial due process a party must show that he was arbitrarily and capriciously deprived of a recognizable property interest rooted in State law. That is from Harbit and then along in the equal protection section of Harbit it states, instead the classification must be reasonable, not arbitrary and must rest upon some ground of difference having a fair and substantial relation to the object of legislation so that all persons similarly circumstanced can be treated alike. All of those standards are the same thing. If the City is making arbitrary decisions about how to zone property, what property to zone and which commericial businesses to favor over other businesses, without a rational basis, then it is incumbent upon the Court to overturn the zoning ordinance or to find that there is a constitutional deprivation to my clients. On the, I did find, I wanted to add something to our argument about procedural due

process which is where, we are stating that this should have gone back to the Planning Commission for another meeting after the zoning was changed for the Stone family. I will look at Plaintiff's 1, Plaintiff's 1 is from the City, it is comparison of uses in zoning districts. And then it says, C1, C2, C3, RDV. From the statute or the ordinance, 19-3.2.2; establishment of zoning districts and specific purposes. R6, single family residential district; RM2, single family multi-family residential district; C3, regional commercial district. These are not talking about huge overlays or whole neighborhoods of many different uses. A district is one zoning classification. So when the City amended the ordinance to rezone or to change the proposed zoning of the Stone Family Trust property they violated their own ordinance and denied the public, including my clients, the right to come and object or support that amendment. And so for that reason I believe you could overturn the zoning ordinance. I do not think that would allow you to necessarily find a constitutional deprivation that causes damages to my clients for the procedural due process issue. On the substantive due process issue. We have presented my clients testimony that they were damaged significantly because their, because RDV was applied to their property when it wasn't applied to other commercial properties.

Ms. Stroud testified, I won't go through all the same arguments before, but she admitted that the line from my clients property or for the rezoning could have been Pendleton Street. And an arbitrary decision was made to put it behind my clients property. She admitted that their rational basis for the Enigma property not being zoned RDV didn't apply to the Family Dollar which fronts on Pendleton Street. And so those are arbitrary decisions that Staff were making that then matriculated up into the ordinance. Finally, well, two more things. One is, on the equal protection claim. We have presented clear and convincing evidence that my clients were treated arbitrarily and capriciously compared to the other commercial users. My clients were the only, are the only use left out there that was not catered to when they did the rezoning, other than the car wash which is out of business. And my clients made the exact same request as the Enigma Corporation and got a completely different answer from Staff. Finally I would go back to RDV, in general, as applied to drive-thru restaurants. We object to a conditional use being a valid constitutional zoning apparatus at all. The City Council has given away its police power to Staff and an unelected Planning Commission to regulate and essentially zone properties based on who the person is, who is, who wants to be there; who is the

tenant or who is going to buy the property. That is effectively removing that decision from elected officials and giving it to people who are just hired to do a job and when that happens and I agree with Mr. Price, it hasn't happened today but my clients aren't allowed by the rules to wait until it does happen. They have to defend their rights on the zoning ordinance, not ten years down the road when, you know, OJ's closes down and someone else wants to come in. And so this is their chance to bring up the issues with this zoning ordinance and we have proven by clear and convincing evidence on the equal protection issue that my clients have been constitutionally deprived which allows to go before the jury on damages. Finally, I think Mr. Price kind of conflated to ideas in his argument that diminution in value is not compensable. It is compensable if you find that there is a constitutional deprivation. So we have put up, you know, evidence about damages, I don't think that was refuted by the appraiser, Mr. Haskell, who didn't appraise a C3 use as a comparison. And so it isn't really effective evidence against my clients damaged evidence. Thank you, Your Honor.

THE COURT: Okay. Anything else?

MR. PRICE: Just briefly. As to the rational basis for the Enigma properties being treated differently, I believe we have covered that. And they were treated

differently for very good reasons. As to the point that, the Hassiotis' property has been treated differently than every other business owner in the area, all you have got to do is look down the zoning map and see that every piece of property on Pendleton Street, within the area that was rezoned is RDV. So it just doesn't hold up nor frankly does the evidence in this case, as to the damages that the Hassiotis' contend to make loss. I know they are entitled to give opinions but those opinions have got to be based on some sound reasoning and it is just not present here. As to, as to the impact or the compensability of a negative financial impact on the property by zoning, the evidence has shown that the Hassiotis' enjoy the same beneficial use of their property as they did before the rezoning. They have acknowledged that the highest and best use of the property is as a restaurant. It is the way it is used now, it is the way it has been used for years. And there is no evidence that it will not be used in the same way or will be prevented to being used the same way in the future. So Bear Enterprises tells us that an ordinance, in this case this ordinance, that limits the use of property will not be held unconstitutional unless it has shown to have caused such a diminution in value as to that tantamount to confiscation. It is just not here, Judge, and we stand by our position.

THE COURT: Anything else, Mr. Burke?

MR. BURKE: No, Your Honor.

THE COURT: Alright. I am getting ready to say a lot of stuff so bear with me. First of all, I want to talk about how we got here, at calling the case. Before that, I think a week or so ago the Court was counseled and this is a status conference, I want to call it just a status conference. The reason for that conference was to make, for the Counsel to share with the Court their position on how the matter should go forward. That was the primary reason and also to discuss scheduling at that time. There was some discussion at that time that the matter should be bifurcated or and the Court should be the Judge on personal entity that decides or makes a decision on the constitutionality of the relief being sought by the Plaintiff. The Plaintiff, in its complaint, obviously indicated, indicates that there was a violation of the equal protection clause as it relates to the Plaintiffs as well as the Plaintiffs allege that they were deprived of due process, procedural as well as substantive due process. And also, the Plaintiff sought attorney fees and damages and attorney fees as a result. At the start of this matter on yesterday, the Court agreed, after having to looked at the case law, particularly the McMaster versus Columbia Board and Zoning Appeals case and that

case is found at 395 SC 499, a 2000 case. The Court agreed that the Court should make the determination, after listening to the testimony, whether or not the relief being sought by the Plaintiff and making an assessment regarding the constitutionality of that relief being sought. I am not going to go into the facts of the case. I think the facts are clear. We understand and we are talking about a restaurant located at 907 Pendleton Street where everybody is familiar with, where it is. There is an intersection there where Pendleton Street intersects with Academy. Counsel did a very good job of placing on the screen where this location was and where Plaintiffs property is located as well as the other properties, the Enigma property which came up in the discussion; also where the Family Dollar property was; the Burger King property was, the Spinx property. There was also some discussion during the testimony as to location and other properties. As a matter of fact, the Court brought up a couple of other properties that the witness for the Plaintiff, I think, Ms. Stroud or Mr. Tankersley, both of them acknowledged that there could have been other buildings located on that section. But then there was also a discussion about the location of certain residential houses in the area where the restaurant was. So we all know where we are, we all know what we are

talking about. Now, there was also a lot of testimony regarding a timeline for meetings that were held by the Planning Commission, I think Counsel supplied to the Court a two cardboard, huge cardboard illustration, that illustrated the dates when these meetings were held. There is no dispute that there were meetings held on different occasions for the purpose of reviewing certain Zoning Commissions, et cetera. What is before the Court today, the Plaintiffs have been operating, the Plaintiffs on the building which has been in operation for quite some time, I don't think there has been any testimony how long it has been in operation but it has been in operation for quite a long period of time. And there is no, Plaintiffs don't refute the testimony that during that period of time the restaurant, OJ's specifically has had a drive-thru window there. And that has been the operation for a significant period of time and that fact is unrefuted by both sides. It appears that the, at some point, at one point, at one point all of the businesses including OJ's and the Family Dollar store, and I don't know when the Enigma property came on the site but businesses in that area were exactly, at one point, zoned C3 at that point. Counsel placed into the record, through his statements to the Court, that there was obviously a meeting, this Court is not, has not been inspired like a member of the Zoning

Commission and he acknowledges that process when based upon what is presented to the Court, there was a meeting by the Zoning Commission in cooperation with the City. And obviously there was some questions that the City makes all the final decisions and that was reiterated by Ms. Stroud as well as Mr. Tankersley. And I will quote exactly what Counsel said. That the property was done to improve, for a lack of a better word, to improve in long term the area in terms of attracting businesses, restaurants, et cetera. And there was positions, which obviously they, to the proposal by certain entities. I think the Sterling Community was approved for the zoning and then there were pending by other entities as well. But here is where we are. At some point there was a change in the zoning classification from C3, as it impacted the Plaintiffs, to RDV. Plaintiffs indicated that if everyone had the zoning classification, that RDV was for everyone, including themselves as well as the Enigma we wouldn't be here in court today but we are. Plaintiffs indicate that the changing of the zoning classification to RDV, as it relates to Plaintiffs property, impacted them and denied them due process, substantive process, as well as a violation of the equal protection clause. In looking at the complaint that was filed by the Plaintiff, Plaintiff, in its first cause of

action, which was declaratory judgment seeking a deprivation of civil rights and deprivation of civil rights that I just enumerated earlier; violation of the equal protection clause and constitution as well as violation of substantive and due process. And the Plaintiff in paragraph one of the Plaintiff states that the RDV zoning classification is invalid and arbitrary because it allocates zoning responsibilities and the City Staff without specific standings, guiding in their decision. In this complaint the Plaintiff says that this more than violates its due process. The Plaintiff also, in paragraph 33 of its complaint and I will read it specifically into the record. Plaintiffs contend that the ordinance violates their rights to substantive due process because it does not actually serve the general welfare of the community. The Court may inquire with Plaintiffs Counsel regarding being more specific as to what that entailed and Counsel did so. And looking at paragraph 34 and paragraph 35 of the Plaintiffs complaint, the Plaintiff contends that the ordinance violates 34 specifically, the ordinance violated their right to substantive due process because the means adopted and to achieve for the purpose and substantially related to it. The Court made inquiry of Counsel as to be more specific as to that provision and Counsel did so. Paragraph 35 of

the Plaintiffs complaint says the Plaintiff contends that the ordinance violates their right to substantive due process for failure that is unduly harsh upon them and applying to them and Counsel was most gracious to explain in more specificity the allegations as alleged in the complaint. Now, as it relates to the specific allegation as to the equal protection clause. The Plaintiff in paragraph 141 of the complaint filed, the Plaintiff states that the ordnance enactment and enforcement violates the equal protection clause of the Fourteenth Amendment as to the United States Constitution. The City's enactment and enforcement of the ordinance intentionally treated Plaintiffs differently from others similarly situated under the State, lawful law. No rational basis existed for the difference in treatment. The City's unconstitutional conduct in that regard has caused Plaintiff to sustain damages in regard, to sustain damages. The Plaintiffs are entitled to recover damages. Now, let's look at the, let me turn to the paragraph. Alright, one other clause. Paragraph 42 of the complaint, page 86. Plaintiff alleges that the ordinance, enactment and enforcement violates the due process for the Fourteenth Amendment to the Unites States Constitution. Plaintiffs possessed, vested, investment property interest in connection with their own, with their rights to own,

sale or operate and maintain a drive-thru restaurant on the subject's property. And there is an allegation that the City has deprived the Plaintiff of those rights and is attempting to deprive the Plaintiffs of those rights. There is, has been ample evidence that the drive-thru that is affixed to the property is still in existence and it is still operational. Plaintiff alleges that, that is the Court's language, that is not in the complaint. The other language that is in the complaint, the City's conduct in this regard has caused the Plaintiffs to sustain damages. Now, the other allegation and the third cause of action goes to the issue of attorney fees. Now, let's go specifically to each one of those. Alright. The Court is guided, first of all, and I think the McMaster case is the first case that I am going to make reference to. Before I do that, typically in these cases the, when we talk about the burden and the extent of the burden, I think both Counsel would agree and case law supports the Plaintiffs has a high bar. And the Court has to look at whether or not the Plaintiff, through the evidence presented, testimony, what have you, have met the high bar that is illustrated in this case. That is the allegation of the Plaintiff. Now, in the McMaster case, well, let me back up a second. In the, let me look at the case, I am going to cite in the, Counsel referenced the police power, the

City has zoning police power. Well, that is the first thing I want to say. That's the power of the City and that and to be more specific, if you look at the Harbit case, Harbit versus the City of Charleston, that is found at 382 SC 383 which is a 2009 case. That case specifically states that the authority of the City can enact zoning ordinances that restricted use of property on properties that is founded and use that power, use the police power. So the City has police power. That is in that case, that's in that case. Alright, now, let's look at the McMaster case. And the Court relied on the McMaster case along with the other cases that I will talk about in just a minute for guidance. In the McMaster case, the Court stated, municipal ordinance is a legislative enactment and is presumed to be constitutional. Every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only where there is, when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution. Since rezoning is a legislative matter, the Court has no power on the property. The City's rezoning decision and the Plaintiff bears the burden of proving otherwise is the high bar that we are talking about. In order to meet the burden of proving the

zoning ordinance invalid the Plaintiffs must show by clear and convincing evidence the arbitrary and capricious nature of the ordinance. Just to fast forward, this is OJ's. The Plaintiffs have alleged that they were targeted by the City. There has been no other evidence presented, other than one of the Plaintiff's testimony that they were targed. No other evidence was presented to the Court to substantiate the fact that the Plaintiffs were targeted or the Plaintiffs were singled out or anything, nothing was presented to that fact other than a statement about in testimony that was made by one of the witnesses in an answer to Counsel's question. The Court also, I think Counsel's statement to the Court, he indicated that the, that the Plaintiffs were targeted and after questioning by the Court Counsel acknowledged that that was his words and not the words of his clients. So, just wanted to put that out there. So going back, the Plaintiff must show by clear and convincing evidence the arbitrary and capricious nature of the ordinance. The word, arbitrary and capricious, is the key here because you are talking about, not only when you are talking about whether there is a violation of the equal protection clause, there is also that language embedded in that clause that the treatment must be arbitrary and capricious. So that's in there in order for the, to be a violation. Now this is in the

McMaster case and this case is also mentioned in the Harbit case. And that case, and I know Madam Court Reporter has these cases down but I am going to reference them and probably give some cites again so bear with me. In the Harbit case versus the City of Charleston, this is 382 SC 383, a 2009 case. In that case there is some specific language that talks about the equal protection clause. And in that case the Court stated that the equal protection clause does not prohibit different treatment of people in different circumstances under the law. Instead, the classification must be reasonable, not arbitrary and must rest upon some ground of difference, having a fair and substantial relation to the legislation so that all persons similarly circumstance can be treated alike. The Court, based upon the testimony presented, could not identify anything in the testimony that would indicate that as it relates to the City's interaction with these Plaintiffs, that they were treated differently than anyone else. I know that there was, and there was some discussion about how the City and the Zoning Board interacted with everyone else and we will get to that in just a minute. Now, there were several entities that spoke to the Zoning Board or Zoning Commission and there were several tweaks along the way when certain things were made aware to the Zoning Commission about certain things.

And I don't want to get into all of them but as Counsel remembers that there were some questions raised by the attorney regarding the parking lot. There was a question raised about a funeral home regarding an issue. These were things that the Board, the City makes the decision, were able to handle and I call that treatment, that kind of stuff. That is those two cases, Harbit and McMaster. Even if you go to the Bear case, Bear Enterprises versus the County of Greenville, that is found at 319 SC 137, 1995 case; Bear goes on and picks up all the language that was outlined in McMaster as well as the Harbit case. And it says that rezoning is legislative, the City's rezoning decision is presumptive and valid. And the Plaintiffs bear the burden of proving otherwise. That is the high bar we are talking about. In order to meet the burden of, the zoning ordinance is invalid the Plaintiffs must show by clear and convincing evidence the arbitrary and capricious nature. Here is that word again, arbitrary and capricious, coming back again in this case, that was cited in these privous cases. Only where the zoning, here is the thing, here it is. Only where the City's zoning act is so unreasonable as to impair or destroy constitutional rights can the Court declare the action unconstitutional. And that is the, Court, these cases put it on the shoulders of the Court and say listen, although the City's

Zoning actions is so unreasonable as to impair or destroy constitutional rights can the Court declare the action unconstitutional. If the propriety of the City's decision is even fairly debatable the Court cannot inject a judgment upon its review of the City's decision. Now, even if you and going through these cases for a reason because I want to cover all of the bases. Even when you go each case is decided, fairly and recently of each other. I mean this is a 2013 case. Dunes West Golf Club, LLC versus the Town of Mt. Pleasant. This case was found at 401 SC 280, 2013 case. And here is what it says in this case. And think about what the Court talked about in the McMaster and Harbit Case and Bear Enterprises case and now we are in the Dunes West case. So the Court said, it says every presumption will be made in favor of the constitutionality of the legislative enactment, and will be plead unconstitutional only when its invalidity appears so clear to be no room for reasonable doubt that it violates the constitution. So here we go about that as well. So we have got Harbit, we have got Dunes, we have got McMaster and we have got the Bear case. Now, there was some question about what preceded the meetings that were had. And some discussion about deprivation of procedural due process. Well, we do know that the, there were minutes taken from those meetings, at the meetings.

And in the Berkeley Electric versus Town of Mt. Pleasant case, there was some question about that raised. In that case the Court said the municipal records properly authenticated or verified the only competent evidence of the proceedings for the transaction regarded by, presumed those to be adminstered, what transpired at those hearings. And in the Berkeley case, the Court said that only, parol evidence and Counsel very much agree with that, cannot be admitted to explain in large of the conflict minutes of the proceedings of the City's Council unless the minutes are incomplete or ambiguous. There has been no reputational insight that these minutes were kept, Counsel provided minutes to the Court. But then that Berkeley case, that is found at 308 SC 205 and it is a 1992 case. I can go on and on and we can talk about two other cases. And the Seabrook case, Seabrook versus Knox case. And that was found in 369 SC 191, that is a 2006 case. But even in that case the Court talked about due process and substantive procedural due process, and talked about substantive due process. But the Court did talk about equal protection and in that case, the Court stated to establish an equal protection violation the Plaintiffs must demonstrate that they were intentionally and personally subject to treatment different from others similarly situated. I think the language is important

because they establish an equal protection violation, the Plaintiffs must demonstrate that they were intentionally and purposefully subject to treatment different from others similarly situated. The Court finds nothing in the record that was presented that the Plaintiffs have demonstrated treatment different than others other than a statement by, from one of the witnesses that they thought that they were targeted. There was no other tangible evidence presented to the Court in that regard. So the City's position, obviously, is that the Plaintiffs have not met the higher burden that is required. And I think there was a mention, by the City, the drive-thru is grandfathered in and then Plaintiffs have not suffered monetary, financial loss as a result, result as of that as to the filing of this action. And this was the language I wanted to elude to earlier and I didn't see it. The City indicated that the reasons for the rezoning was the Staff recommended that RDV was appropriate for those areas, to encourage growth in the community in a meaningful way to encourage grocery stores and et cetera. And now let's go, and Plaintiff alleges that the City was making arbitrary decisions how to zone and where to zone. Meetings were held and minutes were recorded. The Court disagrees with that position. The Court does not find that the City's position was arbitrary or capricious. I think even the

testimony of Ms. Stroud, when she was asked either by the Court or by Counsel as to how these proposed 103 acres were navigated by Mr. Tankersley, the lines were drawn and there was no indication at least in testimony that the Court heard, that there was any evidence of, that this was being done in a arbitrary or capricious manner. I even asked the witness about the designation, about the Family Dollar store, it was designated C3. Their entrance faces Pendleton Street, subject property there. The answer was, that is where the line was. So the line has to be drawn somewhere but there was no evidence that that was done, in this Court's view, since this is within the purview of the Court's decision that there was any evidence that that line of zoning or even how the, allocated was arbitrary or capricious. The Plaintiffs allege that they, because the RDV applied to some but not others. And I disagree. You know, I think this is a situation where obviously there was a remedy that can be resolved. Obviously the testimony is that the complainers, if the building was unoccupied for a six month period of time that obviously there was some discussion and the Plaintiffs would suffer. But there has been no indication that another restaurant could have come in that spot and apply for a drive-thru window back there, that the City would not approve that. Obviously that is something that is futuristic and the

Court can't make any decisions about that. But so, I think there is, essentially the Court and reliance upon all the cases that I have read that gives this Court guidance in matters of this sort, this Court is of the opinion that the, while the Court has implicated to the Plaintiffs situation, under the case law the Plaintiffs have not met the high burden to show that the actions of the City was violative of the equal protection clause as it relates to their actions and was also the City did not infringe upon any procedural or substantial due process rights that the Plaintiffs have alleged. So based upon that and the language that the Court cited in all of these cases, the Court is making a finding on the record that the Plaintiff has not met the bar to prove the allegations in the complaint filed. So the Court would dismiss the complaint filed by the Plaintiff. Counsel does not need to wait, I will deal with the jury that is back there, I will take care of that, so you don't have to. I would like, I would ask this. Since we, since this is not a decision reached by a jury, it is reached by me, I think an order would be appropriate, Mr. Price. And I think I would like an order that specifically cites all the cases I did and my decision and send a copy of that to Mr. Burke before you send it to me. I would be very appreciative if the order has a lot of substance in it and not just a

skeletal, I don't like skeletal orders. I like orders with stuff in it.

MR. PRICE: Yes, sir.

THE COURT: All right, thank you, take care. I will take care of the jury.

(Whereupon, the jury came into open court at approximately 1:28 p.m.)

THE COURT: I am back. I know y'all thought y'all got rid of me but you did not because I always knew where you were, always, I have got a little person who keeps track of you. So the person you saw outside of your window last night was me. No, seriously, first of all, I have got some good news for you and I have got some bad news for you. I will tell you what the good news is first. The good news is that you would not have to try, to be present to try a case with me. The case that was scheduled before me has resolved itself. Here is the bad news and I have instructed my Bailiff at the door, and he has a box of tissues back there, so and I have got some tissues on the table right there. If any of you need get some of that tissue there. Here is the bad news. You won't get to spend any more time with me this week. You won't see me anymore. You know what, my dog would cry better than y'all. If I don't give him a treat he is going to start crying, better than you guys start crying.

But anyway, on a serious note, I think and I say it this way because jury duty, and I know this is not the place you want to be but I try to make you as comfortable as I can while you are here and doing your civic duty. That is why I wanted to share with you a few things. But now, we are going to need you to call back this number, that you call back tonight after 6:00 and they will give you some instructions as to your availability for tomorrow. So don't leave town. Be close by. So enjoy it, good to spend time with you but I hope that you enjoy your jury experience even if it is not in my court. Take care.

(Whereupon, the jury was excused from the courtroom at approximately 1:31 p.m.)

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Greenville, South Carolina on the days of August 28th and 29th, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

That said proceedings were transcribed to the best of my ability from the audio recording and supporting information sent to me by Holly Jenkins, Court Reporter for Greenville County.

February 23, 2023

Joy E. Holston

_____

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

Comparison of Uses in Zoning Districts

Potential uses

Potential use	c1	c2	c3	dev	op
Single family dwelling	Permitted	Permitted	Permitted	Permitted	Permitted
Single family attached	Permitted	Permitted	Permitted	Permitted	Permitted
Duplex Dwelling	Permitted	Permitted	Permitted	Permitted	Permitted
Multi-Family Dwelling	Permitted	Permitted	Permitted	Permitted	Permitted
High-Rise Multi-Family Dwelling (5 stories or more)	Prohibited	Permitted	Permitted	Prohibited	Permitted
Group living - Group home	Prohibited	Prohibited	Prohibited	Special Exception	Special Exception
Day care center (13+ people)	Special Exception	Special Exception	Permitted	Permitted	Special Exception
School, public or private	Special Exception	Permitted	Permitted	Special Exception	Permitted
Medical facility other than hospital	Conditional Use	Permitted	Permitted	Permitted	Permitted
Religious institution	Permitted	Permitted	Permitted	Permitted	Permitted
Institutions-Post Incarceration Facility	Prohibited	Prohibited	Special Exception	Prohibited	Prohibited
Institutions-All other uses	Prohibited	Prohibited	Special Exception	Special Exception	Permitted
Parks and Open Space	Special Exception	Special Exception	Special Exception	Special Exception	Special Exception
Restaurant with a drive-through	Special Exception	Special Exception	Permitted	Conditional Use	Prohibited
Restaurant w/ indoor and outdoor seating	Conditional Use	Permitted	Permitted	Conditional Use	Special Exception
Restaurant with indoor seating only	Permitted	Permitted	Permitted	Permitted	Special Exception
Offices - other than bail bonding or broadcasting studio	Conditional Use	Permitted	Permitted	Permitted	Permitted
Parking lot	Prohibited	Permitted	Permitted	Permitted	Permitted
Bank, financial institution	Permitted	Permitted	Permitted	Permitted	Permitted
Barbershop, beauty shop	Conditional Use	Permitted	Permitted	Permitted	Permitted
Convenience store	Special Exception	Special Exception	Permitted	Special Exception	Prohibited
Funeral home-with cremation	Prohibited	Permitted	Permitted	Prohibited	Permitted
Funeral home-without cremation	Prohibited	Permitted	Permitted	Permitted	Permitted
Grocery store	Conditional Use	Permitted	Permitted	Permitted	Prohibited
Automobile servicing	Prohibited	Special Exception	Permitted	Special Exception	Prohibited
Nightclub or bar	Prohibited	Conditional Use	Conditional Use	Prohibited	Prohibited
Personal Services	Conditional Use	Permitted	Permitted	Permitted	Special Exception
Photography, art, dance studio, gallery	Permitted	Permitted	Permitted	Permitted	Permitted
Retail Sales	Conditional Use	Permitted	Permitted	Permitted	Permitted
Retail Sales exceeding 25,000 square feet	Prohibited	Special Exception	Permitted	Conditional Use	Permitted



April 19, 2018

Dear Property Owner,

The property located at this address has been identified as part of an area of potential re-zoning. The current zoning classification of the property may or may not change under the proposed re-zoning. Please see the enclosed Existing Zoning Map and Proposed Zoning Map to review how your property may be affected. Please also find the Chart of Potential Uses enclosed to clarify the effects of potential zoning changes. This chart is not comprehensive, but includes some common uses and their applicability in various zones.

The City of Greenville will be hosting an open house to provide additional information and receive feedback regarding the proposed re-zoning. It will be a drop-in event held at Saint Andrew's Episcopal Church in the Fellowship Hall, located at 1002 S. Main Street. Please stop by at your convenience, anytime between 4:00pm and 6:00pm on Monday, April 30, 2018 or Tuesday, May 1, 2018.

If you have any questions, please contact the Community Development Division at 864-467-4570. We look forward to speaking with you at the event.

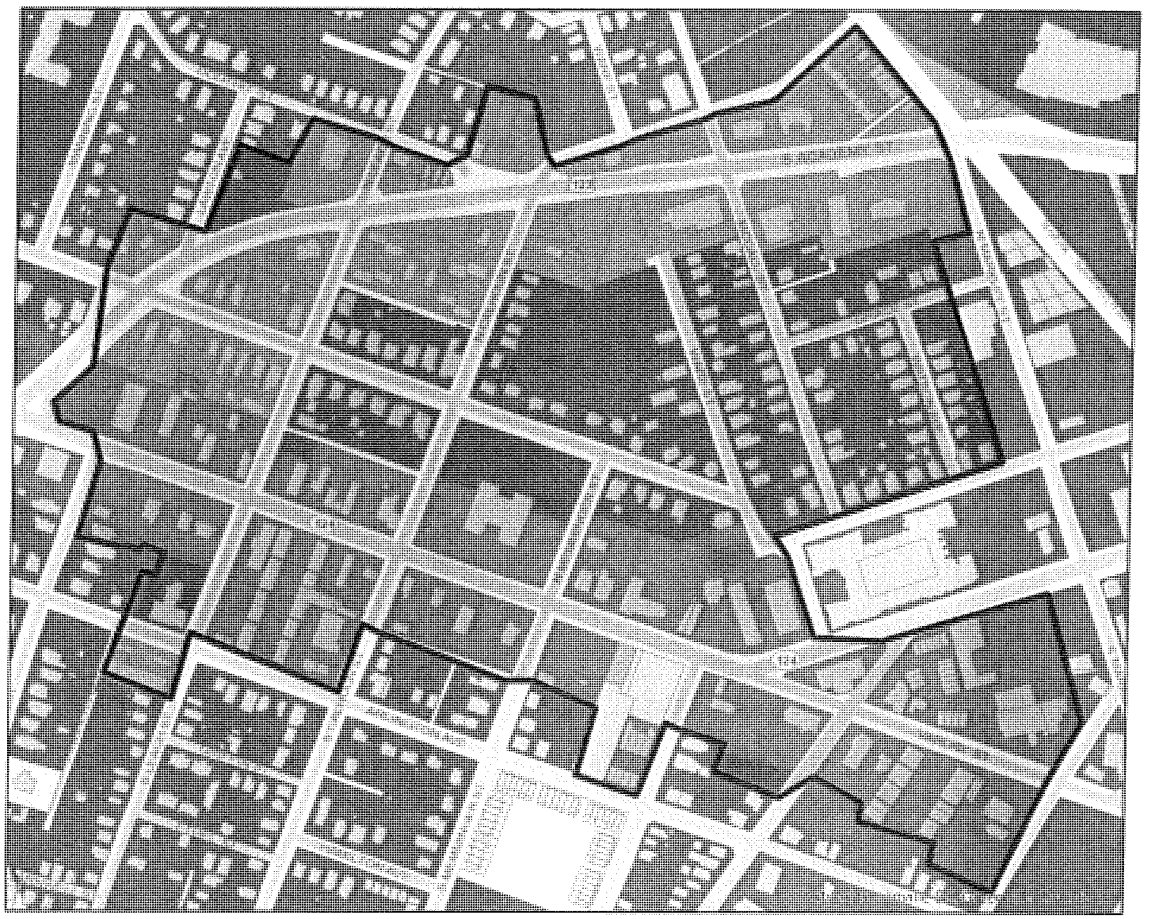
Sincerely,

Virginia B. Stroud
Administrator
Community Development Division

Enclosures: Existing Zoning Map, Potential Zoning Map, and Chart of Potential Uses by Zone

PLAINTIFF'S EXHIBIT
8/22/22 2

Pendleton Street Existing Zoning

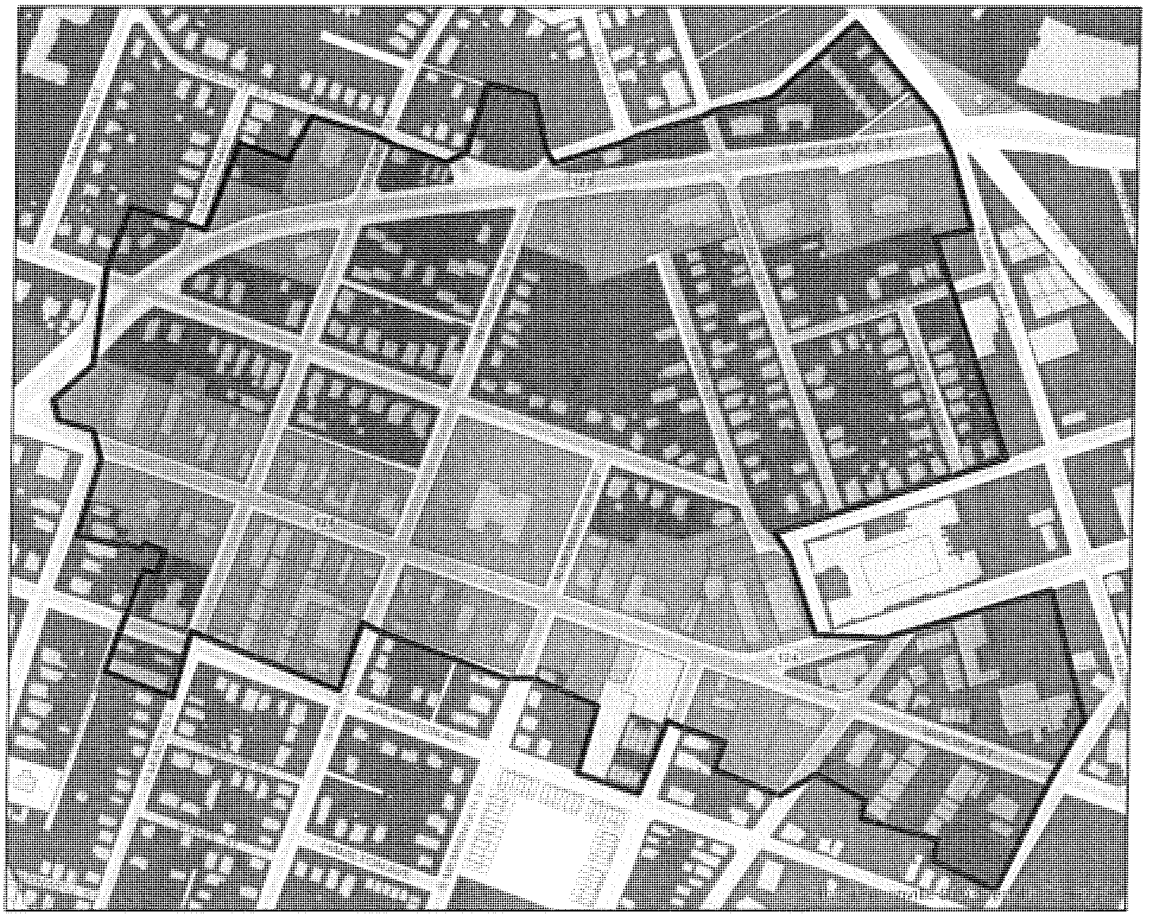


Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

Pendleton Street Proposed Zoning



Legend

Proposed Zoning

Zone

- C-2, Local Commercial District
- C-4, Central Business District
- OD, Office and Institutional District
- PD, Planned Development District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- Other
- Buildings
- Study Area

city of **greenville**

Z-20-2018

Office Use Only: REZ
Application# (18-631) Fees Paid_____
Date Received_____ Accepted By_____
Date Complete_____ App Deny Conditions

APPLICATION FOR REZONE - BASIC

Contact Planning & Development (864) 467-4476

APPLICANT/OWNER INFORMATION

*Indicates Required Field

	APPLICANT	PROPERTY OWNER
*Name:	City of Greenville	
*Title:		
*Address:	PO Box 2207	
*State:	Greenville, SC 29602	
*Zip:	29602	
*Phone:	864-467-4570	
*Email:	gstroud@greenvillesc.gov	

PROPERTY INFORMATION

*STREET ADDRESS Please see attached

*TAX MAP #(S) Please see attached

*DEED BOOK/PAGE

*CURRENT ZONING DESIGNATION Please see attached map of current zoning designations

*PROPOSED ZONING DESIGNATION Please see attached map of proposed zoning designations

*TOTAL ACREAGE approximately 103 acres

INSTRUCTIONS

1. The applicant is encouraged to schedule a preapplication conference at least one (1) month prior to the scheduled submission deadline. At this time, the applicant may also be encouraged to schedule a sufficiency review one (1) to two (2) weeks prior to the scheduled submission deadline to allow staff review of the application. Call (864) 467-4476 to schedule an appointment.

   PREAPPLICATION MEETING DATE Please see attached list of meeting dates and presentations

2. If the application includes more than one (1) parcel and/or more than one (1) owner, the applicant must provide the appropriate deed book/page references, tax parcel numbers, and owner signatures as an attachment.
3. If the application is to designate a portion of a property within this Zoning Map Amendment request, otherwise described by deed, a survey and legal description of the parcel reflecting the requested designation(s) by courses and distances must be included in the submittal package.
4. In addition to the Zoning Map Amendment required documents, as set forth in ***Sections 19-2.3.2, Amendments to Text and Zoning District Map***, the applicant/owner must respond to the "Standards" questions on page 3 of this application. A separate sheet may be attached to address these questions.
5. All applications and fees (made payable to the City of Greenville) for designation as a Zoning Map Amendment must be received by the planning and development office no later than 2:00 pm of the date reflected on the attached schedule.

   A. Zoning Map Amendment $550.00 – *public hearing required*

PLAINTIFF'S EXHIBIT
8/29/22 3 HT

city of greenville

6. Staff will review the application for "sufficiency" pursuant to Section 19-2.2.6, Determination of Sufficiency. If the application is deemed insufficient, staff will notify the applicant and request that the application be revised and resubmitted to address insufficiency comments. In this event, the item will be postponed to a subsequent regularly scheduled planning commission meeting.
7. Please refer to ***Section 19-2.3.2, Amendments to Text and Zoning District Map*** for additional information.
8. **Public Notice Requirements.** Zoning Map Amendment applications require a planning commission public hearing. The applicant is responsible for sign posting the subject property at least 15 days (but no more than 18 days) prior to the scheduled hearing date.

   Zoning Map Amendment applications also require a developer-led neighborhood meeting, which is to be held at least eight (8) days prior to the scheduled planning commission hearing (Sec. 19-2.2.4, Neighborhood meetings). See *Instructions for Organizing a Developer-Led Neighborhood Meeting* for more information.

   Upon planning commission recommendation, the application item will be scheduled for city council hearing.

   (*To be filled out at time of application submittal*)

   _____Public Hearing signs are acknowledged as received by the applicant

   _____Instructions for Organizing a Developer-Led Neighborhood Meeting are acknowledged as received by the applicant

   *APPLICANT SIGNATURE Mary P. Wells
9. **Please verify that all required information is reflected on the plan(s), and submit one (1) paper copy and one (1) electronic version of the application submittal package.**
10. **Please read carefully:** The applicant and property owner affirm that all information submitted with this application; including any/all supplemental information is true and correct to the best of their knowledge and they have provided full disclosure of the relevant facts.

    In addition, the applicant affirms that the applicant or someone acting on the applicant's behalf has made a reasonable effort to determine whether a deed or other document places one or more restrictions on the property that preclude or impede the intended use and has found no record of such a restriction.

    If the planning office by separate inquiry determines that such a restriction exists, it shall notify the applicant. If the applicant does not withdraw or modify the application in a timely manner, or act to have the restriction terminated or waived, then the planning office will indicate in its report to the planning commission that granting the requested change would not likely result in the benefit the applicant seeks.

    Furthermore, my signature (applicant) indicates that I understand and consent that this matter will appear before the Planning Commission for consideration and that any recommendation, for approval or denial, by the Planning Commission will be presented to the City Council at their next regularly scheduled meeting to be held on the fourth Monday of the month following the Planning Commission meeting in which the matter was heard.

Mary P. Wells _____ *APPLICANT SIGNATURE

7/12/18 _____ DATE

city of greenville

11. To that end, the applicant hereby affirms that the tract or parcel of land subject of the attached application **is** ___ or **is not** ___ restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the requested activity.

*Signatures	
Applicant	
Date	
Property Owner/Authorized Agent	
Date	

SUPPORTING INFORMATION – STANDARDS QUESTIONS
Applicant response to Section 19-2.3.2 (E)(2), Amendments to Zoning District Map

(Please attach separate sheet if additional space is need)

1. DESCRIBE THE WAYS IN WHICH THE PROPOSED ZONING DESIGNATION IS CONSISTENT WITH THE COMPREHENSIVE PLAN.
   Please see attached

2. DESCRIBE THE CONDITIONS THAT HAVE CHANGED FROM CONDITIONS PREVAILING AT THE TIME THAT THE ORIGINAL DESIGNATION WAS ADOPTED.
   Please see attached.

3. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT ADDRESSES A DEMONSTRATED COMMUNITY NEED.
   Please see attached.

4. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT IS COMPATIBLE WITH EXISTING AND PROPOSED USES SURROUNDING THE SUBJECT LAND AND IS THE APPROPRIATE ZONING DISTRICT FOR THE LAND.
   Please see attached

city of greenville

5. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT PROMOTES A LOGICAL AND ORDERLY DEVELOPMENT PATTERN.

Please see attached.

6. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN UNDESIRABLE STRIP OR RIBBON COMMERCIAL DEVELOPMENT.

Please see attached

7. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN THE CREATION OF AN INAPPROPRIATELY ISOLATED ZONING DISTRICT UNRELATED TO ADJACENT AND SURROUNDING ZONING DISTRICTS.

Please see attached.

8. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN SIGNIFICANT ADVERSE IMPACTS ON THE PROPERTY VALUES OF SURROUNDING LANDS.

Please see attached.

9. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN DETRIMENTAL IMPACTS ON THE NATURAL ENVIRONMENT AND ITS ECOLOGY, INCLUDING BUT NOT LIMITED TO: WATER; AIR; NOISE; STORMWATER MANAGEMENT; WILDLIFE; VEGETATION; AND, WETLANDS.

Please see attached.

10. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL RESULT IN DEVELOPMENT THAT IS ADEQUATELY SERVED BY PUBLIC FACILITIES AND SERVICES (ROADS, POTABLE WATER, SEWERAGE, SCHOOLS, PARKS, POLICE, FIRE, AND EMERGENCY FACILITIES).

Please see attached.

Pendleton Street Proposed Re-Zoning
Comments received at Open House Event
April 20 and May 1
Updated: November 15, 2018

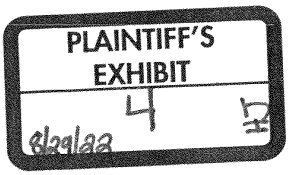
Concerned Property Owners:
Brandon Brown – Upstate Family Funeral Services
506 Arlington Avenue
Concerned that funeral homes are considered nonconforming in RDV
Proposed solution: Revise RDV district to allow funeral homes without crematoriums
Update: Completed; RDV District now allows funeral homes without crematoriums

Michanna Tate – Michael Talley Law firm
206 Green Avenue
Concerned that vacant lot next to law office is recommended for RM-1
Property used as overflow parking for law firm
Proposed solution: Extend OD to include vacant parcel
Update: Recommended OD for vacant parcel

David Stone
111 N. Calhoun Street (West End Apartment community) and parcels on east side of N. Calhoun Street
Opposed to proposed re-zoning; maintain current zoning for all parcels.
Proposed solution: Consider RDV for all parcels
Update: Recommend RM-2, Consistent with current use of property

Scott Woods
906 and 904 Pendleton Street (Premiere Car Wash)
Opposed to RDV; maintain current zoning
Proposed Solution: proceed with proposed re-zoning to RDV
Update: Mr. Woods wishes to maintain current zoning; staff has spoken with him and provided spread sheet with comparison of major zoning uses. He will review. Proceed with recommended RDV designation.

Greg Minton, Enigma Corporation
Parcels at intersection of Academy and Pendleton Streets including 914 Pendleton St.
Opposed to RDV; maintain current zoning
Proposed solution: consider maintaining current zoning for vacant parcels and continue with proposed re-zoning of 914 Pendleton St.
Update: Sine property is a gateway into City and Academy Street is a major arterial corridor, staff recommends maintaining C-3 for property and work with owner to ensure a development that aligns with surrounding neighborhood goals.



Viviane Trama, Blythe Industries
Vacant lot at intersection of Lawton Ave. and Academy St. and 16 Lawton Ave.
Concerned that 3 parcels with have different zoning classifications and with allowed uses in RDV.
Proposed solution: 1) Combine three parcels into parcel and maintain current OD zoning; 2) Combine the three parcels currently zoned OD and we can move forward with the recommendation of re-zoning to RDV
Update: Recommend RDV zoning designation for all parcels

Ken and Kenneth Cosgrove
[redacted] Pendleton Street and VL and [redacted] Mallard Street
Concerned that in RDV a convenience store requires a special exception
Proposed solution: City staff has met with Cosgrove family to discuss other options for achieving redevelopment goals for property. Consider proposed re-zoning to RDV and reassure owners that City is committed to supporting redevelopment of property.
Update: Recommend RDV for parcel.

Dinos Hassiotis (Hassiotis Constantinon)
[redacted] Pendleton Street (OJ's Restaurant)
Concerned that drive through restaurant is a conditional use in RDV
After explaining that the requirements for conditional use, property owner less concerned but wants to make sure drive-through will continue to be permitted.
Update: Proceed with RDV for parcel and work with property owner should redevelopment plan for property be presented.

Additional Property Owner concerns:
Robert Julian – [redacted] Perry Avenue and VL at 78-2-15 and 78-2-1.1
Concerned with proposed RM-1 zoning of 78-2-15. Requested that it be re-zoned RDV.
Proposed Solution: Consider RDV for all parcels.
Update: Recommend RDV for VL at78-2-1.1 and 317 Perry Avenue since these properties are accessed off of Academy Street. Recommend RM-2 for VL at 78-2-15 since this property is accessed through the neighborhood.

Tad Mallory – [redacted] Markley Street
Concerned with setback requirements for new development if adjacent property is zoned RM-2.
Proposed Solution: Recommend C-2 for [redacted] Markley Street
Update: Recommend C-2 for [redacted] Markley Street and work with owner on setbacks for new development.

Notes for Review and Consideration:

- Review the RDV district and update table of uses.
    - Add funeral homes without crematorium as allowed use.
    - Look at parking requirements
    - Review setbacks
    - Review maximum building heights
- Review Group Homes and districts which allow;
- Develop specific conditions for "Conditional Use"- consider hours of operation, buffering, lighting, noise, design, landscaping, auto/bicycle/pedestrian movement
- Consider Special Exception for drive through

From: David Stone
To: Planning; [redacted]
Subject: Objection to Application O. Z-20-2018
Date: Monday, August 13, 2018 9:38:54 PM

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

To the planning commission,

In section 8 of the city's application they state the proposed amendment will not result in significantly adverse impacts on the property values. The Stone family has expressed a strong disagreement with this statement and brought this up to the planning department's April 30th meeting the desire to keep our property zoned the same as it is. We have invested a large sum of money to help provide affordable living and were one of the pioneers in the area to revitalize an apartment complex that has spurred further growth and improvements in the surrounding area.

We made this decision to breath life into a dying property due to the fact of it's zoning classification. We have continued to invest in this project in order to see it though many more years with the vision of potential development in the future.

Limiting our rights to what we have invested into for over three generations is considered a devaluation and must be considered as a detriment to the value of property. If this can't be seen then other measures may be taken in order to protect the value of our property. We hope that you can see the same.

Tax Map Numbers:
0078000600300
0078000600400
0078000600301
0078000601201
0078000601200
0079000202800
0079000202700
0079000202600
0079000202500
0079000201900
0079000201400
0073000400400

David Rivers Stone Jr.
President

13 North Irvine Street | Greenville, SC 29601
office (864) 271-4442 | fax (864) 233-4440

PLAINTIFF'S EXHIBIT 5 8/29/22

city of
greenville

Community Development

November 26, 2018

Dear Neighbor,

In an effort to keep the public and the local residents informed about the proposed re-zoning of property in the Pendleton and Academy Streets area, City staff will be presenting information at the West End Neighborhood Association meeting on Tuesday, December 4, 2018 at 6:30pm at Saint Andrew's Episcopal Church in the Fellowship Hall, located at 1002 S. Main Street.

The current zoning classification of the property may or may not change under the proposed re-zoning. Please see the enclosed Existing Zoning Map and Proposed Zoning Map to review how your property may be affected. Please also find the Chart of Potential Uses enclosed to clarify the effects of potential zoning changes. This chart is not comprehensive, but includes some common uses and their applicability in the various zones.

If you are unable to join us, but would like to learn more about the proposed re-zoning, please contact the Community Development Division at 864-467-4570 or gstroud@greenvillesc.gov.

Sincerely,

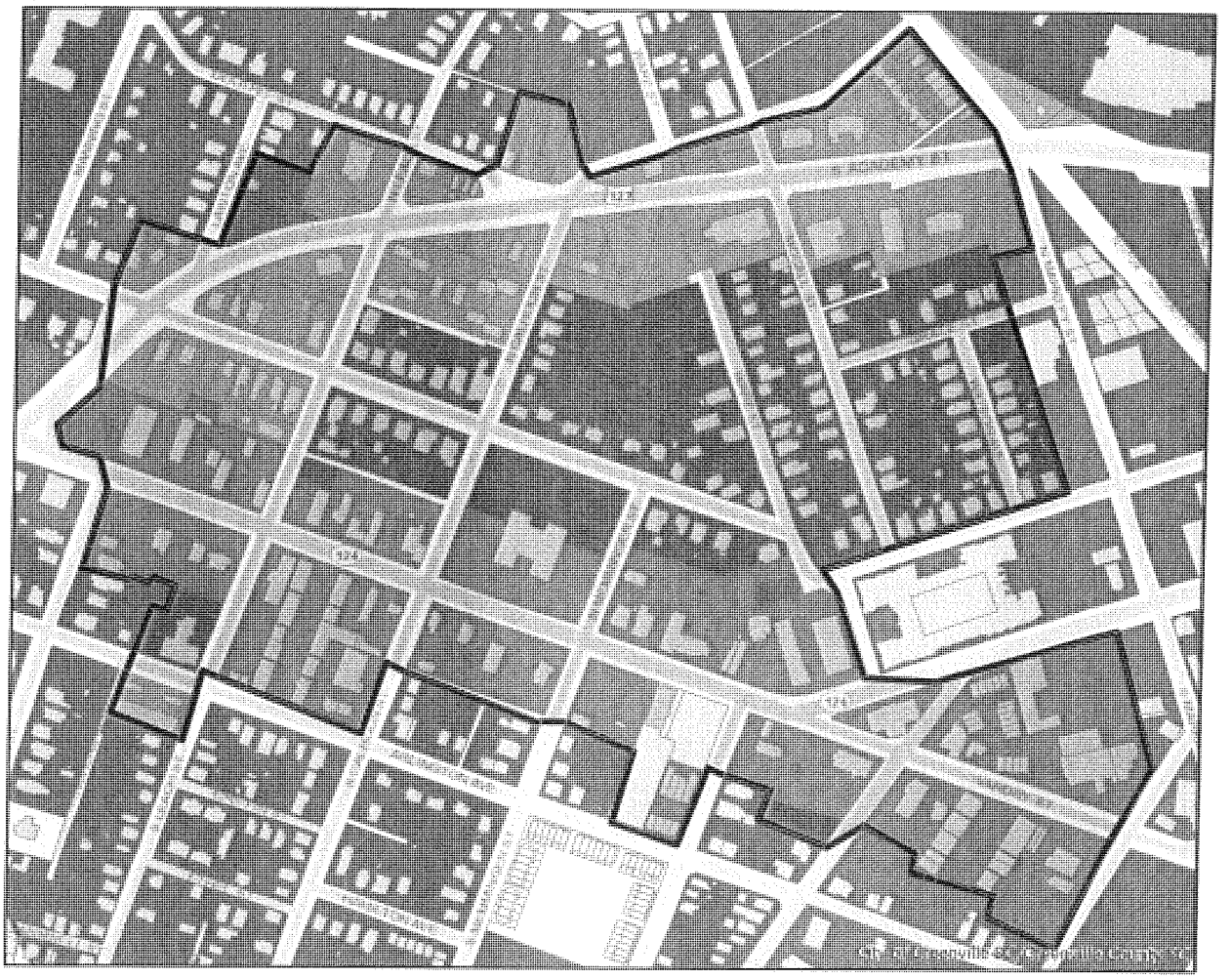
Virginia Stroud

Virginia B. Stroud
Administrator
Community Development Division

Enclosures: Existing Zoning Map, Potential Zoning Map, and Chart of Potential Uses by Zone

PLAINTIFF'S EXHIBIT
8/29/22 6 HJH

Pendleton Street Existing Zoning



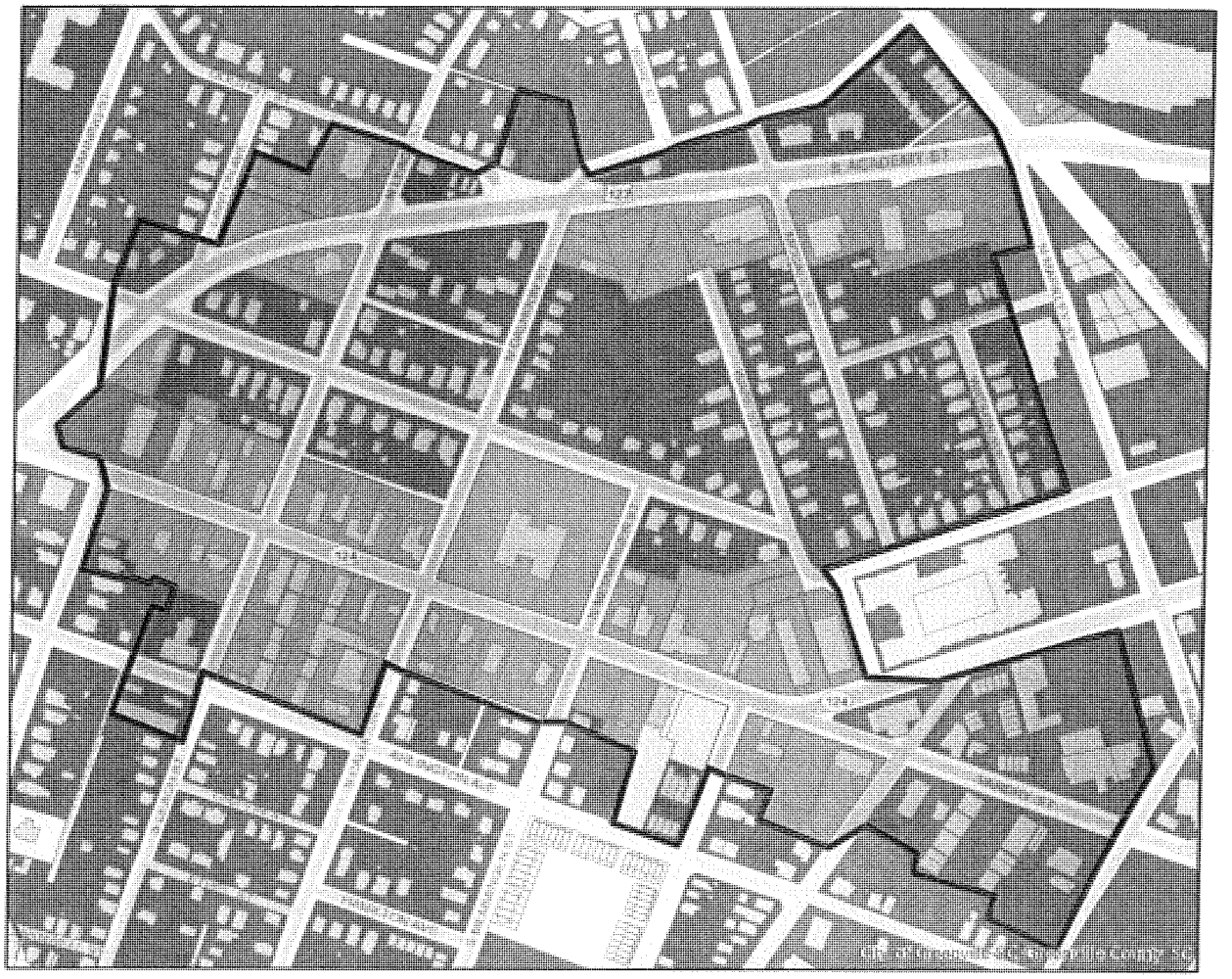
0 0.04 0.09 0.17 Miles

Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

Pendleton Street Proposed Zoning



Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

From: Elizabeth Lapidus
To: White, Knox
Subject: FW: Planning Commission Item # Z-20-2018- Support
Date: Wednesday, November 7, 2018 9:12:50 AM

From: Ginny Stroud
Sent: Wednesday, November 7, 2018 9:09 AM
To: Elizabeth Lapidus
Subject: RE: Planning Commission Item # Z-20-2018- Support
It was discussed at the September meeting and the Planning Commission asked for additional information. It will be on the December agenda for the Planning Commission. Thanks

city of greenville
Ginny Stroud
Community Development Administrator | Economic Development
gstroud@greenvillesc.gov | www.greenvillesc.gov
PHONE: 864-467-4568 | FAX: 864-467-5735

From: Elizabeth Lapidus
Sent: Wednesday, November 7, 2018 8:53 AM
To: Ginny Stroud <gstroud@greenvillesc.gov>
Subject: FW: Planning Commission Item # Z-20-2018- Support
Hi Ginny,
I'm confused---when is this planned to be discussed?
Sincerely,
Elizabeth Lapidus
Executive Assistant to the Mayor
elapidus@greenvillesc.gov | www.greenvillesc.gov
PHONE: 864-467-4590

city of greenville

From: White, Knox <kwhite@hsblawfirm.com>
Sent: Wednesday, November 7, 2018 8:01 AM
To: Elizabeth Lapidus <elapidus@greenvillesc.gov>
Subject: Re: Planning Commission Item # Z-20-2018- Support
CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

It's on Monday agenda ..... correct?

Knox White
-HSB-
Sent from my iPhone

On Nov 7, 2018, at 7:59 AM, Elizabeth Lapidus <elapidus@greenvillesc.gov> wrote:

> Sent from my iPhone

PLAINTIFF'S EXHIBIT
8/29/22 7 HD

From: Elizabeth Lapidus
To: White, Knox
Subject: FW: Planning Commission Item # Z-20-2018- Support
Date: Wednesday, November 7, 2018 9:13:03 AM

From: Ginny Stroud
Sent: Wednesday, November 7, 2018 9:11 AM
To: Knox White
Subject: RE: Planning Commission Item # Z-20-2018- Support

Mayor,
You and I are scheduled to meet with some folks re: financing for Woodside Mill this afternoon. If you have a few minutes after our meeting, I can bring you up to speed. Thanks,
Ginny

city of greenville
Ginny Stroud
Community Development Administrator | Economic Development
gstroud@greenvillesc.gov | www.greenvillesc.gov
PHONE: 864-467-4568 | FAX: 864-467-5735

From: Knox White
Sent: Wednesday, November 7, 2018 9:08 AM
To: Ginny Stroud <gstroud@greenvillesc.gov>
Subject: FW: Planning Commission Item # Z-20-2018- Support

From: White, Knox <kwhite@hsblawfirm.com>
Sent: Wednesday, November 7, 2018 9:07 AM
To: Elizabeth Lapidus <elapidus@greenvillesc.gov>
Subject: Re: Planning Commission Item # Z-20-2018- Support

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Ginny
This is all news to me
I'd like to know more about who and what opposition is about
I do support a rezone

Knox White
-HSB-
Sent from my iPhone

On Nov 7, 2018, at 8:38 AM, Elizabeth Lapidus <elapidus@greenvillesc.gov> wrote:

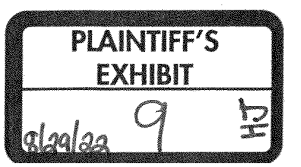
From: Ginny Stroud
Sent: Wednesday, November 7, 2018 8:14 AM
To: Lillian Flemming <lflemming@greenvillesc.gov>; Ian Thomas <[redacted] Planning <planning@greenvillesc.gov>
Cc: greenvilleWENA@gmail.com; Knox White <kwhite@greenvillesc.gov>; Elizabeth

PLAINTIFF'S EXHIBIT 8 9/20/22

Planning Staff Report to
Greenville Planning Commission
August 8
for the August 16, 2018 Public Hearing

Docket Number:	**Z-19-2018**
Applicant:	CITY OF GREENVILLE PLANNING DEPARTMENT
Proposal:	**TEXT AMENDMENT TABLE OF USES – FUNERAL HOMES/CREMATORY**
Staff Recommendation:	**APPROVE**

Staff Analysis: The proposed amendment to the Land Management Ordinance addresses section 19-4.1.2 – Table of Uses. The first proposed amendment is to differentiate between funeral homes, mortuary with crematory; and, funeral homes, mortuary without crematory. The reason staff proposes this amendment is that by distinguishing between the uses, it allows for consideration of allowing funeral homes without on-site crematories in a transitional zone district. This amendment does not currently remove funeral homes from any of the three districts they are permitted in: OD (Office & Institutional District), C-1 (Neighborhood Commercial District), and C-2 (Local Commercial District). However, it would allow for funeral homes and mortuaries without on-site cremation services as a permitted use in the RDV (Redevelopment District). The purpose of the RDV district is to provide convenient access to necessary goods and services for the neighborhood. It is a mixed-use zoning district intended to provide uses for those who live and work in the area. Funeral homes are needed services within our community. Other commercial uses permitted in the RDV include neighborhood service uses such as barbershops, personal services, vet clinics, restaurants, hotels, and retail sales and services under 25,000 sf.



From: Jason Tankersley
To: Courtney E. DeVoe
Subject: Re: Workshop Meeting - Pendleton Rezone (Z-20-2018)
Date: Friday, August 24, 2018 6:06:53 PM

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Okay

Seems heavy handed to the C3 folks

Jason Tankersley
jasont@capllc.com
864.918.1190c
864.331.2971d

On Aug 24, 2018, at 6:06 PM, Courtney E. DeVoe <cdevoe@greenvillesc.gov> wrote:

I personally do not know and have not been part of any the discussions.

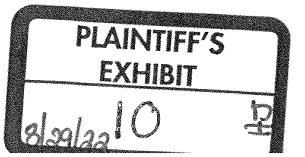
Courtney DeVoe, AICP
Senior Development Planner | Planning & Development
cdevoe@greenvillesc.gov | www.greenvillesc.gov
Phone: 864-467-4482 | Fax: 864-467-4510
Closed every day for lunch: 12 - 1
Temporary Office Hours: M, TH, F...8 - 5
TU.....9:30 – 5
W.....8 – 12

From: Jason Tankersley <jasont@capllc.com>
Sent: Friday, August 24, 2018 5:58 PM
To: Courtney E. DeVoe <cdevoe@greenvillesc.gov>
Subject: Re: Workshop Meeting - Pendleton Rezone (Z-20-2018)
CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

The rezone.

From: "Courtney E. DeVoe" <cdevoe@greenvillesc.gov>
Date: Friday, August 24, 2018 at 5:57 PM
To: Jason Tankersley <jasont@capllc.com>
Subject: RE: Workshop Meeting - Pendleton Rezone (Z-20-2018)
Pushing the workshop? I thought it was requested by PC last month...

Courtney DeVoe, AICP
Senior Development Planner | Planning & Development
cdevoe@greenvillesc.gov | www.greenvillesc.gov
Phone: 864-467-4482 | Fax: 864-467-4510



Closed every day for lunch: 12 - 1
Temporary Office Hours: M, TH, F...8 - 5
TU.....9:30 – 5
W.....8 – 12

From: Jason Tankersley <jasont@capllc.com>
Sent: Friday, August 24, 2018 5:56 PM
To: Courtney E. DeVoe <cdevoe@greenvillesc.gov>
Subject: Re: Workshop Meeting - Pendleton Rezone (Z-20-2018)
CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Who is really pushing this? Can you say?

From: "Courtney E. DeVoe" <cdevoe@greenvillesc.gov>
Date: Friday, August 24, 2018 at 5:54 PM
To: Jason Tankersley <jasont@capllc.com>, David Keller <[redacted] Catherine Smith <CSmith@catherinesmitharchitect.com>, Catherine Smith <[redacted] Diane Eldridge <Diane[redacted] "Jonathan Pait, Sr." <jonathan@pait.org>, Meg Terry <mterry@dp3architects.com>, "Gardner IV, Eugene A" <Eugene.GardnerIV@td.com>
Cc: Jay Graham <jbgraham@greenvillesc.gov>
Subject: RE: Workshop Meeting - Pendleton Rezone (Z-20-2018)
I am looking into having it part of one of the regular scheduled meetings. Will keep you informed.
Hope everyone has a great weekend!

Courtney DeVoe, AICP
Senior Development Planner | Planning & Development
cdevoe@greenvillesc.gov | www.greenvillesc.gov
Phone: 864-467-4482 | Fax: 864-467-4510
Closed every day for lunch: 12 - 1
Temporary Office Hours: M, TH, F...8 - 5
TU.....9:30 – 5
W.....8 – 12

From: Jason Tankersley <jasont@capllc.com>
Sent: Friday, August 24, 2018 5:39 PM
To: Courtney E. DeVoe <cdevoe@greenvillesc.gov>; David Keller <[redacted] Catherine Smith <CSmith@catherinesmitharchitect.com>; Catherine Smith <[redacted] Diane Eldridge <Diane[redacted] Jonathan Pait, Sr. <jonathan@pait.org>; Meg Terry <mterry@dp3architects.com>; Gardner IV, Eugene A <Eugene.GardnerIV@td.com>
Cc: Jonathan B. Graham <jbgraham@greenvillesc.gov>
Subject: Re: Workshop Meeting - Pendleton Rezone (Z-20-2018)
CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender

before clicking on any links or opening attachments.

I can make it, but if it is too difficult for others; is there an alternate?

From: "Courtney E. DeVoe" <cdevoe@greenvillesc.gov>
Date: Friday, August 24, 2018 at 1:52 PM
To: David Keller <[redacted] Catherine Smith <CSmith@catherinesmitharchitect.com>, Catherine Smith <[redacted] Diane Eldridge <Diane.[redacted] Jason Tankersley <jasont@capllc.com>, "Jonathan Pait, Sr." <jonathan@pait.org>, Meg Terry <mterry@dp3architects.com>, "Gardner IV, Eugene A" <Eugene.GardnerIV@td.com>
Cc: Jay Graham <jbgraham@greenvillesc.gov>
Subject: Workshop Meeting - Pendleton Rezone (Z-20-2018)

Good afternoon Commission members,

As an outcome from last month's meeting, I would like to schedule a workshop to review the Pendleton St rezone application. Please let me know if you are available at the time listed below:

Tuesday, August 28 at 4:00 pm.

Thank you,

Courtney DeVoe, AICP
Senior Development Planner | Planning & Development
cdevoe@greenvillesc.gov | www.greenvillesc.gov
Phone: 864-467-4482 | Fax: 864-467-4510
Closed every day for lunch: 12 - 1
Temporary Office Hours: M, TH, F...8 - 5
TU.....9:30 – 5
W.....8 – 12

Total Control Panel Login

To: jasont@capllc.com
From: prvs=7676390d8=cdevoe@greenvillesc.gov

Message Score: 30
My Spam Blocking Level: Medium

High (60): Pass
Medium (75): Pass
Low (90): Pass

Block this sender / Block this sender enterprise-wide
Block greenvillesc.gov / Block greenvillesc.gov enterprise-wide

This message was delivered because the content filter score did not exceed your filter level.

Total Control Panel Login

To: jasont@capllc.com

Message Score: 1

High (60):

MINUTES
GREENVILLE CITY PLANNING COMMISSION
10th floor Council Chambers
December 20, 2018
4:00 PM
Meeting Notice Posted December 5, 2018

Minutes prepared by Michael Frixen

Members Present:	Jason Tankersley, Catherine Smith, Jonathan Pait, David Keller, Diane Eldridge, Meg Terry, Trey Gardner
Members Absent:	None
Staff Present:	Jonathan Graham, Planning & Development Manager Shannon Lavrin, Assistant Planning & Development Manager Brennan Williams, Development Planner Michael Frixen, Development Planner Chad Hall, Development Planner Michael Pitts, City Attorney Dwayne Cooper, Engineering Services Manager Clint Link, Civil Engineer Kevin Howard, Economic Development Project Manager Ginny Stroud, Community Development Michael Williamson, Community Development

NOTICE OF MEETING: Pursuant to Section 30-4-80 of the S.C. Code of Laws, annual notice of this Commission's Meetings was provided on April 4, 2018 via the Greenville City Website. In addition, the Agenda for this Meeting was posted outside the meeting place (City Council Chambers in City Hall) and was emailed to all persons, organizations, and news media requesting notice. Notice for the public hearings was published in the *Greenville News*, posted on the properties subject of public hearing(s), mailed to all surrounding property owners, and emailed to all persons, organizations, and news media requesting notice pursuant to Section 6-29-760 of the S.C. Code of Laws and Section 19-2.2.9 of the Code of the City of Greenville.

CALL TO ORDER: Chairman Jason Tankersley called the meeting to order at 4:02 PM. He explained the purpose of the planning commission, outlined the rules for procedure, and invited the Commissioners to introduce themselves.

APPROVAL OF MINUTES: The November 15, 2018, minutes were approved as presented.

ACCEPTANCE OF AGENDA: Skipped at beginning, but approved during Old Business

CONFLICTS OF INTEREST: Meg Terry and Jonathan Pait on agenda item B under Old Business.

PLAINTIFF'S EXHIBIT
11

OLD BUSINESS:

A. **Z-20-2018**
Application by City of Greenville for a **REZONE of** approximately 103 acres located along a portion of PENDLETON ST, N MEMMINGER ST, S CALHOUN ST, and S ACADMEY ST to RDV, Redevelopment District; OD, Office & Institutional District; RM-2, Single- & Multi-Family Residential District; RM-1, Single- & Multi-Family Residential District and C-4, Central Business District (see project documents)

Graham presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Recommend approval of rezone to city council**

Public comments in favor of application:

- Developers support rezoning project
- Citizen and homeowner petitions in support of rezoning project
- Help protect neighborhoods from major commercial development and incompatible land uses

Public comments against application:

- Concerns that rezoning does not protect adequately protect low-income residents; provided suggestions for policy changes
- Suggest tabling application to allow for further consideration and working with property owners
- Believe properties were cherry-picked for various zoning designations
- Concerns about gentrification
- Concerns about split-zoning for properties that may be combined in the future
- Concerns about decreasing current property values
- Concerns about current uses becoming nonconforming or requiring Conditional Use permits and Special Exceptions in the future

Ginny Stroud provided information about the city's efforts to provide affordable housing in the neighborhood. Planning staff provided additional explanation as to why certain properties were assigned the recommended zoning classifications.

***Motion: Commissioner Smith moved to recommend the rezone to city council. Commissioner Keller seconded the motion. The motion was approved by a vote of 5-2, with Commissioners Tankersly and Gardner voting "no."**

B. **Z-21-2018**
Application by Nathan Kaser for a **MAJOR MODIFICATION PD REZONE** of 8.7 acres located at **N PLEASANTBURG DR** from PD, Planned Development District to PD, Planned Development District (TM#s 0276000300503; 0276000300518).

Commissioners Pait and Terry left the chambers due to a conflict of interest on this item.

Frixen presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Recommend approval of rezone to city council with staff comments and conditions**

The applicant provided additional information about the proposed PD modification and provided clarification on the proposed buffers between their project and the adjacent pool property and residential neighborhood. They also stated they will provide stormwater facilities that could handle a 100-year storm event.

Public comments in favor of application:

- Benefit of increased senior affordable housing in the City of Greenville, but concerns about increased traffic on Regency Hills Drive

Public comments against application:

- Do not believe development meets PD requirements
- Applicant is not honoring the development agreement with the neighborhood that was a condition of annexation in 2006
- Believe the proposal violates a deed restriction for pool parking if McCarter Avenue is extended
- Developer has not clearly defined the benefits and protections they are offering the adjacent neighborhood
- Developer has not worked closely with the neighborhood to develop their proposal
- Development will destroy the pristine natural setting around the McCarter community pool
- Concerns about removal of trees and dissatisfaction with proposed buffers and screening
- Greenville will lose the tangible and intangible community benefits provided by the McCarter pool
- New four-story building will affect pool members trying to sunbathe
- Development will worsen flooding problems in the McCarter community

Andy Sherard of Site Design rebutted some of the public comments.

Board discussion:
After closing the public hearing, the commissioners expressed their frustration with the number of speakers who repeated the same information. Commissioner Keller stated that after the first few speakers, the commission was well aware of the neighborhood's disapproval of the project and they did not accomplish anything by having so many people repeat the same thing. There are many more agenda items and applicants the commission needs to hear tonight.

Commissioner Eldridge stated that the neighbors cannot expect to dictate how another property owner uses their own land.

Commissioner Smith stated that she does not think the proposed PD modification has an orderly development pattern. Several other commissioners agreed.

***Motion: Commissioner Smith moved to recommend denial of the proposed rezone. Commissioner Eldridge seconded the motion. The motion was approved by a vote of 4-1, with Commissioner Tankersly voting "no." Commissioners Terry and Pait recused themselves due to conflicts of interest on the item.**

The meeting was recessed for approximately 5 minutes.

ACCEPTANCE OF AGENDA: The agenda was unanimously approved as amended, with the following items deferred until the January 17, 2019, regular meeting: SD 18-027, MD 18-004

C. **SD 18-022**
Application by Salters Road Venture, LLC for a **SUBDIVISION** of 4.53 acres located at **100 QUESTOVER DR** from 3 LOTS to 47 LOTS (TM# 0261000103700; 0261000103800; 0261000103900)

Frixen presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Approve with staff comments and conditions, with the two lots and stormwater pond deleted from the preliminary plat as illustrated and agreed to by the applicant.**

Dwayne Cooper, City Engineer, provided information on the Salters Road realignment project, the need to delete the two subdivision lots from the preliminary plat, and the relocation of the stormwater pond from the proposed location to the adjacent property. He explained that the applicant has been cooperative working with the city and Verdae Development, and the proposed development will be finalized once property agreements with the city and Verdae are in place.

Public comments in favor of application:

- Debbie Wallace of Verdae Development expressed her support for the project

Public comments against application:

- None

Board discussion:
The board asked for clarification on some of the land swap issues from staff.

***Motion: Commissioner Pait moved to approve with staff comments and conditions, and with the deletion of the two lots and stormwater pond as illustrated during the meeting and agreed to by the applicant. Commissioner Smith seconded the motion. The motion was approved by a vote of 7-0.**

D. SD 18-027
Application by Jay Martin for a **SUBDIVISION** of 1.86 acres located at **808 MCDANIEL AV** from 1 LOT to 7 LOTS (TM# 0217000500700)
Deferred to January 17, 2019, meeting as requested by applicant.

E. SD 18-031
Application by Neal Fogleman for a **SUBDIVISION** of 5.95 acres located at **DUVALL DR + ISBELL LN** from 1 LOT to 21 LOTS (TM# M011010100100).

The commission voted to go into executive session at the request of the city attorney. No action was taken. The board voted to come out of executive session.

Frixen presented the staff report for this item, noting that the item was deferred at the November meeting for the city attorney to research potential legal issues that might prevent the development. Frixen stated that other than a copy of the plat and deed restrictions being added, there were no changes to the staff report. (Note: Full staff report is on file at the Planning Office.)
Staff Recommendation: Recommend approval with staff comments and conditions

Public comments in favor of application:

- None

Public comments against application:

- Believe restrictive covenants prevent the property from being subdivided as proposed
- Concern about fire hydrants
- Concern about increased traffic
- Concern about loss of trees on the property and increased noise from the interstate

The applicant provided a rebuttal, stating that the site consists primarily of Kudzu and thin pine trees. He also believes his development will reduce the noise impacts from the interstate on the adjacent neighborhood.

Board discussion:

- Commissioner Terry believed the size of the lots is incompatible with the adjacent neighborhood and does not meet the infill design standards.
- Discussion about the width of the streets.

- Discussion about current vegetation on the site.
- Concern about stormwater detention facility

***Motion: Commissioner Keller made a motion to approve with staff comments and conditions. Commissioner Pait seconded the motion. The motion was approved by a vote of 5-2, with Commissioners Terry and Smith voting "no."**

NEW BUSINESS:

A. **MD 18-004 (MFD 18-978)**
Application by W. Norman Hamilton for a **MULTI-FAMILY DEVELOPMENT** on 3.7 acres located at **254 S PLEASANTBURG DR** (TM#s 0266000130100, 0266000130101)
Deferred to January 17, 2019, meeting as requested by applicant.

B. **Z-26-2018**
Application by Dan Bruce for a **REZONE** of 19.4 acres located at **HAYWOOD RD and PELHAM RD** from R-6, Single-Family Residential District to PD, Planned Development District (TM#s 0278000200300, 0278000200301)

Lavrin presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Recommend denial of rezone to city council**

Lavrin explained that the applicant is aware of the recommendation for denial, but wanted to use the planning commission meeting as an opportunity to receive comments on the proposed PD.

Andy Sherard of Site Design asked staff to show a Powerpoint presentation of the revised application they submitted earlier in the afternoon for the January planning commission meeting.

Staff stated that the applicant cannot show information that was not publicly noticed. City attorney Mike Pitts, citing the Land Management Ordinance, stated that minor modifications to an application may be approved at the planning commission, but major deviations would require deferral and a revised application.

There was also procedural discussion about voting to defer or table the application prior to the commission providing comments. Mr. Pitts stated that once the item is tabled or deferred, discussion on the item at that meeting stops.

The applicant proceeded to go through the originally public noticed application.

Public comments in favor of application:

Public comments against application:

Board discussion:
- Concerns about increased traffic congestion
- Discussion of orientation and mass of proposed buildings
- Discussion of topographic challenges
- Recommend reorienting Spinx gas station
- Break up mass of building
- Provide a more defined boulevard and traffic pattern through the site
- Concern about little open space
- Provided feedback about architecture

***Motion: Commissioner Smith made a motion to defer this application to January 17, 2019,**

with the consent of the applicant. Commissioner Terry seconded the motion. The motion was approved by a vote of 7-0.

C. **Z-27-2018**
Application by City of Greenville for a **TEXT AMENDMENT** to Section(s) 19-4.3.2(G) Wireless communications facility to address recent changes in federal law and to modify building height requirements for roof-mounted wireless facilities in the C-4 Central Business District

Frixen presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Recommend approval of text amendment to city council**

City attorney Mike Pitts explained that he had received feedback from one of the wireless companies that the language and the requirement regarding the size of the pole-mounted antennas may need to be increased from 3 cubic feet to 3.5 cubic feet or slightly more. He stated that the approval would be subject to finalizing that language before it is presented to council, but the modification does not substantially change the amendment and it can move forward.

Public comments in favor of application:
- None

Public comments against application:
- None

Board discussion:
- None

***Motion: Commissioner Terry made a motion to approve, with a minor increase in the size requirements for pole-mounted antennas to be finalized prior to presentation to council. Commissioner Keller seconded the motion. The motion was approved by a vote of 7-0.**

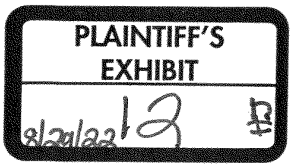
OTHER BUSINESS:

A. **Approval of 2019 Planning Commission Meeting Calendar**

By a vote of acclamation, the commission approved its 2019 meeting calendar as follows:

Date of Public Hearing - Planning Commission*
January 17, 2019
February 21
March 21
April 18
May 16
June 20
July 18
August 15
September 19
October 17
November 21
December 19
January 16, 2020

ADJOURNMENT: The meeting was adjourned at 8:20 P.M.



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REVISED 2/11/2019

Ordinance No. 2019-___

AN ORDINANCE

TO REZONE APPROXIMATELY 103 ACRES OF PROPERTY ALONG A PORTION OF PENDLETON STREET, NORTH MEMMINGER STREET, SOUTH CALHOUN STREET, AND SOUTH ACADEMY STREET (Z-20-2018)

WHEREAS, the City of Greenville applied to the City Planning Commission and City Council to rezone multiple properties along a portion of Pendleton Street, North Memminger Street, South Calhoun Street and South Academy Street in order to better align zoning with current uses and encourage development that is compatible with the surrounding neighborhoods; and

WHEREAS, the Pendleton Street corridor, between South Main Street and Academy Street, is an important link connecting downtown, the West End Historic District and the Village of West Greenville; and

WHEREAS, Academy Street between Markley and Pendleton Streets also links Heritage Green, Downtown, the Salvation Army's Kroc Center, A.J. Whittenberg Elementary School and the new Unity Park with the neighborhoods located in Greenville's West Side; and

WHEREAS, the West Greenville, West End, and Sterling neighborhoods have undergone transformation with the renovation of existing homes and the construction of new homes including affordable, workforce and market-rate options; and

WHEREAS, while this revitalization, taken as a whole, has been a positive development, these three neighborhoods also face development pressures including the demolition of existing homes and religious and commercial structures, and the loss of affordable housing; and

WHEREAS, the West End Neighborhood Association asked City staff to review the zoning classifications in this area and present recommendations that encourage more neighborhood compatible development; and

WHEREAS, the Sterling Neighborhood Master Plan also included a recommendation to update the zoning along Pendleton Street to encourage more mixed use and neighborhood friendly development; and

WHEREAS, in light of these neighborhood changes and the concerns expressed by the residents, the City developed a study area that included the Pendleton Street and Academy Street corridors and adjacent areas and undertook an evaluation of the current zoning, and the commercial zoning designations permitted within the City's Land Management Ordinance; and

WHEREAS, from those efforts and studies emerged a recognition that the Pendleton Street corridor was predominately zoned C-3 (Regional Commercial), one of the most intensive commercial designations and found on corridors such as Laurens Road, Wade Hampton Boulevard and Pleasantburg Drive, while the Academy Street corridor in close proximity was zoned C-2 (Local Commercial); and

WHEREAS, the RDV (Redevelopment District) designation was the most appropriate commercial zoning designation for this section of Pendleton Street given the desire to discourage uses that do not contribute to the revitalization of the area, and to encourage more urban and pedestrian friendly development; and

WHEREAS, the RDV designation meets the Mixed-Use Community (Pendleton Street) and Urban Residential (Academy Street) future land use designations set out in the 2009 Comprehensive Plan; and

WHEREAS, in the Comprehensive Plan, a Mixed-Use Community designation encourages grocery stores, specialty stores, community libraries, medical offices, mid-size employers, community parks and residential uses; and

WHEREAS, the Urban Residential designation encourages a range of housing, including single-family detached houses, attached homes and multifamily units in order to serve as a transition between the Downtown core uses and the single family neighborhoods of outlying areas; and

WHEREAS, the City's planning efforts culminated with a recommendation of the rezoning contemplated in this Ordinance, which in summary, rezones the Pendleton Street commercial corridor from C-3 to RDV and those portions of the Academy Street commercial corridor in the same vicinity from C-2 to RDV, RM-1 (Single-family and Multifamily Residential District) and RM-2 (Single-family and Multifamily Residential District) while maintaining and slightly expanding the residential designation where appropriate based on current uses; and

WHEREAS, staff also reviewed the intersection of Academy Street and Pendleton Street and given that Academy Street is an arterial street and generates traffic counts of between 20,200 and 27,300 cars per day, and the three (3) adjoining corners are currently zoned C-3, staff recommended that this corner remain C-3; and

WHEREAS, City staff was also mindful of existing uses within the subject area and the majority of the existing uses will be allowed by right with a few current uses that will be considered non-conforming under the RDV designation; and

WHEREAS, those non-conforming uses may continue as long as the operations do not cease for a period greater than six (6) months which at that time, the zoning will revert to the new zoning designation; and

WHEREAS, in the past, City Council has taken steps to better align the zoning along commercial corridors to encourage redevelopment that supports its adjacent neighborhoods including a portion of Pendleton Street between Academy Street and the Village of West Greenville in 2010, portions of E. Stone Avenue and Wade Hampton Boulevard in 2008 and portions of the Pete Hollis Gateway area in 2006; and

WHEREAS, the proposed rezoning is more fully set forth in Exhibit A, attached hereto and made a part hereof, which sets forth the tax map number along with the existing and proposed designation for each affected property — further reference is also made to Exhibits B and C, attached hereto and made a part hereof, which set forth maps prepared by Planning staff reflecting the existing and proposed zoning, respectively; and

WHEREAS, several neighborhood and public meetings were held to request and receive feedback from the impacted property owners and neighbors as more fully set forth in Exhibit D, attached hereto and made a part hereof; and

WHEREAS, the City Planning Commission, pursuant to public notice, held a public hearing on December 20, 2018, to consider the proposed rezoning, and the Commission recommended approval; and

WHEREAS, City Council finds that the proposed re-zoning guides development in accordance with existing and future needs and substantially advances legitimate governmental interests by promoting public convenience, order, appearance, prosperity, and welfare; and

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WHEREAS, City Council finds the proposed zoning classifications to be compatible with the City's Comprehensive Development Plan and with the zoning of surrounding properties; and

WHEREAS, at the January 28 meeting, City Council requested that staff review the proposed zoning for four parcels comprising Tax Map Numbers 78-6-4, 78-6-12, 78-6-12.1 and 78-6-3.1; and

WHEREAS, staff reviewed the proposed zoning for these parcels and based upon their size, frontage along Academy Street, and the goal to encourage more neighborhood-friendly redevelopment, staff is recommending that the aforementioned parcels listed above be zoned RDV;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, approximately 103 acres of property currently located along a portion of Pendleton Street, North Memminger Street, South Calhoun Street and South Academy Street are hereby rezoned as reflected in Exhibit A. This Ordinance shall be effective upon second and final reading.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF _____, 2019.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

REVIEWED:

_____
CITY MANAGER

EXHIBIT A
List of properties by tax map numbers

PIN	Existing	Proposed
007300400200	C-3	C-4
007300400400	C-3	C-4
007300400600	C-3	C-4
007300400601	C-3	C-4
007300400602	C-3	C-4
007300400603	C-3	C-4
007300400604	C-3	C-4
007300400605	C-3	C-4
007300400607	C-3	C-4
007300400608	C-3	C-4
007300400609	C-3	C-4
007300400610	C-3	C-4
007300400611	C-3	C-4
007300400612	C-3	C-4
007300400613	C-3	C-4
007300400614	C-3	C-4
007300400615	C-3	C-4
007300400616	C-3	C-4
007300400617	C-3	C-4
007300400618	C-3	C-4
007300400619	C-3	C-4
007300400800	C-3	C-4
007300401000	C-3	C-4
007300401500	C-3	C-4
007300401600	C-3	C-4
007400200100	C-2	RM-2
007400200101	C-2	RM-2
007400200102	C-2	RM-2
007400200103	C-2	RM-2
007400200104	C-2	RM-2
007400200105	C-2	RM-2
007400200106	C-2	RM-2
007400200107	C-2	RM-2
007400200108	C-2	RM-2
007400200109	C-2	RM-2
007400200110	C-2	RM-2
007400200111	C-2	RM-2
007400200112	C-2	RM-2
007400200113	C-2	RM-2
007400200114	C-2	RM-2
007400200200	C-2	RM-2
007400300300	C-2	C-2
007400401300	C-2	C-2
007400500100	RM-2	RM-2
007400500200	RM-2	RM-2
007400500300	C-2	C-2
007400600100	C-2	RM-2
007400600200	RM-2	RM-2
007400600201	RM-2	RM-2
007400600300	RM-2	RM-2
007400600400	RM-2	RM-2
007400600500	RM-2	RM-2
007400600600	RM-2	RM-2
007400600700	RM-2	RM-2
007400600800	RM-2	RM-2
007400600900	RM-2	RM-2
007400700100	RM-2	RM-2
007400700101	RM-2	RM-2
007400700200	RM-2	RM-2
007400700300	RM-2	RM-2
007400700400	RM-2	RM-2

2

0074000700500	RM-2	RM-2
0074000700600	RM-2	RM-2
0074000700700	RM-2	RM-2
0074000700800	RM-2	RM-2
0074000700900	RM-2	RM-2
0074000700901	RM-2	RM-2
0074000701000	RM-2	RM-2
0074000701100	RM-2	RM-2
0074000701200	RM-2	RM-2
0074000701300	RM-2	RM-2
0074000701301	RM-2	RM-2
0074000701400	RM-2	RM-2
0074000701500	RM-2	RM-2
0074000701600	RM-2	RM-2
0074000800200	RM-2	RM-2
0074000800300	RM-2	RM-2
0074000800400	RM-2	RM-2
0074000800500	RM-2	RM-2
0074000800600	RM-2	RM-2
0074000800700	RM-2	RM-2
0074000800800	RM-2	RM-2
0074000800900	RM-2	RM-2
0074000801200	C-4/RM-2	C-4/RM-2
0074000801400	RM-2	RM-2
0075000300900	C-2	RM-1
0075000301000	C-2	RM-1
0075000301100	C-2	RM-1
0075000301101	C-2	RM-1
0075000301200	C-2	RM-1
0078000101000	C-2	RM-1
0078000101001	C-2	RM-1
0078000101002	C-2	RM-1
0078000200101	C-2	RM-2
0078000200102	C-2	RM-2
0078000200200	C-3	C-3
0078000200301	C-3	C-3
0078000200302	C-3	C-3
0078000200400	C-3	C-3
0078000200500	C-3	RDV
0078000200700	C-3	RDV
0078000200900	C-3	RDV
0078000201200	C-2	RM-2
0078000201201	C-2	RM-2
0078000201202	C-2	RM-2
0078000201300	C-2	RM-2
0078000201400	C-2	RM-2
0078000201500	C-2	RM-2
0078000201600	C-2	RM-2
0078000201601	C-2	RM-2
0078000201700	C-2	RM-2
0078000300100	C-3	RDV
0078000300101	C-3	RM-2
0078000300200	C-3	RM-2
0078000300300	C-3	RM-2
0078000300900	RM-2	RM-2
0078000301200	C-3	RDV
0078000301300	C-3	RDV
0078000301500	C-3	RDV
0078000400100	C-3	RDV
0078000400101	C-3	RDV
0078000400700	C-3	RDV
0078000400800	C-3	RDV

List of Current and Propososed Zoning by Parcel (003)

3

0078000400801	C-3	RDV	
0078000400900	C-3	RDV	
0078000401000	C-3	RDV	
0078000401100	C-3	RDV	
0078000401300	C-3	RDV	
0078000401400	C-3	RDV	
0078000401500	C-3	RDV	
0078000401700	C-3	RDV	
0078000401701	C-3	RDV	
0078000401900	C-3	RDV	
0078000402000	C-3	RDV	
0078000402100	C-3	RDV	
0078000402200	C-3	RDV	
0078000402201	C-3	RDV	
0078000402202	C-3	RDV	
0078000402203	C-3	RDV	
0078000402204	C-3	RDV	
0078000402205	C-3	RDV	
0078000402206	C-3	RDV	
0078000402207	C-3	RDV	
0078000402208	C-3	RDV	
0078000402300	C-3	RDV	
0078000402401	C-3	RDV	
0078000402500	C-3	RDV	
0078000500100	RM-2	RM-2	
0078000500200	RM-2	RM-2	
0078000500300	RM-2	RDV	
0078000500301	C-3	RDV	
0078000500500	C-3	RDV	
0078000500600	C-3	RDV	
0078000500700	C-3	RDV	
0078000500800	C-3	RDV	
0078000500900	RM-2	RM-2	
0078000501000	RM-2	RM-2	
0078000501001	RM-2	RM-2	
0078000501200	RM-2	RM-2	
0078000501300	RM-2	RM-2	
0078000600100	C-2	RM-2	
0078000600200	RM-2	RM-2	
0078000600300	C-2	RM-2	
0078000600301	C-2	~~RM-2~~	RDV
0078000600400	C-2	~~RM-2~~	RDV
0078000600500	RM-2	RM-2	
0078000600501	RM-2	RM-2	
0078000600502	RM-2	RM-2	
0078000600600	RM-2	RM-2	
0078000600700	RM-2	RM-2	
0078000600800	RM-2	RM-2	
0078000600900	RM-2	RM-2	
0078000601000	RM-2	RM-2	
0078000601100	RM-2	RM-2	
0078000601200	C-2	~~RDV~~	RDV
0078000601201	C-2	~~RDV~~	RDV
0078000601800	C-2	RM-2	
0078000601801	RM-2	RM-2	
0078000601802	C-2	RM-2	
0078000700400	OD	RDV	
0078000700500	OD	RDV	
0078000700600	OD	RDV	
0078000700900	C-2	RM-2	
0078000700901	OD	RDV	
0078000700901	C-2	RDV	

List of Current and Proposed Zoning by Parcel (003)

4

0078000701000	C-2	RM-2
0078000701001	OD	RM-2
0078000701100	C-2	RM-2
0078000701101	C-2	RM-2
0078000701102	C-2	RM-2
0078000701200	C-2	RM-2
0078000701400	C-2	RDV
0078000701900	C-2	C-2
0079000100100	RM-2	RM-2
0079000100200	RM-2	RM-2
0079000100201	RM-2	RM-2
0079000100400	RM-2	RM-2
0079000100500	RM-2	RM-2
0079000100502	RM-2	RM-2
0079000100600	RM-2	RM-2
0079000100700	RM-2	RM-2
0079000100800	RM-2	RM-2
0079000100801	RM-2	RM-2
0079000100900	RM-2	RM-2
0079000101000	RM-2	RM-2
0079000101100	RM-2	RM-2
0079000101200	RM-2	RM-2
0079000101300	C-2	RM-2
0079000101500	RM-2	RDV
0079000101800	C-2	RM-2
0079000101900	RM-2	RM-2
0079000102000	RM-2	RM-2
0079000102100	RM-2	RM-2
0079000102700	RM-2	RM-2
0079000102800	RM-2	RM-2
0079000102900	RM-2	RM-2
0079000103000	RM-2	RM-2
0079000103100	RM-2	RM-2
0079000103200	RM-2	RM-2
0079000103300	RM-2	RM-2
0079000103400	RM-2	RM-2
0079000103500	RM-2	RM-2
0079000103600	RM-2	RM-2
0079000103700	RM-2	RM-2
0079000103801	RM-2	RM-2
0079000103802	RM-2	RM-2
0079000103803	RM-2	RM-2
0079000103900	RM-2	RM-2
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0079000200200	RM-2	RM-2
0079000200300	RM-2	RM-2
0079000200400	RM-2	RM-2
0079000200500	RM-2	RM-2
0079000200600	RM-2	RM-2
0079000200700	RM-2	RM-2
0079000200800	RM-2	RM-2
0079000200900	RM-2	RM-2
0079000201000	RM-2	RM-2
0079000201100	RM-2	RM-2
0079000201200	RM-2	RM-2
0079000201300	RM-2	RM-2
0079000201400	C-2	RDV
0079000201401	RM-2	RDV
0079000201900	C-2	RDV
0079000202100	RM-2	RM-2
0079000202400	RM-2	RM-2
0079000202500	RM-2	RDV

List of Current and Proposed Zoning by Parcel (003)

5

0079000202501	RM-2	RDV
0079000202600	RM-2	RDV
0079000202700	C-2	RDV
0079000202800	C-2	RM-2
0079000202900	RM-2	RM-2
0079000203000	RM-2	RM-2
0079000203100	RM-2	RM-2
0079000203200	RM-2	RM-2
0079000203300	RM-2	RM-2
0079000203400	RM-2	RM-2
0079000203401	RM-2	RM-2
0079000203500	RM-2	RM-2
0079000203506	RM-2	RM-2
0079000203507	RM-2	RM-2
0079000203508	RM-2	RM-2
0079000203509	RM-2	RM-2
0079000203510	RM-2	RM-2
0079000204000	RM-2	RM-2
0080000100100	C-3	RDV
0080000100101	C-3	RDV
0080000100200	OD	RDV
0080000100400	RM-2	RM-2
0080000100500	RM-2	RM-2
0080000100600	RM-2	RM-2
0080000100700	RM-2	RM-2
0080000100800	RM-2	RM-2
0080000100900	RM-2	RM-2
0080000100901	RM-2	RM-2
0080000101000	C-3	RDV
0080000101100	C-3	RDV
0080000101200	C-3	RDV
0080000101300	C-3	RDV
0080000101301	C-3	RDV
0080000200100	C-3/RM-2	RDV
0080000300100	RM-2	RDV
0080000300200	C-3	RDV
0080000300300	RM-2	RDV
0080000300400	C-3	RDV
0080000300500	C-3	RDV
0080000300502	C-3	RDV
0080000400100	C-3	PD
0080000400102	C-3	RDV
0080000400103	C-3	PD
0080000400104	C-3	PD
0080000400105	C-3	RM-2
0080000400106	PD	RM-2
0080000400107	PD	RM-2
0080000400108	PD	RM-2
0080000400109	PD	RM-2
0080000400110	PD	RM-2
0080000400111	C-3	RM-2
0080000400112	PD	RM-2
0080000400113	C-3	RM-2
0080000400400	PD	RDV
0080000400500	C-3	RM-2
0080000500100	C-3/RM-2	RDV
0080000500200	C-3	RDV
0080000500300	C-3	RDV
0080000500301	C-3	RDV
0080000500900	C-3	RDV
0080000600100	C-3	C-4
0080000600200	C-3	C-4

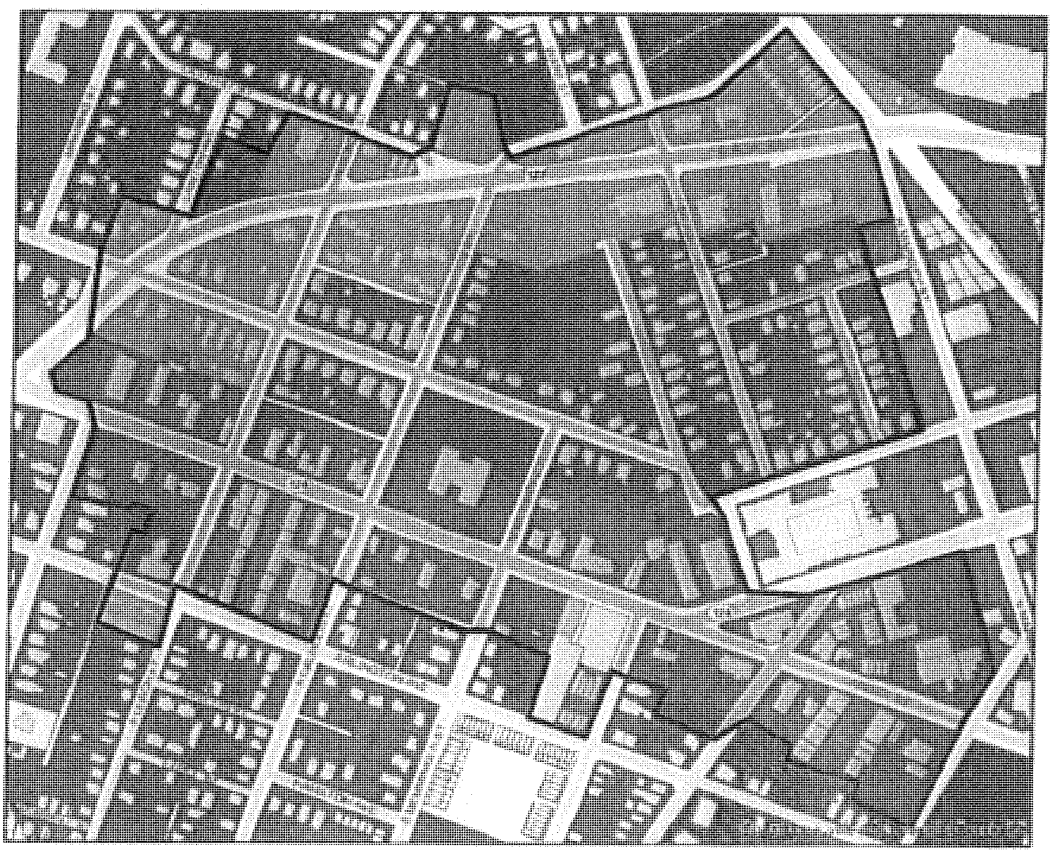
List of Current and Propososed Zoning by Parcel (003)

6

0080000600300	C-3	C-4
0081000200200	C-3	OD
0081000200300	C-3	OD
0081000200301	C-3	OD
0081000200302	C-3	OD
0081000200303	C-3	OD
0081000200304	C-3	OD
0081000200305	C-3	OD
0081000200306	C-3	OD
0081000200307	C-3	OD
0081000200308	C-3	OD
0081000200309	C-3	OD
0081000200400	C-3	OD
0081000200500	C-3	OD
0081000200600	C-3	RM-1
0081000201700	C-3	RM-1
0081000201800	C-3	RM-1
0081000202100	C-3	OD
0081000202200	C-3	OD
0081000202300	C-3	OD
0084000103100	C-3	RM-2
0084000103100	RDV	RM-2
0084000103101	RDV	RM-2
0084000103102	RDV	RM-2
0084000103103	RDV	RM-2
0084000103104	RDV	RM-2
0084000103105	RDV	RM-2
0084000103106	RDV	RM-2
0084000103107	RDV	RM-2
0084000103108	RDV	RM-2
0084000103109	RDV	RM-2
0084000103110	RDV	RM-2
0084000103111	RDV	RM-2

EXHIBIT B

Pendleton Street Existing Zoning



Legend

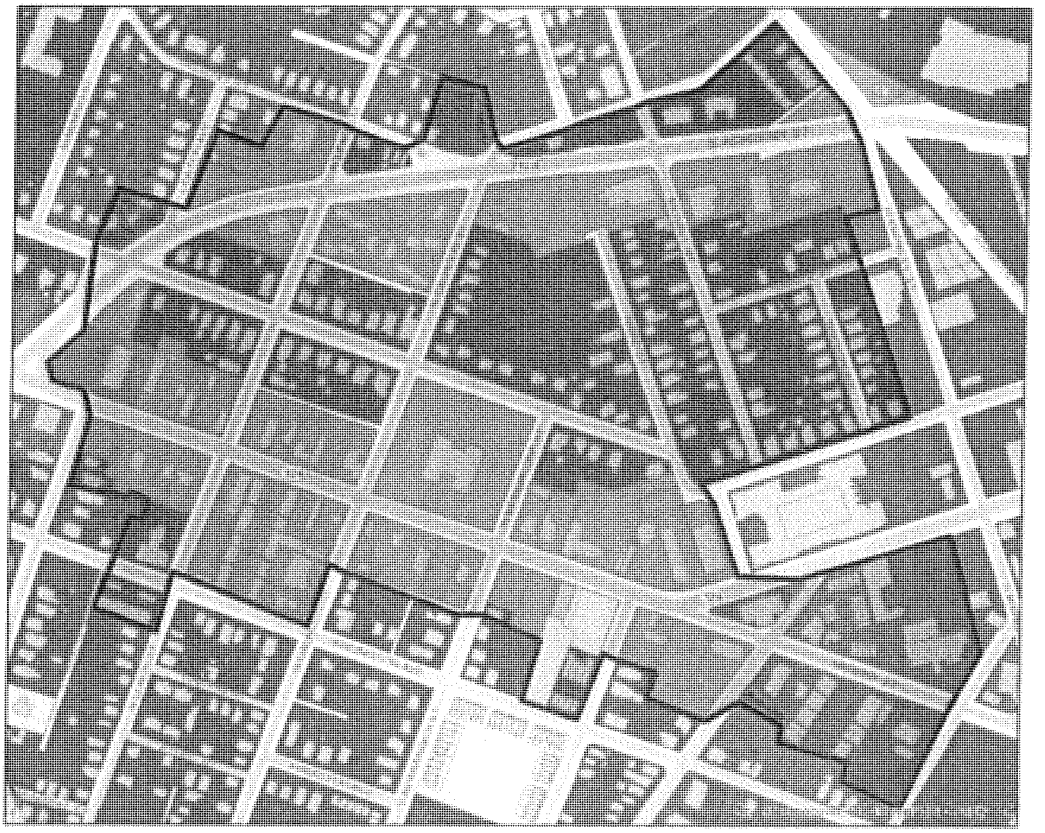
Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

EXHIBIT C

Pendleton Street Proposed Zoning

Revised 2 - 11 - 2019



Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

EXHIBIT D

Pendleton and Academy Street Proposed Zoning Update
Public Meetings and presentations to gather citizens and property owner comments

- West End Neighborhood Association meeting – April 3, 2018 at 6:30
  St. Andrews Episcopal Church

- Open House for Property owners and citizens – April 30, 2018, 4:00-6:00
  St. Andrews Episcopal Church

- Open House for property owners and citizens – May 1, 2018, 4:00-6:00
  St. Andrews Episcopal Church

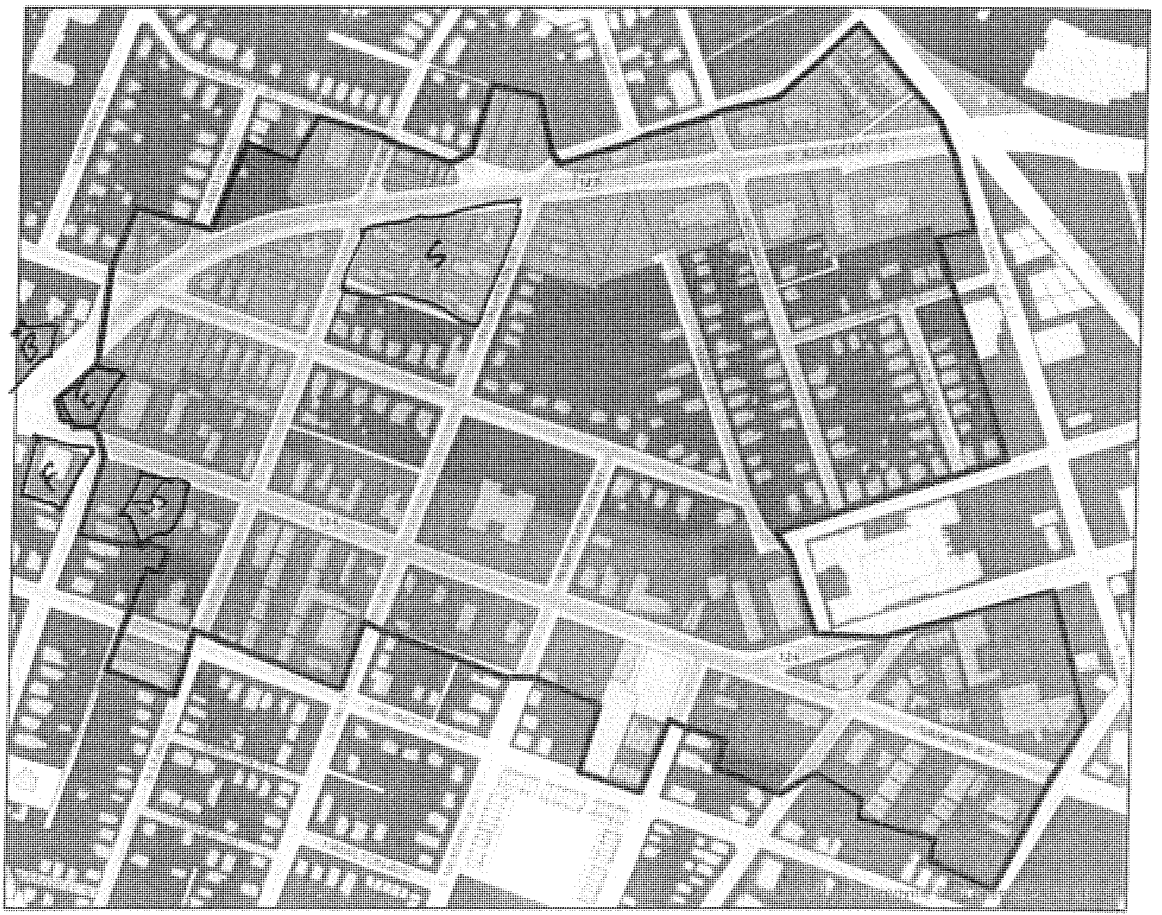
- Sterling Neighborhood Association meeting – May 10, 2018 at 6:00
  Sterling Community Center

- Sterling Land Trust Board of Directors – May 17, 2018 at 6:30
  Sterling Hope Center

- West Greenville Neighborhood Association – October 9, 2018 at 6:30
  W. Greenville Community Center

- West End Neighborhood Association – December 4, 2018 at 6:30
  St. Andrews Episcopal Church

Pendleton Street Existing Zoning



0 0.04 0.09 0.17 Miles

Legend

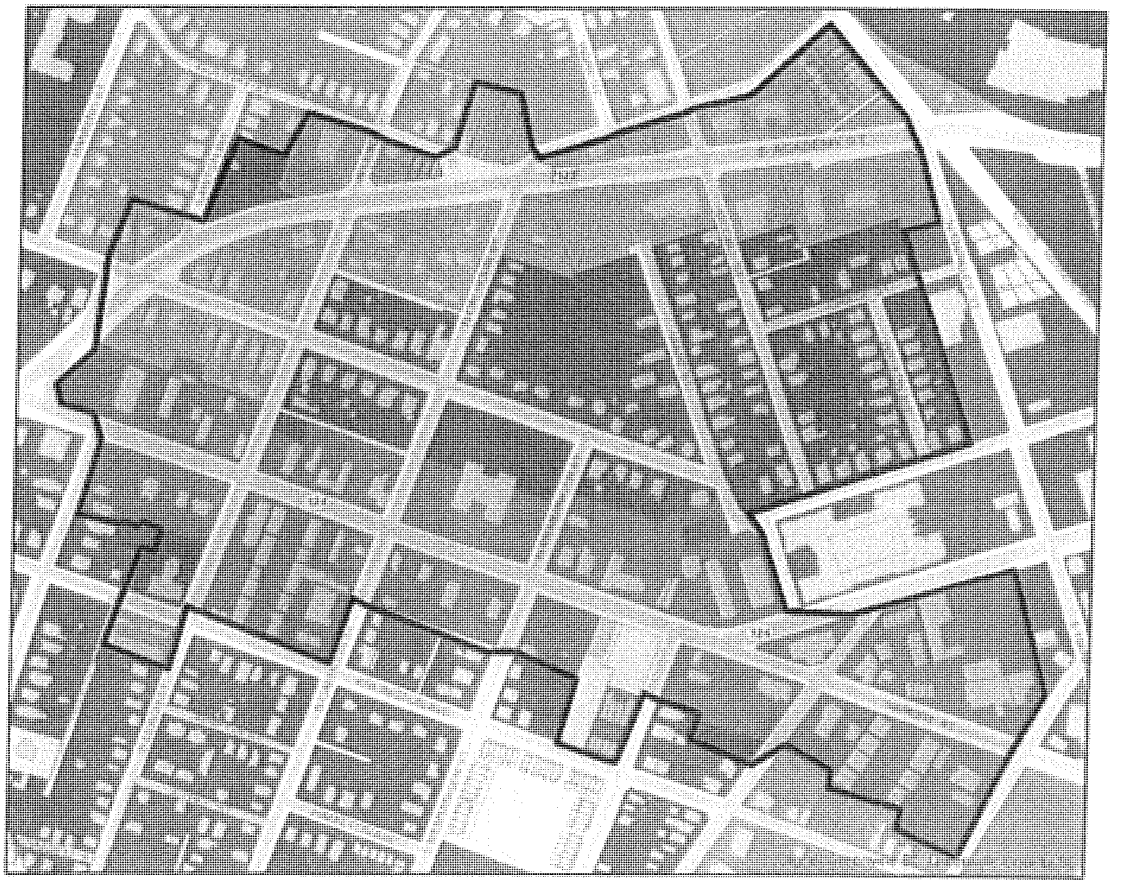
Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

PLAINTIFF'S EXHIBIT
8/20/20 13

PLTF 000750

Pendleton Street Existing Zoning



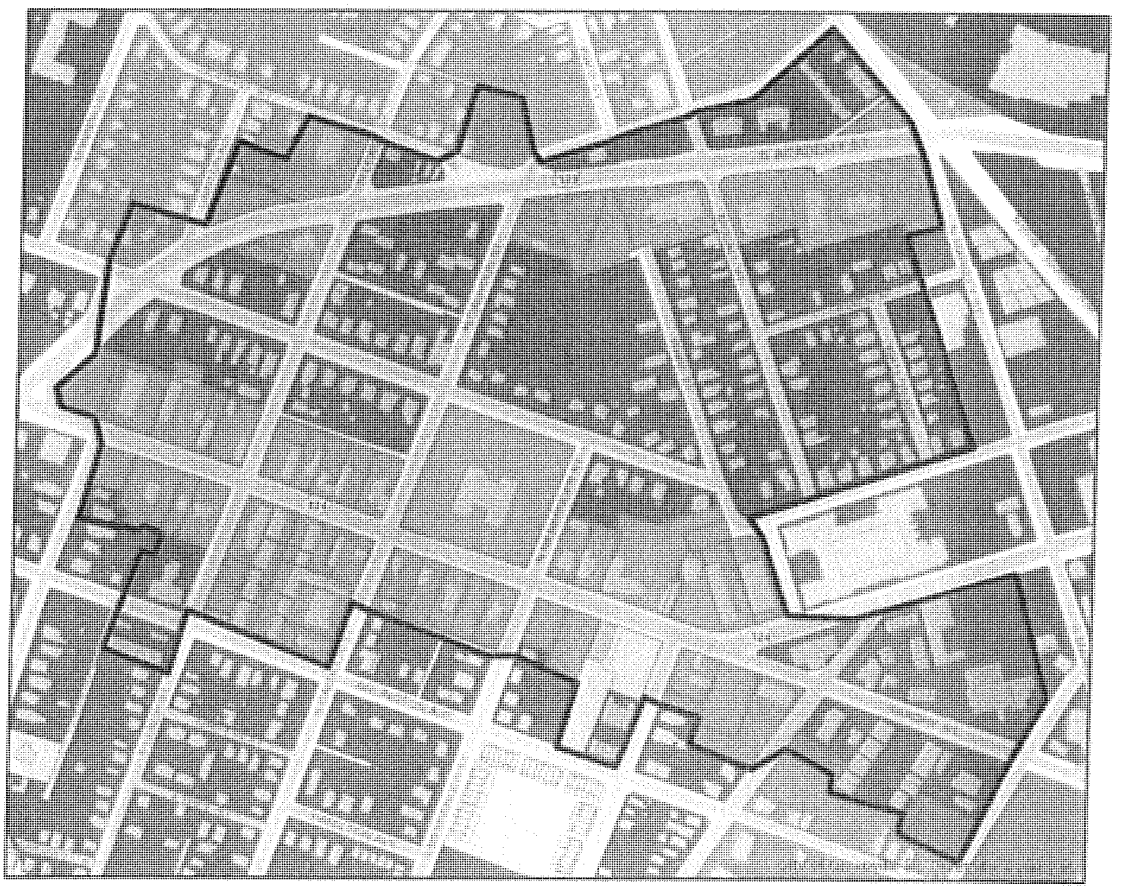
Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

PLAINTIFF'S EXHIBIT
8/29/22 14

Pendleton Street Proposed Zoning



Legend

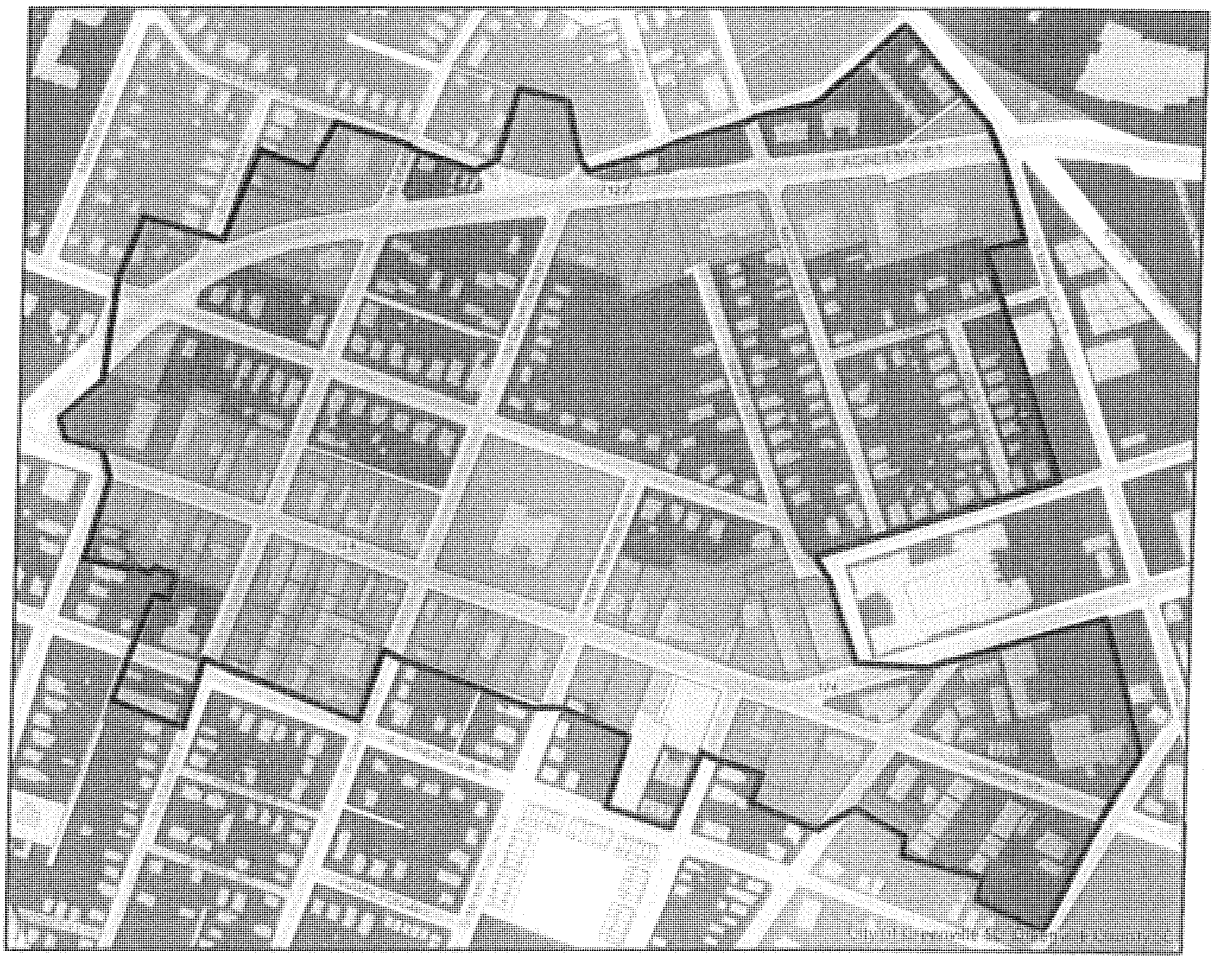
Proposed Zoning

Zone

- C-2, Local Commercial District
- C-4, Central Business District
- OD, Office and Institutional District
- PD, Planned Development District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- Other
- Buildings
- Study Area

PLTF 000751

Pendleton Street Proposed Zoning



Legend

Zoning

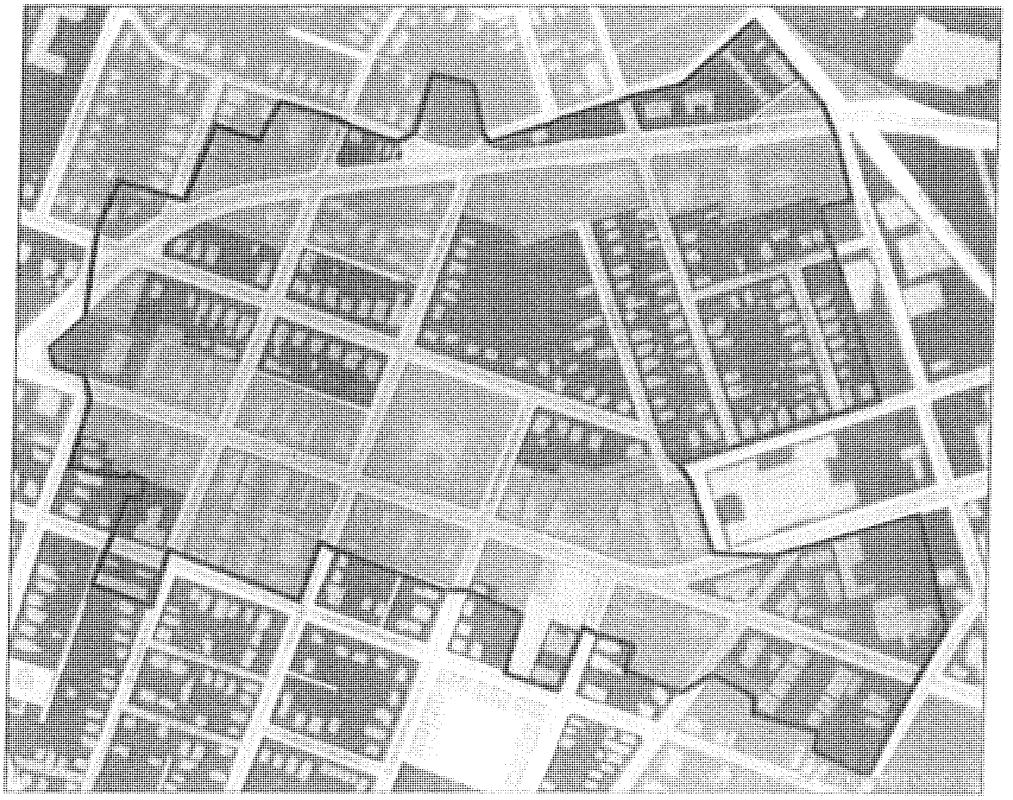
- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
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- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

PLTF 000755

EXHIBIT C

Pendleton Street Proposed Zoning

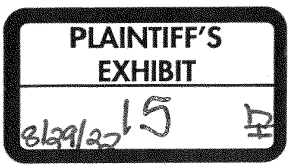
Revised 2 - 11 - 2019



Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
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- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area



From: Elizabeth Lapidus
To: White, Knox
Subject: FW: Planning Commission Item # Z-20-2018- Support
Date: Wednesday, November 7, 2018 9:13:03 AM

From: Ginny Stroud
Sent: Wednesday, November 7, 2018 9:11 AM
To: Knox White
Subject: RE: Planning Commission Item # Z-20-2018- Support

Mayor,
You and I are scheduled to meet with some folks re: financing for Woodside Mill this afternoon. If you have a few minutes after our meeting, I can bring you up to speed. Thanks,
Ginny

city of greenville
Ginny Stroud
Community Development Administrator | Economic Development
gstroud@greenvillesc.gov | www.greenvillesc.gov
PHONE: 864-467-4568 | FAX: 864-467-5735

From: Knox White
Sent: Wednesday, November 7, 2018 9:08 AM
To: Ginny Stroud <gstroud@greenvillesc.gov>
Subject: FW: Planning Commission Item # Z-20-2018- Support

From: White, Knox <kwhite@hsblawfirm.com>
Sent: Wednesday, November 7, 2018 9:07 AM
To: Elizabeth Lapidus <elapidus@greenvillesc.gov>
Subject: Re: Planning Commission Item # Z-20-2018- Support

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Ginny
This is all news to me
I'd like to know more about who and what opposition is about
I do support a rezone

Knox White
-HSB-
Sent from my iPhone

On Nov 7, 2018, at 8:38 AM, Elizabeth Lapidus <elapidus@greenvillesc.gov> wrote:

From: Ginny Stroud
Sent: Wednesday, November 7, 2018 8:14 AM
To: Lillian Flemming <lflemming@greenvillesc.gov>; Ian Thomas <[redacted] Planning <planning@greenvillesc.gov>
Cc: greenvilleWENA@gmail.com; Knox White <kwhite@greenvillesc.gov>; Elizabeth

Lapidus <elapidus@greenvillesc.gov>; Jonathan B. Graham <jbgraham@greenvillesc.gov>; Shannon Lavrin <slavrin@greenvillesc.gov>; City Info <cityinfo@greenvillesc.gov>; Nancy Whitworth <nwhitworth@greenvillesc.gov>; Doyle, Amy <Amy [redacted] George Fletcher <gfletcher@greenvillesc.gov>; Littlejohn, Jil <[redacted] Russell Stall <rstall@greenvillesc.gov>; Wil Brasington <wbrasington@greenvillesc.gov>; Michael Williamson <mwilliamson@greenvillesc.gov>

Subject: RE: Planning Commission Item # Z-20-2018- Support

Councilmember Flemming,

Thank you for your email. As requested by the Planning Commission, staff is meeting with representatives of UDA while they are in town this week to review the proposed re-zoning and seek their input and feedback on the recommended changes. With that feedback, we will speak with the property owners who voiced opposition to the changes to seek a resolution that benefits everyone. We are scheduled to return to the Planning Commission at their December meeting to present the re-zoning request. Staff will provide an update to the neighborhoods prior to the December Planning Commission meeting so that residents are aware of any changes. We appreciate the support shown by the neighborhood associations as we move through the process.

Thank you,

Ginny

Ginny Stroud
Community Development Administrator | Economic Development
gstroud@greenvillesc.gov | www.greenvillesc.gov
PHONE: 864-467-4568 | FAX: 864-467-5735

From: Lillian Flemming
Sent: Wednesday, November 7, 2018 7:55 AM
To: Ian Thomas <[redacted] Planning <planning@greenvillesc.gov>
Cc: greenvilleWENA@gmail.com; Knox White <kwhite@greenvillesc.gov>; Elizabeth Lapidus <elapidus@greenvillesc.gov>; Jonathan B. Graham <jbgraham@greenvillesc.gov>; Shannon Lavrin <slavrin@greenvillesc.gov>; Ginny Stroud <gstroud@greenvillesc.gov>; City Info <cityinfo@greenvillesc.gov>; Nancy Whitworth <nwhitworth@greenvillesc.gov>; Doyle, Amy <Amy [redacted] George Fletcher <gfletcher@greenvillesc.gov>; Littlejohn, Jil <[redacted] Russell Stall <rstall@greenvillesc.gov>; Wil Brasington <wbrasington@greenvillesc.gov>
Subject: Re: Planning Commission Item # Z-20-2018- Support

Mayor, Council, City Manager, Planning:

I attended the West End Neighborhood Association meeting and the attendance was good. But I was disheartened to hear the sadness of the residents as they failed to understand how 11 commercial businesses could hold the RDV zoning hostage but the residents of the communities affected do not seem to matter.

I thank Ian and the community for hanging in there and I am proud of their work. RDV zoning will not hurt commercial development and

I hope that we can help our commercial business owners to see this and move this item forward.
The West End, West Greenville, Sterling, Green Avenue, and Great Sullivan Neighborhood Associations are also affected by the RDV Zoning and this will help to protect the residential communities. I know that the other communities also support this City zoning proposal. Since these residential areas are the most impacted with town houses, apartments, condominiums and commercial developments, we need the RDV zoning to control the growth for residentially friendly developments.
Thanks for listening!

Lillian Brock Flemming
Greenville City Council Dist. 2
Home: [redacted]
Cell: [redacted]

From: Ian Thomas <[redacted]
Sent: Tuesday, November 6, 2018 10:33 AM
To: Planning
Cc: greenvilleWENA@gmail.com; Knox White; Elizabeth Lapidus; Lillian Flemming; Jonathan B. Graham; Shannon Lavrin; Ginny Stroud; City Info
Subject: Planning Commission Item # Z-20-2018- Support

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or opening attachments.

Docket Number: Z-20-2018
Dear Planning Commission Members,
I reside at [redacted] Perry Ave, Greenville, SC 29601, where I have lived since 2009 I am in strong support of the application by the City of Greenville to rezone, as highlighted in the application of Z-20-2018.
I feel that the application has been thoroughly vetted, discussed, and reviewed. The City has taken into consideration the type of developments that have flourished in this area for some time, including owner-occupied, residential developments. Areas of West Greenville, Sterling, Green Ave, and the West End of Greenville are neighborhoods in which people want to live, work and play; as residents are naturally well-positioned to do as City dwellers. This area has seen the revitalization and refurbishment of numerous existing properties, which remain part of the fabric of the historical West End areas of downtown Greenville.
The current zoning of Pendleton Street and Academy Street in the area of study (C3-Regional Commercial District) can traditionally be found in high intensity retail and commercial areas. C3 zoning "allows" for residential use. Areas such as Wade Hampton Boulevard, Laurens Road, Pleasantburg Road, and portions of Haywood Road also have C3 zoning. Pendleton Street does not have nearly the same volume of traffic as these other major roads. The existing C3 zoning appears to be to intense of a zone for Pendleton Street. Furthermore, the C3 properties on Academy Street and Pendleton Street are immediately adjacent to RM2 residential properties with no type of

transitional zoning to act as a buffer. To have C3 zoning immediately adjacent to an owner-occupied RM2 site is an extreme of two different types of zoning.
RDV zoning is more appropriate for the community than C3 zoning because it supports more appropriate local and community based developments. RDV will benefit the local business/commercial and residential economy.
The rezone to RDV would be a positive opportunity and example for the city of Greenville to showcase their ability to work with residents and businesses to find compromise and solutions in an area that is experiencing economic and social changes to a historically significant area of Greenville.
Thank you for your time and consideration. A PDF of this information has also been attached.
Sincerely,
Ian Thomas
Perry Ave Resident
cc:
greenvilleWENA@gmail.com
kwhite@greenvillesc.gov
elapidus@greenvillesc.gov
lflemming@greenvillesc.gov
jbgraham@greenvillesc.gov
slavrin@greenvillesc.gov
gstroud@greenvillesc.gov
cityinfo@greenvillesc.gov

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MINUTES
FORMAL MEETING OF CITY COUNCIL

CITY HALL, 206 S. MAIN STREET, COUNCIL CHAMBERS
Monday, January 28, 2019 - 5:30 p.m.

1. **CALL TO ORDER**
   Mayor Knox H. White

2. **INVOCATION**
   Councilmember Lillian Flemming

3. **PLEDGE OF ALLEGIANCE**
   Augusta Heights Baptist Church Girl Scout Cadettes

4. **ROLL CALL**
   The following members of City Council were in attendance: Mayor Knox White, Amy Doyle, Lillian Flemming, Wil Brasington, Russell Stall, and George Fletcher

   Absent: Jil Littlejohn

5. **APPROVAL OF THE MINUTES**
   January 14, 2019; Approved as submitted
   January 22, 2019; Approved as submitted

6. **COMMUNICATIONS / ANNOUNCEMENTS FROM THE MAYOR AND COUNCIL**
   None

7. **CITIZENS WISHING TO ADDRESS COUNCIL**
   Refer to Items 15b and 15c

8. **PRESENTATION**
   None

9. **PUBLIC HEARING**
   None

10. **APPOINTMENTS – Boards and Commissions**
    None

CONSENT AGENDA
There will be no discussion of Consent Agenda items unless a Council member so requests in which event the item in question will be considered separately.

Councilmember Fletcher moved, seconded by Councilmember Brasington, to approve second and final reading of agenda items 11a, 11b, 11c, 11d, 11e, 11f, 11g, 11h,11i, 11j, 11k, and 11l, and first and final reading of agenda items 13a and 13b of the Consent Agenda. The motion carried unanimously.

DEFENDANT'S EXHIBIT

11. UNFINISHED BUSINESS – (Ordinances – Second and Final Reading)

a. Ordinance to appropriate $1,500 in the Miscellaneous Grants Fund from the Phoenix Center to fund the Greenville Police Department's Alcohol Enforcement Team's Enforcement Activities

b. Ordinance to abandon a portion of right of way on Cavalier Drive (AB-3-2018)

c. Ordinance to abandon an unimproved, unnamed alley located off of East 5th Street near Woodside Mill and an unnamed alley located off of 3rd Street near Woodside Mill (AB-4-2018)

d. Ordinance to abandon a portion of 2nd and 3rd Street Alley located off of East Main Street near Woodside Mills (AB-5-2018)

e. Ordinance to abandon Questover Drive (AB-6-2018)

f. Ordinance to appropriate $26,080 in the Law Enforcement Special Revenue Fund, Department of Homeland Security Account, and to accept a grant award in the amount of $26,080 from the Office of Justice Programs, Bulletproof Vest Partnership for the purpose of funding the purchase of body armor for the Greenville Police Department

g. Ordinance to enter into a Development Agreement between the city of Greenville and the South Carolina Children's Theater for the provision of public improvements

h. Ordinance to confirm the Lease of Falls Cottage and the Falls Cottage property to the Carolina Foothills Garden Club, the sublease of the lease of Falls Cottage and the Falls Cottage Property to Mary S. Jones, Allen D. Jones, and Kent T. Fisher, and for other purposes as set out herein

i. Ordinance to appropriate $57,500 in the General Fund for the recruitment of a City Manager

j. Ordinance to provide City consent to a Right of Way Agreement between the Greater Greenville Chamber of Commerce and Renewable Water Resources on property located at 24 Cleveland Street (Tax Map Number 0069000300105)

k. Ordinance to rezone a portion of 1041 Verdae Boulevard from C-3, Regional Commercial District, and S-1, Service District, to S-1, Service District (Tax Map Number 0545010102204) (Z-24-2018)

l. Ordinance to amend Section 19-4-3.2(G) of the Code of Ordinances of the City of Greenville pertaining to wireless communication facilities (Z-27-2018)

12. NEW BUSINESS – (Ordinance – First Reading)
None

13. NEW BUSINESS – (Resolutions – First and Final Reading)

a. Resolution to accept a Dedication from Verdae Development, Inc. of 0.937 acre (40,808 square feet) of public right of way for Alleys 4 and 5 at Hollingsworth Park at Verdae TND into the City Street System

b. Resolution to accept a Dedication of public right of way from Verdae Owners Association, Inc. for Verdae Boulevard

REGULAR AGENDA

14. UNFINISHED BUSINESS – (Ordinances – Second and Final Reading)
None

15. NEW BUSINESS – (Ordinances – First Reading)

a. Ordinance to appropriate $16,533 in the Zoo Enterprise Fund for a contribution from the Zoo Education Foundation to convert a part-time zoo education instructor to full-time status

Councilmember Brasington moved, seconded by Councilmember Fletcher, to approve first reading. The motion carried unanimously.

b. Ordinance to rezone approximately 103 acres of property along a portion of Pendleton Street, North Memminger Street, South Calhoun Street, and South Academy Street (Z-20-2018)

Councilmember Stall moved, seconded by Councilmember Fletcher, to approve first reading.

Community Development Administrator Ginny Stroud stated the rezoning is being recommended to encourage more neighborhood compatible development. Ms. Stroud also stated a study area including the properties in Item 15b was selected to determine if the current zoning structure needed to be changed to RDV, Redevelopment District. Ms. Stroud commented on RDV zoning being the best use encouraging more urban and pedestrian friendly development in the area. Ms. Stroud noted there were numerous neighborhood meetings held regarding the rezoning.

Ian Thomas, 209 Perry Avenue, as President of the West End Neighborhood Association, spoke in support of Item 15b and referred to a letter of support including 80 residential signatures previously submitted to the City from the residents in the area. Mr. Thomas referred to positive aspects of the proposed rezoning and stated if the zoning is not changed, commercial development could occur.

Diane Keller, 111 McCall Street, spoke in support of Item 15b and stated she has been a resident of the impacted area for over 40 years. Ms. Keller referred to new residents moving into the area and stated the rezoning will help to prevent unwanted businesses from establishing in the area. Ms. Keller added she would like to see more affordable housing in the area.

Father Patrick Tuttle, St. Anthony's Church and School, 307 Gower Street, spoke in support of Item 15b and stated he believes the rezoning will improve and protect the neighborhood. Father Tuttle stated he represents residents who are unable to attend because they are working and who need to live close to where they work and need to have a low rent or mortgage. Father Tuttle shared concerns for more work force and affordable housing in the area and recommended creating a new zoning designation for the work force community.

Linda Faust, 307 Perry Avenue, spoke in support of Item 15b and stated she supports continued redevelopment in the West End and believes RDV rezoning will improve health, general welfare, and safety protection for the neighborhoods.

Jack Malo, 17 Club Forest Lane, spoke regarding Item 15b and commented on interaction with neighborhood residents by students of St. Anthony's of Padua Catholic School regarding the residents' inability to attend city meetings and allowing the students to speak on their behalf. Mr. Malo stated he and the students in attendance are representing 57 West Greenville residents who could not attend. Mr. Malo commented that they support the proposed RDV rezoning, but expressed concern for protection of those residents and the potential loss of their property to developers.

Maegan White, 101 Aberdeen Lane, spoke regarding Item 15b and on behalf of 57 area residents and her fellow peers at St. Anthony's Catholic School. Ms. White presented a handout of her comments and requested Council amend the proposed zoning to create a new residential zoning designation to protect single family, low height residences and to prevent three story and higher, multi-residential buildings high end developments. Ms. White stated she is in favor of RDV zoning as long as there are protections in place for work force and working poor in the community.

Maria Clark, 24 Shale Court, spoke regarding Item 15b on behalf of 57 area residents and as a student at St. Anthony's Catholic School. Ms. Clark commented on her interactions with residents in the surrounding neighborhood. Ms. Clark encouraged Council to consider the impact of zoning on the community and the comments presented.

Suzanne Woaf, 200 Perry Avenue, spoke in support of Item 15b and stated the rezoning will promote a vibrant and viable community and will keep with the character of the proposed downtown master plan for the City.

Robert Brady, 10 N. Leach Street, spoke in support of Item 15b, stating he has lived in the area being affected for five years, expressing his appreciation to city staff working on the rezoning proposal and requesting Council's support for the proposal.

Susan Skipwith, 303 Arlington Avenue, spoke in support of Item 15b and stated she moved five years ago from Portland, Oregon, and chose Greenville because of the downtown development and the attention given to parks and neighborhoods. Ms. Skipwith shared her support for the development and her appreciation to city staff in conducting neighborhood meetings and listening to the residents.

Dan Weidenbenner, 168B Otis Street, spoke in support of Item 15b and referred to the establishment and involvement in the Community Coalition which advocates for smaller communities and supports positive change. Mr. Weidenbenner stated he believes the rezoning will protect the neighborhoods.

Luke Burke, 401 Pettigru Street, spoke as attorney representing his clients Dino Hassiotis and George Hassiotis, owner of 907 Pendleton Street. Mr. Burke explained his clients' opposition to the rezoning and commented on their initial investment in the area during the 1990's. Mr. Burke stated the rezoning would eliminate the drive-thru business at OJ's Diner and they would not be able to expand or make any changes to the current footprint. Mr. Burke expressed concern with property across Pendleton Street and its anticipated commercial use.

Councilmember Brasington asked if the current use of OJ's Diner would be grandfathered under the proposed RDV zoning. Mr. Burke responded it would be grandfathered in, however, it would not be able to expand its footprint. Regarding the drive thru, Councilmember Brasington asked if the business changes ownership or becomes vacant, would a special permit or exemption be required for the drive thru to be allowed. Mr. Burke responded if it was vacated for six months or sold, the new owner would be required to obtain a conditional use from the City. Mr. Burke stated the proposed zoning affects his clients' ability to pursue another restaurant owner, not knowing if they will be granted a conditional use.

Planning and Development Manager Jay Graham clarified if the property is sold and its use continues, no rezoning is triggered, but if the property is vacated for more than six months or there is a capital investment of 25% percent of the current property value, then that would be a trigger for rezoning. Mayor White stated drive-thru restaurants throughout the City are reviewed because in some circumstances they may be in close proximity to a residential neighborhood and cause issues with noise and lights, however, it is not affecting this situation at all.

Rosa Byrd, 33 Bob Street, spoke in support of Item 15b and on behalf of Rev. Vardry Fleming, President of the West Greenville Neighborhood Association who is unable to attend. Ms. Byrd commented on the neighborhood's support for new affordable housing for low income families and for the revitalization of the Village of West Greenville. Ms. Byrd requested the rezoning request be approved.

Mary Duckett, 201 Pinkney Street, spoke in support of Item 15b and stated she serves as President of Southernside Neighborhood in Action. Ms. Duckett commented that she stands in support of the neighborhood and their request for

RDV zoning. Ms. Duckett asked that Council vote unanimously with the neighborhood for rezoning.

Rivers Stillwell, 210 W. Earle Street, spoke regarding Item 15b and acknowledged his representation of one of the Stone Family Trusts and property located on Academy Street. Mr. Stillwell stated while supportive of Item 15b, rezoning the Stone property from C-2 to RM-3 would be a substantial change. Mr. Stillwell requested Council moderate the overlay and take it down to allow for RDV to maintain the status quo on the property. Mr. Stillwell also requested that the issue of what is going to go on the property be deferred until it comes up under RDV.

Councilmember Doyle requested information regarding the Planning Commission's meeting on the item and requested the Planning Commission minutes be included in Council's agenda packet for second and final reading. Mr. Graham stated the final vote was 5-2 for approval. Mayor White asked if the Planning Commission could reconsider Mr. Stillwell's request. Mr. Graham responded that arguments have been presented that have not been made prior to this meeting and stated he would be open to meeting and reviewing the request.

Councilmember Doyle requested a synopsis on the Greenville Housing Fund. Ms. Stroud provided the purposes of the Greenville Housing Fund and referred to the City's contribution to date of $3.5 million towards affordable housing. Ms. Stroud stated that four loans have been made totaling $1.35 million supporting the construction and preservation of about 300 units of affordable housing and leveraging about $46 million in investment. In addition to the Fund, Ms. Stroud added the City's Community Development Division continues to provide programs that are active in the West Greenville neighborhood, offers a homeowner rehab program and acquires property which can be used for affordable housing.

Councilmember Brasington requested if it is permissible for staff to review and amend the Ordinance at second reading, and Council members responded affirmatively. Councilmember Fletcher asked for staff to look at Ms. White's proposal for a separate zoning category. Mayor White responded that it could not be made as a part of the agenda item before Council. Councilmember Fletcher responded he would still like to take a look at the proposal. Mayor White referred to the ability to create overlay districts which could be potentially considered.

After discussion, the motion carried unanimously.

c. Ordinance to approve a major modification to an existing PD consisting of 8.7 acres located at North Pleasantburg Drive (Tax Map Numbers 0276000300503 and 0276000300518) (Z-21-2018)

Councilmember Doyle moved, seconded by Councilmember Stall, to approve first reading with a condition to refer the item back to the Planning Commission for further study and a recommendation concerning the additional PD modifications with the understanding that second and final reading will not occur until after the Planning Commission issues their recommendation.

Stephanie Gates, 106 Wakefield Street, project engineer for Site Design, Inc., spoke regarding Item 15c on behalf of the developer and offered to answer any questions. Ms. Gates provided the highlights stating they have increased the buffer yards and setbacks around the development, especially around the pool where the main opposition was on the proximity of the development to the pool property. Regarding the single family homes, Ms. Gates stated they have been reduced in number and moved around some so they are not as close to the pool development.

Jay Austin, 308 McCarter Avenue, spoke in opposition of Item 15c and as a representative of McCarter Community Club. Mr. Austin shared his concerns regarding the development and stated every plan presented to this point has violated residents' established property rights and ignored an agreement that was recognized by the City as part of the 2006 annexation. Mr. Austin also stated he does not believe the changes presented are sufficient for the concerns of the Planning Commission. Mr. Austin commented he believes the design needs to be redesigned to address the established neighborhood and community asset. Mr. Austin stated the developer has been unwilling to address the concerns in the past and he does not believe they will be addressed going forward.

Mr. Graham stated the property is currently zoned PD, Planned Development, and Councilmember Doyle referred to the adjacent property as C-3, Regional Commercial District. Mayor White responded that the zoning issue will need to be addressed. Mr. Austin stated the Planned Development was brought into the City and it had conditions as part of the annexation agreement in 2006. Mr. Austin stated they have explained it to the Planning Commission and city staff, however, there seems to be no interest in living up to the agreement.

City Attorney Michael Pitts stated there are two issues regarding the site, one being an easement related to an alternative parking site which is not occurring with this plan and another being an alleged agreement with a prior developer, which the City is not a party to. Mr. Pitts added even if the City were a party, he does not believe it would bind the hands of a future Council taking action.

J.J. Andrighetti, Parkwood Drive, acknowledged his representation as the attorney for the McCarter Community Pool and spoke in opposition to Item 15c. Mr. Andrighetti stated the easement exists and even if there is not an extension of the road at present, it is an encumbrance on the property, and according to the South Carolina statute, the City shall reject an application related to it. Mr. Andrighetti stated they will not waive the easement until the terms of 2006 are abided by.

Mr. Andrighetti referred to receiving responses to a Freedom of Information Act request, which they did not have in time for the Planning Commission meeting. Mr. Andrighetti stated he believes the record shows acknowledgement of the Agreement by the City, Bob Jones University and the agents that worked on the plan. Mr. Andrighetti provided comments regarding attempts to remove the easement and attempts to annex and rezone the property. Mr. Andrighetti stated the property owner sought out an agreement with his client and his client agreed to hold its tongue and

not fight the annexation. Mr. Andrighetti stated his client is asking for the City to require the developer to live up to their end of the bargain.

Councilmember Doyle asked for clarification regarding continuation of the easement. Mr. Pitts responded the current plan does not extend the road and does not trigger the provision in the deed for alternative parking on the property.

After discussion, the motion carried unanimously with the condition.

16. NEW BUSINESS – (Resolution – First and Final Reading)

a. Resolution to certify 856 South Pleasantburg Drive as an abandoned building site (Tax Map Number 0269000100512)

Councilmember Brasington moved, seconded by Councilmember Fletcher, to approve first and final reading. The motion carried unanimously.

b. Resolution to accept from Farm Products, LLC, new right of way for Traction Street, land for a public green space, and public access easements along Traction Street and Easley Bridge Road

Councilmember Brasington moved, seconded by Councilmember Stall, to approve first and final reading. The motion carried unanimously.

Clarence Thornton, 114 Douthit Street, thanked the Greenville Police Department on its handling of an issue this past weekend, commented on violence and gentrification creating more violence, encouraged pastors and leadership to go into the community and put a stop to it, and expressed dissatisfaction at not being called in the order he signed up on the list for speaking.

Greenville Police Chief Ken Miller thanked Mr. Thornton for his remarks regarding the Police Department. Chief Miller introduced Dr. Lee Hunt as the new Planning Director for the Police Department.

17. ADJOURN. There being no further business, the meeting adjourned at 6:46 p.m.

JIL LITTLEJOHN, MAYOR PRO TEM

CAMILLA G. PITMAN, MMC, Certified PLS
CITY CLERK

MEETING NOTICE POSTED AND MEDIA NOTIFIED ON JANUARY 25, 2019.

City Council Agenda

Agenda Of 2-11-2019

Documents:

AGENDA OF 2-11-2019.PDF

Draft - Formal Minutes Of 1-28-2019

Documents:

DRAFT - FORMAL MINUTES OF 1-28-2019.PDF

Draft - Special Formal Minutes Of 2-4-2019

Documents:

DRAFT - SPECIAL FORMAL MINUTES OF 2-4-2019.PDF

Item 11a

Documents:

ITEM 11A - APPROPRIATION - 16,533 - ZOO ENTERPRISE FUND.PDF

Item 14a

Documents:

ITEM 14A - Z-20-2018 - REZONE PORTION OF PENDLETON STREET, N. MEMMINGER STREET, S. CALHOUN STREET, AND S. ACADEMY STREET.PDF

Item 15a

Documents:

ITEM 15A - PROPERTY EXCHANGE WITH CAP CAMPERDOWN, LLC.PDF

Item 15b

Documents:

ITEM 15B - APPROPRIATION - 575,635 PUBLIC SAFETY RADIOS.PDF

Item 15c

Documents:

DEFENDANT'S EXHIBIT

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ITEM 15C - APPROPRIATION - 57,500 - SCDHEC GRANT - REDUCTION AND RECYCLING.PDF

Item 15d

Documents:

ITEM 15D - PROPERTY TAX CREDIT FOR FIRE SPRINKLER INSTALLATION.PDF

Item 15e

Documents:

ITEM 15E - AGREEMENT - CRESCENT VILLAGE AT WASHINGTON WEST.PDF

Questions on an agenda item? Contact Camilla Pitman, city clerk, at cpitman@greenvillesc.gov. *All media inquiries, please contact Leslie Fletcher, city public information officer, at* lfletcher@greenvillesc.gov

DEFENDANT'S EXHIBIT

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MINUTES
FORMAL MEETING OF CITY COUNCIL

CITY HALL, 206 S. MAIN STREET, COUNCIL CHAMBERS
Monday, February 11, 2019 - 5:30 p.m.

1. **CALL TO ORDER**
   Mayor Pro Tem Jil Littlejohn

2. **INVOCATION**
   Councilmember Russell Stall

3. **PLEDGE OF ALLEGIANCE**

4. **ROLL CALL**
   The following members of City Council were in attendance: Amy Doyle, Lillian Flemming, Jil Littlejohn, Wil Brasington, Russell Stall, and George Fletcher

   Absent: Mayor Knox White

5. **APPROVAL OF THE MINUTES**
   January 28, 2019; Approved as submitted
   February 4, 2019; Approved as submitted

6. **COMMUNICATIONS / ANNOUNCEMENTS FROM THE MAYOR AND COUNCIL**
   None

7. **CITIZENS WISHING TO ADDRESS COUNCIL**

   Meagan White, 1010 Aberdeen Lane, spoke in opposition to Item 14a and on behalf of 57 area residents and her peers at St. Anthony's Catholic School. Ms. White thanked staff and Council for previous meetings regarding the item and stated she does not believe the rezoning proposed will safeguard the residents and that a solution needs to be found regarding the zoning of the area. Ms. White asked Council to consider the residents being affected by the rezoning when voting on the item.

   Mary Duckett, 201 Pinkney Street, spoke in support of Item 15e and asked Council to sign the agreement with Crescent Village as a tangible step for affordable housing for the workforce. Ms. Duckett spoke on behalf of Southernside Neighborhood in Action and said the neighborhood is excited to see the agreement come to fruition.

   Suzanne Woolf, 200 Perry Avenue, spoke in support of Item 14a and stated she would like to see connections made between all the surrounding neighborhoods. Ms. Woolf also stated approving the item would be positive for the neighborhoods and commercial development and would be in keeping with growth of Greenville and the downtown master plan.

   Eric Brown, 400 Mills Avenue, spoke in reference to 100 year old cedar trees located adjacent to Mills Mill and requested Council review the current ordinance and save the trees as part of the proposed development.

   Planning and Development Manager Jay Graham stated the City's Parks and Recreation Department has been tasked with modifying the Ordinance to deal with issues that are

arising from the loss of trees. Councilmember Flemming commented on viewing the trees and stated there needs to be more protection of trees to maintain the landscape's integrity. Mr. Graham added an application for this project has not been submitted, but when it is, a tree survey will be required. Councilmember Doyle referred to complaints about the clear cutting of trees in the City and stated the Landscape Ordinance should be examined.

Diane Keller, 111 McCall Street, spoke in support of Item 14a and expressed her appreciation of city staff working with the West End Association. Ms. Keller stated she believes the rezoning is the best choice for residents as well as businesses.

8. PRESENTATION

a. Greenville Fire Department – Award Presentation
Fire Chief Steve Kovalcik recognized Greenville Water employees Chuck Turner, Allan Vindaz, and Mario Irby with a citation for their quick action in putting out a fire at the home of Lovick Richardson on January 30, 2019, while working in the area.

9. PUBLIC HEARING
None

10. APPOINTMENTS – Boards and Commissions
None

CONSENT AGENDA
There will be no discussion of Consent Agenda items unless a Council member so requests in which event the item in question will be considered separately.

Councilmember Brasington moved, seconded by Councilmember Stall, to approve second and final reading of agenda item 11a of the Consent Agenda. The motion carried unanimously.

11. UNFINISHED BUSINESS – (Ordinances – Second and Final Reading)

a. Ordinance to appropriate $16,533 in the Zoo Enterprise Fund for a contribution from the Zoo Education Foundation to convert a part-time zoo education instructor to full-time status

12. NEW BUSINESS – (Ordinance – First Reading)
None

13. NEW BUSINESS – (Resolutions – First and Final Reading)
None

REGULAR AGENDA

Def COG 0002

14. UNFINISHED BUSINESS – (Ordinances – Second and Final Reading)

a. Ordinance to rezone approximately 103 acres of property along a portion of Pendleton Street, North Memminger Street, South Calhoun Street, and South Academy Street (Z-20-2018) (REVISED)

Councilmember Flemming moved, seconded by Councilmember Stall, to approve second and final reading.

Councilmember Brasington asked if the Ordinance includes an adjustment to the RDV (Redevelopment District) mentioned at the January 28 formal meeting, and Mr. Graham responded it includes the adjustment requested by Rivers Stillwell.

Mayor Pro Tem Littlejohn inquired about an overlay for the area, which was suggested during first reading. Community Development Administrator Ginny Stroud responded that her staff met with the St. Anthony's School students and created a list of opportunities to reach the owner/occupants in the area to make them aware of the homeowner rehabilitation programs and partnership programs available with the City. Ms. Stroud added the property tax issue was also discussed with the students.

Councilmember Doyle stated the Bailey Bill might be a good tool to use for the neighbors in the area. Councilmember Doyle also stated she was surprised by the amount of owner occupied dwellings as compared to rental properties. Mayor Pro Tem Littlejohn commented on the importance of providing tax relief to the residents and having control of the types of businesses moving into this area.

Councilmember Flemming applauded the students at St. Anthony's for their work in the community regarding the issue. Mayor Pro Tem Littlejohn suggested involving the Youth Commission to assist in distributing information to the residents.

After discussion, the motion carried unanimously.

15. NEW BUSINESS – (Ordinances – First Reading)

a. Ordinance to approve a real estate exchange involving approximately 558 square feet of city property located on South Main Street

Councilmember Stall moved, seconded by Councilmember Fletcher, to approve first reading. The motion carried unanimously.

b. Ordinance to appropriate $575,635 in the Capital Projects Fund for the purchase of public safety radios

Councilmember Brasington moved, seconded by Councilmember Stall, to approve first reading.

Fire Chief Stephen Kovalcik commented on the need for new radios and their ability to communicate with other emergency responders from different departments. Chief Kovalcik stated Greenville County is going to the same radio system and will be paying for the service subscription fees.

After discussion, the motion carried unanimously.

c. Ordinance to appropriate $57,500 in the Miscellaneous Grant Fund for FY2019 Grant Funds received from the South Carolina Department of Health and Environmental Control and to authorize the use of other city funds as local match for the grant

Councilmember Brasington moved, seconded by Councilmember Stall, to approve first reading. The motion carried unanimously.

d. Ordinance to authorize a property tax credit to taxpayers within the corporate limits of the city of Greenville for installation of fire sprinkler systems

Councilmember Stall moved, seconded by Councilmember Brasington, to approve first reading. The motion carried unanimously.

e. Ordinance to authorize the City Manager to execute a Development Agreement between the City of Greenville and Crescent Village at Washington West, LLC and to approve the sale of property described herein

Councilmember Doyle moved, seconded by Councilmember Flemming, to approve first reading.

Developers Trey Cole and Pat Dilger provided an update on the project and stated the engineering and architectural work is ready to begin. Mr. Cole also stated there will be 16 residential units and 5,000 square feet of commercial space.

Councilmember Flemming commented on the development being a model for the community. Ms. Dilger added the project has the highest density allowed in RDV zoning with the least amount of parking needed.

After discussion, the motion carried unanimously.

16. **NEW BUSINESS – (Resolution – First and Final Reading)**
None

17. **ADJOURN.** There being no further business, the meeting adjourned at 6:07 p.m.

KNOX H. WHITE, MAYOR

CAMILLA G. PITMAN, MMC, Certified PLS
CITY CLERK

MEETING NOTICE POSTED AND MEDIA NOTIFIED ON FEBRUARY 8, 2019.

Def COG 0004

DocuSign Envelope ID: C7D84665-2416-4FA6-8349-09548CC9C825

REQUEST FOR COUNCIL ACTION
City of Greenville, South Carolina

TO: Honorable Mayor and Members of City Council

FROM: Nancy P. Whitworth, Interim City Manager

Agenda Item No.

14a

☐ Ordinance/First Reading ☑ Ordinance/Second & Final Reading ☐ Resolution/First & Final Reading ☐ Information Only

AGENDA DATE REQUESTED: February 11, 2019

ORDINANCE/RESOLUTION CAPTION:

TO REZONE APPROXIMATELY 103 ACRES OF PROPERTY ALONG A PORTION OF PENDLETON STREET, NORTH MEMMINGER STREET, SOUTH CALHOUN STREET, AND SOUTH ACADEMY STREET (Z-20-2018) REVISED

SUMMARY BACKGROUND:

This Ordinance rezones multiple properties along a portion of Pendleton Street, North Memminger Street, South Calhoun Street and South Academy Street in order to better align zoning with current uses and encourage development that is compatible with the surrounding neighborhoods.

This Ordinance is revised to rezone the following Tax Map Numbers 78-6-4, 78-6-12, 78-6-12.1 and 78-6-3.1 to RDV (Redevelopment District) based upon their size, the property's frontage along Academy Street, and the goal to encourage more neighborhood-friendly redevelopment.

IMPACT IF DENIED:

If denied, the properties will not be rezoned.

FINANCIAL IMPACT

N/A

REQUIRED SIGNATURES

Department Director		City Attorney	DocuSigned by: Michael S. Pitts 5E0F2A267E2D413...
OMB Director		City Manager	DocuSigned by: Nancy Whitworth 1DC2D48BBB5D4AB...

DEFENDANT'S EXHIBIT

8/29/23 4

AN ORDINANCE

TO REZONE APPROXIMATELY 103 ACRES OF PROPERTY ALONG A PORTION OF PENDLETON STREET, NORTH MEMMINGER STREET, SOUTH CALHOUN STREET, AND SOUTH ACADEMY STREET (Z-20-2018)

WHEREAS, the City of Greenville applied to the City Planning Commission and City Council to rezone multiple properties along a portion of Pendleton Street, North Memminger Street, South Calhoun Street and South Academy Street in order to better align zoning with current uses and encourage development that is compatible with the surrounding neighborhoods; and

WHEREAS, the Pendleton Street corridor, between South Main Street and Academy Street, is an important link connecting downtown, the West End Historic District and the Village of West Greenville; and

WHEREAS, Academy Street between Markley and Pendleton Streets also links Heritage Green, Downtown, the Salvation Army's Kroc Center, A.J. Whittenberg Elementary School and the new Unity Park with the neighborhoods located in Greenville's West Side; and

WHEREAS, the West Greenville, West End, and Sterling neighborhoods have undergone transformation with the renovation of existing homes and the construction of new homes including affordable, workforce and market-rate options; and

WHEREAS, while this revitalization, taken as a whole, has been a positive development, these three neighborhoods also face development pressures including the demolition of existing homes and religious and commercial structures, and the loss of affordable housing; and

WHEREAS, the West End Neighborhood Association asked City staff to review the zoning classifications in this area and present recommendations that encourage more neighborhood compatible development; and

WHEREAS, the Sterling Neighborhood Master Plan also included a recommendation to update the zoning along Pendleton Street to encourage more mixed use and neighborhood friendly development; and

WHEREAS, in light of these neighborhood changes and the concerns expressed by the residents, the City developed a study area that included the Pendleton Street and Academy Street corridors and adjacent areas and undertook an evaluation of the current zoning, and the commercial zoning designations permitted within the City's Land Management Ordinance; and

WHEREAS, from those efforts and studies emerged a recognition that the Pendleton Street corridor was predominately zoned C-3 (Regional Commercial), one of the most intensive commercial designations and found on corridors such as Laurens Road, Wade Hampton Boulevard and Pleasantburg Drive, while the Academy Street corridor in close proximity was zoned C-2 (Local Commercial); and

WHEREAS, the RDV (Redevelopment District) designation was the most appropriate commercial zoning designation for this section of Pendleton Street given the desire to discourage uses that do not contribute to the revitalization of the area, and to encourage more urban and pedestrian friendly development; and

WHEREAS, the RDV designation meets the Mixed-Use Community (Pendleton Street) and Urban Residential (Academy Street) future land use designations set out in the 2009 Comprehensive Plan; and

WHEREAS, in the Comprehensive Plan, a Mixed-Use Community designation encourages grocery stores, specialty stores, community libraries, medical offices, mid-size employers, community parks and residential uses; and

WHEREAS, the Urban Residential designation encourages a range of housing, including single-family detached houses, attached homes and multifamily units in order to serve as a transition between the Downtown core uses and the single family neighborhoods of outlying areas; and

WHEREAS, the City's planning efforts culminated with a recommendation of the rezoning contemplated in this Ordinance, which in summary, rezones the Pendleton Street commercial corridor from C-3 to RDV and those portions of the Academy Street commercial corridor in the same vicinity from C-2 to RDV, RM-1 (Single-family and Multifamily Residential District) and RM-2 (Single-family and Multifamily Residential District) while maintaining and slightly expanding the residential designation where appropriate based on current uses; and

WHEREAS, staff also reviewed the intersection of Academy Street and Pendleton Street and given that Academy Street is an arterial street and generates traffic counts of between 20,200 and 27,300 cars per day, and the three (3) adjoining corners are currently zoned C-3, staff recommended that this corner remain C-3; and

WHEREAS, City staff was also mindful of existing uses within the subject area and the majority of the existing uses will be allowed by right with a few current uses that will be considered non-conforming under the RDV designation; and

WHEREAS, those non-conforming uses may continue as long as the operations do not cease for a period greater than six (6) months which at that time, the zoning will revert to the new zoning designation; and

WHEREAS, in the past, City Council has taken steps to better align the zoning along commercial corridors to encourage redevelopment that supports its adjacent neighborhoods including a portion of Pendleton Street between Academy Street and the Village of West Greenville in 2010, portions of E. Stone Avenue and Wade Hampton Boulevard in 2008 and portions of the Pete Hollis Gateway area in 2006; and

WHEREAS, the proposed rezoning is more fully set forth in Exhibit A, attached hereto and made a part hereof, which sets forth the tax map number along with the existing and proposed designation for each affected property — further reference is also made to Exhibits B and C, attached hereto and made a part hereof, which set forth maps prepared by Planning staff reflecting the existing and proposed zoning, respectively; and

WHEREAS, several neighborhood and public meetings were held to request and receive feedback from the impacted property owners and neighbors as more fully set forth in Exhibit D, attached hereto and made a part hereof; and

WHEREAS, the City Planning Commission, pursuant to public notice, held a public hearing on December 20, 2018, to consider the proposed rezoning, and the Commission recommended approval; and

WHEREAS, City Council finds that the proposed re-zoning guides development in accordance with existing and future needs and substantially advances legitimate governmental interests by promoting public convenience, order, appearance, prosperity, and welfare; and

WHEREAS, City Council finds the proposed zoning classifications to be compatible with the City's Comprehensive Development Plan and with the zoning of surrounding properties; and

WHEREAS, at the January 28 meeting, City Council requested that staff review the proposed zoning for four parcels comprising Tax Map Numbers 78-6-4, 78-6-12, 78-6-12.1 and 78-6-3.1; and

WHEREAS, staff reviewed the proposed zoning for these parcels and based upon their size, frontage along Academy Street, and the goal to encourage more neighborhood-friendly redevelopment, staff is recommending that the aforementioned parcels listed above be zoned RDV;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, approximately 103 acres of property currently located along a portion of Pendleton Street, North Memminger Street, South Calhoun Street and South Academy Street are hereby rezoned as reflected in Exhibit A. This Ordinance shall be effective upon second and final reading.

DONE, RATIFIED AND PASSED THIS THE _____ DAY OF _____, 2019.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

REVIEWED:

_____
CITY MANAGER

EXHIBIT A
List of properties by tax map numbers

1

PIN	Existing	Proposed
0073000400200	C-3	C-4
0073000400400	C-3	C-4
0073000400500	C-3	C-4
0073000400601	C-3	C-4
0073000400602	C-3	C-4
0073000400603	C-3	C-4
0073000400604	C-3	C-4
0073000400605	C-3	C-4
0073000400607	C-3	C-4
0073000400608	C-3	C-4
0073000400609	C-3	C-4
0073000400610	C-3	C-4
0073000400611	C-3	C-4
0073000400612	C-3	C-4
0073000400613	C-3	C-4
0073000400614	C-3	C-4
0073000400615	C-3	C-4
0073000400616	C-3	C-4
0073000400617	C-3	C-4
0073000400618	C-3	C-4
0073000400619	C-3	C-4
0073000400800	C-3	C-4
0073000401000	C-3	C-4
0073000401500	C-3	C-4
0073000401600	C-3	C-4
0074000200100	C-2	RM-2
0074000200101	C-2	RM-2
0074000200102	C-2	RM-2
0074000200103	C-2	RM-2
0074000200104	C-2	RM-2
0074000200105	C-2	RM-2
0074000200106	C-2	RM-2
0074000200107	C-2	RM-2
0074000200108	C-2	RM-2
0074000200109	C-2	RM-2
0074000200110	C-2	RM-2
0074000200111	C-2	RM-2
0074000200112	C-2	RM-2
0074000200113	C-2	RM-2
0074000200114	C-2	RM-2
0074000200200	C-2	RM-2
0074000300300	C-2	C-2
0074000401500	C-2	C-2
0074000500100	RM-2	RM-2
0074000500200	RM-2	RM-2
0074000500300	C-2	C-2
0074000600100	C-2	RM-2
0074000600200	RM-2	RM-2
0074000600201	RM-2	RM-2
0074000600300	RM-2	RM-2
0074000600400	RM-2	RM-2
0074000600500	RM-2	RM-2
0074000600600	RM-2	RM-2
0074000600700	RM-2	RM-2
0074000600800	RM-2	RM-2
0074000600900	RM-2	RM-2
0074000700100	RM-2	RM-2
0074000700101	RM-2	RM-2
0074000700200	RM-2	RM-2
0074000700300	RM-2	RM-2
0074000700400	RM-2	RM-2

List of Current and Propososed Zoning by Parcel (003)

2

0074000700500	RM-2	RM-2
0074000700600	RM-2	RM-2
0074000700700	RM-2	RM-2
0074000700800	RM-2	RM-2
0074000700900	RM-2	RM-2
0074000700901	RM-2	RM-2
0074000701000	RM-2	RM-2
0074000701100	RM-2	RM-2
0074000701200	RM-2	RM-2
0074000701300	RM-2	RM-2
0074000701301	RM-2	RM-2
0074000701400	RM-2	RM-2
0074000701500	RM-2	RM-2
0074000701600	RM-2	RM-2
0074000800200	RM-2	RM-2
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0074000800400	RM-2	RM-2
0074000800500	RM-2	RM-2
0074000800600	RM-2	RM-2
0074000800700	RM-2	RM-2
0074000800800	RM-2	RM-2
0074000800900	RM-2	RM-2
0074000801200	C-4/RM-2	C-4/RM-2
0074000801400	RM-2	RM-2
0075000300900	C-2	RM-1
0075000301000	C-2	RM-1
0075000301100	C-2	RM-1
0075000301101	C-2	RM-1
0075000301200	C-2	RM-1
0078000101000	C-2	RM-1
0078000101001	C-2	RM 1
0078000101002	C-2	RM-1
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0078000200102	C-2	RM-2
0078000200200	C-3	C-3
0078000200301	C-3	C-3
0078000200302	C-3	C-3
0078000200400	C-3	C-3
0078000200500	C-3	RDV
0078000200700	C-3	RDV
0078000200900	C-3	RDV
0078000201200	C-2	RM-2
0078000201201	C-2	RM-2
0078000201202	C-2	RM-2
0078000201300	C-2	RM-2
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0078000201601	C-2	RM-2
0078000201700	C-2	RM-2
0078000300100	C-3	RDV
0078000300101	C-3	RM-2
0078000300200	C-3	RM-2
0078000300300	C-3	RM-2
0078000300900	RM-2	RM-2
0078000301200	C-3	RDV
0078000301300	C-3	RDV
0078000301500	C-3	RDV
0078000400100	C-3	RDV
0078000400101	C-3	RDV
0078000400700	C-3	RDV
0078000400800	C-3	RDV

List of Current and Proposed Zoning by Parcel (003)

3

0078000400801	C-3	RDV	
0078000400900	C-3	RDV	
0078000401000	C-3	RDV	
0078000401100	C-3	RDV	
0078000401300	C-3	RDV	
0078000401400	C-3	RDV	
0078000401500	C-3	RDV	
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0078000401701	C-3	RDV	
0078000401800	C-3	RDV	
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0078000402100	C-3	RDV	
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0078000402201	C-3	RDV	
0078000402202	C-3	RDV	
0078000402203	C-3	RDV	
0078000402204	C-3	RDV	
0078000402205	C-3	RDV	
0078000402206	C-3	RDV	
0078000402207	C-3	RDV	
0078000402208	C-3	RDV	
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0078000500800	C-3	RDV	
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0078000600100	C-2	RM-2	
0078000600200	RM-2	RM-2	
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0078000600301	C-2	RM-2	RDV
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0078000600800	RM-2	RM-2	
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0078000601200	C-2	RDV	RDV
0078000601201	C-2	RDV	RDV
0078000601800	C-2	RM-2	
0078000601801	RM-2	RM-2	
0078000601802	C-2	RM-2	
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0078000700500	OD	RDV	
0078000700600	OD	RDV	
0078000700800	C-2	RM-2	
0078000700901	OD	RDV	
0078000700901	C-2	RDV	

List of Current and Proposed Zoning by Parcel (003)

4

0078000701000	C-2	RM-2
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0078000701100	C-2	RM-2
0078000701101	C-2	RM-2
0078000701102	C-2	RM 2
0078000701200	C-2	RM-2
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0078000100100	RM-2	RM-2
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0079000100201	RM-2	RM-2
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0079000100502	RM-2	RM-2
0079000100600	RM-2	RM-2
0079000100700	RM-2	RM-2
0079000100800	RM-2	RM-2
0079000100801	RM-2	RM-2
0079000100900	RM-2	RM-2
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0079000201400	C-2	RDV
0079000201401	RM-2	RDV
0079000201900	C-2	RDV
0079000202100	RM-2	RM-2
0079000202400	RM-2	RM-2
0079000202500	RM-2	RDV

List of Current and Proposed Zoning by Parcel (003)

5

0079000202501	RM-2	RDV
0079000202600	RM-2	RDV
0079000202700	C-2	RDV
0079000202800	C-2	RM-2
0079000202900	RM-2	RM-2
0079000203000	RM-2	RM-2
0079000203100	RM-2	RM-2
0079000203200	RM-2	RM-2
0079000203300	RM-2	RM-2
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0079000203507	RM-2	RM 2
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0079000203509	RM-2	RM-2
0079000203510	RM-2	RM-2
0079000204000	RM-2	RM-2
0080000100100	C-3	RDV
0080000100101	C-3	RDV
0080000100200	OD	RDV
0080000100400	RM-2	RM-2
0080000100500	RM-2	RM-2
0080000100600	RM-2	RM-2
0080000100700	RM-2	RM-2
0080000100800	RM-2	RM-2
0080000100900	RM-2	RM-2
0080000100901	RM-2	RM-2
0080000101000	C-3	RDV
0080000101100	C-3	RDV
0080000101200	C-3	RDV
0080000101300	C-3	RDV
0080000101301	C-3	RDV
0080000200100	C-3/RM-2	RDV
0080000300100	RM-2	RDV
0080000300200	C-3	RDV
0080000300300	RM-2	RDV
0080000300400	C-3	RDV
0080000300500	C-3	RDV
0080000300502	C-3	RDV
0080000400100	C-3	PD
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0080000400103	C-3	PD
0080000400104	C-3	PD
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0080000400109	PD	RM-2
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0080000400111	C-3	RM-2
0080000400112	PD	RM-2
0080000400113	C-3	RM-2
0080000400400	PD	RDV
0080000400500	C-3	RM-2
0080000500100	C-3/RM-2	RDV
0080000500200	C-3	RDV
0080000500300	C-3	RDV
0080000500301	C-3	RDV
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0080000600200	C-3	C-4

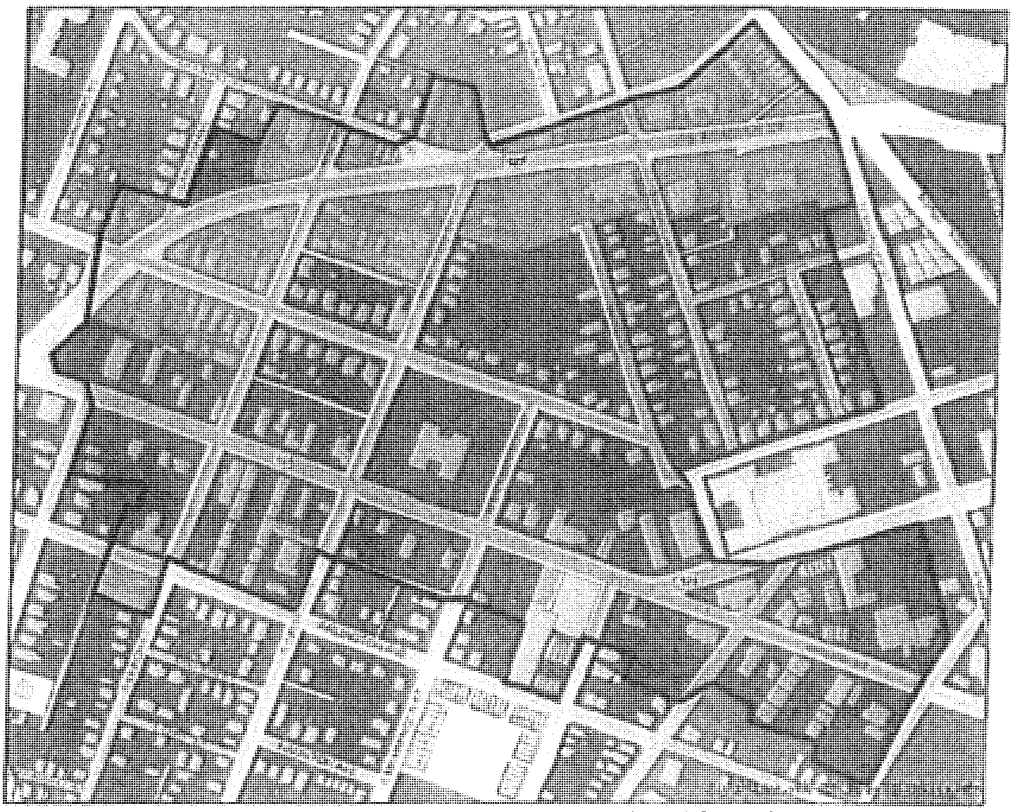
List of Current and Proposoed Zoning by Parcel (003)

6

0080000600300	C-3	C-4
0081000200200	C-3	OD
0081000200300	C-3	OD
0081000200301	C-3	OD
0081000200302	C-3	OD
0081000200303	C-3	OD
0081000200304	C-3	OD
0081000200305	C-3	OD
0081000200306	C-3	OD
0081000200307	C-3	OD
0081000200308	C-3	OD
0081000200309	C-3	OD
0081000200400	C-3	OD
0081000200500	C-3	OD
0081000200600	C-3	RM-1
0081000201700	C-3	RM-1
0081000201800	C-3	RM-1
0081000202100	C-3	OD
0081000202200	C-3	OD
0081000202300	C-3	OD
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0084000103100	RDV	RM-2
0084000103101	RDV	RM-2
0084000103102	RDV	RM-2
0084000103103	RDV	RM-2
0084000103104	RDV	RM-2
0084000103105	RDV	RM-2
0084000103106	RDV	RM-2
0084000103107	RDV	RM-2
0084000103108	RDV	RM-2
0084000103109	RDV	RM-2
0084000103110	RDV	RM-2
0084000103111	RDV	RM-2

EXHIBIT B

Pendleton Street Existing Zoning



Legend

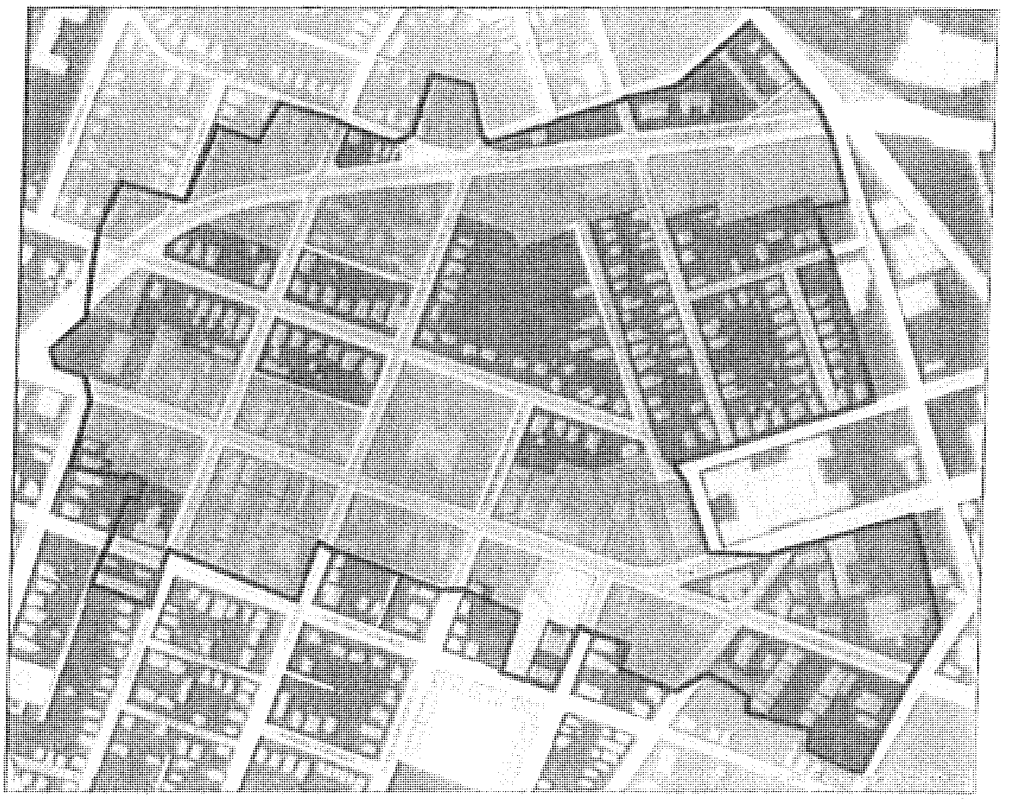
Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

EXHIBIT C

Pendleton Street Proposed Zoning

Revised 2 - 11 - 2019



Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

EXHIBIT D

Pendleton and Academy Street Proposed Zoning Update
Public Meetings and presentations to gather citizens and property owner comments

- West End Neighborhood Association meeting – April 3, 2018 at 6:30
  St. Andrews Episcopal Church

- Open House for Property owners and citizens – April 30, 2018, 4:00-6:00
  St. Andrews Episcopal Church

- Open House for property owners and citizens – May 1, 2018, 4:00-6:00
  St. Andrews Episcopal Church

- Sterling Neighborhood Association meeting – May 10, 2018 at 6:00
  Sterling Community Center

- Sterling Land Trust Board of Directors – May 17, 2018 at 6:30
  Sterling Hope Center

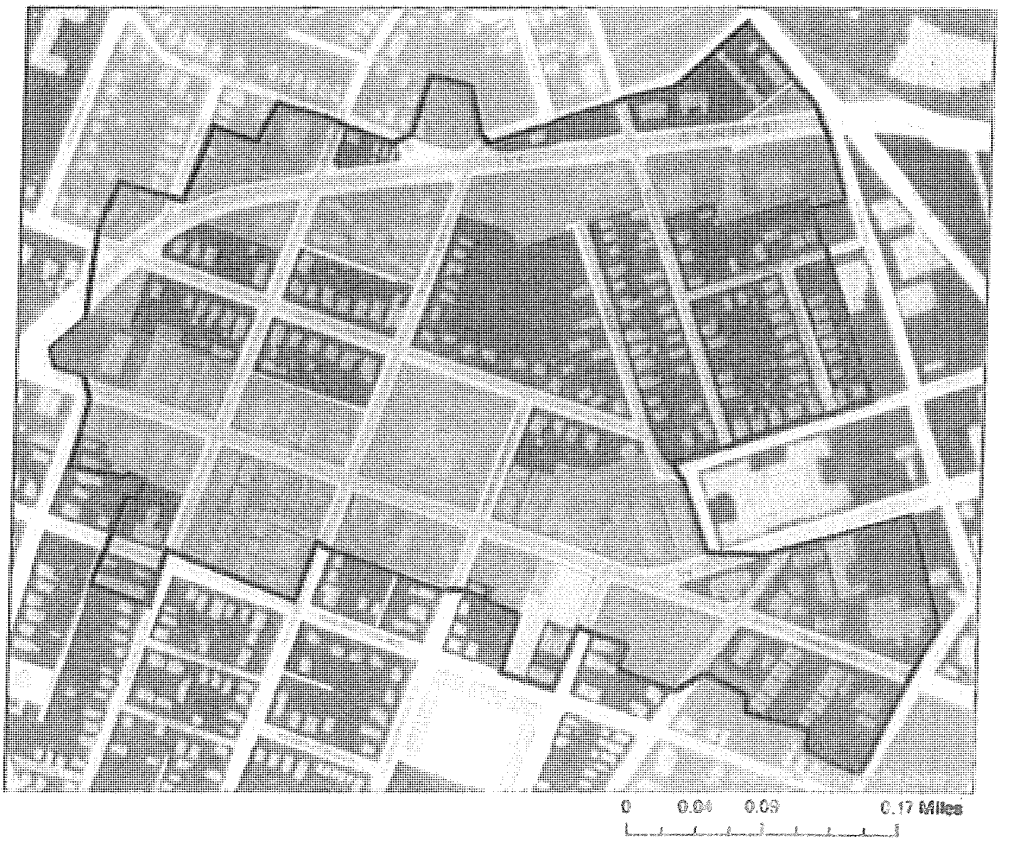
- West Greenville Neighborhood Association – October 9, 2018 at 6:30
  W. Greenville Community Center

- West End Neighborhood Association – December 4, 2018 at 6:30
  St. Andrews Episcopal Church

EXHIBIT C

Pendleton Street Proposed Zoning

Revised 2 - 11 - 2019



Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

DEFENDANT'S EXHIBIT

8/29/22 5

DEFENDANT'S EXHIBIT
8/31/22 6

April 19, 2018

Dear Property Owner,

The property located at this address has been identified as part of an area of potential re-zoning. The current zoning classification of the property may or may not change under the proposed re-zoning. Please see the enclosed Existing Zoning Map and Proposed Zoning Map to review how your property may be affected. Please also find the Chart of Potential Uses enclosed to clarify the effects of potential zoning changes. This chart is not comprehensive, but includes some common uses and their applicability in various zones.

The City of Greenville will be hosting an open house to provide additional information and receive feedback regarding the proposed re-zoning. It will be a drop-in event held at Saint Andrew's Episcopal Church in the Fellowship Hall, located at 1002 S. Main Street. Please stop by at your convenience, anytime between 4:00pm and 6:00pm on Monday, April 30, 2018 or Tuesday, May 1, 2018.

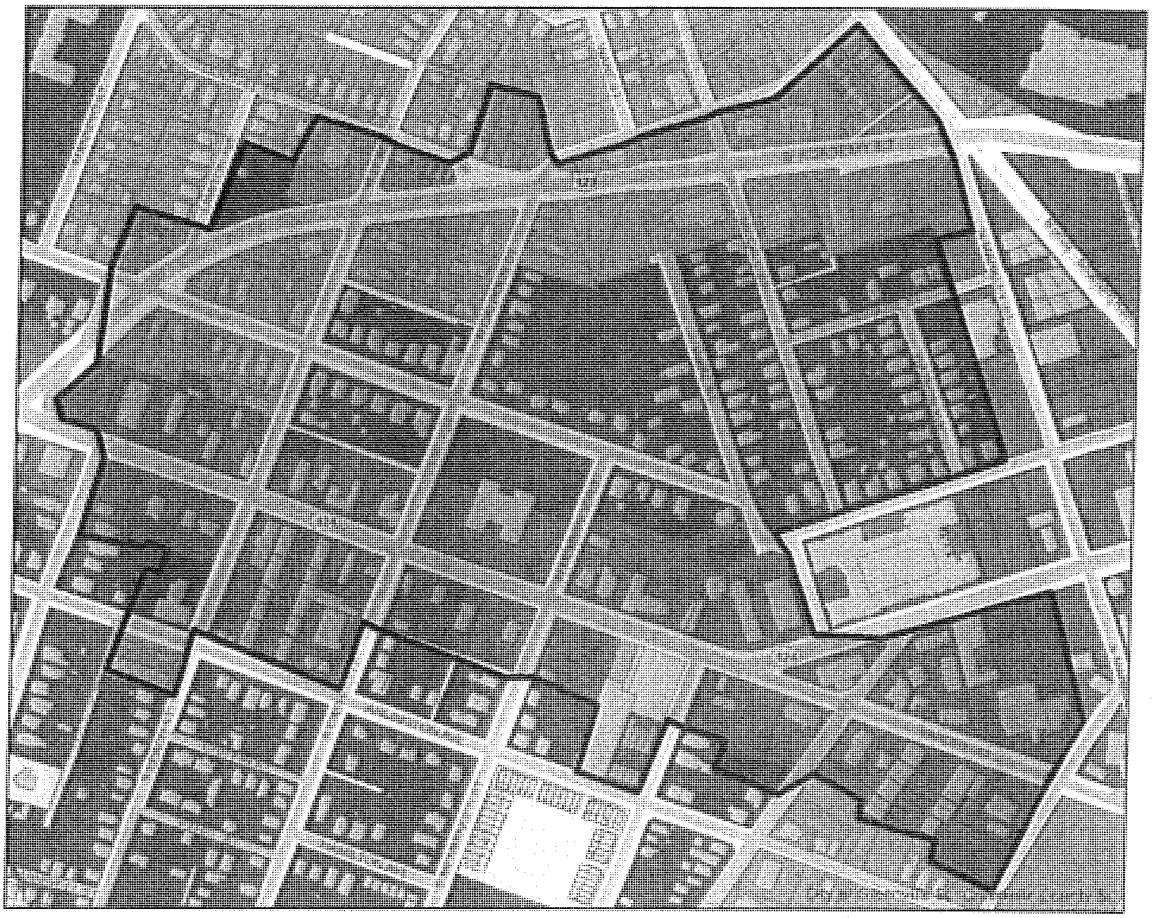
If you have any questions, please contact the Community Development Division at 864-467-4570. We look forward to speaking with you at the event.

Sincerely,

Virginia B. Stroud
Administrator
Community Development Division

Enclosures: Existing Zoning Map, Potential Zoning Map, and Chart of Potential Uses by Zone

Pendleton Street Existing Zoning



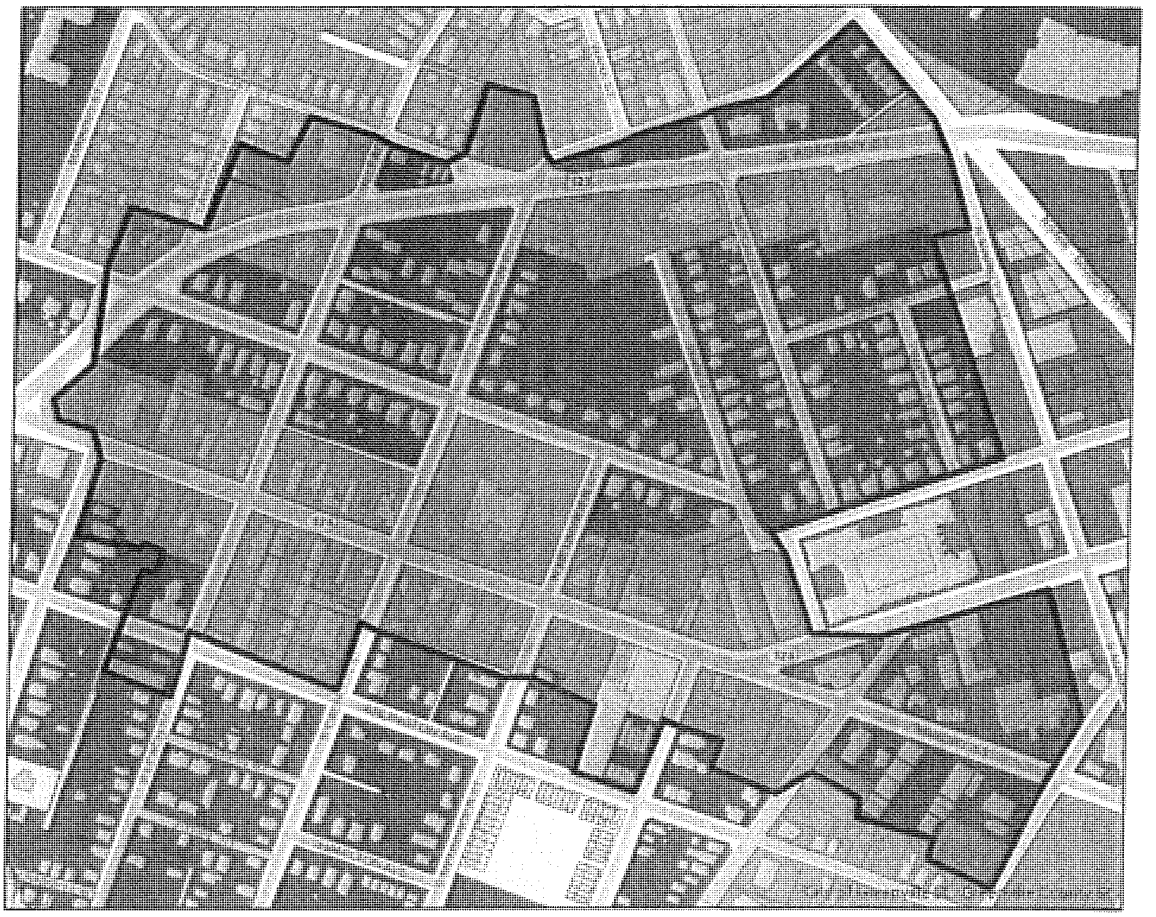
Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

PLTF 000750

Pendleton Street Proposed Zoning



Legend

Proposed Zoning

Zone

- C-2, Local Commercial District
- C-4, Central Business District
- OD, Office and Institutional District
- PD, Planned Development District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- Other
- Buildings
- Study Area

PLTF 000751

Pendleton Street Proposed Re-Zoning
Comments received at Open House Event
April 20 and May 1

Concerned Property Owners:
Brandon Brown – Upstate Family Funeral Services
506 Arlington Avenue
Concerned that funeral homes are considered nonconforming in RDV
Proposed solution: Revise RDV district to allow funeral homes without crematoriums

Michanna Tate – Michael Talley Law firm
206 Green Avenue
Concerned that vacant lot next to law office is recommended for RM-1
Property used as overflow parking for law firm
Proposed solution: Extend OD to include vacant parcel

David Stone
111 N. Calhoun Street (West End Apartment community) and parcels on east side of N. Calhoun Street
Opposed to proposed re-zoning; maintain current zoning for all parcels.
Proposed solution: Consider RDV for all parcels

Scott Woods
906 and 904 Pendleton Street (Premiere Car Wash)
Opposed to RDV; maintain current zoning
Proposed Solution: proceed with proposed re-zoning to RDV

Greg Minton, Enigma Corporation
Parcels at intersection of Academy and Pendleton Streets including 914 Pendleton St.
Opposed to RDV; maintain current zoning
Proposed solution: consider maintaining current zoning for vacant parcels and continue with proposed re-zoning of 914 Pendleton St.

Viviane Trama, Blythe Industries
Vacant lot at intersection of Lawton Ave. and Academy St. and 16 Lawton Ave.
Concerned that 3 parcels with have different zoning classifications and with allowed uses in RDV.
Proposed solution: 1) Combine three parcels into parcel and maintain current OD zoning; 2) Combine the three parcels currently zoned OD and we can move forward with the recommendation of re-zoning to RDV

Ken and Kenneth Cosgrove
515 Pendleton Street and VL and 9 Mallard Street

DEFENDANT'S EXHIBIT
8/29/23 7 : 57

Concerned that in RDV a convenience store requires a special exception
Proposed solution: City staff has met with Cosgrove family to discuss other options for achieving redevelopment goals for property. Consider proposed re-zoning to RDV and reassure owners that City is committed to supporting redevelopment of property.

Dinos Hassiotis (Hassiotis Constantinon)
907 Pendleton Street (OJ's Restaurant)
Concerned that drive through restaurant is a conditional use in RDV
After explaining that the requirements for conditional use, property owner less concerned but wants to make sure drive-through will continue to be permitted.

Notes for Review and Consideration:

- Review the RDV district and update table of uses.
  - Add funeral homes without crematorium as allowed use.
  - Look at parking requirements
- Review Group Homes and districts which allow;
- Develop specific conditions for "Conditional Use"- consider hours of operation, buffering, lighting, noise, design, landscaping, auto/bicycle/pedestrian movement
- Consider Special Exception for drive through

Next Steps:

Make revisions to the RDV description and table of uses;
Develop specific conditions for conditional use for RDV;
May 21 - Present to the Planning and Neighborhoods Committee
June 1 – Send notification to property owners within 500'
June 21 – Planning Commission
July 9 and August 13 – City Council consideration

Sign-In Sheet

Name (please print)	Date	Phone	Email
VIVIANE TRAMA	5/1/18	[redacted]	
MICHAEL McNINCH	5/1/18		
GREG MINTON	5/1/18		
Robert N. Jenkins	5/1/18		
Scott Woods	5/1/18		
SARA Conrad	5/1/18		
JAY BORCK	5/1/18		
Mary Daum	5/1/18		
Ian Thom	5/1/18		

DEFENDANT'S EXHIBIT

8/24/22 8 b

Sign-In Sheet

Name (please print)	Date	Phone	Email
David Ayers	4/30/18	[redacted]	
Brandon Brown	4/30/18		
Steve Stuart	4/30/18		
Sylvia Nance	4/30/18		
Ben Nance	4/30/18		
Felicia Davis	4/30/18		
Dino Hassiotis	4/30/18		
Patricia Crew	4/30/18		
Michanna T. Tate	4/30/18		
Suzie Foley	4/30/18		
Lynn Henry	4/30/18		
Robbie Robinson	4/30/18		
DAN SOLESZKA	4/30/18		
David Stone	4/30/18		
Kenneth Cosgrove	4/30/18		
Ken Cosgrove	4/30/18		
Dan Weidenbenner	4/30/18		
Linda Hill	4-30-18		

City Council of the City of Greenville
Committee on Planning and Neighborhoods

Greenville City Hall, 206 S. Main Street, Ninth Floor Conference Room
Monday, May 21, 2018, at 10:30 a.m.

MINUTES

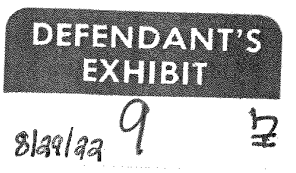
COMMITTEE:	Amy Doyle, Chairperson; Lillian Flemming; Jil Littlejohn; Russell Stall
CITY STAFF:	City Manager John Castile, City Attorney Mike Pitts, Deputy City Manager Nancy Whitworth

Councilmember Doyle called the meeting to order for the purpose of discussing the following matters.

Pendleton Street Rezoning
Community Development Administrator Ginny Stroud presented a handout detailing a list of existing and proposed zoning on Pendleton Street as well as a list of the comparison of uses in zoning districts. Ms. Stroud advised meetings were held with the West End and Sterling Neighborhood Associations, Sterling Land Trust, and two open houses for land owners and stated the neighborhood would like to see more mixed use and neighborhood friendly commercial development. Councilmember Flemming expressed concern if the proposed zoning was going to look like spot zoning and might be favoring one neighbor over another. Councilmember Doyle asked about the neighbors' responses to the study. Ms. Stroud responded some neighbors had expressed concerns and those concerns had been addressed with some compromises recommended. Ms. Stroud and Planning and Development Manager Jay Graham stressed the zoning changes were being done to give the zoning in the West End more consistency. Mr. Graham added he does not believe an overlay would work in this area.

Gibbs Street and Substation Exchange
Urban Designer Jeff Waters and Assistant City Engineer-Environmental Paul Dow discussed the Gibbs Street and Duke Substation Exchange. Mr. Waters distributed a handout showing the existing conditions of Gibbs Street and related how part of the street is to be vacated and transferred to Duke Power Company. Mr. Waters stated there needs to be a partnership with Duke Power to be able to create a large multi-use path near the new park area. Mr. Waters added once the property is given to Duke, it will no longer exist in park planning. Mr. Dow was in attendance because of a sewer line running underneath the property.

Camp the Falls – Rotary Project
Parks and Recreation Director Mari Steinbach introduced Project Creator and Rotary Club Board Member Ryan Thackray and club members Luke Thorwart, Laura Moore, and Dolly Durham-Montgomery. Mr. Thackray stated the Rotary Club previously sponsored the Holiday Lights fundraiser at the Roper Mountain Center and because of the great partnership between Rotary and the City, the group would like to sponsor a new fundraising opportunity entitled Camp the Falls in city parks. Ms. Moore explained the concept as a one night, urban camping experience set for September 2019 with raffle winners being selected as the participants. Ms. Moore added there would be a large festival two weeks prior to the event for the public to learn about the City's outdoor space and camping. Mr. Thackray stated the money raised by the raffle would go back into the Rotary Fund, which would benefit city parks and Rotary charities.



Councilmember Littlejohn asked for clarification of the event and encouraged the organizers to be inclusive. Ms. Steinbach stated they have contacted the Falls Park Garden Club and they would want a 15%-20% percent share of the profits and would share in the insurance coverage. Councilmember Flemming questioned how the Club would protect the natural environment of the parks. Ms. Steinbach responded the event would be treated as any other Parks and Recreation event, noting a checklist and a site layout would be followed. Ms. Durham-Montgomery responded a large number of volunteers would be assisting with the event and Police Chief Ken Miller has been included in discussions regarding a police presence. Councilmember Doyle stated while there is a no camping policy in the parks and there would be sensitivity concerning that issue, she believes the project is worthwhile.

Complete Streets Policy
Engineering Services Manager Dwayne Cooper and Assistant City Engineer Clint Link provided a presentation as included in Council's Agenda packet on the City's Complete Streets Policy. Mr. Cooper stated the City's success has caused increased traffic, making it even more important to provide safe bike lanes. Mr. Link stated complete streets are not only about having bike lanes and traffic calming, but also widening safe crosswalks, installing curb extensions, and putting in accessible pedestrian signals. Mr. Link also stated the City coordinates closely with the South Carolina Department of Transportation on the road issues and added several departments within the City must work together to complete projects. Mr. Cooper discussed upcoming projects including Verdae Boulevard streetscape, Augusta Street improvements, 300 North Main, Church Street improvements, Fairforest Way rehabilitation, and Salters Road improvements. Mr. Cooper added his department is also doing a downtown transportation study regarding complete streets.

Councilmember Stall asked if the work on Augusta Road has been funded. Mr. Cooper responded affirmatively and stated some of the project is being done by SCDOT. Councilmember Doyle stated she would like to know the percentage of city streets which are striped and those which are complete streets. Councilmember Flemming shared her concern about visibility at the edge of streets with vehicles having to come out too far into oncoming traffic. Ms. Steinbach responded those types of issues could fall under Parks and Grounds. City Manager John Castile added those types of issues are processed through a service request, and he encourages neighborhoods to let the City know about such overgrowth. Councilmember Doyle recognized advocates from BikeGreenville in attendance for discussion.

Committee Update and Future Meeting Agendas
No discussion held.

Motion – Executive Session
No discussion held.

With no further discussions, the meeting adjourned at 11:53 a.m.

Lori Sondov
Deputy City Clerk

Meeting notice posted on May 18, 2018

Planning Staff Report to
Greenville Planning Commission
August 8, 2018
for the August 16, 2018 Public Hearing

Docket Number:	**Z-20-2018**
Applicant:	City of Greenville
Property Location:	Properties bounded by and adjacent to S ACADEMY ST, N MARKLEY ST, S MARKLEY ST, ARLINGTON AV, & SUMNER ST
Acreage:	**103**
Zoning:	**C-3, Regional Commercial District; C-2, Local Commercial District; & OD, Office and Institutional District**
Proposal:	**Rezone C-3, C-2, & OD Properties to RDV, RM-2, & RM-1**
Staff Recommendation:	**Approve**

Applicable Sections of the City of Greenville Code of Ordinances:

Sec. 2-372 *Function, Powers, and Duties of the Planning Commission*
Sec.19-2.1.2 (A) (2) (b) *Zoning District Map Amendments (Rezoning)*
Sec.19-2.3.2 (E) (2) *Amendments to Zoning District Map*
Sec.19-3.2 *District Descriptions*

Staff Analysis:

As the West End neighborhood continues to grow and change, the neighborhood association requested staff to review the current zoning districts and consider changes to promote more neighborhood friendly development. The current zoning designation of C-3 (Regional Commercial) is one the most intense commercial districts in our code. Previously, city staff had studied the West Greenville area and set an area, loosely bounded by Pendleton St, Academy St, N. Markley St and S. Main St. (see attached map of existing zoning) As staff conducted research into this request, we also considered this previous study and the zoning of the areas associated with it. From this study, staff suggests zoning changes that will promote redevelopment of properties along the Pendleton St., Academy St, N. Markley and S. Main St. corridor segments, as well as properties within a bounded area adjacent (see attached map of proposed zoning) and are consistent with the development that is occurring in the adjacent residential areas and nearby pedestrian focused business districts. Staff met with the West End Neighborhood Association on April 3 and received overwhelming support for the proposed changes. A public open house was held for property owners in this area on April 30 and May 1 from 4:00-6:00 at the St. Andrews Episcopal Church, 1002 S. Main Street. Property owners had the opportunity to meet one-on-one with staff and discuss proposed changes. Based on feedback received from those meetings, staff incorporated comments and brings forward the attached proposal for your consideration.

DEFENDANT'S EXHIBIT
9/29/22 10

Comparison of Uses in Zoning Districts

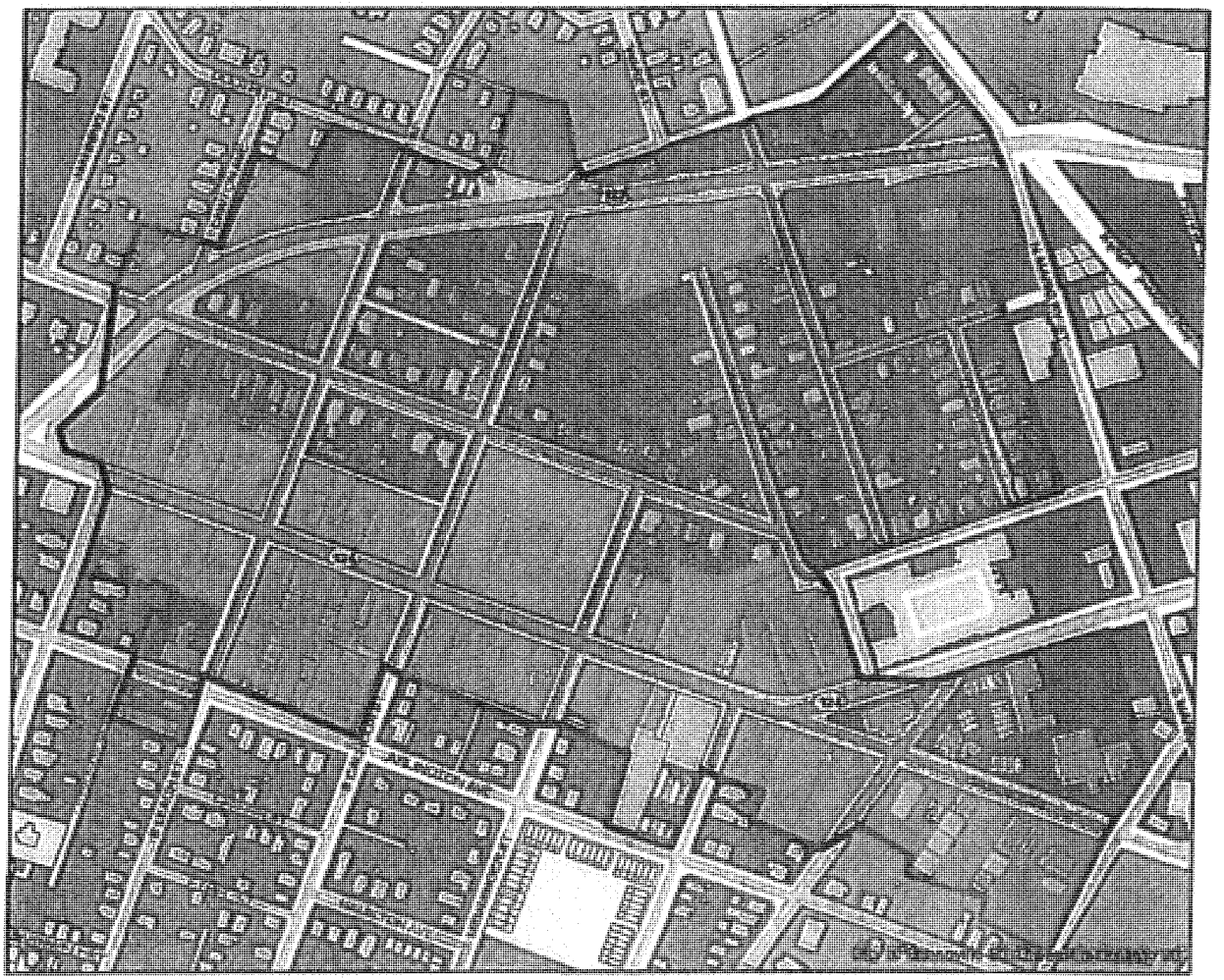
Potential uses

Potential use	C2	C3 - Current Zoning	ROV	OD
Single family dwelling	Permitted	Permitted	Permitted	Permitted
Single family attached	Permitted	Permitted	Permitted	Permitted
Duplex Dwelling	Permitted	Permitted	Permitted	Permitted
Multi-Family Dwelling	Permitted	Permitted	Permitted	Permitted
High-Rise Multi-Family Dwelling (5 stories or more)	Permitted	Permitted	Prohibited	Permitted
Group living - Group home	Prohibited	Prohibited	Requires Special Exception	Requires Special Exception
Day care center, (13+ people)	Requires Special Exception	Permitted	Permitted	Requires Special Exception
School, public or private	Permitted	Permitted	Requires Special Exception	Permitted
Medical facility other than hospital	Permitted	Permitted	Permitted	Permitted
Religious institution	Permitted	Permitted	Permitted	Permitted
Institutions-Post Incarceration Facility	Prohibited	Requires Special Exception	Prohibited	Prohibited
Institutions-All other uses	Prohibited	Requires Special Exception	Requires Special Exception	Permitted
Parks and Open Space	Requires Special Exception	Requires Special Exception	Requires Special Exception	Requires Special Exception
Restaurant with a drive-through	Requires Special Exception	Permitted	Conditional Use	Prohibited
Restaurant w/ indoor and outdoor seating	Permitted	Permitted	Conditional Use	Requires Special Exception
Restaurant with indoor seating only	Permitted	Permitted	Permitted	Requires Special Exception
Offices - other than bail bonding or broadcasting studio	Permitted	Permitted	Permitted	Permitted
Parking lot	Permitted	Permitted	Permitted	Permitted
Bank, financial institution	Permitted	Permitted	Permitted	Permitted
Barbershop, beauty shop	Permitted	Permitted	Permitted	Permitted
Convenience store	Requires Special Exception	Permitted	Requires Special Exception	Prohibited
Funeral home	Permitted	Permitted	Nonconforming	Permitted
Grocery store	Permitted	Permitted	Permitted	Prohibited
Automobile servicing	Requires Special Exception	Permitted	Requires Special Exception	Prohibited
Nightclub or bar	Conditional Use	Conditional Use	Prohibited	Prohibited
Personal Services	Permitted	Permitted	Permitted	Requires Special Exception
Photography, art, dance studio, gallery	Permitted	Permitted	Permitted	Permitted
Retail Sales	Permitted	Permitted	Permitted	Permitted
Retail Sales exceeding 25,000 square feet	Requires Special Exception	Permitted	Conditional Use	Permitted

COG Response to FOIA from Bannister & Waytt re Pendleton Street Rezone

COG000398

Pendleton Street Proposed Zoning



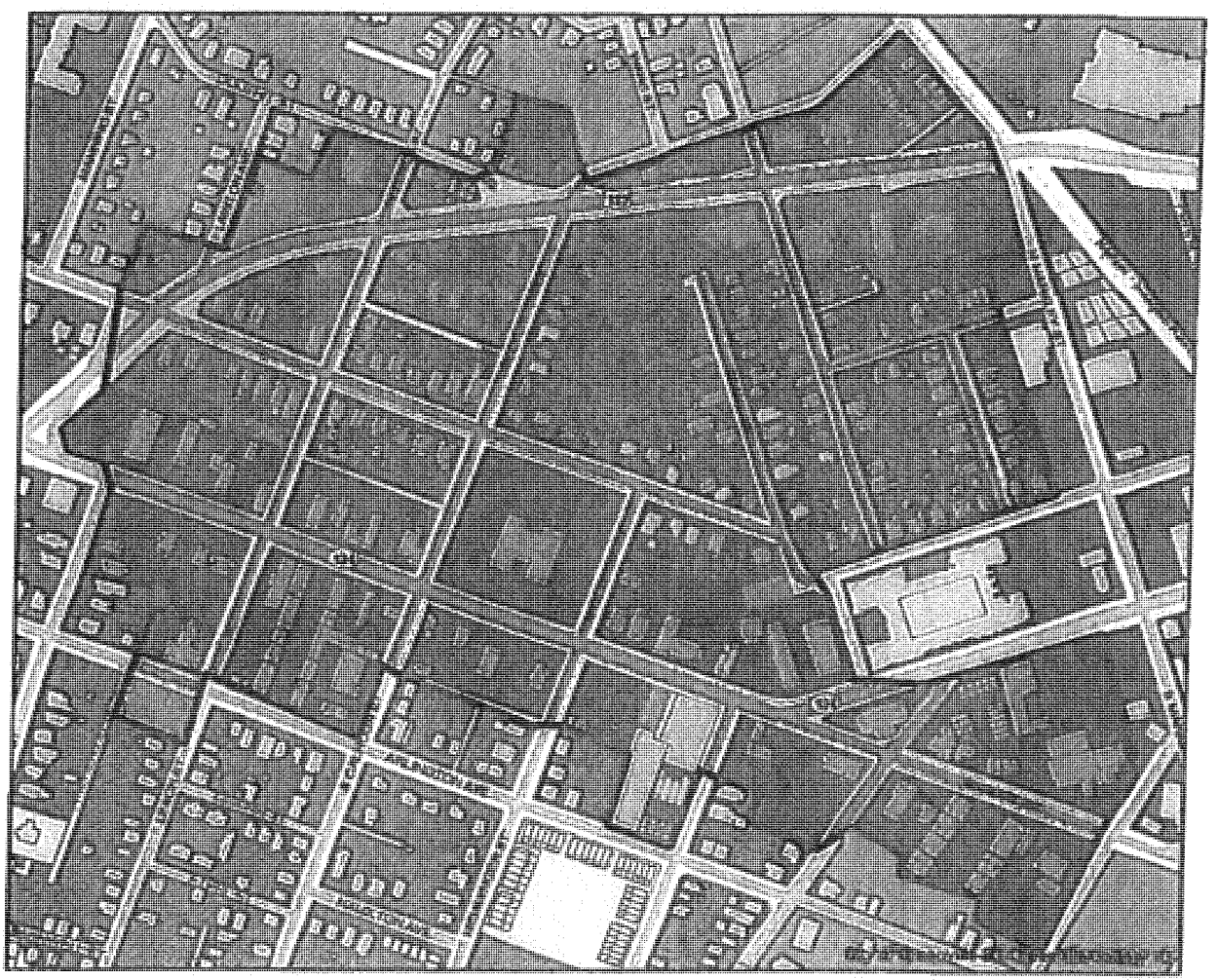
Legend

Proposed Zoning

Zone

- C-2, Local Commercial District
- C-4, Central Business District
- OD, Office and Institutional District
- PD, Planned Development District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- Other
- Buildings
- Study Area

Pendleton Street Existing Zoning



Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

city of greenville

2-20-2018

Office Use Only: RSZ
Application# 18-631 Fees Paid
Date Received Accepted By
Date Complete App Deny Conditions

APPLICATION FOR REZONE - BASIC

Contact Planning & Development (864) 467-4476

APPLICANT/OWNER INFORMATION

*Indicates Required Field

	APPLICANT	PROPERTY OWNER
*Name:	City of Greenville	
*Title:		
*Address:	PO Box 2207	
*State:	Greenville, SC 29602	
*Zip:	29602	
*Phone:	864-467-4570	
*Email:	gstroud@greenvillesc.gov	

PROPERTY INFORMATION

*STREET ADDRESS Please see attached

*TAX MAP #(S) Please see attached

*DEED BOOK/PAGE

*CURRENT ZONING DESIGNATION Please see attached map of current zoning designations

*PROPOSED ZONING DESIGNATION Please see attached map of proposed zoning designations

*TOTAL ACREAGE approximately 103 acres

INSTRUCTIONS

1. The applicant is encouraged to schedule a preapplication conference at least one (1) month prior to the scheduled submission deadline. At this time, the applicant may also be encouraged to schedule a sufficiency review one (1) to two (2) weeks prior to the scheduled submission deadline to allow staff review of the application. Call (864) 467-4476 to schedule an appointment.

   PREAPPLICATION MEETING DATE Please see attached list of meeting dates and presentations
2. If the application includes more than one (1) parcel and/or more than one (1) owner, the applicant must provide the appropriate deed book/page references, tax parcel numbers, and owner signatures as an attachment.
3. If the application is to designate a portion of a property within this Zoning Map Amendment request, otherwise described by deed, a survey and legal description of the parcel reflecting the requested designation(s) by courses and distances must be included in the submittal package.
4. In addition to the Zoning Map Amendment required documents, as set forth in ***Sections 19-2.3.2, Amendments to Text and Zoning District Map***, the applicant/owner must respond to the "Standards" questions on page 3 of this application. A separate sheet may be attached to address these questions.
5. All applications and fees (made payable to the City of Greenville) for designation as a Zoning Map Amendment must be received by the planning and development office no later than 2:00 pm of the date reflected on the attached schedule.

   A. Zoning Map Amendment $550.00 – *public hearing required*

city of greenville

6. Staff will review the application for "sufficiency" pursuant to Section 19-2.2.6, Determination of Sufficiency. If the application is deemed insufficient, staff will notify the applicant and request that the application be revised and resubmitted to address insufficiency comments. In this event, the item will be postponed to a subsequent regularly scheduled planning commission meeting.
7. Please refer to ***Section 19-2.3.2, Amendments to Text and Zoning District Map*** for additional information.
8. **Public Notice Requirements.** Zoning Map Amendment applications require a planning commission public hearing. The applicant is responsible for sign posting the subject property at least 15 days (but no more than 18 days) prior to the scheduled hearing date.

   Zoning Map Amendment applications also require a developer-led neighborhood meeting, which is to be held at least eight (8) days prior to the scheduled planning commission hearing (Sec. 19-2.2.4, Neighborhood meetings). See *Instructions for Organizing a Developer-Led Neighborhood Meeting* for more information.

   Upon planning commission recommendation, the application item will be scheduled for city council hearing.

   (*To be filled out at time of application submittal*)

   _____Public Hearing signs are acknowledged as received by the applicant

   _____Instructions for Organizing a Developer-Led Neighborhood Meeting are acknowledged as received by the applicant

   *APPLICANT SIGNATURE _____
9. **Please verify that all required information is reflected on the plan(s), and submit one (1) paper copy and one (1) electronic version of the application submittal package.**
10. **Please read carefully:** The applicant and property owner affirm that all information submitted with this application; including any/all supplemental information is true and correct to the best of their knowledge and they have provided full disclosure of the relevant facts.

    In addition, the applicant affirms that the applicant or someone acting on the applicant's behalf has made a reasonable effort to determine whether a deed or other document places one or more restrictions on the property that preclude or impede the intended use and has found no record of such a restriction.

    If the planning office by separate inquiry determines that such a restriction exists, it shall notify the applicant. If the applicant does not withdraw or modify the application in a timely manner, or act to have the restriction terminated or waived, then the planning office will indicate in its report to the planning commission that granting the requested change would not likely result in the benefit the applicant seeks.

    Furthermore, my signature (applicant) indicates that I understand and consent that this matter will appear before the Planning Commission for consideration and that any recommendation, for approval or denial, by the Planning Commission will be presented to the City Council at their next regularly scheduled meeting to be held on the fourth Monday of the month following the Planning Commission meeting in which the matter was heard.

_____ *APPLICANT SIGNATURE

7/12/18 DATE

city of greenville

11. To that end, the applicant hereby affirms that the tract or parcel of land subject of the attached application is ___ or is not ___ restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the requested activity.

*Signatures	
Applicant	
Date	
Property Owner/Authorized Agent	
Date	

SUPPORTING INFORMATION – STANDARDS QUESTIONS
Applicant response to Section 19-2.3.2 (E)(2), Amendments to Zoning District Map

(Please attach separate sheet if additional space is need)

1. DESCRIBE THE WAYS IN WHICH THE PROPOSED ZONING DESIGNATION IS CONSISTENT WITH THE COMPREHENSIVE PLAN.
   Please see attached

2. DESCRIBE THE CONDITIONS THAT HAVE CHANGED FROM CONDITIONS PREVAILING AT THE TIME THAT THE ORIGINAL DESIGNATION WAS ADOPTED.
   Please see attached.

3. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT ADDRESSES A DEMONSTRATED COMMUNITY NEED.
   Please see attached.

4. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT IS COMPATIBLE WITH EXISTING AND PROPOSED USES SURROUNDING THE SUBJECT LAND AND IS THE APPROPRIATE ZONING DISTRICT FOR THE LAND.
   Please see attached

city of greenville

5. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT PROMOTES A LOGICAL AND ORDERLY DEVELOPMENT PATTERN.
Please see attached.

6. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN UNDESIRABLE STRIP OR RIBBON COMMERCIAL DEVELOPMENT.
Please see attached

7. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN THE CREATION OF AN INAPPROPRIATELY ISOLATED ZONING DISTRICT UNRELATED TO ADJACENT AND SURROUNDING ZONING DISTRICTS.
Please see attached.

8. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN SIGNIFICANT ADVERSE IMPACTS ON THE PROPERTY VALUES OF SURROUNDING LANDS.
Please see attached.

9. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN DETRIMENTAL IMPACTS ON THE NATURAL ENVIRONMENT AND ITS ECOLOGY, INCLUDING BUT NOT LIMITED TO: WATER; AIR; NOISE; STORMWATER MANAGEMENT; WILDLIFE; VEGETATION; AND, WETLANDS.
Please see attached.

10. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL RESULT IN DEVELOPMENT THAT IS ADEQUATELY SERVED BY PUBLIC FACILITIES AND SERVICES (ROADS, POTABLE WATER, SEWERAGE, SCHOOLS, PARKS, POLICE, FIRE, AND EMERGENCY FACILITIES).
Please see attached.

1. Describe the ways in which the proposed zoning designation is consistent with the comprehensive plan.

Staff concludes that the proposed zoning designation of RDV is Mixed-Use Community (Pendleton Street) and Urban Residential (Academy Street) Future Land Use designations. The Mixed-Use Community designation encourages grocery stores, specialty stores, community libraries, medical offices, mid-size employers and community parks. Residential uses are also encouraged. The Urban Residential designation encourages a range of housing, including single-family, detached houses, attached homes and multi-family units. This designation serves as a transition between downtown core uses and the single family neighborhood of outlying areas. The focus of both designations is on pedestrians.

2. Describe the conditions that have changes from conditions prevailing at the time that the original designation was adopted.

The Pendleton Street corridor between S. Main and Academy Streets is an important connection, linking three highly walkable and pedestrian-friendly areas - downtown, the West End and the Village of West Greenville. In addition, Academy Street between Markely and Pendleton Streets also links Heritage Green, downtown, the Kroc Center and AJ Whittenberg Elementary School and the new Unity Park with these neighborhoods in Greenville's West Side. The West Greenville, West End and Sterling neighborhoods have undergone a transformation with the renovation of existing homes and the construction of new homes. While this revitalization, overall, has been very positive, the three neighborhoods have faced development pressures including the demolition of older homes with historic character and the transition of once affordable housing options to market rate homes. Several planning efforts and studies have focused on strengthening the unique conditions of these areas. The proposed RDV designation is compatible with the changing conditions.

3. Describe the ways in which the proposed amendment addresses a demonstrated community need.

The RDV designation will guide redevelopment and increase the viability of the area by limiting certain uses and encouraging pedestrian-orientation, mixed-use pattern of retail, office and residential development. The proposed re-zoning will require a high quality of development, including buffering, that is sensitive to the nearby single family and multi-family residential districts.

4. Describe the ways in which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zoning district for the land.

The RDV designation is consistent with the zoning of parcels located adjacent to these areas on Pendleton Street west of Academy Street.

5. Describe the ways in which the proposed amendment promotes a logical and orderly development pattern.

The proposed zoning amendment will provide for uses that are compatible with development patterns of the area.

6. Describe the ways in which the proposed amendment will not result in undesirable strip or ribbon commercial development.

It is not anticipated that the proposed amendment will result in strip or ribbon commercial development since the City has adopted nonresidential design standards for development.

7. Describe the ways in which the proposed amendment will not result in the creation of an inappropriately isolated zoning district unrelated to adjacent and surrounding zoning districts.

The proposed zoning amendment will not create "spot" zoning. The proposed amendment will expand upon the existing RDV designation along the Pendleton and Academy Street corridors.

8. Describe the ways in which the proposed amendment will not result in significant adverse impact on the property values of surrounding lands.

It is not apparent that the proposed amendment will result in significantly adverse impacts on the property values of surrounding lands. On the contrary, it is anticipated that the proposed amendment will have a positive impact on property values and provide property owners with assurance that there is consistency in the manner in which Pendleton and Academy Streets will be redeveloped.

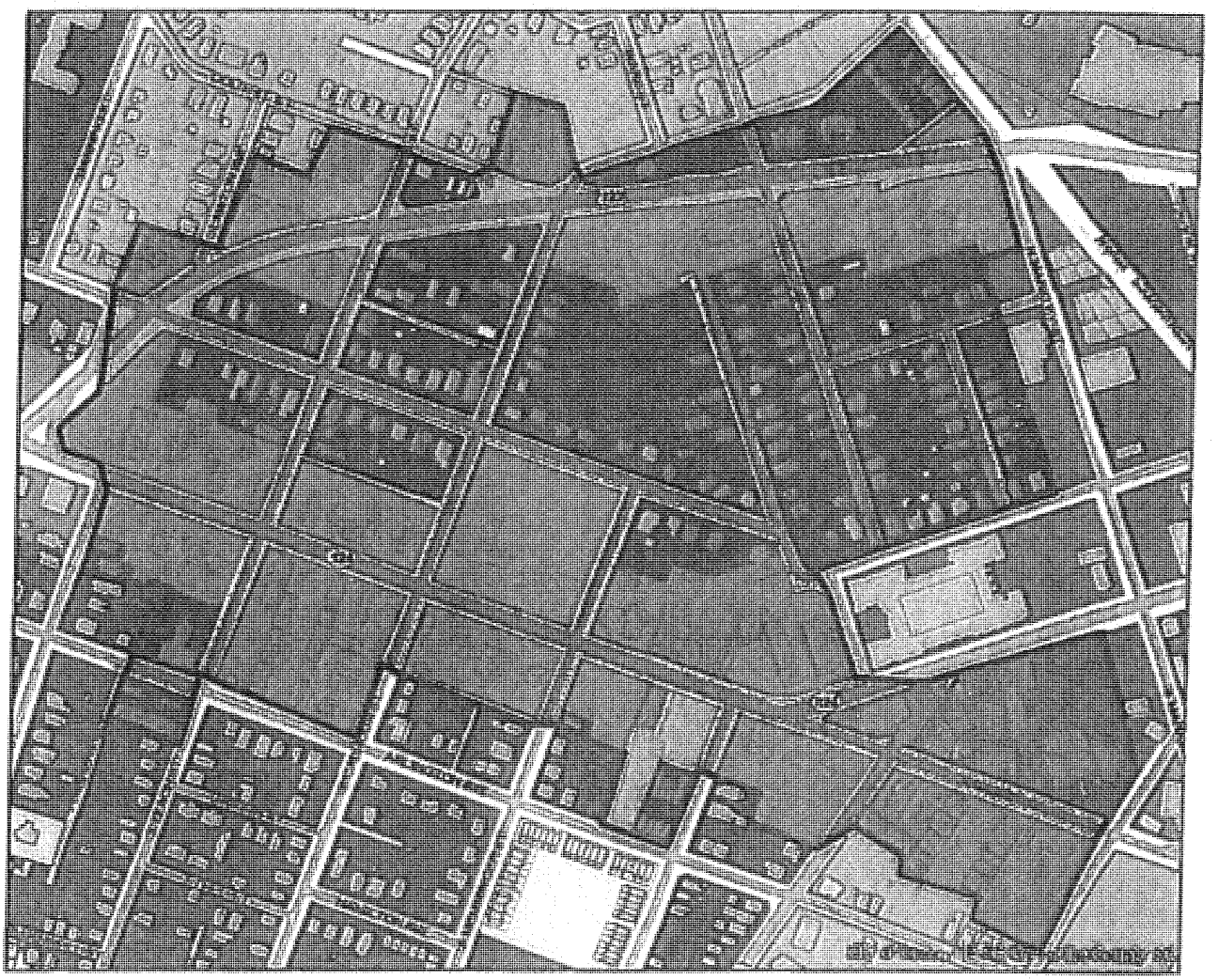
9. Describe the ways in which the proposed amendment will not result in detrimental impacts on the natural environment and its ecology, including but not limited to: water, air, noise, storm water management, wildlife, vegetation and wetlands.

Redevelopment of any properties included in the will comply with City ordinances.

10. Describe the ways in which the proposed amendment will result in development that is adequately served by public facilities and services (roads, potable water, sewerage, schools, parks, police, fire and emergency facilities).

Public facilities and services are available to all properties included in the study area.

Pendleton Street Proposed Zoning



0 0.04 0.09 0.17 Miles

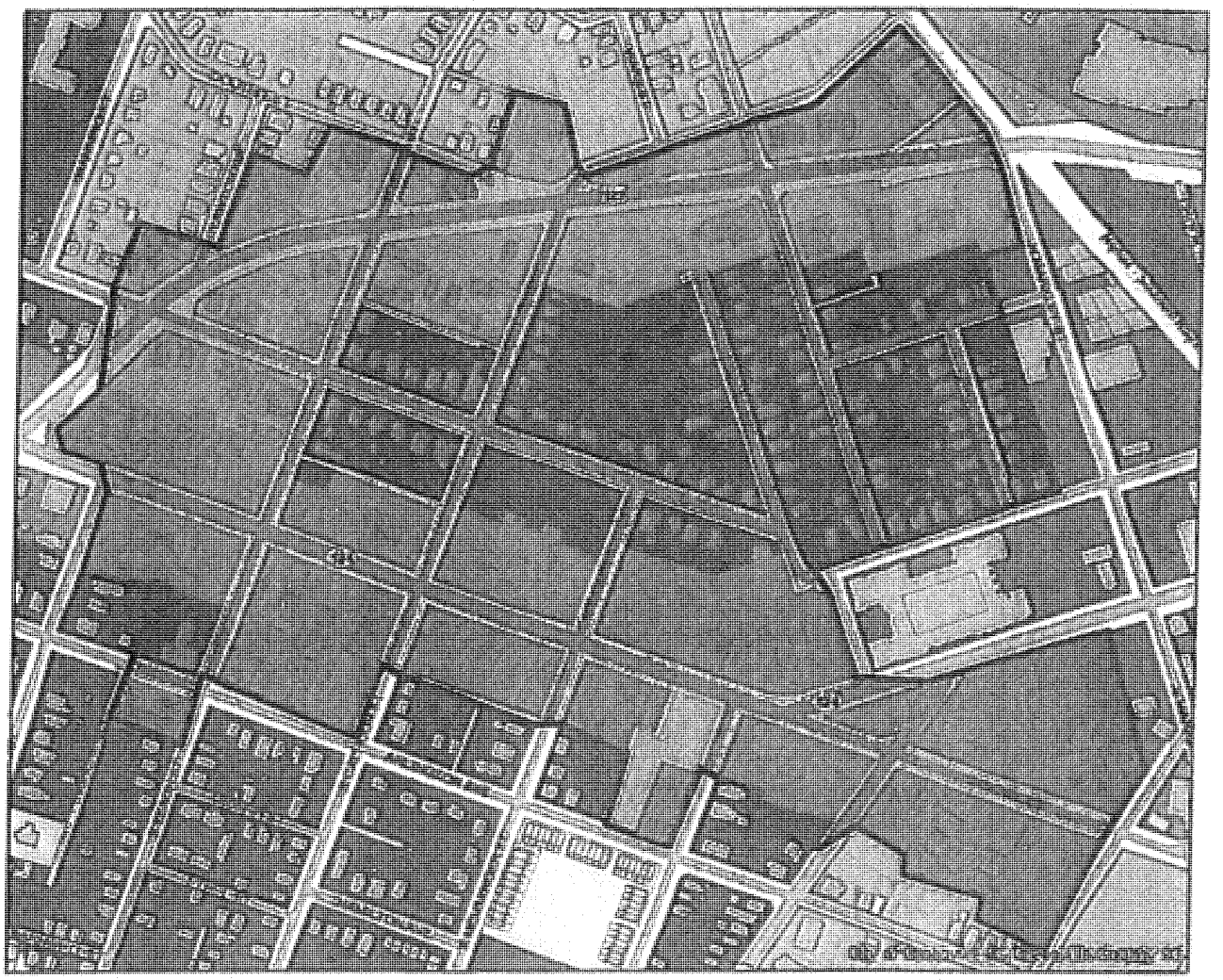
Legend

Proposed Zoning

Zone

- C-2, Local Commercial District
- C-4, Central Business District
- OD, Office and Institutional District
- PD, Planned Development District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- Other
- Buildings
- Study Area

Pendleton Street Existing Zoning



0 0.04 0.09 0.17 Miles

Legend

Zoning

- C-1, Neighborhood Commercial District
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- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District

- Buildings
- Study Area

0079000100800	116	WARE
0079000101500	605	ACADEMY
0079000101900	307	CALHOUN
0079000102900	120	WARE
0079000103100	114	WARE
0079000103801	16	PERRY
0079000103803		PERRY
0079000200600	111	WARE
0079000200800	115	WARE
0079000201300	127	WARE
0079000201401		MCCALL
0079000202100	143	WARE
0079000202700	118	CALHOUN
0079000202900	114	CALHOUN
0079000203500	108	PERRY
0079000203507	106	PERRY
0080000100100	1116	MAIN
0080000100200		PERRY
0080000100500	25	PERRY
0080000100801	10	MEMMINGER
0080000101100	610	PENDLETON
0080000300300	711	PENDLETON
0080000300500	7	CALHOUN
0080000301100	406	ARLINGTON
0080000400103		PENDLETON
0080000400105	302	ARLINGTON
0080000400112		MALLARD
0080000400400	615	PENDLETON
0080000500100	503	VARDRY
0080000500300	515	PENDLETON
0080000500900	112	ANDERSON
0081000200302	413	VARDRY
0081000200304	413	VARDRY
0081000200500	423	VARDRY
0081000200700	109	ANDERSON
0081000201500	110	ARLINGTON
0081000202300	401	VARDRY
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0074000600100	90	GRACE
0074000600200	98	GRACE
0074000600201	92	GRACE
0074000700600	15	WATSON
0074000700700	17	WATSON
0074000700800	19	WATSON
0074000700900	20	MCCALL
0074000800500	6	WATSON
0074000800600	8	WATSON
0074000800700	12	WATSON
0074000800800	14	WATSON
0073000400601	1027	MAIN
0073000400602	1027	MAIN
0073000400603	1027	MAIN
0073000400604	1027	MAIN
0073000400619	1027	MAIN
0073000400800	9	ANDERSON
0073000401000	416	VARDRY
0073000401500	1015	MAIN
0074000200111	437	MARKLEY
0074000200112	439	MARKLEY
0074000200113	441	MARKLEY
0074000200114		MARKLEY
0074000200200	00402	CALHOUN

Pendleton St Study_Area_Parcels.xls

PIN	Parcel STRNUM	Parcel Street Location
0073000400611		MAIN
0073000400612		MAIN
0073000400613		MAIN
0073000400614		MAIN
0074000200103	421	MARKLEY
0074000200104	423	MARKLEY
0074000200105		MARKLEY
0074000200106	427	MARKLEY
0073000400100	1001	MAIN
0073000400400	1021	MAIN
0073000400607		MAIN
0073000400609		MAIN
0073000400616	1027	MAIN
0073000400618		
0073000401600	108	GREEN
0073000401800	18	MARKLEY
0074000200100	507	MARKLEY
0074000200102	419	MARKLEY
0074000200107	429	MARKLEY
0074000200109	433	MARKLEY
0074000300300	409	MARKLEY
0074000500100	106	MCCALL
0074000600400	102	GRACE
0074000600600	106	GRACE
0074000700101	702	RHETT
0074000700300	9	WATSON
0074000700500	13	WATSON
0074000700901	109	GRACE
0074000701100	14	MCCALL
0074000800200	604	RHETT
0074000800400	4	WATSON
0074000800900	16	WATSON
0074000801400	101	MARKLEY
0075000300203		DOUTHIT
0075000300800	10	DOUTHIT
0075000301200	203	CALHOUN
0078000100800	9	LAWTON
0078000200301	918	PENDLETON
0078000200400	914	PENDLETON
0078000201300	309	PERRY
0078000201500	315	PERRY
0078000300101	7	SUMNER
0078000300300	11	SUMNER
0078000301300	905	PENDLETON
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Pendleton St Study_Area_Parcels.xls

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0075000301101	4	DOUTHIT
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Pendleton St Study_Area_Parcels.xls

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Pendleton St Study_Area_Parcels.xls

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Pendleton St Study_Area_Parcels.xls

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0079000103900	804	RHETT
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0079000200700	113	WARE
0079000201400	129	ACADEMY
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0080000500200	9080	ANDERSON
0080000600100		MAIN
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0081000201600	108	ARLINGTON
0081000202200	206	GREEN

Pendleton Street and Academy Street Proposed Zoning Update
Public meetings and presentations made to gather citizen and property owner comments

- West End Neighborhood Association meeting – April 3, 2018 at 6:30, St. Andrews Episcopal Church
- Open House for Property owners and citizens – April 30, 2018, 4:00-6:00, St. Andrews Episcopal Church
- Open House for property owners and citizens – May 1, 2018, 4:00-6:00, St. Andrews Episcopal Church
- Sterling Neighborhood Association meeting – May 10, 2018 at 6:00, Sterling Community Center
- Sterling Land Trust Board of Directors – May 17 at 6:30, Sterling Hope Center

MINUTES

GREENVILLE CITY PLANNING COMMISSION
10th floor Council Chambers
August 16, 2018
3:00 PM
Meeting Notice Posted August 1, 2018

Minutes prepared by Courtney DeVoe

Members Present:	Jason Tankersley, Meg Terry, Trey Gardner, Diane Eldridge, Jonathan Pait, David Keller
Members Absent:	Catherine Smith
Staff Present:	Courtney DeVoe, Senior Development Planner; Brennan Williams, Development Planner; Shannon Lavrin, Assistant Planning & Development Manager; Jonathan Graham, Planning & Development Manager; Michael Pitts, City Attorney; Dwayne Cooper, Engineering Services Manager; Clint Link, Assistant City Engineer – Civil; Ginny Stroud, Community Development Administrator; Michael Williamson, Community Development Project Manager; Monique Mattison, Community Planner

NOTICE OF MEETING: Pursuant to Section 30-4-80 of the S.C. Code of Laws, annual notice of this Commission's Meetings was provided on April 4, 2018 via the Greenville City Website. In addition, the Agenda for this Meeting was posted outside the meeting place (City Council Chambers in City Hall) and was emailed to all persons, organizations, and news media requesting notice. Notice for the public hearings was published in the *Greenville News*, posted on the properties subject of public hearing(s), mailed to all surrounding property owners, and emailed to all persons, organizations, and news media requesting notice pursuant to Section 6-29-760 of the S.C. Code of Laws and Section 19-2.2.9 of the Code of the City of Greenville.

CALL TO ORDER: Chairman Jason Tankersley called the meeting to order at 3:05 PM.

APPROVAL OF MINUTES: The June 21, 2018 minutes were approved.

ACCEPTANCE OF AGENDA: The agenda was unanimously approved to amend the agenda with unanimous to table AX-6-2018; AX-8-2018; SD 18-016.

RECESS: Chairman Jason Tankersley called the meeting to recess at 3:14 PM.

CALL TO ORDER: Chairman Jason Tankersley called the meeting to order at 3:20 PM.

Commissioner Keller made a motion to suspend rules in order to allow public comment on item SD 18-016. Commissioner Gardner seconded the motion. The motion was approved by a vote of 6-0.

Applicant objected to the Commission's motion to suspend rules on item SD 18-016. Applicant requested that no public comment be received on item SD 18-016 as no presentation of the item was to be given at this meeting.

Board discussion included that intent to suspend rules was to provide an opportunity for the public in attendance to offer comments on item SD 18-016. The applicant, one person in favor, and one person in opposition may have five (5) minutes to speak. After that, no further public comments to be received on the item. Further discussion

DEFENDANT'S EXHIBIT

No Board discussion.

Commissioner Keller made a motion to recommend approval to City Council. Commissioner Terry seconded the motion. The motion was approved by a vote of 6-0.

Commissioner Terry recused from Council Chambers for item Z-20-2018.

O. Z-20-2018
Application by City of Greenville for a **REZONE** approximately 103 acres located along a portion of PENDLETON ST, N MEMMINGER ST, S CALHOUN ST, and S ACADMEY ST to RDV, Redevelopment District; OD, Office & Institutional District ; RM-2, Single- & Multi-Family Residential District; RM-1, Single- & Multi-Family Residential District and C-4, Central Business District (see project documents)

Graham presented the staff report for this application noting that public comments were received for this application. As the West End neighborhood continues to grow and change, the neighborhood association requested staff to review the current zoning districts and consider changes to promote more neighborhood friendly development. A similar recommendation was made in the Sterling Neighborhood Master Plan, adopted in 2010. The current zoning designation of C-3 (Regional Commercial) is one the most intense commercial districts in our code. Previously, city staff had studied the West End area and set an area, loosely bounded by Pendleton St, Academy St, N. Markley St and S. Main St. (see attached map of existing zoning). As staff conducted research into this request, we also considered this previous study and the zoning of the areas associated with it. From this study, staff suggests zoning changes that will promote redevelopment of properties along the Pendleton St., Academy St, N. Markley and S. Main St. corridor segments, as well as properties within a bounded area adjacent (see attached map of proposed zoning) which are consistent with and support the development that is occurring in the adjacent residential areas and nearby pedestrian focused business districts. Staff met with the West End Neighborhood Association on April 3 and received overwhelming support for the proposed changes. A public open house was held for property owners in this area on April 30 and May 1 from 4:00-6:00 at the St. Andrews Episcopal Church, 1002 S. Main Street. Property owners had the opportunity to meet one-on-one with staff and discuss proposed changes. Staff also met with Sterling Neighborhood Association on May 10 at 6:00 at the Sterling Community Center and with the Sterling Land Trust Board of Directors on May 17 at 6:30 at the Sterling Hope Center. Based on feedback received from those meetings, staff has incorporated adjustments, based on comments and feedback, and brings forward the attached proposal for your consideration.

Staff Recommendation: Recommend Approval to City Council

Public comment included: proposed RDV would allow more uses on property; concern over state building property being rezoned to RDV as adjacent to residential; RDV allows less intense commercial uses; retaining neighborhoods within area; properties to remain C-3; area designated as commercial shall remain commercial; blanket rezoning; public notice and community meetings; corner of Academy and Pendleton shall remain commercial, C-3; downzoning versus upzoning in certain areas

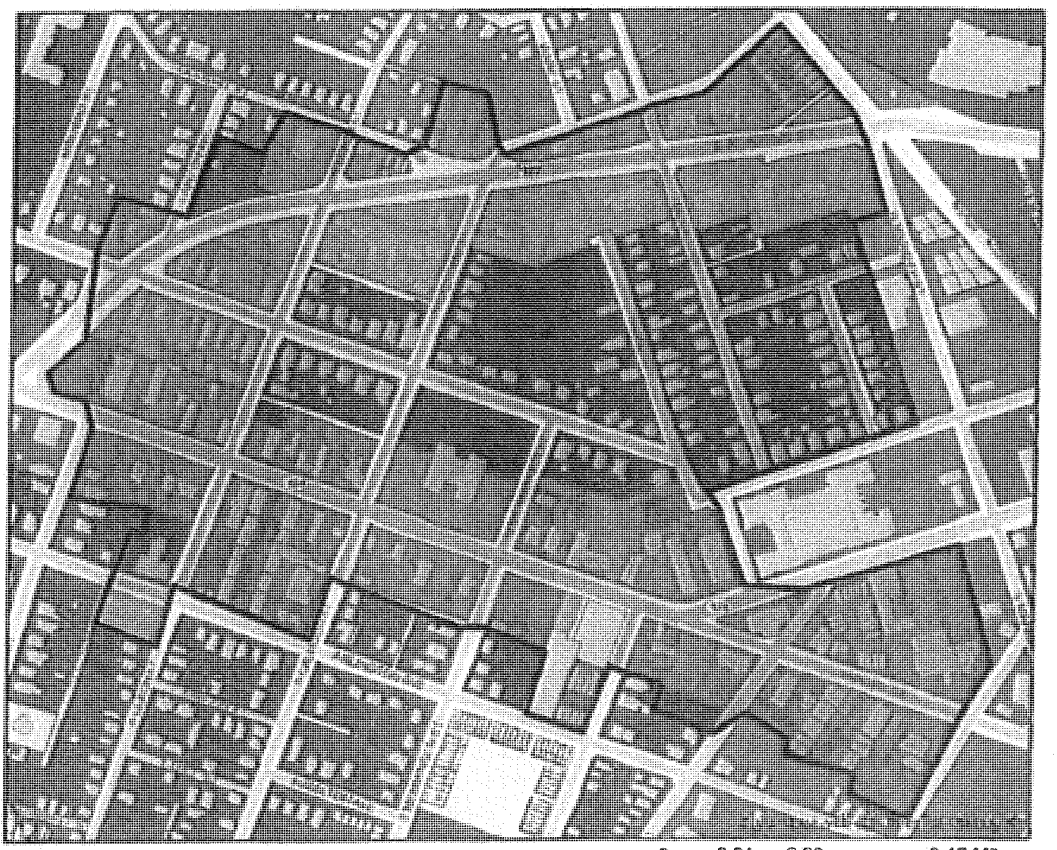
Board Discussion included: blanket zoning; downzoning; commercial areas; workshop to further study proposed request

Commissioner Keller made a motion to table application. Commissioner Gardner seconded the motion. The motion was approved by a vote of 5-0. (Commissioner Terry recused).

Commissioner Terry retuned to Council Chambers for remaining agenda.

EXHIBIT B

Pendleton Street Existing Zoning



Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

DEFENDANT'S EXHIBIT

8/29/22 12

PLANNING COMMISSION
AGENDA Workshop
September 27, 2018
4:00 PM
9th Floor Conference Room, City Hall

1. **Call to Order**
2. **Roll Call**
3. **Discussion and Training on the following item:**

Z-20-2018 Application by City of Greenville for a **REZONE** approximately 103 acres located along a portion of PENDLETON ST, N MEMMINGER ST, S CALHOUN ST, and S ACADMEY ST to RDV, Redevelopment District; OD, Office & Institutional District; RM-2, Single- & Multi-Family Residential District; RM-1, Single- & Multi-Family Residential District and C-4, Central Business District

4. **Adjournment**

DEFENDANT'S EXHIBIT
8/29/22 13

MINUTES
GREENVILLE CITY PLANNING COMMISSION
9th Floor Conference Room, City Hall
September 27, 2018
4:00 PM

Minutes prepared by Michael Frixen

Members Present:	Jason Tankersley, Catherine Smith, David Keller, Diane Eldridge, Meg Terry
Members Absent:	Trey Gardner, Jonathan Pait
Staff Present:	Jonathan Graham, Planning & Development Manager Shannon Lavrin, Assistant Planning & Development Manager Courtney DeVoe, Senior Development Planner Michael Frixen, Development Planner Michael Williamson, Community Development Ginny Stroud, Community Development

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CALL TO ORDER: Chairman Jason Tankersley called the meeting to order at 4:05 PM.

DISCUSSION
Staff from Planning and the Community Development department shared information regarding the following agenda item:

Z-20-2018 Application by City of Greenville for a **REZONE** approximately 103 acres located along a portion of PENDLETON ST, N MEMMINGER ST, S CALHOUN ST, and S ACADMEY ST to RDV, Redevelopment District; OD, Office & Institutional District; RM-2, Single- & Multi-Family Residential District; RM-1, Single- & Multi-Family Residential District and C-4, Central Business District

Discussion between staff and the planning commission members included:

- Overview and reasoning for the proposed zoning changes. The neighborhood residents would like to see their neighborhoods protected from growth occurring in the West End. The proposed rezoning will better align the zoning designations with current development while protecting surrounding neighborhoods and providing greater connectivity.
- Was C-4 considered? Yes. However, there were concerns about the scale and mass permitted in the C-4 district. There was also concern about the parking exemptions of the C-4 district.
- There is a consultant currently working on the new downtown master plan. A part of their study includes the edges and corridors coming into downtown.
- The commission would like some additional information on why the city wants the rezoning. What are the benefits of the proposed rezoning? Is it possible to prepare a pro's and con's list?
- Concern over uses allowed in C-3 including bars and night clubs. The residents in the adjacent neighborhoods want to be protected from those uses.
- RDV might be a good compromise that allows for development that is compatible with their neighborhoods.

DEFENDANT'S EXHIBIT
Gleelan 14

11/8/18 Pendleton Street Re-Zoning - Discussion w/ UDA

Review of RDV Zoning District and allowed uses:
3-4 things to be considered in RDV definition & uses
- Parking - how to accommodate parking for proposed use
  - 19.6.1-1 - off street parking
  - 6.1.3 - Schedule B allows for negotiation
  - 1.5 parking spaces too much
  - may want to relax parking requirements
  - Do we allow shared parking - parking leases

High Cost of Free Parking

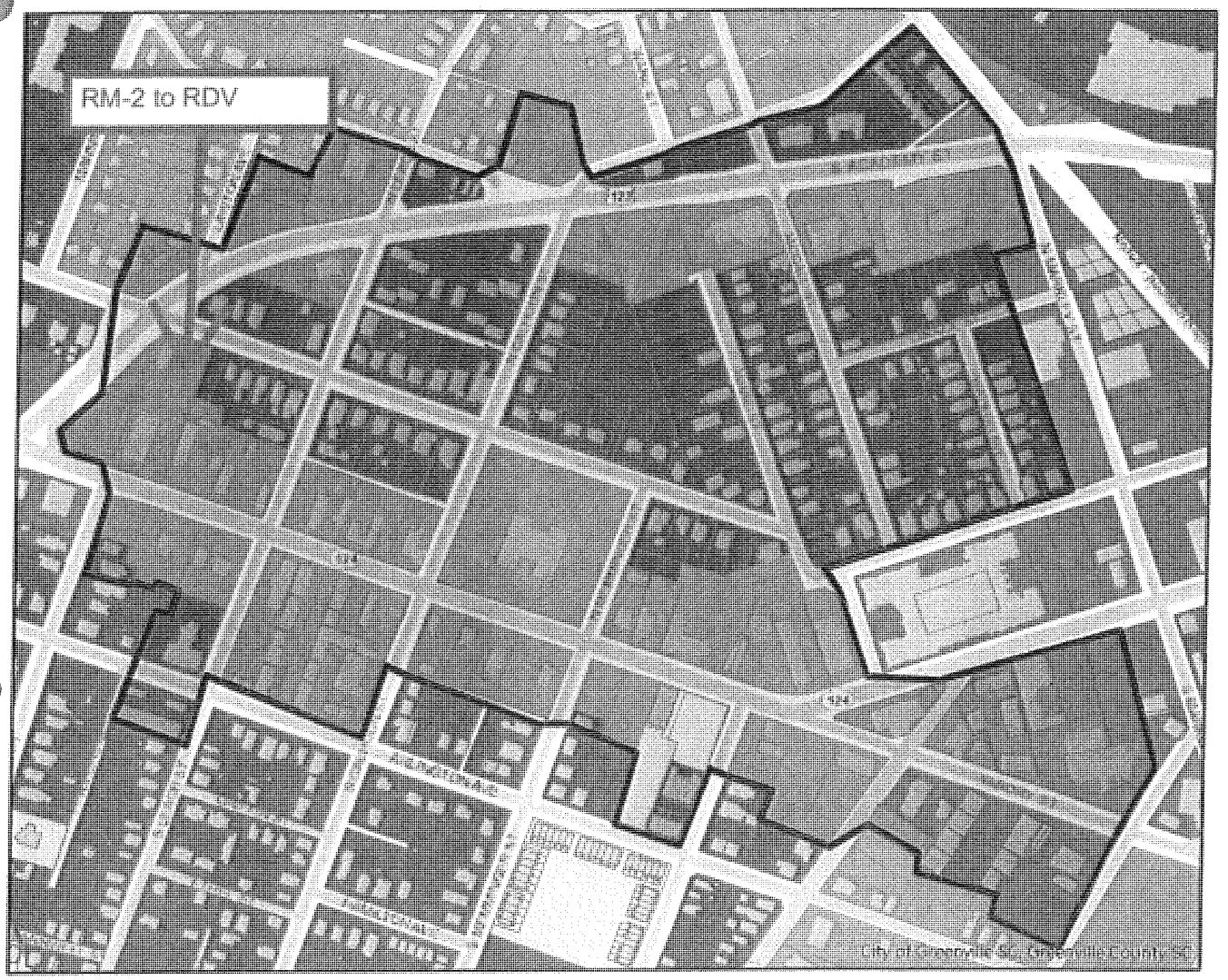
- Setbacks
  - Consider no setback requirements
  - Look at RDV require. - front 20' shared to MAX
    - Closer than 10' better
    - Side & rear set back Require ok

- Height - Review - 40' may be too low, perhaps 50'

Other Considers & Observations
- Want to encourage small neighborhood nodes
- Want to encourage reuse of existing building
- Want to encourage connectivity w/ Trail & Village
- Think about what City wants this area to develop in to

DEFENDANT'S EXHIBIT
8/29/22 15

Pendleton Street Proposed Zoning



Legend

Proposed Zoning

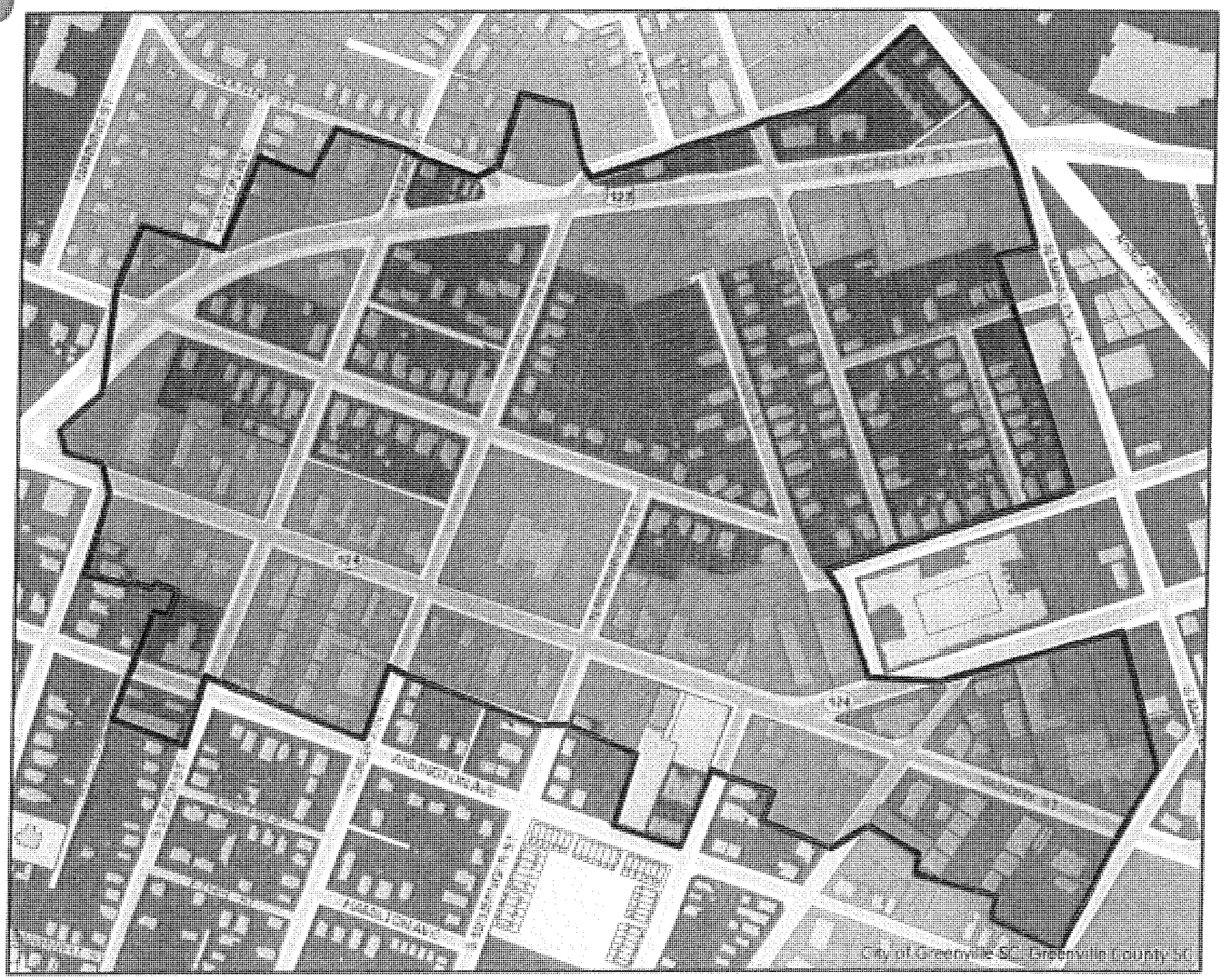
Zone

- C-2, Local Commercial District
- C-4, Central Business District
- OD, Office and Institutional District
- PD, Planned Development District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- Other
- Buildings
- Study Area

DEFENDANT'S EXHIBIT

8/24/22 16

Pendleton Street Proposed Zoning



0 0.04 0.09 0.17 Miles

Legend

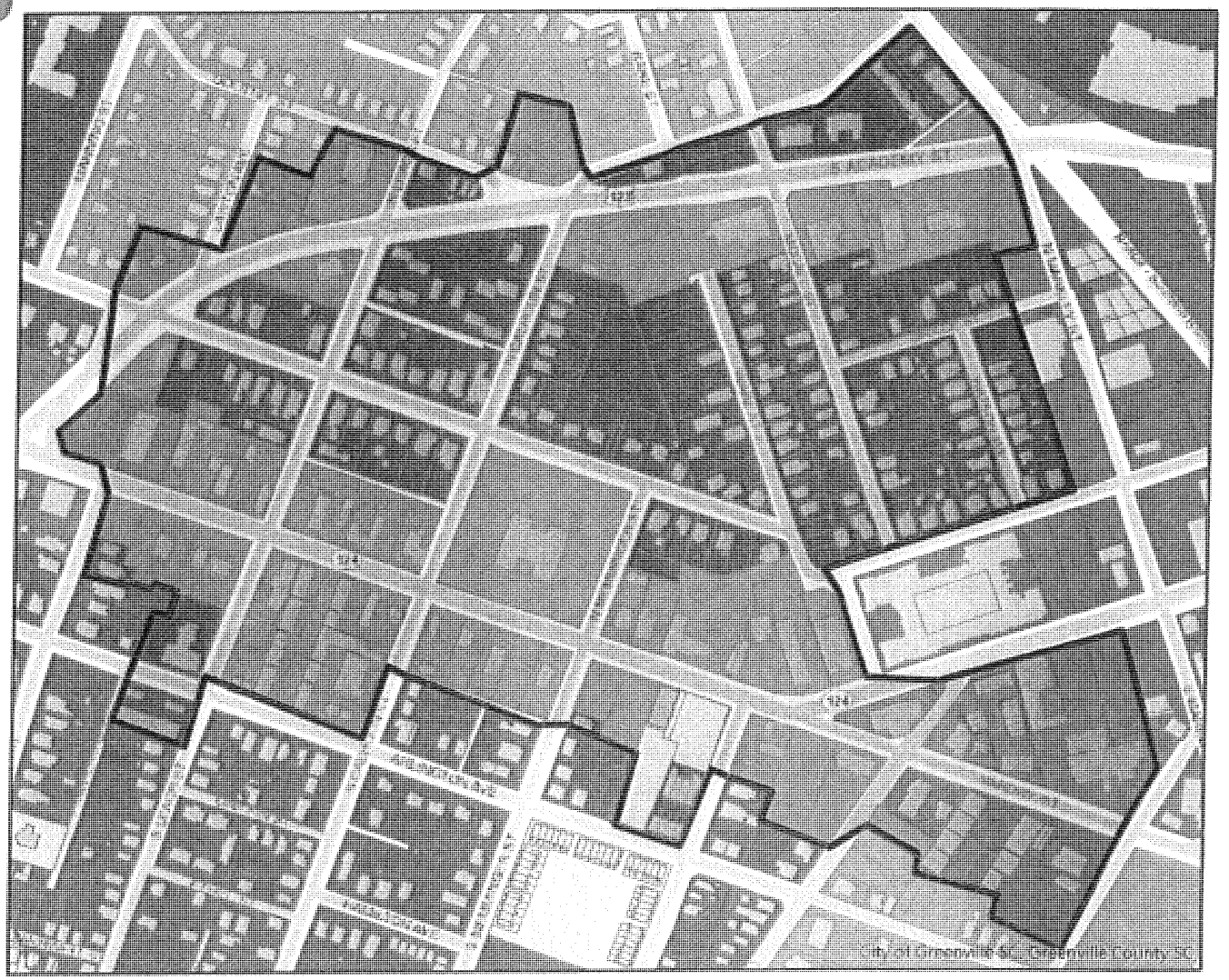
Zoning

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- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

DEFENDANT'S EXHIBIT

8/29/22 17 보

Pendleton Street Proposed Zoning



Legend

Zoning

- C-1, Neighborhood Commercial District
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- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

DEFENDANT'S EXHIBIT

8/29/22 18

DEFENDANT'S EXHIBIT

8/29/22 19

city of greenville

Community Development

November 26, 2018

Dear Neighbor,

In an effort to keep the public and the local residents informed about the proposed re-zoning of property in the Pendleton and Academy Streets area, City staff will be presenting information at the West End Neighborhood Association meeting on Tuesday, December 4, 2018 at 6:30pm at Saint Andrew's Episcopal Church in the Fellowship Hall, located at 1002 S. Main Street.

The current zoning classification of the property may or may not change under the proposed re-zoning. Please see the enclosed Existing Zoning Map and Proposed Zoning Map to review how your property may be affected. Please also find the Chart of Potential Uses enclosed to clarify the effects of potential zoning changes. This chart is not comprehensive, but includes some common uses and their applicability in the various zones.

If you are unable to join us, but would like to learn more about the proposed re-zoning, please contact the Community Development Division at 864-467-4570 or gstroud@greenvillesc.gov.

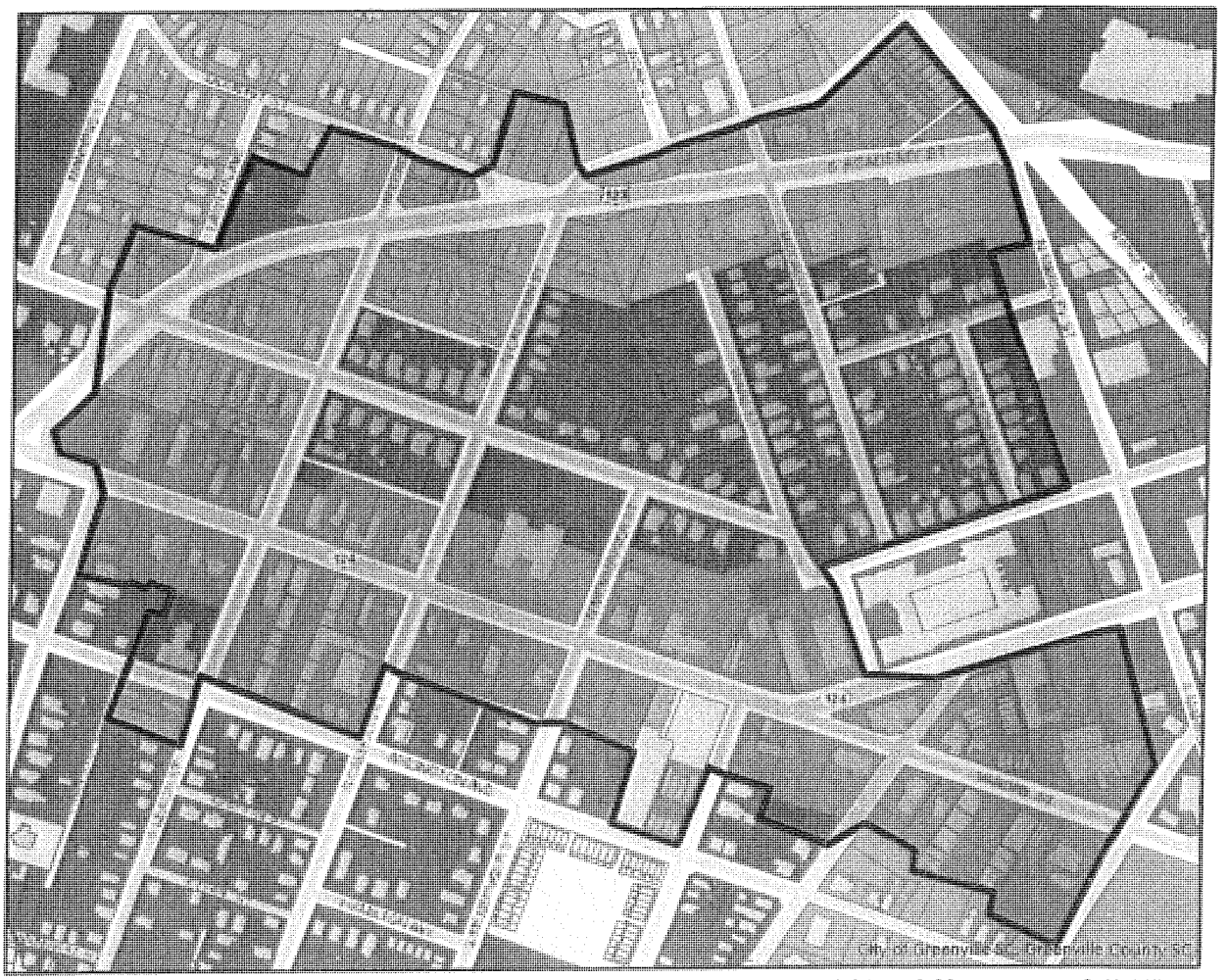
Sincerely,

Virginia Stroud

Virginia B. Stroud
Administrator
Community Development Division

Enclosures: Existing Zoning Map, Potential Zoning Map, and Chart of Potential Uses by Zone

Pendleton Street Existing Zoning



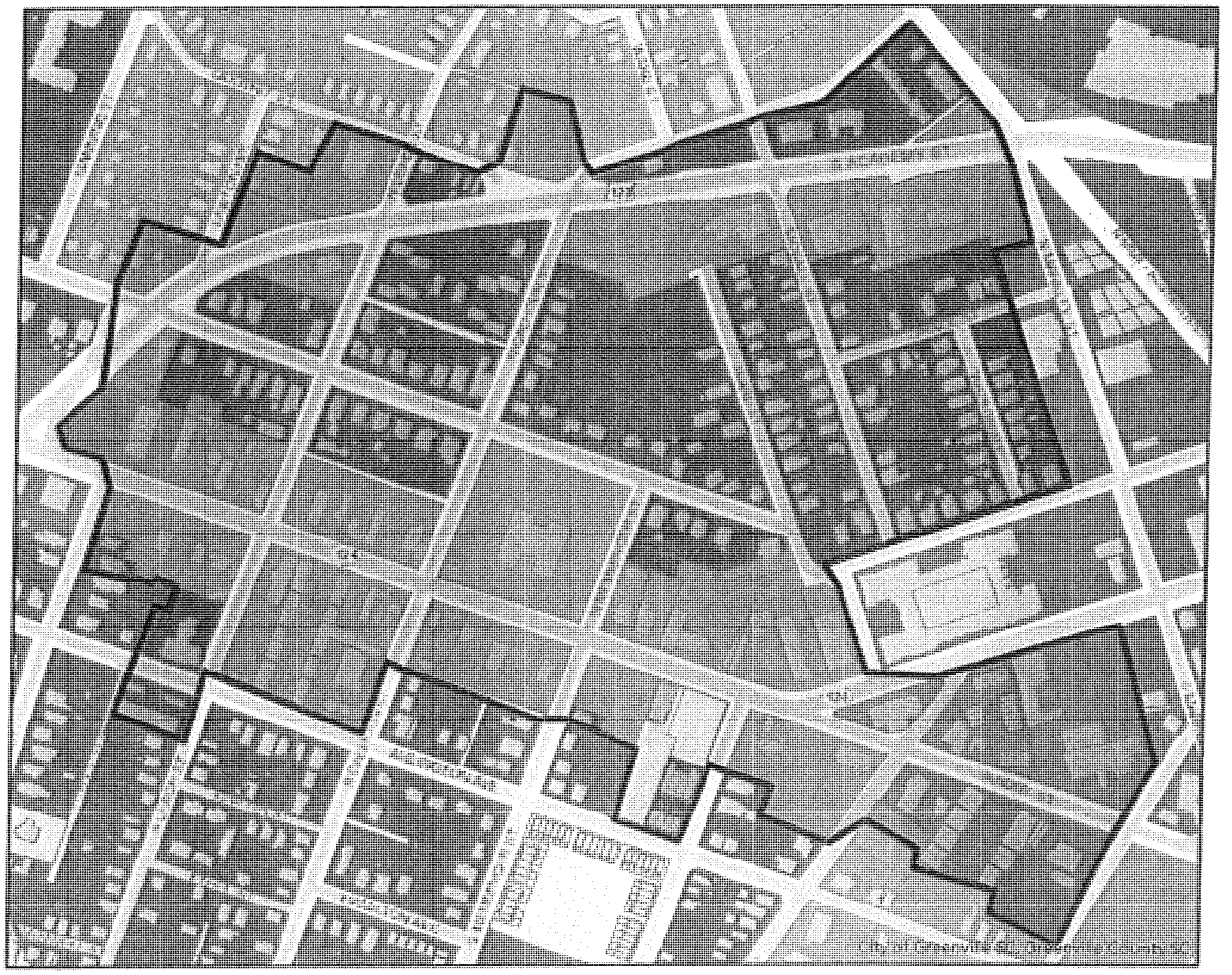
Legend

Zoning

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- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

PLTF 000754

Pendleton Street Proposed Zoning



0 0.04 0.09 0.17 Miles

Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
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- S-1, Service District
- Buildings
- Study Area

PLTF 000755

Planning Staff Report to
Greenville Planning Commission
December 14, 2018
for the December 20, 2018 Public Hearing

Docket Number:	**Z-20-2018**
Applicant:	City of Greenville
Property Location:	Properties bounded by and adjacent to S ACADEMY ST, N MARKLEY ST, S MARKLEY ST, ARLINGTON AV, & SUMNER ST
Acreage:	103
Zoning:	C-3, Regional Commercial District; C-2, Local Commercial District; & OD, Office and Institutional District
Proposal:	Rezone C-3, C-2, & OD Properties to RDV, RM-2, & RM-1
Staff Recommendation:	Approve

Applicable Sections of the City of Greenville Code of Ordinances:

Sec. 2-372 *Function, Powers, and Duties of the Planning Commission*
Sec.19-2.1.2 (A) (2) (b) *Zoning District Map Amendments (Rezoning)*
Sec.19-2.3.2 (E) (2) *Amendments to Zoning District Map*
Sec.19-3.2 *District Descriptions*

Staff Analysis:

During the August 16, 2018, Planning Commission meeting, the Commission voted to table this application to allow for a workshop to further study the proposed request. The workshop was held on September 27, 2018, where the Commission requested staff to review the rezoning request with the Downtown Master Plan consultants, Urban Design Associates, and to review the proposal for any other potential compromises.

Consequently, the consultants agreed with the proposed rezoning. Staff also reevaluated the study area to determine whether certain parcels should maintain their existing zoning designation. As a result, staff recommends the triangle shaped parcel located at the North West corner of South Academy Street and North Markley Street should remain C-2, local commercial district to maintain consistency with the parcels located across Academy Street.

Also, staff recommends the four (4) parcels located at the North East corner of South Academy Street and Pendleton Street should remain C-3, regional commercial district. Staff believes the C-3 zoning is consistent for two reasons. First, South Academy Street is an arterial road, carrying large volumes of traffic (between 20,200 – 27,300 cars per day). According to the City Code of Ordinances, C-3 zoning districts are typically located along major arterials (Sec. 19-3.2.2(J)). Second, staff believes the C-3 zoning is consistent with the other three corners located at the intersection of South Academy Street and Pendleton Street.

DEFENDANT'S EXHIBIT
8/29/22 20

city of greenville

Z-20-2018

Office Use Only: RZZ
Application# 18-1631 Fees Paid_____
Date Received_____ Accepted By_____
Date Complete_____ App Deny Conditions

APPLICATION FOR REZONE - BASIC

Contact Planning & Development (864) 467-4476

APPLICANT/OWNER INFORMATION

*Indicates Required Field

	APPLICANT	PROPERTY OWNER
*Name:	City of Greenville	
*Title:		
*Address:	PO Box 2207	
*State:	Greenville, SC 29602	
*Zip:	29602	
*Phone:	864-467-4570	
*Email:	gstroud@greenvillesc.gov	

PROPERTY INFORMATION

*STREET ADDRESS Please see attached

*TAX MAP #(S) Please see attached

*DEED BOOK/PAGE

*CURRENT ZONING DESIGNATION Please see attached map of current zoning designations

*PROPOSED ZONING DESIGNATION Please see attached map of proposed zoning designations

*TOTAL ACREAGE approximately 103 acres

INSTRUCTIONS

1. The applicant is encouraged to schedule a preapplication conference at least one (1) month prior to the scheduled submission deadline. At this time, the applicant may also be encouraged to schedule a sufficiency review one (1) to two (2) weeks prior to the scheduled submission deadline to allow staff review of the application. Call (864) 467-4476 to schedule an appointment.

   PREAPPLICATION MEETING DATE Please see attached list of meeting dates and presentation
2. If the application includes more than one (1) parcel and/or more than one (1) owner, the applicant must provide the appropriate deed book/page references, tax parcel numbers, and owner signatures as an attachment.
3. If the application is to designate a portion of a property within this Zoning Map Amendment request, otherwise described by deed, a survey and legal description of the parcel reflecting the requested designation(s) by courses and distances must be included in the submittal package.
4. In addition to the Zoning Map Amendment required documents, as set forth in ***Sections 19-2.3.2, Amendments to Text and Zoning District Map***, the applicant/owner must respond to the "Standards" questions on page 3 of this application. A separate sheet may be attached to address these questions.
5. All applications and fees (made payable to the City of Greenville) for designation as a Zoning Map Amendment must be received by the planning and development office no later than 2:00 pm of the date reflected on the attached schedule.

   A. Zoning Map Amendment $550.00 – *public hearing required*

city of greenville

6. Staff will review the application for "sufficiency" pursuant to Section 19-2.2.6, Determination of Sufficiency. If the application is deemed insufficient, staff will notify the applicant and request that the application be revised and resubmitted to address insufficiency comments. In this event, the item will be postponed to a subsequent regularly scheduled planning commission meeting.
7. Please refer to ***Section 19-2.3.2, Amendments to Text and Zoning District Map*** for additional information.
8. **Public Notice Requirements.** Zoning Map Amendment applications require a planning commission public hearing. The applicant is responsible for sign posting the subject property at least 15 days (but no more than 18 days) prior to the scheduled hearing date.

   Zoning Map Amendment applications also require a developer-led neighborhood meeting, which is to be held at least eight (8) days prior to the scheduled planning commission hearing (Sec. 19-2.2.4, Neighborhood meetings). See *Instructions for Organizing a Developer-Led Neighborhood Meeting* for more information.

   Upon planning commission recommendation, the application item will be scheduled for city council hearing.

   (To be filled out at time of application submittal)

   _____Public Hearing signs are acknowledged as received by the applicant

   _____Instructions for Organizing a Developer-Led Neighborhood Meeting are acknowledged as received by the applicant

   *APPLICANT SIGNATURE [signature]
9. **Please verify that all required information is reflected on the plan(s), and submit one (1) paper copy and one (1) electronic version of the application submittal package.**
10. **Please read carefully:** The applicant and property owner affirm that all information submitted with this application; including any/all supplemental information is true and correct to the best of their knowledge and they have provided full disclosure of the relevant facts.

    In addition, the applicant affirms that the applicant or someone acting on the applicant's behalf has made a reasonable effort to determine whether a deed or other document places one or more restrictions on the property that preclude or impede the intended use and has found no record of such a restriction.

    If the planning office by separate inquiry determines that such a restriction exists, it shall notify the applicant. If the applicant does not withdraw or modify the application in a timely manner, or act to have the restriction terminated or waived, then the planning office will indicate in its report to the planning commission that granting the requested change would not likely result in the benefit the applicant seeks.

    Furthermore, my signature (applicant) indicates that I understand and consent that this matter will appear before the Planning Commission for consideration and that any recommendation, for approval or denial, by the Planning Commission will be presented to the City Council at their next regularly scheduled meeting to be held on the fourth Monday of the month following the Planning Commission meeting in which the matter was heard.

[signature] *APPLICANT SIGNATURE

7/12/18 DATE

city of greenville

11. To that end, the applicant hereby affirms that the tract or parcel of land subject of the attached application is ___ or is not ___ restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the requested activity.

*Signatures	
Applicant	
Date	
Property Owner/Authorized Agent	
Date	

SUPPORTING INFORMATION – STANDARDS QUESTIONS
Applicant response to Section 19-2.3.2 (E)(2), Amendments to Zoning District Map

(Please attach separate sheet if additional space is need)

1. DESCRIBE THE WAYS IN WHICH THE PROPOSED ZONING DESIGNATION IS CONSISTENT WITH THE COMPREHENSIVE PLAN.
Please See attached

2. DESCRIBE THE CONDITIONS THAT HAVE CHANGED FROM CONDITIONS PREVAILING AT THE TIME THAT THE ORIGINAL DESIGNATION WAS ADOPTED.
Please see attached.

3. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT ADDRESSES A DEMONSTRATED COMMUNITY NEED.
Please see attached.

4. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT IS COMPATIBLE WITH EXISTING AND PROPOSED USES SURROUNDING THE SUBJECT LAND AND IS THE APPROPRIATE ZONING DISTRICT FOR THE LAND.
Please See attached

city of greenville

5. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT PROMOTES A LOGICAL AND ORDERLY DEVELOPMENT PATTERN.
Please see attached.

6. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN UNDESIRABLE STRIP OR RIBBON COMMERCIAL DEVELOPMENT.
Please see attached.

7. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN THE CREATION OF AN INAPPROPRIATELY ISOLATED ZONING DISTRICT UNRELATED TO ADJACENT AND SURROUNDING ZONING DISTRICTS.
Please see attached.

8. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN SIGNIFICANT ADVERSE IMPACTS ON THE PROPERTY VALUES OF SURROUNDING LANDS.
Please see attached.

9. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL NOT RESULT IN DETRIMENTAL IMPACTS ON THE NATURAL ENVIRONMENT AND ITS ECOLOGY, INCLUDING BUT NOT LIMITED TO: WATER; AIR; NOISE; STORMWATER MANAGEMENT; WILDLIFE; VEGETATION; AND, WETLANDS.
Please see attached.

10. DESCRIBE THE WAYS IN WHICH THE PROPOSED AMENDMENT WILL RESULT IN DEVELOPMENT THAT IS ADEQUATELY SERVED BY PUBLIC FACILITIES AND SERVICES (ROADS, POTABLE WATER, SEWERAGE, SCHOOLS, PARKS, POLICE, FIRE, AND EMERGENCY FACILITIES).
Please see attached.

1. Describe the ways in which the proposed zoning designation is consistent with the comprehensive plan.

Staff concludes that the proposed zoning designation of RDV is Mixed-Use Community (Pendleton Street) and Urban Residential (Academy Street) Future Land Use designations. The Mixed-Use Community designation encourages grocery stores, specialty stores, community libraries, medical offices, mid-size employers and community parks. Residential uses are also encouraged. The Urban Residential designation encourages a range of housing, including single-family, detached houses, attached homes and multi-family units. This designation serves as a transition between downtown core uses and the single family neighborhood of outlying areas. The focus of both designations is on pedestrians.

2. Describe the conditions that have changes from conditions prevailing at the time that the original designation was adopted.

The Pendleton Street corridor between S. Main and Academy Streets is an important connection, linking three highly walkable and pedestrian-friendly areas - downtown, the West End and the Village of West Greenville. In addition, Academy Street between Markely and Pendleton Streets also links Heritage Green, downtown, the Kroc Center and AJ Whittenberg Elementary School and the new Unity Park with these neighborhoods in Greenville's West Side. The West Greenville, West End and Sterling neighborhoods have undergone a transformation with the renovation of existing homes and the construction of new homes. While this revitalization, overall, has been very positive, the three neighborhoods have faced development pressures including the demolition of older homes with historic character and the transition of once affordable housing options to market rate homes. Several planning efforts and studies have focused on strengthening the unique conditions of these areas. The proposed RDV designation is compatible with the changing conditions.

3. Describe the ways in which the proposed amendment addresses a demonstrated community need.

The RDV designation will guide redevelopment and increase the viability of the area by limiting certain uses and encouraging pedestrian-orientation, mixed-use pattern of retail, office and residential development. The proposed re-zoning will require a high quality of development, including buffering, that is sensitive to the nearby single family and multi-family residential districts.

4. Describe the ways in which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zoning district for the land.

The RDV designation is consistent with the zoning of parcels located adjacent to these areas on Pendleton Street west of Academy Street.

5. Describe the ways in which the proposed amendment promotes a logical and orderly development pattern.

The proposed zoning amendment will provide for uses that are compatible with development patterns of the area.

6. Describe the ways in which the proposed amendment will not result in undesirable strip or ribbon commercial development.

It is not anticipated that the proposed amendment will result in strip or ribbon commercial development since the City has adopted nonresidential design standards for development.

7. Describe the ways in which the proposed amendment will not result in the creation of an inappropriately isolated zoning district unrelated to adjacent and surrounding zoning districts.

The proposed zoning amendment will not create "spot" zoning. The proposed amendment will expand upon the existing RDV designation along the Pendleton and Academy Street corridors.

8. Describe the ways in which the proposed amendment will not result in significant adverse impact on the property values of surrounding lands.

It is not apparent that the proposed amendment will result in significantly adverse impacts on the property values of surrounding lands. On the contrary, it is anticipated that the proposed amendment will have a positive impact on property values and provide property owners with assurance that there is consistency in the manner in which Pendleton and Academy Streets will be redeveloped.

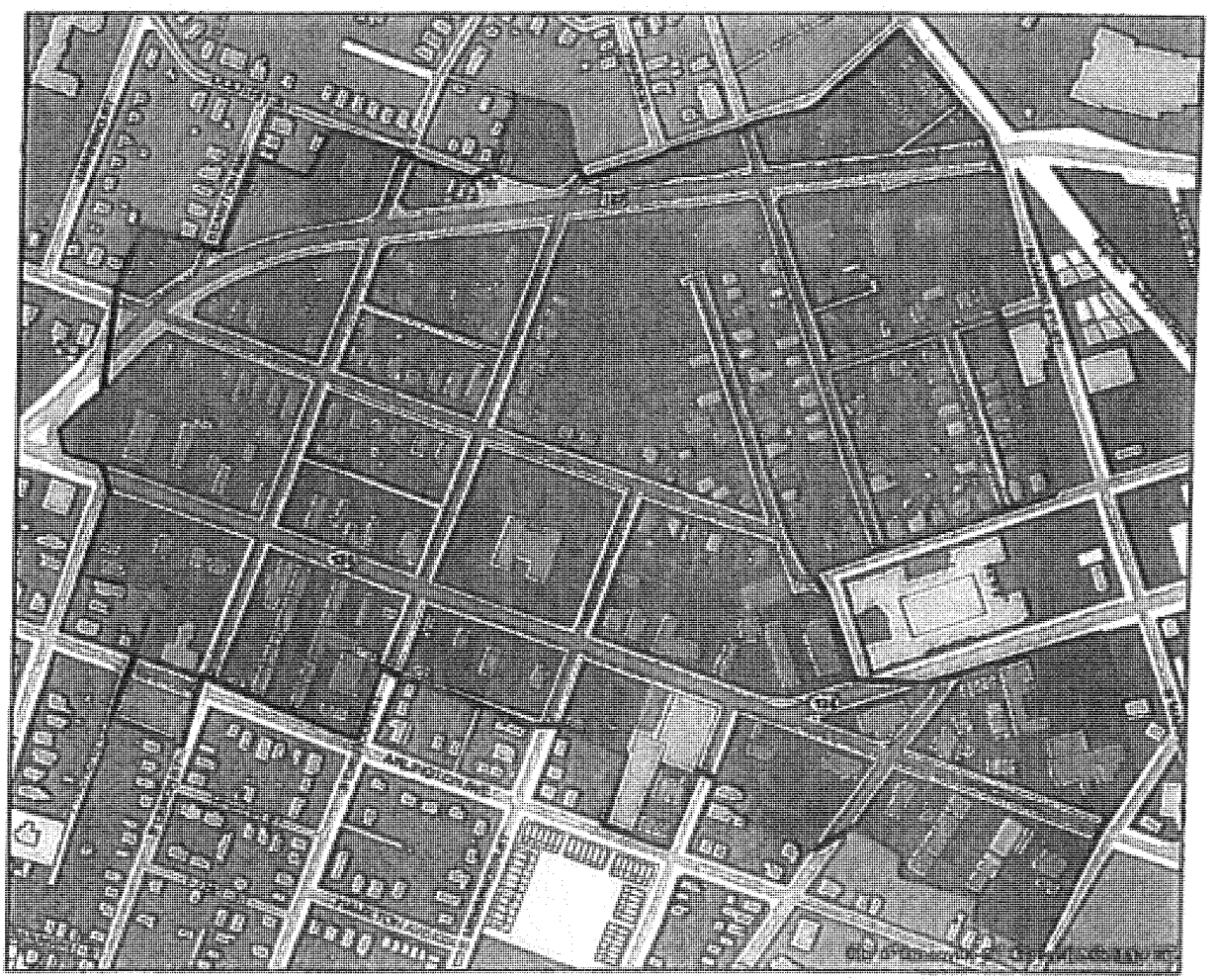
9. Describe the ways in which the proposed amendment will not result in detrimental impacts on the natural environment and its ecology, including but not limited to: water, air, noise, storm water management, wildlife, vegetation and wetlands.

Redevelopment of any properties included in the will comply with City ordinances.

10. Describe the ways in which the proposed amendment will result in development that is adequately served by public facilities and services (roads, potable water, sewerage, schools, parks, police, fire and emergency facilities).

Public facilities and services are available to all properties included in the study area.

Pendleton Street Existing Zoning

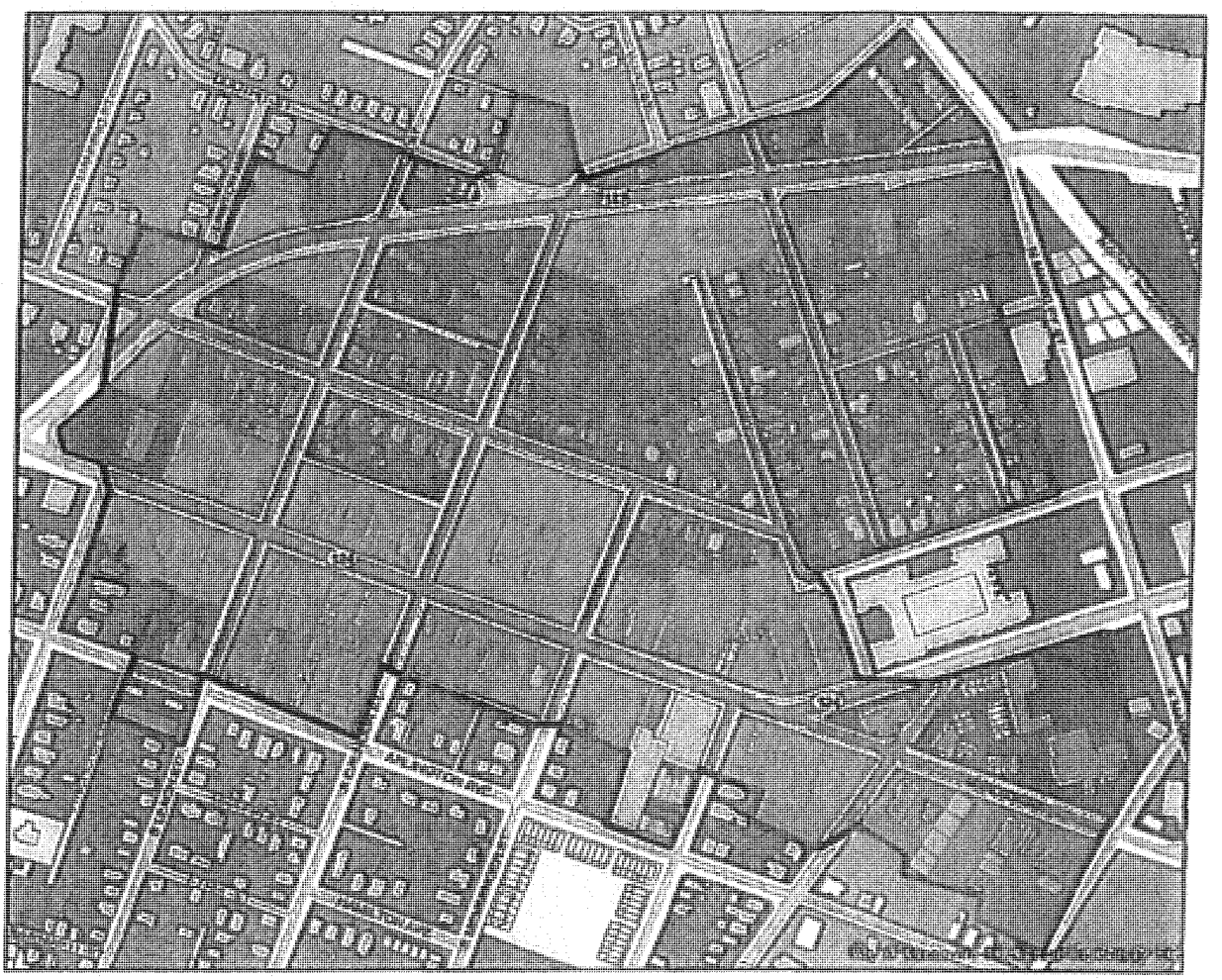


Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

Pendleton Street Proposed Zoning



Legend

Zoning

- C-1, Neighborhood Commercial District
- C-2, Local Commercial District
- C-3, Regional Commercial District
- C-4, Central Business District
- FRD, Flexible Review District
- I-1, Industrial District
- OD, Office and Institutional District
- PD, Planned Development District
- R-6, Single Family Residential District
- R-9, Single Family Residential District
- RDV, Redevelopment District
- RM-1, Single- and Multi-Family Residential District
- RM-1.5, Single- and Multi-Family Residential District
- RM-2, Single- and Multi-Family Residential District
- RM-3, Single- and Multi-Family Residential District
- S-1, Service District
- Buildings
- Study Area

Comparison of Uses in Zoning Districts

Potential uses

Potential use	C1	C2	C3	RDV	OD
Single family dwelling	Permitted	Permitted	Permitted	Permitted	Permitted
Single family attached	Permitted	Permitted	Permitted	Permitted	Permitted
Duplex Dwelling	Permitted	Permitted	Permitted	Permitted	Permitted
Multi-Family Dwelling	Permitted	Permitted	Permitted	Permitted	Permitted
High-Rise Multi-Family Dwelling (5 stories or more)	Prohibited	Permitted	Permitted	Prohibited	Permitted
Group living - Group home	Prohibited	Prohibited	Prohibited	Special Exception	Special Exception
Day care center (13+ people)	Special Exception	Special Exception	Permitted	Permitted	Special Exception
School, public or private	Special Exception	Permitted	Permitted	Special Exception	Permitted
Medical facility other than hospital	Conditional Use	Permitted	Permitted	Permitted	Permitted
Religious institution	Permitted	Permitted	Permitted	Permitted	Permitted
Institutions-Post Incarceration Facility	Prohibited	Prohibited	Special Exception	Prohibited	Prohibited
Institutions-All other uses	Prohibited	Prohibited	Special Exception	Special Exception	Permitted
Parks and Open Space	Special Exception	Special Exception	Special Exception	Special Exception	Special Exception
Restaurant with a drive-through	Special Exception	Special Exception	Permitted	Conditional Use	Prohibited
Restaurant w/ indoor and outdoor seating	Conditional Use	Permitted	Permitted	Conditional Use	Special Exception
Restaurant with indoor seating only	Permitted	Permitted	Permitted	Permitted	Special Exception
Offices - other than bail bonding or broadcasting studio	Conditional Use	Permitted	Permitted	Permitted	Permitted
Parking lot	Prohibited	Permitted	Permitted	Permitted	Permitted
Bank, financial institution	Permitted	Permitted	Permitted	Permitted	Permitted
Barbershop, beauty shop	Conditional Use	Permitted	Permitted	Permitted	Permitted
Convenience store	Special Exception	Special Exception	Permitted	Special Exception	Prohibited
Funeral home-with cremation	Prohibited	Permitted	Permitted	Prohibited	Permitted
Funeral home-without cremation	Prohibited	Permitted	Permitted	Permitted	Permitted
Grocery store	Conditional Use	Permitted	Permitted	Permitted	Prohibited
Automobile servicing	Prohibited	Special Exception	Permitted	Special Exception	Prohibited
Nightclub or bar	Prohibited	Conditional Use	Conditional Use	Prohibited	Prohibited
Personal Services	Conditional Use	Permitted	Permitted	Permitted	Special Exception
Photography, art, dance studio, gallery	Permitted	Permitted	Permitted	Permitted	Permitted
Retail Sales	Conditional Use	Permitted	Permitted	Permitted	Permitted
Retail Sales exceeding 25,000 square feet	Prohibited	Special Exception	Permitted	Conditional Use	Permitted

COG Response to FOIA from Bannister & Wayt re Pendleton Street Rezone COG000425

PIN	Parcel STRNUM	Parcel Street Location
0073000400611		MAIN
0073000400612		MAIN
0073000400613		MAIN
0073000400614		MAIN
0074000200103	421	MARKLEY
0074000200104	423	MARKLEY
0074000200105		MARKLEY
0074000200106	427	MARKLEY
0073000400100	1001	MAIN
0073000400400	1021	MAIN
0073000400607		MAIN
0073000400609		MAIN
0073000400616	1027	MAIN
0073000400618		
0073000401600	108	GREEN
0073000401800	18	MARKLEY
0074000200100	507	MARKLEY
0074000200102	419	MARKLEY
0074000200107	429	MARKLEY
0074000200109	433	MARKLEY
0074000300300	409	MARKLEY
0074000500100	106	MCCALL
0074000600400	102	GRACE
0074000600600	106	GRACE
0074000700101	702	RHETT
0074000700300	9	WATSON
0074000700500	13	WATSON
0074000700901	109	GRACE
0074000701100	14	MCCALL
0074000800200	604	RHETT
0074000800400	4	WATSON
0074000800900	16	WATSON
0074000801400	101	MARKLEY
0075000300203		DOUTHIT
0075000300800	10	DOUTHIT
0075000301200	203	CALHOUN
0078000100800	9	LAWTON
0078000200301	918	PENDLETON
0078000200400	914	PENDLETON
0078000201300	309	PERRY
0078000201500	315	PERRY
0078000300101	7	SUMNER
0078000300300	11	SUMNER
0078000301300	905	PENDLETON
0078000400100		LEACH
0078000401100	811	PENDLETON
0078000401400	811	PENDLETON
0078000402000	811	PENDLETON
0078000402200	12	CALHOUN
0078000500301	826	PENDLETON
0078000500600	808	PENDLETON
0078000501300	213	PERRY
0078000600200	120	LEACH
0078000600501	106	LEACH
0078000600600	212	PERRY
0078000601201		ACADEMY
0078000601801	13	DOUTHIT
0078000700901	00000	ACADEMY
0078000701001	308	PERRY
0078000702000	109	DOUTHIT
0079000100600	19	MCCALL

0078000100800	116	WARE
0078000101500	605	ACADEMY
0078000101900	307	CALHOUN
0078000102900	120	WARE
0078000103100	114	WARE
0078000103801	16	PERRY
0078000103803		PERRY
0078000200600	111	WARE
0078000200800	115	WARE
0078000201300	127	WARE
0078000201401		MCCALL
0078000202100	143	WARE
0078000202700	118	CALHOUN
0078000202900	114	CALHOUN
0078000203500	108	PERRY
0078000203507	108	PERRY
0080000100100	1116	MAIN
0080000100200		PERRY
0080000100500	25	PERRY
0080000100901	10	MEMMINGER
0080000101100	610	PENDLETON
0080000300300	711	PENDLETON
0080000300500	7	CALHOUN
0080000301100	406	ARLINGTON
0080000400103		PENDLETON
0080000400105	302	ARLINGTON
0080000400112		MALLARD
0080000400400	615	PENDLETON
0080000500100	503	VARDRY
0080000500300	515	PENDLETON
0080000500900	112	ANDERSON
0081000200302	413	VARDRY
0081000200304	413	VARDRY
0081000200500	423	VARDRY
0081000200700	109	ANDERSON
0081000201500	110	ARLINGTON
0081000202300	401	VARDRY
0074000500300	525	ACADEMY
0074000600100	90	GRACE
0074000600200	98	GRACE
0074000600201	92	GRACE
0074000700600	15	WATSON
0074000700700	17	WATSON
0074000700800	19	WATSON
0074000700900	20	MCCALL
0074000800500	6	WATSON
0074000800600	8	WATSON
0074000800700	12	WATSON
0074000800800	14	WATSON
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0073000400602	1027	MAIN
0073000400603	1027	MAIN
0073000400604	1027	MAIN
0073000400619	1027	MAIN
0073000400800	9	ANDERSON
0073000401000	416	VARDRY
0073000401500	1015	MAIN
0074000200111	437	MARKLEY
0074000200112	439	MARKLEY
0074000200113	441	MARKLEY
0074000200114		MARKLEY
0074000200200	00402	CALHOUN

Pendleton St Study Area Parcels.xls

0074000600700	100	MCCALL
0074000600800	102	MCCALL
0074000600900	104	MCCALL
0074000700100	700	RHETT
0074000701300	6	MCCALL
0074000701301	10	MCCALL
0074000701400	710	RHETT
0074000701500	708	RHETT
0075000300900	8	DOUTHIT
0075000301000	6	DOUTHIT
0075000301100	4	DOUTHIT
0075000301101	4	DOUTHIT
0078000101001	902	ACADEMY
0078000101002	5	LAWTON
0078000200101	321	PERRY
0078000200102	317	PERRY
0078000201600	301	PERRY
0078000201601	303	PERRY
0078000201700	15	LEACH
0078000300100	915	PENDLETON
0078000400700	15	LEACH
0078000400800	514	ARLINGTON
0078000400801	516	ARLINGTON
0078000400900	811	PENDLETON
0078000402401	10	CALHOUN
0078000402500	803	PENDLETON
0078000500100	215	PERRY
0078000500200	10	LEACH
0078000600300		LEACH
0078000600301		ACADEMY
0078000600400	111	CALHOUN
0078000600500	214	PERRY
0078000700300	20	LAWTON
0078000700400	18	LAWTON
0078000700500	16	LAWTON
0078000700600	14	LAWTON
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0079000100201	9	MCCALL
0079000100400	11	MCCALL
0079000100500	15	MCCALL
0079000100502	00017	MCCALL
0079000102000	142	WARE
0079000102100		CALHOUN
0079000102700	126	WARE
0079000102800	122	WARE
0079000200100	22	PERRY
0079000200200	24	PERRY
0079000200300	28	PERRY
0079000200400	30	PERRY
0079000202400		CALHOUN
0079000202500		CALHOUN
0079000202501	122	CALHOUN
0079000202600	120	CALHOUN
0079000203508	104	PERRY
0079000203509	102	PERRY
0079000203510	100	PERRY
0079000204000	32	PERRY
0080000101300	598	PENDLETON
0080000101301	600	PENDLETON
0080000200100	706	PENDLETON
0080000300100	701	PENDLETON
0080000301400	12	MEMMINGER

0080000400100	601	PENDLETON
0080000400102	609	PENDLETON
0080000400500	7	MEMMINGER
0080000400600	9	MEMMINGER
0080000400900	320	ARLINGTON
0080000600200	1107	MAIN
0080000600300		MAIN
0081000200200	407	VARDRY
0081000200300	413	VARDRY
0084000103100	601	ARLINGTON
0078000200700	904	PENDLETON
0078000200900	900	PENDLETON
0078000201200	305	PERRY
0078000201201		PERRY
0078000300700	606	ARLINGTON
0078000300900	600	ARLINGTON
0078000401500	505	ARLINGTON
0078000401700	811	PENDLETON
0078000401701	811	PENDLETON
0078000401900	811	PENDLETON
0078000500800	800	PENDLETON
0078000500900	201	PERRY
0078000501000	207	PERRY
0078000501001	205	PERRY
0078000600800	208	PERRY
0078000600900	204	PERRY
0078000601000	202	PERRY
0078000601100	200	PERRY
0078000601200	117	CALHOUN
0078000701100	00304	PERRY
0078000701200	300	PERRY
0078000701400	109	LEACH
0078000701900	125	LEACH
0079000100900	103	MCCALL
0079000101000	105	MCCALL
0079000101100	107	MCCALL
0079000101200	109	MCCALL
0079000103300	108	WARE
0079000103400	106	WARE
0079000103500	104	WARE
0079000103600	102	WARE
0079000103700	100	WARE
0079000200900	117	WARE
0079000201000	119	WARE
0079000201100	121	WARE
0079000201200	125	WARE
0079000203100	110	CALHOUN
0079000203200	108	CALHOUN
0079000203300	106	CALHOUN
0079000203400	110	PERRY
0080000100600	27	PERRY
0080000100700	29	PERRY
0080000100800	31	PERRY
0080000100900	00035	PERRY
0080000300502	715	PENDLETON
0080000400107	306	ARLINGTON
0080000400108	304	ARLINGTON
0080000400109	302	ARLINGTON
0080000400110		MALLARD
0080000500301	7	MALLARD
0081000200305	413	VARDRY
0081000200306	413	VARDRY

0081000200307	413	VARDRY
0081000200308	413	VARDRY
0081000200309	413	VARDRY
0081000201700	106	ARLINGTON
0081000201800	104	ARLINGTON
0081000201900	214	GREEN
0081000202100	208	GREEN
0073000400200	405	MAIN
0073000400600	1027	MAIN
0073000400605	1027	MAIN
0073000400608		MAIN
0073000400610		MAIN
0073000400615		MAIN
0073000400617		
0074000200101	417	MARKLEY
0074000200108		MARKLEY
0074000200110	435	MARKLEY
0074000401300	505	ACADEMY
0074000500200	108	MCCALL
0074000600300	100	GRACE
0074000600500	104	GRACE
0074000700200	5	WATSON
0074000700400	11	WATSON
0074000701000	18	MCCALL
0074000701200	12	MCCALL
0074000701600	706	RHETT
0074000800300	808	RHETT
0074000801200	119	MARKLEY
0075000301300	207	WARE
0076010101900	406	PERRY
0078000101000	402	PERRY
0078000200200	920	PENDLETON
0078000200302	916	PENDLETON
0078000200500	910	PENDLETON
0078000201202		PERRY
0078000201400	311	PERRY
0078000300200	9	SUMNER
0078000301200	903	PENDLETON
0078000301500	907	PENDLETON
0078000400101	3	LEACH
0078000401000	811	PENDLETON
0078000401300	811	PENDLETON
0078000402100	16	CALHOUN
0078000402300	801	PENDLETON
0078000500300	9061	LEACH
0078000500500	810	PENDLETON
0078000500700	804	PENDLETON
0078000501200	209	PERRY
0078000600100	124	LEACH
0078000600502	104	LEACH
0078000600700	210	PERRY
0078000601800	11	DOUTHIT
0078000601802	9	DOUTHIT
0078000700900	312	PERRY
0078000701000	310	PERRY
0079000100100	800	RHETT
0079000100700	21	MCCALL
0079000100801	101	MCCALL
0079000101300	111	MCCALL
0079000101800	125	CALHOUN
0079000103000	118	WARE
0079000103200	110	WARE

0079000103802		PERRY
0079000103900	804	RHETT
0079000200500	109	WARE
0079000200700	113	WARE
0079000201400	129	ACADEMY
0079000201600		ACADEMY
0079000202800	116	CALHOUN
0079000203000	112	CALHOUN
0079000203401	104	CALHOUN
0079000203508	108	PERRY
0080000100101	1122	MAIN
0080000100400	19	PERRY
0080000101000	614	PENDLETON
0080000101200	606	PENDLETON
0080000300200	705	PENDLETON
0080000300400	713	PENDLETON
0080000301000	406	ARLINGTON
0080000400104	607	PENDLETON
0080000400106	308	ARLINGTON
0080000400111		MALLARD
0080000400113		MALLARD
0080000500200	9080	ANDERSON
0080000600100		MAIN
0081000200301		VARDRY
0081000200303	413	VARDRY
0081000200400	419	VARDRY
0081000200600		ANDERSON
0081000201300	114	ARLINGTON
0081000201600	108	ARLINGTON
0081000202200	205	GREEN

Pendleton Street and Academy Street Proposed Zoning Update
Public meetings and presentations made to gather citizen and property owner comments

- West End Neighborhood Association meeting – April 3, 2018 at 6:30, St. Andrews Episcopal Church
- Open House for Property owners and citizens – April 30, 2018, 4:00-6:00, St. Andrews Episcopal Church
- Open House for property owners and citizens – May 1, 2018, 4:00-6:00, St. Andrews Episcopal Church
- Sterling Neighborhood Association meeting – May 10, 2018 at 6:00, Sterling Community Center
- Sterling Land Trust Board of Directors – May 17 at 6:30, Sterling Hope Center

- Planning Commission-August 16, 2018, City Hall
- Planning Commission Workshop-September 27, 2018, City Hall
- Neighborhood Meeting-December 4, 2018, St. Andrews Episcopal Church

Pendleton Street Proposed Re-Zoning
Comments received at Open House Event
April 20 and May 1

Concerned Property Owners:
Brandon Brown – Upstate Family Funeral Services
506 Arlington Avenue
Concerned that funeral homes are considered nonconforming in RDV
Proposed solution: Revise RDV district to allow funeral homes without crematoriums

Michanna Tate – Michael Talley Law firm
206 Green Avenue
Concerned that vacant lot next to law office is recommended for RM-1
Property used as overflow parking for law firm
Proposed solution: Extend OD to include vacant parcel

David Stone
111 N. Calhoun Street (West End Apartment community) and parcels on east side of N. Calhoun Street
Opposed to proposed re-zoning; maintain current zoning for all parcels.
Proposed solution: Consider RDV for all parcels

Scott Woods
906 and 904 Pendleton Street (Premiere Car Wash)
Opposed to RDV; maintain current zoning
Proposed Solution: proceed with proposed re-zoning to RDV

Greg Minton, Enigma Corporation
Parcels at intersection of Academy and Pendleton Streets including 914 Pendleton St.
Opposed to RDV; maintain current zoning
Proposed solution: consider maintaining current zoning for vacant parcels and continue with proposed re-zoning of 914 Pendleton St.

Viviane Trama, Blythe Industries
Vacant lot at intersection of Lawton Ave. and Academy St. and 16 Lawton Ave.
Concerned that 3 parcels with have different zoning classifications and with allowed uses in RDV.
Proposed solution: 1) Combine three parcels into parcel and maintain current OD zoning; 2) Combine the three parcels currently zoned OD and we can move forward with the recommendation of re-zoning to RDV

Ken and Kenneth Cosgrove
515 Pendleton Street and VL and 9 Mallard Street

Concerned that in RDV a convenience store requires a special exception
Proposed solution: City staff has met with Cosgrove family to discuss other options for achieving redevelopment goals for property. Consider proposed re-zoning to RDV and reassure owners that City is committed to supporting redevelopment of property.

Dinos Hassiotis (Hassiotis Constantinon)
907 Pendleton Street (OJ's Restaurant)
Concerned that drive through restaurant is a conditional use in RDV
After explaining that the requirements for conditional use, property owner less concerned but wants to make sure drive-through will continue to be permitted.

Notes for Review and Consideration:

- Review the RDV district and update table of uses.
  - Add funeral homes without crematorium as allowed use.
  - Look at parking requirements
- Review Group Homes and districts which allow;
- Develop specific conditions for "Conditional Use"- consider hours of operation, buffering, lighting, noise, design, landscaping, auto/bicycle/pedestrian movement
- Consider Special Exception for drive through

Next Steps:

Make revisions to the RDV description and table of uses;
Develop specific conditions for conditional use for RDV;
May 21 - Present to the Planning and Neighborhoods Committee
June 1 – Send notification to property owners within 500'
June 21 – Planning Commission
July 9 and August 13 – City Council consideration

City Programs:
- Apprearance Rehab
- Property Acquisition
- Constr. Subsidy

Planning Commission Mtg. 6HF 12/20

C-2 Similar use however would not offer all of the oversight that promotes harmony between neighbors & business

C-3 traffic intense use; should be used at major intersections

Concerns noted at Public Hearing:
- Rezoning does not protect low-income
- Not enough protections
- Create revitalization district to protect low income
- Change in mileage rates
- Is Legislation
- Increase density
- What happens to people who pave water, sewer, gas?

Megan White

Jack Mabe

Robert

315, 317, 321 Perry Ave

John

- Not opposed to RDV
- Property value decrease

Mark Griffin

- Represent - Ed Smalley & McPherson Trust
- has potential sale
- decrease property value

David Stone

- Apt complex; wants to keep redevelopment options open

Dino Hatsoftis

- Boston Lunch
- Value of property

DEFENDANT'S EXHIBIT
8/24/22 21

MINUTES
GREENVILLE CITY PLANNING COMMISSION
10th floor Council Chambers
December 20, 2018
4:00 PM
Meeting Notice Posted December 5, 2018

Minutes prepared by Michael Frixen

Members Present:	Jason Tankersley, Catherine Smith, Jonathan Pait, David Keller, Diane Eldridge, Meg Terry, Trey Gardner
Members Absent:	None
Staff Present:	Jonathan Graham, Planning & Development Manager Shannon Lavrin, Assistant Planning & Development Manager Brennan Williams, Development Planner Michael Frixen, Development Planner Chad Hall, Development Planner Michael Pitts, City Attorney Dwayne Cooper, Engineering Services Manager Clint Link, Civil Engineer Kevin Howard, Economic Development Project Manager Ginny Stroud, Community Development Michael Williamson, Community Development

NOTICE OF MEETING: Pursuant to Section 30-4-80 of the S.C. Code of Laws, annual notice of this Commission's Meetings was provided on April 4, 2018 via the Greenville City Website. In addition, the Agenda for this Meeting was posted outside the meeting place (City Council Chambers in City Hall) and was emailed to all persons, organizations, and news media requesting notice. Notice for the public hearings was published in the *Greenville News,* posted on the properties subject of public hearing(s), mailed to all surrounding property owners, and emailed to all persons, organizations, and news media requesting notice pursuant to Section 6-29-760 of the S.C. Code of Laws and Section 19-2.2.9 of the Code of the City of Greenville.

CALL TO ORDER: Chairman Jason Tankersley called the meeting to order at 4:02 PM. He explained the purpose of the planning commission, outlined the rules for procedure, and invited the Commissioners to introduce themselves.

APPROVAL OF MINUTES: The November 15, 2018, minutes were approved as presented.

ACCEPTANCE OF AGENDA: Skipped at beginning, but approved during Old Business

CONFLICTS OF INTEREST: Meg Terry and Jonathan Pait on agenda item B under Old Business.

DEFENDANT'S EXHIBIT 22

OLD BUSINESS:

A. **Z-20-2018**
Application by City of Greenville for a **REZONE of** approximately 103 acres located along a portion of PENDLETON ST, N MEMMINGER ST, S CALHOUN ST, and S ACADMEY ST to RDV, Redevelopment District; OD, Office & Institutional District; RM-2, Single- & Multi-Family Residential District; RM-1, Single- & Multi-Family Residential District and C-4, Central Business District (see project documents)

Graham presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Recommend approval of rezone to city council**

Public comments in favor of application:

- Developers support rezoning project
- Citizen and homeowner petitions in support of rezoning project
- Help protect neighborhoods from major commercial development and incompatible land uses

Public comments against application:

- Concerns that rezoning does not protect adequately protect low-income residents; provided suggestions for policy changes
- Suggest tabling application to allow for further consideration and working with property owners
- Believe properties were cherry-picked for various zoning designations
- Concerns about gentrification
- Concerns about split-zoning for properties that may be combined in the future
- Concerns about decreasing current property values
- Concerns about current uses becoming nonconforming or requiring Conditional Use permits and Special Exceptions in the future

Ginny Stroud provided information about the city's efforts to provide affordable housing in the neighborhood. Planning staff provided additional explanation as to why certain properties were assigned the recommended zoning classifications.

***Motion: Commissioner Smith moved to recommend the rezone to city council. Commissioner Keller seconded the motion. The motion was approved by a vote of 5-2, with Commissioners Tankersly and Gardner voting "no."**

B. **Z-21-2018**
Application by Nathan Kaser for a **MAJOR MODIFICATION PD REZONE** of 8.7 acres located at **N PLEASANTBURG DR** from PD, Planned Development District to PD, Planned Development District (TM#s 0276000300503; 0276000300518).

Commissioners Pait and Terry left the chambers due to a conflict of interest on this item.

Frixen presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Recommend approval of rezone to city council with staff comments and conditions**

The applicant provided additional information about the proposed PD modification and provided clarification on the proposed buffers between their project and the adjacent pool property and residential neighborhood. They also stated they will provide stormwater facilities that could handle a 100-year storm event.

Public comments in favor of application:

- Benefit of increased senior affordable housing in the City of Greenville, but concerns about increased traffic on Regency Hills Drive

Public comments against application:

- Do not believe development meets PD requirements
- Applicant is not honoring the development agreement with the neighborhood that was a condition of annexation in 2006
- Believe the proposal violates a deed restriction for pool parking if McCarter Avenue is extended
- Developer has not clearly defined the benefits and protections they are offering the adjacent neighborhood
- Developer has not worked closely with the neighborhood to develop their proposal
- Development will destroy the pristine natural setting around the McCarter community pool
- Concerns about removal of trees and dissatisfaction with proposed buffers and screening
- Greenville will lose the tangible and intangible community benefits provided by the McCarter pool
- New four-story building will affect pool members trying to sunbathe
- Development will worsen flooding problems in the McCarter community

Andy Sherard of Site Design rebutted some of the public comments.

Board discussion:
After closing the public hearing, the commissioners expressed their frustration with the number of speakers who repeated the same information. Commissioner Keller stated that after the first few speakers, the commission was well aware of the neighborhood's disapproval of the project and they did not accomplish anything by having so many people repeat the same thing. There are many more agenda items and applicants the commission needs to hear tonight.

Commissioner Eldridge stated that the neighbors cannot expect to dictate how another property owner uses their own land.

Commissioner Smith stated that she does not think the proposed PD modification has an orderly development pattern. Several other commissioners agreed.

***Motion: Commissioner Smith moved to recommend denial of the proposed rezone. Commissioner Eldridge seconded the motion. The motion was approved by a vote of 4-1, with Commissioner Tankersly voting "no." Commissioners Terry and Pait recused themselves due to conflicts of interest on the item.**

The meeting was recessed for approximately 5 minutes.

ACCEPTANCE OF AGENDA: The agenda was unanimously approved as amended, with the following items deferred until the January 17, 2019, regular meeting: SD 18-027, MD 18-004

C. **SD 18-022**
Application by Salters Road Venture, LLC for a **SUBDIVISION** of 4.53 acres located at **100 QUESTOVER DR** from 3 LOTS to 47 LOTS (TM# 0261000103700; 0261000103800; 0261000103900)

Frixen presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Approve with staff comments and conditions, with the two lots and stormwater pond deleted from the preliminary plat as illustrated and agreed to by the applicant.**

Dwayne Cooper, City Engineer, provided information on the Salters Road realignment project, the need to delete the two subdivision lots from the preliminary plat, and the relocation of the stormwater pond from the proposed location to the adjacent property. He explained that the applicant has been cooperative working with the city and Verdae Development, and the proposed development will be finalized once property agreements with the city and Verdae are in place.

Public comments in favor of application:

- Debbie Wallace of Verdae Development expressed her support for the project

Public comments against application:

- None

Board discussion:
The board asked for clarification on some of the land swap issues from staff.

***Motion: Commissioner Pait moved to approve with staff comments and conditions, and with the deletion of the two lots and stormwater pond as illustrated during the meeting and agreed to by the applicant. Commissioner Smith seconded the motion. The motion was approved by a vote of 7-0.**

D. **SD 18-027**
Application by Jay Martin for a **SUBDIVISION** of 1.86 acres located at **808 MCDANIEL AV** from 1 LOT to 7 LOTS (TM# 0217000500700)
Deferred to January 17, 2019, meeting as requested by applicant.

E. **SD 18-031**
Application by Neal Fogleman for a **SUBDIVISION** of 5.95 acres located at **DUVALL DR + ISBELL LN** from 1 LOT to 21 LOTS (TM# M011010100100).

The commission voted to go into executive session at the request of the city attorney. No action was taken. The board voted to come out of executive session.

Frixen presented the staff report for this item, noting that the item was deferred at the November meeting for the city attorney to research potential legal issues that might prevent the development. Frixen stated that other than a copy of the plat and deed restrictions being added, there were no changes to the staff report. (Note: Full staff report is on file at the Planning Office.)
Staff Recommendation: Recommend approval with staff comments and conditions

Public comments in favor of application:

- None

Public comments against application:

- Believe restrictive covenants prevent the property from being subdivided as proposed
- Concern about fire hydrants
- Concern about increased traffic
- Concern about loss of trees on the property and increased noise from the interstate

The applicant provided a rebuttal, stating that the site consists primarily of Kudzu and thin pine trees. He also believes his development will reduce the noise impacts from the interstate on the adjacent neighborhood.

Board discussion:

- Commissioner Terry believed the size of the lots is incompatible with the adjacent neighborhood and does not meet the infill design standards.
- Discussion about the width of the streets.

- Discussion about current vegetation on the site.
- Concern about stormwater detention facility

***Motion: Commissioner Keller made a motion to approve with staff comments and conditions. Commissioner Pait seconded the motion. The motion was approved by a vote of 5-2, with Commissioners Terry and Smith voting "no."**

NEW BUSINESS:

A. **MD 18-004 (MFD 18-978)**
Application by W. Norman Hamilton for a **MULTI-FAMILY DEVELOPMENT** on 3.7 acres located at **254 S PLEASANTBURG DR** (TM#s 0266000130100, 0266000130101)
Deferred to January 17, 2019, meeting as requested by applicant.

B. **Z-26-2018**
Application by Dan Bruce for a **REZONE** of 19.4 acres located at **HAYWOOD RD and PELHAM RD** from R-6, Single-Family Residential District to PD, Planned Development District (TM#s 0278000200300, 0278000200301)

Lavrin presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Recommend denial of rezone to city council**

Lavrin explained that the applicant is aware of the recommendation for denial, but wanted to use the planning commission meeting as an opportunity to receive comments on the proposed PD.

Andy Sherard of Site Design asked staff to show a Powerpoint presentation of the revised application they submitted earlier in the afternoon for the January planning commission meeting.

Staff stated that the applicant cannot show information that was not publicly noticed. City attorney Mike Pitts, citing the Land Management Ordinance, stated that minor modifications to an application may be approved at the planning commission, but major deviations would require deferral and a revised application.

There was also procedural discussion about voting to defer or table the application prior to the commission providing comments. Mr. Pitts stated that once the item is tabled or deferred, discussion on the item at that meeting stops.

The applicant proceeded to go through the originally public noticed application.

Public comments in favor of application:

Public comments against application:

Board discussion:
- Concerns about increased traffic congestion
- Discussion of orientation and mass of proposed buildings
- Discussion of topographic challenges
- Recommend reorienting Spinx gas station
- Break up mass of building
- Provide a more defined boulevard and traffic pattern through the site
- Concern about little open space
- Provided feedback about architecture

***Motion: Commissioner Smith made a motion to defer this application to January 17, 2019,**

with the consent of the applicant. Commissioner Terry seconded the motion. The motion was approved by a vote of 7-0.

C. **Z-27-2018**
Application by City of Greenville for a **TEXT AMENDMENT** to Section(s) 19-4.3.2(G) Wireless communications facility to address recent changes in federal law and to modify building height requirements for roof-mounted wireless facilities in the C-4 Central Business District

Frixen presented the staff report for this item. (Note: Full staff report is on file at the Planning Office.) **Staff Recommendation: Recommend approval of text amendment to city council**

City attorney Mike Pitts explained that he had received feedback from one of the wireless companies that the language and the requirement regarding the size of the pole-mounted antennas may need to be increased from 3 cubic feet to 3.5 cubic feet or slightly more. He stated that the approval would be subject to finalizing that language before it is presented to council, but the modification does not substantially change the amendment and it can move forward.

Public comments in favor of application:
- None

Public comments against application:
- None

Board discussion:
- None

***Motion: Commissioner Terry made a motion to approve, with a minor increase in the size requirements for pole-mounted antennas to be finalized prior to presentation to council. Commissioner Keller seconded the motion. The motion was approved by a vote of 7-0.**

OTHER BUSINESS:

A. **Approval of 2019 Planning Commission Meeting Calendar**

By a vote of acclamation, the commission approved its 2019 meeting calendar as follows:

Date of Public Hearing - Planning Commission*
January 17, 2019
February 21
March 21
April 18
May 16
June 20
July 18
August 15
September 19
October 17
November 21
December 19
January 16, 2020

ADJOURNMENT: The meeting was adjourned at 8:20 P.M.

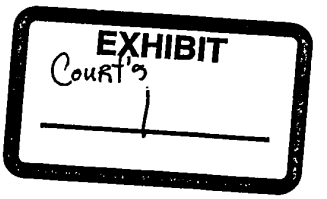
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	
George C. Hassiotis and Constantinon Hassiotis,	)	Case No. 2019-CP-23-02041
	)	
Plaintiffs,	)	**DEFENDANT'S TRIAL BRIEF**
	)	
v.	)	
	)	
The City of Greenville, South Carolina,	)	
	)	
Defendant.	)	

INTRODUCTION

This pretrial brief is submitted on behalf of the Defendant City of Greenville. The exhibits included herewith may be supplemented at trial.

BACKGROUND

This case involves the rezoning by the City of Greenville of property in the Pendleton and Academy Streets area in Greenville known as the Pendleton Street Corridor. The Plaintiffs are the owners of property at 907 Pendleton Street within the area that was re-zoned. The subject property is rented to third parties who operate OJ's, a popular drive-in restaurant there. The restaurant has a drive through window which is in use.



A rezoning plan approved by City Council in January 2019 rezoned much of the Pendleton Street Corridor to Redevelopment District (RDV). Prior to the rezoning, Plaintiffs' property was zoned Regional Commercial (C-3). As a result of the rezoning, Plaintiff's property is now zoned RDV. This designation permits the current use of the Plaintiffs' property but is somewhat more restrictive than C-3. In particular, a restaurant with a drive-through window, which is permitted on a C-3 property, is a nonconforming use which is conditionally allowed on RDV property. Under the zoning plan, this and other nonconforming uses are allowed to continue unless the business ceases to operate for six months or more, or if the existing use is expanded. In such an event, the owner would be able to seek a variance to permit the nonconforming use. Plaintiffs opposed the rezoning effort and wanted their property to remain C-3.

Plaintiffs are also upset about property owned by a third party, which Plaintiffs refer to as the Enigma Property, or Spinx Property, which is situated within the rezoned area at the northeast corner of the intersection of Pendleton and Academy Streets. The Enigma property was originally C-3, but its proposed use under the first version of the rezoning plan was changed to RDV. The Planning Commission tabled the proposed plan in August 2018 and requested further study. In November, the Planning Commission voted to recommend to City Council a revised version of the plan, which included returning the Enigma Property to C-3. The reasons for this change are explained below.

As part of the rezoning process, the City's Community Development Department conducted several neighborhood meetings in 2018 to explain the project and to elicit input from the community. Community support for the plan was strong, although there were several property owners who objected to various parts of the plan. All comments were collected and considered by staff. The Plaintiffs attended several of these meetings. Enigma had a representative at the

meetings as well. At one of the meetings the Enigma representative expressed opposition to the Enigma property being rezoned RDV due to its location at the intersection of Academy and Pendleton. Planning staff followed up and confirmed that because the intersection was a gateway into the city, and because Academy was a major arterial street, it was appropriate to leave the Enigma property zoned as C-3. The Plaintiffs' property, which is across Pendleton Street from the Enigma property, does not border Academy, and the reasoning the City applied to leave the Enigma property as C-3 does not apply to the Plaintiffs' property.

The Plaintiffs expressed their opposition to the proposed RDV classification for their property at one or more of the neighborhood meetings because of their concern that they would lose their right to have a drive through window. City personnel advised the Plaintiffs about their right to maintain the current use subject to the six-month business cessation period, but ultimately recommended that the Plaintiff's property be re-zoned to RDV.

The proposed rezoning plan was approved by the Planning Commission on December 14, 2018, and was submitted to City Council for consideration. The first reading of the proposed ordinance adopting the plan was at City Council's meeting of January 28, 2019. Plaintiffs attended the meeting and expressed their opposition to the plan through a representative. The second and final reading of the proposed ordinance was at City Council's meeting on February 11, 2019. With minor changes not impacting either the Plaintiffs' or the Enigma properties, City Council adopted the plan on that date.

PLAINTIFFS' CLAIMS

Plaintiffs allege the following causes of action:

1. Declaratory judgment for deprivation of civil rights;
2. Damages under 42 USC § 1983 for violation of the Equal Protection Clause and the Due Process clause of the 14th Amendment of the United States Constitution; and

3. Recovery of attorney's fees and expert's costs pursuant to 42 USC. § 1988.

The gravamen of the Plaintiffs' complaints appears to be twofold: first, that the rezoning adversely impacts the Plaintiffs' ability to own, sell, operate, expand, and maintain a drive-thru restaurant on the Subject Property (Complaint, paragraph 38); and second, that the ordinance violates the Plaintiffs' equal protection rights and substantive due process rights by treating Plaintiffs' property differently from others similarly situated without a rational basis for the different treatment (Complaint, paragraph 41-44).

The applicable law and the evidence demonstrate that Plaintiffs cannot establish their claims against the City as a matter of law. As to the applicable law, the burden of proof the Plaintiffs face is high, and under the facts of this case, the burden of proof cannot be met. As to the evidence relied on by the City, which is summarized below and will be established through the minutes and reports of City Council and the Planning Commission, the rezoning of the Plaintiffs' property was part of a community-wide plan, was not intended to and did not target Plaintiffs or single them out, did not treat them differently from the other similarly situated property owners in the area of the rezoning plan, and did not rise to the level of a constitution deprivation of their rights or to the level of a constitutional taking.

LEGAL STANDARDS AND PLAINTIFFS' BURDEN OF PROOF

The authority of the City to enact zoning ordinances that restrict the use of privately owned property is founded in the municipality's police power. Harbit v. City of Charleston, 382 S.C. 383, 674 S.E.2d 776 (2009).

A municipal ordinance is a legislative enactment and is presumed to be constitutional. McMaster v. Columbia Board of Zoning Appeals, 395 S.C. 499, 719 S.E.2d 660 (2011). Every presumption will be made in favor of the constitutionality of a legislative enactment, and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution. Id.

An issue regarding the interpretation of a legislative enactment is a question of law. Id. Hence, it is for this Court and not a jury to determine whether the zoning ordinance and its application violated the constitutional rights of the Plaintiffs.

The City also refers the Court generally to the case of Bear Enterprises v. County of Greenville, 319 S.C. 137, 459 S.E.2d 883 (Ct. App. 1995). The legal principles cited by the court in that case control many of the issues in this case. Bear Enterprises confirms the following:

--Rezoning is a legislative matter, and the Court has no power to zone property.

--The City's rezoning decision is presumptively valid, and the Plaintiffs bear the burden of proving otherwise.

--In order to meet the burden of proving the zoning ordinance is invalid, the Plaintiffs must show by clear and convincing evidence the arbitrary and capricious nature of the ordinance.

--Only where the City's zoning action is so unreasonable as to impair or destroy constitutional rights can the Court declare the action unconstitutional; if the propriety of the City's decision is even fairly debatable, the Court cannot inject its judgment into its review of the City's decision and must leave the decision undisturbed.

--The City does not deny due process to the Plaintiffs merely because the rezoning plan does not permit the Plaintiffs to make the most beneficial use of their property.

The City also refers the Court to other precedents that are established law in South Carolina:

-- In reviewing substantive due process challenges to municipal ordinances, a court must consider whether the ordinance bears a reasonable relationship to any legitimate interest of government. Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280,737 S.E.2d 601 (2013).

--Every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution. Id.

--In order to successfully assault a city's zoning decision, a citizen must establish that the decision was arbitrary and unreasonable; and in the context of a zoning action involving property, it must be clear that the state's action has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense. Id.

--To prove a violation of substantive due process, the State's deprivation of a property interest must fall so far beyond the outer boundaries of legitimate governmental authority that no process could remedy the deficiency. Harbit v. City of Charleston, 382 S.C. 383, 674 S.E.2d 776 (2009).

--A legislative body does not deny substantive due process simply because it does not permit a landowner to make the most beneficial use of its property. Id.

-- The Equal Protection Clause does not prohibit different treatment of people in different circumstances under the law; instead, the classification must be reasonable, not arbitrary, and must

rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009).

--The rational basis standard, rather than strict scrutiny, applies to an equal protection challenge to a rezoning denial because the classification at issue does not affect a fundamental right and does not draw upon inherently suspect distinctions such as race, religion, or alienage. Id.

--Even assuming a governmental entity is not enforcing an ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of an equal protection violation. Id.

-- Under the rational basis test for equal protection claims, the court must determine: (1) whether the law treats similarly situated entities differently; (2) if so, whether the legislative body has a rational basis for the disparate treatment; and (3) whether the disparate treatment bears a rational relationship to a legitimate government purpose. Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280,737 S.E.2d 601 (2013).

In addition to the two primary claims being made by the Plaintiffs, there is also a suggestion that the City's rezoning of the Plaintiffs' property to RDV amounted to an unconstitutional "taking" of Plaintiffs' property. However, there has been no taking. The evidence will show that the Plaintiffs enjoy the same beneficial use of their property as they did before the rezoning. The property is still being used as a restaurant known as OJ's Diner. A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property; property owners are not entitled to have their property zoned for its most profitable use. An ordinance limiting the use of property will not be held unconstitutional unless it is shown to have caused such a diminution in value as to be tantamount to confiscation. See Bear Enterprises

v. County of Greenville, 319 S.C. 137, 141, 459 S.E.2d 883, 886 (Ct. App. 1995). Generally, also see McMaster v. Columbia Board of Zoning Appeals, supra; Lenardis v. City of Greenville, 316 S.C. 471, 450 S.E.2d 597 (Ct. App. 1994).

SUMMARY OF THE CITY'S EVIDENCE

The City will primarily rely on the minutes of the Planning Commission and City Council to support its position that the rezoning was not unlawful. The City contends that these minutes are the best evidence of what the City did and why.

South Carolina Code Section 30-4-90 (a)(3) requires public bodies to keep written minutes of their public meetings. South Carolina Code Section 5-7-750 requires a municipal corporation to "provide for keeping minutes of its proceedings which shall be a public record".

Municipal records properly authenticated or verified are the only competent evidence of the proceedings of the transactions of the governing body. Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding of the City Council unless the minutes are incomplete or ambiguous. Otherwise, parol evidence could render official minutes uncertain and unreliable so that the minutes would fail to afford dependable evidence of the proceedings of the municipal body. See Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 417 S.E.2d 579 (1992).

The City will also rely on testimony and documentation provided by Plaintiffs. Based on these sources, the City will establish the following salient facts:

In June of 1992, the Plaintiffs' predecessor in title Christos Hassiotis purchased 907 Pendleton Street and built a drive-thru restaurant (Amended Complaint, Par. 7-9).

On June 14, 2013, the Plaintiffs inherited the property (Amended Complaint, Par. 10).

In 2018, the City began the process of rezoning approximately 103 acres of property along a portion of Pendleton Street, North Memminger Street, South Calhoun Street, and South Academy Street. As part of the process, an Application for Rezoning was prepared by staff of the City's Planning Commission (Exhibit 20 - December 14, 2018 Planning Staff Report to Greenville Planning Commission). In great detail, the Application documents the purposes of the rezoning proposal, and why zoning the area RDV was recommended. Here is a portion of the staff's reasoning contained in the Application:

> [Staff concludes that the proposed zoning designation of RDV is Mixed-Use- Community (Pendleton Street) and Urban Residence (Academy Street) Future Land Use designations. The Mixed-Use Community designation encourages grocery stores, specialty stores, community libraries, medical offices, mid-size employers and community parks. Residential uses are also encouraged. The Urban Residential designation encourages a range of housing, including single-family, detached houses, attached homes and multi—family units. This designation serves as a transition between downtown core uses and the single-family neighborhood of outlying areas. The focus of both designations is on pedestrians.

The application explains why the proposed amendment to RDV will be beneficial to the community:

> The RDV designation will guide redevelopment and increase the viability of the area by limiting certain uses and encouraging pedestrian-orientation, mixed-use pattern of retail, office and residential development. The proposed re-zoning will require a high quality of development, including buffering, that is sensitive to the nearby single family, and multi-family residential districts.

The staff described the expected impact on property values as follows:

> It is not apparent that the proposed amendment will result in significantly adverse impacts on the property values of surrounding lands. On the contrary, it is anticipated that the proposed amendment will have a positive impact on property values and provide property owners with assurance that there is consistency in the manner in which Pendleton and Academy Streets will be redeveloped.

Plaintiff's property located at 907 Pendleton Street was within the area recommended to be rezoned. The application contained a table entitled "Comparison of Uses In Zoning Districts" that illustrated how the changes to RDV would impact properties in the area. The restaurant on the Plaintiff's property was a restaurant with a drive-thru window. This use was permitted for properties zoned C3 and as a conditional use under the RDV designation. Many other potential uses are available to a property zoned RDV as illustrated by the comparison sheet.

Several neighborhood meetings were held by Planning Commission staff within the proposed zoning area. Property Owners within the area were provided notice of these meetings as well as preliminary information about the plan including proposed rezoning maps. Plaintiffs were aware of these meetings and attended several of them. One or both of the Plaintiffs attended several of these meetings and expressed their concern about whether the restaurant would be allowed to retain its drive-thru window. (Exhibit 7 - April 30, 2018 comments from April 20 and May 1 Open House event)

On August 8, 2018, Planning staff submitted the application for rezoning to the Planning Commission. On August 16, 2018, the Planning Commission considered the application and tabled it after discussion (Exhibit 11 - August 16, 2018 Planning Commission Minutes). The Commission asked that a workshop be held to further study the proposed request.

The workshop was held on September 27, 2018 (Exhibit 13 and 14 - Planning Commission Workshop Agenda and Minutes). According to the December 14, 2018, Planning Staff Report to the Commission, the Workshop was held on September 27, 2018 where the Commission requested staff to review the rezoning request with the Downtown Master Plan Consultants Urban Design Associates to review the proposal for any other potential compromises. The consultants agreed with the proposed rezoning. (Exhibit 20 - December 14, 2018, Planning Staff Report.)

The minutes report that Planning Staff recommended four parcels located at the Northeast corner of South Academy Street and Pendleton Street remain zoned as C-3, Regional Commercial District. These parcels are the Enigma parcels described in Plaintiff's Amended Complaint. Plaintiff's take issue with the decision to change the zoning status of the Enigma parcels from the RDV designation assigned to them in the original rezoning plan. The minutes of this meeting show that the change to RDV status was recommended after staff determined that the unique locations of these parcels relative to other parcels on Pendleton Street justified the change. Specifically, planning staff determined that leaving the Enigma parcels as C-3 was appropriate for two reasons. "First, South Academy Street is an arterial road, carrying large volumes of traffic (between 20,200 – 27,300 cars per day.). Second, staff believes the C-3 zoning is consistent with the other three corners located at the intersection of South Academy Street and Pendleton Street."

On December 20, 2018, the Planning Commission considered the revised rezoning plan. The minutes of that meeting reflect that the staff recommended approval of the rezoning plan to City Council. Public comments were heard in favor of and against the revised application. A Motion to Approve the rezoning plan was approved by the Commission during this meeting. (Exhibit 22 - December 20, 2018, Planning Commission Minutes).

On January 28, 2019, the proposed ordinance was presented to City Council for first reading (Exhibit 1- Minutes of City Council on January 28, 2019). Council heard from a variety of speakers, both for and against the proposed ordinance. A representative for the Plaintiffs expressed to Council the Plaintiff's opposition to the rezoning plan. A request was made by a representative of another property owner for its property to be redesignated RDV instead of RM-2 and provided reasons to the Council for the proposed change. Council asked the Planning Commission to reconsider the request which had been made earlier. After first reading and before the second and final reading, Planning Commission staff determined that the request was consistent with the overall intent of the rezoning plan and agreed to this change.

On February 11, 2019, City Council approved the rezoning ordinance (Exhibit 3 - Feb 11, 2019 City Council Minutes). Plaintiffs were present during the Council meeting (Deposition of Constantino Hassiotis, page 20).

SUMMARY OF CITY'S POSITION

The City submits that the issue of whether a constitutional deprivation of Plaintiffs' rights is for the Court, and not the jury. Rezoning is a legislative matter. The decision of the legislative body is presumptively valid, and the property owner bears the burden of proving otherwise

The governing bodies of municipalities clothed with authority to determine residential and industrial districts are better qualified by their knowledge of the situation to act upon such matters than are the courts and they will not be interfered with unless there is a plain violation of the constitutional rights of citizens.

It is not the prerogative of the court to pass upon the wisdom of the decision.

The Court cannot insinuate its judgment into a review of the City Council's decision but must leave that decision undisturbed if the propriety of that decision is even "fairly debatable." See Lenardis v. City of Greenville, 316 S.C. 471, 450 S.E.2d 597 (1994).

In the regulatory taking context, the issue of whether a taking occurred is a question of law for the court.

Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978).

The burden of proof the Plaintiffs must meet is quite high. The City's evidence, viewed in the context of that burden of proof, shows that the rezoning of Plaintiffs' property was reasonable, based on sufficient justification, was within the City's power, and did not cause an actionable injury to the Plaintiffs' property. Whether the Plaintiffs meet their burden of proof to establish a constitutional deprivation should be decided by this Court.

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.

s/V. Clark Price

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Attorneys for Defendant City of Greenville

Greenville, South Carolina

August 17, 2022

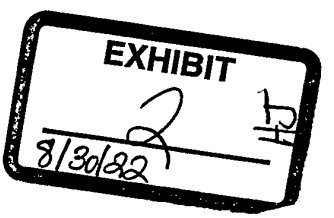
EXCERPTS FROM CITY'S TRIAL BRIEF

Brief p. 5

A municipal ordinance is a legislative enactment and is presumed to be constitutional. McMaster v. Columbia Board of Zoning Appeals, 395 S.C. 499, 719 S.E.2d 660 (2011). Every presumption will be made in favor of the constitutionality of a legislative enactment, and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

--In order to meet the burden of proving the zoning ordinance is invalid, the Plaintiffs must show by clear and convincing evidence the arbitrary and capricious nature of the ordinance. Bear Enterprises

--Only where the City's zoning action is so unreasonable as to impair or destroy constitutional rights can the Court declare the action unconstitutional; if the propriety of the City's decision is even fairly debatable, the Court cannot inject its



judgment into its review of the City's decision and must leave the decision undisturbed. Bear Enterprises

--The City does not deny due process to the Plaintiffs merely because the rezoning plan does not permit the Plaintiffs to make the most beneficial use of their property. Bear Enterprises

Brief p. 6

--To prove a violation of substantive due process, the State's deprivation of a property interest must fall so far beyond the outer boundaries of legitimate governmental authority that no process could remedy the deficiency. Harbit v. City of Charleston, 382 S.C. 383, 674 S.E.2d 776 (2009).

--A legislative body does not deny substantive due process simply because it does not permit a landowner to make the most beneficial use of its property. Id.

EQUAL PROTECTION

Brief p. 6-7

-- The Equal Protection Clause does not prohibit different treatment of people in different circumstances under the law; instead, the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the

legislation, so that all persons similarly circumstanced shall be treated alike. Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009).

--The rational basis standard, rather than strict scrutiny, applies to an equal protection challenge to a rezoning denial because the classification at issue does not affect a fundamental right and does not draw upon inherently suspect distinctions such as race, religion, or alienage. Id.

--Even assuming a governmental entity is not enforcing an ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of an equal protection violation. Id.

-- Under the rational basis test for equal protection claims, the court must determine: (1) whether the law treats similarly situated entities differently; (2) if so, whether the legislative body has a rational basis for the disparate treatment; and (3) whether the disparate treatment bears a rational relationship to a legitimate government purpose. Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280,737 S.E.2d 601 (2013).

RELEVANCE OF OPINION RE IMPACT ON VALUE OF PROPERTY

Brief p. 7-8

The evidence will show that the Plaintiffs enjoy the same beneficial use of their property as they did before the rezoning. The property is still being used as a

restaurant known as OJ's Diner. A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property; property owners are not entitled to have their property zoned for its most profitable use. **An ordinance limiting the use of property will not be held unconstitutional unless it is shown to have caused such a diminution in value as to be tantamount to confiscation.** See Bear Enterprises v. County of Greenville, 319 S.C. 137, 141, 459 S.E.2d 883, 886 (Ct. App. 1995).

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ELECTRONICALLY FILED - 2023 Jan 04 3:40 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

January 4, 2023

Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE: Hassiotis v. The City of Greenville, Docket No. 19-CP-23-02041

Dear Madam Clerk,

Enclosed please find the Appellants George C. Hassiotis and Constantinon Hassiotis' Notice of Appeal in the above titled matter. Additionally, I have included a certificate of service, a check for the filling costs, as well as a copy of the correspondence sent to the Clerk of Court in Greenville County.

By this letter, I also inform the Court that I will enroll as counsel of record. Please forward any and all future correspondence to my attention.

Please let me know if you have questions regarding the enclosed. With kind regards, I remain

Very Truly Yours,

Scarlet B. Moore

Scarlet B. Moore, Esq.
Counsel for Appellant

SBM/s

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Luke Burke, Esq.
Vincent C. Price, Esq.
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January 4, 2023

Paul B. Wickensimer, Clerk of Court
Courthouse
305 E. North Street
Greenville, S.C. 29601-2121

RE: George C. Hassiotis, et al v. The City of Greenville, 19-CP-23-02041

Dear Clerk,

Enclosed please find the Appellants George C. Hassiotis and Constantinon Hassiotis' Notice of Appeal in the above titled matter. Additionally, I have included a certificate of service. I have also filed the Notice of Appeal electronically with the Greenville County AIS system. Please let me know if you have questions regarding the enclosed. With kind regards, I remain

Very Truly Yours,

Scarlet B. Moore

Scarlet B. Moore, Esq.
Counsel for Appellants

SBM/s

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ELECTRONICALLY FILED - 2023 Jan 04 3:40 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Greenville County
In the Court of Common Pleas
Hon. Alex Kinlaw, Jr., presiding

2019-CP-23-02041

George C. Hassiotis and Constantinon Hassiotis.....Appellants,

Versus

The City of Greenville, South Carolina.....Respondent.

CERTIFICATE OF SERVICE

I certify that on this date, January 4, 2023, I served a copy of the **Notice of Appeal** on counsel of record to their addresses, and by affixing proper postage and putting into the U.S. Mail:

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January 4, 2023
Greenville, South Carolina

ELECTRONICALLY FILED - 2023 Jan 04 3:40 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2302041

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Greenville County
In the Court of Common Pleas
Hon. Alex Kinlaw, Jr., presiding

2019-CP-23-02041

George C. Hassiotis and Constantinon Hassiotis.....Appellants,

Versus

The City of Greenville, South Carolina.....Respondent.

NOTICE OF APPEAL

George C. Hassiotis and Constantinon Hassiotis APPEAL the orders entered in the above titled matter, in the following particulars:

1. Order of Judgment filed September 14, 2022, and signed by Hon. Alex Kinlaw, Jr.
2. Order on Post-Trial Motions filed on December 6, 2022, and signed by Hon. Alex Kinlaw, Jr.

The Appellants received written notice of the entry of the Order on Post-Trial Motions in this matter on December 6, 2022.

Respectfully Submitted,

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RECEIVED
Oct 23 2023
SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 23, 2023

s/Scarlet B. Moore
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