

2738 Northland Drive

Case #16-137

July 19, 2016

To the Members of the Commission:

I am submitting the following in response to the proposed development on the southwest corner of Northland Drive and Parker Street.

In March 1990 Chris Burnam submitted a request to rezone the all undeveloped land north of Kitty Hawk Manor and south of Northland Drive from R-1 to R-3 in order to build a complex of multi-family units. After a lot of discussion his original request was denied by the Planning and Zoning Commission for a variety of reasons. Mr. Burnam and his attorney David Rogers brought forward a modified proposal which would leave the northern portion of the property along Gypsy Moth as R-1 and a dedicated 100 permanent buffer zone along the back boundaries of the properties on Northland Drive, as well as a 25 foot setback from the 100 foot buffer zone.

A copy of the minutes of these Planning and Zoning meetings is attached.

During the discussion at the City Council Meeting on May 5, 1990 Mr. Burnam and Mr. Rogers stated their intent to eventually develop the southern side of Gypsy Moth as R-1 and to give the 100 foot permanent buffer zone lots to the Northland Dive property owners by a warranty deed. Mr. Boeckann was asked about how the City stood on enforcing such a restriction.

“Mr Boeckmann said that private covenants would not be enforceable by the City. Mr. Burnam asked about offering a deed restriction. Mr. Boeckmann said they were basically the same thing but would be enforceable by private landowners. Mr. Rogers said they would pledge to the City that they would not sell it to a subsequent buyer without such a restriction in it. Mr. Loveless asked how the City stood on enforcing that restriction. Mr. Rogers said that was a private covenant enforced by private parties but the City had two things going: their representation that they won’t do it, and that they would have given all the adjoining landowners the right to enforce it because a private covenant was very much enforceable by anyone in the neighborhood of the land involved.”

(This is taken directly from the discussion of the City Council Meeting, the entire discussion is attached.)

As a result of this, the ordinance passed, the units were built, in 1994 Warranty deeds were issued to all of the property owners EXCEPT mine; and over the years Chris Burnam has been a good steward in our neighborhood.

In March 2015 Weyen Burnam and Chris Burnam met with me to show me the plans to develop Gypsy Moth and the homes along the south side. Weyen Burnam would be the developer of this project. At that time I shared a few concerns with him and mentioned the fact I had never received my Warranty Deed. Chris once again told me it would be taken care of and they would never put houses on that piece of land as they would never disturb the buffer zone. I have attached a copy of my email exchange with Weyen Burnam were he also stated:

“So as you know, we do not plan to develop anything on the North side NOR to allow any of the Northland owners access to develop on this land either, thus making this a substantial buffer zone”

Recently the Burnam’s purchased the land in question, which also carries the same Warranty Deed restrictions passed along from the original owners; and now there is a development proposal which completely disregards these restrictions and contradicts previously made pledges.

It is very clear that the intent of Chris Burnam and David Rogers in 1990 was to make sure the lots comprising the 100 foot buffer zone would remain undeveloped Forever, regardless of who owned the land. The intent was to have this protection on the land itself with the owners of the land serving as stewards, paying the nominal property taxes. In 1990 much of the land in the area North from I-70 up to Northland Drive was covered in trees; now the only band of trees remaining are the 100 foot buffer zone. Weyen Burnam is proposing to disregard the restrictions placed upon the land and all subsequent landowners. Based on the minutes from the 1990 meetings and the opinions of both the City Attorney and the late David Rogers, it would appear this could lead to legal complications.

Sincerely,

A handwritten signature in cursive script that reads "Annette Kolling-Buckley Greenlee". The signature is written in dark ink and is positioned above the typed name.

Annette Kolling-Buckley Greenlee

1738 Northland Drive

President, Northland-Parker Neighborhood Association

AN ORDINANCE

amending the Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, by changing and amending the zoning map whereby property located at the southwest corner of Business Loop 70 and Sexton Road will be rezoned and become a part of M-1, General Industrial District; repealing all conflicting ordinances or parts of ordinances; and fixing the time when this ordinance shall become effective.

City
Council

March 5, 1990

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended and changed so that the following described property, to wit:

A tract of land located in the easterly part of Lot "G" in Parley's Second Addition to the City of Columbia, Missouri and more particularly described as being Tract 3 of a survey recorded in book 448 page 186 except that part zoned M-1, containing 1.8 acres.

will be rezoned and become a part of M-1, General Industrial District, and taken away from C-3, General Business District, so that hereafter the property may be used for all the purposes permitted in District M-1.

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this 5th day of March, 1990.

ATTEST:

/s/ Laura H. Daniel
City Clerk

/s/ Chester B. Edwards
Mayor and Presiding Officer

B65-90 To rezone from R-1 to R-3 property located west of Barker Street, 1500 ft. north of Vandiver Drive.

The bill was given second reading by the Clerk.

Mr. Beck pointed out that the Planning and Zoning Commission had recommended denial of this request on a 6-3 vote. After that vote the City received a letter from an attorney representing the applicant. An amendment sheet, providing a buffer on the north side, was included in the packet. There was also a memo from the Parks and Recreation Commission indicating that they did not oppose the proposed rezoning.

Mr. Hancock displayed a sketch on the overhead reflecting the proposed amendment brought in by the attorney representing the property owner. He said it would pull the zoning district boundary about 310 feet south of the R-1 and R-1 zoned property along Northland.

Mr. Edwards asked the approximate size of the tract. Mr. Hancock said it was about 14 to 16 acres. Mr. Edwards asked if the amendment sheet reflected the request of Mr. Rogers on behalf of the applicant. Mr. Hancock said it did and added that it no longer included an acreage reference.

Mayor pro-tem Edwards opened the public hearing.

David Rogers, an attorney representing the Burnam Companies, the contract purchaser of the subject ground. He explained that it had originally been an approximately 23-acre tract and the effect of the amendment, moving the northern line southward approximately 310 feet had the effect of reducing it to between a 15 or 16-acre tract. Mr. Rogers said this was an area where it was difficult to make sound zoning decisions at best because of the mixed uses and zonings in the area including some very nice residential homes to the north and the immediate east of the property along with two sets of apartments immediately in the area and two trailer parks. He said the Burnams own apartment units immediately to the south of the subject property consisting of 33 units and immediately across the street consisting also of units numbered in the 30's. They own Vandiver Park to the south and Holly Park Village to the east. He said they had created a substantial improvement in the area in the last two or three years that they have owned the properties and have substantially upgraded the apartment units in the area. Mr. Rogers said if the Council were to approve the rezoning request in its amended form it would allow them to get started this construction season on the part there is no argument about. He didn't think the neighborhood had objected to the R-3 zoning in the area, but were concerned about what was going to happen when they get up toward Northland Drive. He said this would allow them to test the market and that they were planning on building a slightly better unit than they have in the existing apartments in the immediate area. He said it would give them a chance to develop an area without impacting, at all, on the area up toward Northland Drive because there are a substantial amount of trees in there that will not be touched and some elevation differences which would totally buffer that area. Then if they see that the project is successful and want to expand it at all, the Council would be in a position to completely control any such expansions. He said if they had to come back with a HUD for the entire tract they will have lost this construction season and probably the contract. Mr. Rogers asked that they pass the ordinance in its amended form. Harold Anderson, President of the Barker Northland Neighborhood Association, explained the makeup of their neighborhood. Mr. Anderson spoke in opposition to the proposal and disagreed with Mr. Rogers' statement when he said they didn't oppose the R-3. He said that was not correct, they did not want it because they felt they would have no protection if the property should be sold later on. Mr. Anderson said they thought the area would develop R-1 if given the chance and given time. He said they wanted something they could be proud of and that they weren't proud of the two apartments on Barker Street although Mr. Burnam had

ainted them and had done some landscaping. Mr. Anderson said they appreciated the fact that they had had several friendly meetings with the developer, but that the density question kept coming up and where they would be if the land was sold to someone else. He said the developer had withdrawn his offer of the buffer zone to the neighborhood because they could not agree with him on the concept. They felt their only protection left was the R-1. Mr. Anderson said they would have backed the developer if he would have come back with an R-2 RUD. He had a signed petition by all of the neighborhood homeowners opposing the R-3 zoning.

Raul Albert, 2703 Barker, questioned a developer destroying a single family neighborhood. He said they didn't need R-3 in their neighborhood nor did they need more apartments in their neighborhood.

Andy Gutl, a member of the Northland Drive Neighborhood Association, said they didn't want to come out in opposition to just any kind of development, but that they would like to have it develop as an R-1 if at all possible. He said their main concern with apartments was the number of units that could possibly be put in there with R-3 zoning. They had tried to come to an agreement on that issue but couldn't. He felt they could support an R-2 RUD.

Chris Burnam said their strategy over the past few years had been to buy distressed properties in the area and significantly upgrade them. He felt they had done that, and had also been very good corporate citizens in the area. He said it not only benefits the neighborhood but also benefits them economically. He said they had tried their best to accommodate the Homeowners Association in regards to density and at one time they had offered capping the density at 160 units, the deed restrictions, in the 16-acre property. Mr. Burnam said they would make an immediate effort to follow up on something like that if the Council chose to support them.

There was a discussion about transferring the area north of Gypsy Moth to the adjacent property owners and the area from Gypsy Moth Drive to Kitty Hawk as an R-2 RUD. Mr. Burnam said their philosophy had been to try to get along with the neighbors as best they could. He said they felt the 16 acres with 160 units would be a reasonable density and would work from an economic standpoint. Mr. Burnam said starting from the northernmost Gypsy Moth — from Gypsy Moth north it would be a buffer area, Gypsy Moth south to the southern boundary line of the row of lots to the south of Gypsy would be an R-2 RUD and from there south would be R-3. Mr. Edwards asked how they would access. Mr. Burnam said they would abrogate the plat as it stands right now and would access the R-2 RUD through the R-3 property. As far as the R-2 RUD goes, Mr. Burnam said that was really not land they were planning on developing in the foreseeable future, but in order to ease fears in the neighborhood he said they would be willing to file for the R-2 RUD.

Ms. Lynch asked if they would still be willing to limit the density in the R-3 area to 160. Mr. Burnam said he would. Mr. Hutton asked if there was any way to limit the density other than a covenant. Mr. Boeckmann said that private covenants would not be enforceable by the City. Mr. Burnam asked about offering a deed restriction. Mr. Boeckmann said they were basically the same thing but would be enforceable by private landowners. Mr. Rogers said they would pledge to the City that they would not sell it to a subsequent buyer without such a restriction in it. Mr. Loveless asked how the City stood on enforcing that restriction. Mr. Rogers said that was a private covenant enforced by private parties but the City had two things going; their representation that they won't do it, and that they would have given all of the adjoining landowners the right to enforce it because a private covenant was very much enforceable by anyone in the neighborhood of the land involved. Mr. Edwards asked if this bordered on conditional zoning. Mr. Rogers said he didn't think so because there was no condition. He said there was a 300-foot strip that is not being rezoned and they were representing to the Council that they were not only asking it not to be rezoned, but said they would not in the future ask for a density greater than R-2 RUD and probably less.

Mr. Anderson explained that their first agreement broke down because their lawyer had told them it would be conditional zoning.

Mayor pro-tem Edwards closed the public hearing.

Mr. Loveless said he had serious reservations about this rezoning because he was concerned about the amount of traffic generated by a potential 160 units additional exiting onto Parker Street. He said there was no signal at the intersection of Parker and Vandiver and to get onto Vandiver at any high traffic time during the day is difficult as it is, particularly in the morning and evening as people go and come from work. He was also concerned about the relatively high rate of apartment vacancies that presently exist in the City. Another problem he had was the land use plan and he said this particular rezoning would be against the current plan. Since the North Area Land Use Plan was under revision currently, Mr. Loveless thought the rezoning to be premature. He said he would feel much better if the Burnam Companies would be willing to dedicate the north part of the tract as a City park so we could be assured that it would benefit all Columbians.

Mr. Beck said there would be a public hearing this spring on the North Area Land Use Plan.

Mr. Campbell was troubled by the large area involved and the fact that it was an open zone.

Mr. Scheurich said the property was bordered on the south by R-3, and on the east by C-1, and doubted that the property would ever develop as an R-1 district. With the amendment, Mr. Scheurich said he would vote in favor of the rezoning.

Mr. Campbell said he thought at times a very poorly done R-1 could be as bad, if not worse, than an R-3.

Ms. Lynch felt the compromise was reasonable with the developer having taken approximately 8 acres out of the R-3 development and gone with an R-2 RUD, which was exactly what the neighbors had requested, as well as the buffer area. She didn't agree that it should be dedicated as park land because that would take it off the tax rolls, although she said she was in favor of green space. Ms. Lynch requested that deed restrictions be included to limit the number of R-3 units to a maximum of 160. She also didn't think that single family residences would develop in the area due to the mobile homes and the commercial zoning in the area. She felt there could be some very discouraging projects in R-1 that the neighbors would fight much more aggressively.

Mr. Campbell made the motion that B55-90 be amended per the amendment sheet. The motion was seconded by Mr. Scheurich with the vote recorded as follows: VOTING YES: SCHEURICH, LOVELESS, HUTTON, CAMPBELL, EDWARDS, LYNCH. VOTING NO: NO ONE. ABSENT: MCCOLLUM. Motion passed.

Ms. Lynch asked that Mr. Burnam file for an R-2 RUD for the strip as soon as possible. Mr. Rogers said it would sit there in an undevelopable form. She said she would

like it done as protection for the neighbors.

B55-90, as amended, was given third reading with the vote recorded as follows:
VOTING YES: SCHEURICH, CAMPBELL, EDWARDS, LYNCH. VOTING NO: LOVELESS, HUTTON. ABSENT:
MCCOLLUM. Bill declared enacted, reading as follows:

Introduced by McCollum

First Reading February 19, 1990 Second Reading March 5, 1990
Ordinance No. 032542 Council Bill No. B.65-90 A

AN ORDINANCE

amending the Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, by changing and amending the zoning map whereby property located west of Parker Street approximately 1,500 feet north of Vandiver Drive, will be rezoned and become a part of R-3, Medium Density Multiple-Family Dwelling District; repealing all conflicting ordinances or parts of ordinances; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended and changed so that the following described property, to wit:

Lots 11 through 17 of Kitty Hawk Manor, Plat #1, as recorded in Plat Book 12, Page 48 of the Boone County, Missouri records.

Lots 18 through 53 of Kitty Hawk Manor, Plat #2, as recorded in Plat Book 12, Page 66 of the Boone County, Missouri records, excepting Gypsy Moth Drive, the north 140 feet of Ryan Avenue and all of Stinson Avenue bounded by Lots 67, 68, 69 and 70.

will be rezoned and become a part of R-3, Medium Density Multiple-Family Dwelling District, and taken away from R-1, One-Family Dwelling District, so that hereafter the property may be used for all the purposes permitted in District R-3.

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this 5th day of March, 1990.

WITNESSETH:

/s/ Laura B. Daniel
City Clerk

/s/ Chester B. Edwards
Mayor and Presiding Officer

B56-90 To rezone from R-1 to R-1 property located on east side of Oakland Gravel Road, 500 ft. north of Northridge Drive.

The bill was given second reading by the Clerk.

Mr. Edwards explained that a protest petition had been submitted against this rezoning request which meant that 5 of the 7 Council members needed to vote in favor of the rezoning.

Mr. Beck said that the rezoning had been recommended by the Planning and Zoning Commission on a 7-2 vote. He said questions had been raised about building streets in a flood plain area. Mr. Beck said a street could be built in the area if it was built across the flood plain with compensation made to allow water to pass through it. He added that if the tract was properly platted and properly engineered it could technically be developed.

Mr. Hancock displayed on the overhead a rendering of the 100-year flood plain.

Mr. Loveless asked about restrictions for building residences in a flood plain. Mr. Ratterson said they were showing a typical cross section and in the area labeled floodway there could be no development that increases the elevation of the 100-year flood in the floodway. He identified floodway fringe and explained they were areas in the 100-year flood plain that could be developed provided the improvements are elevated to the point where they would offer 1-foot freeboard over the 100-year flood elevation. He said the 100-year floodway elevation could not be increased. There was a discussion about the accuracy of the elevations and Mr. Ratterson explained how they were arrived at. He said the elevations were pretty accurate but the cross sections probably vary considerably. Mr. Campbell asked how frequently they were revised to take into account the changes in the runoff caused by development upstream. Mr. Ratterson explained that the responsibility for changes in the identified floodway, profile, and cross section was the developers.

Mayor pro-tem Edwards opened the public hearing.

Dennis Palmer, 8455 Westlake Rd., the applicant, asked the Council to keep in mind that he wasn't asking for anything that Council hadn't passed routinely for anyone else asking for R-1 zoning.

Mr. Campbell asked if this parcel was part of a much larger tract. Mr. Palmer said it was. Mr. Campbell asked if plans had been developed for the entire tract. Mr. Palmer said he had not.

Mr. Hutton said the only way he could develop it was by one single road off of Oakland. Mr. Palmer agreed.

Mike Gilbert, 2615 Pine Drive, explained that his property was directly south of the

Subject RE: RE:Construction Commencement
From Weyen Burnam <weyen.burnam@storage-mart.com>
To <colbooks@tranquility.net>
Cc Weyen Burnam <weyen.burnam@storage-mart.com>
Date 25.03.2015 18:27



Annette

I'll have to see about the deed work but this was the responsibility of the previous owner to record as we can not record the document. I'll see about re-creating something in the near future but it might take a while as we're in the middle of a large financial transaction that our legal team is swamped with for probably the next 30 days. We can provide a document, but it is up to you to record it so that it shows in the assessor's file. So you know, we do not plan to develop anything on the North side NOR to allow any of the Northland owners access to develop on this land either, thus making this a substantial buffer zone.

As for the disturbance; our plan is to disturb only what we need in order to achieve both the street and city required sidewalk on the North side of the road. We have a staging and concrete clean out area designated on our plans at the entry to the subdivision, not anywhere close to your property. Additionally, if you have some specific trees you are concerned about please mark these with some sort of brightly colored indicator material so that we can avoid this area if possible.

Please feel free to follow up if you have not heard anything from me by May on the lot transfer.

Thanks.

Weyen Burnam

From: colbooks@tranquility.net [colbooks@tranquility.net]
Sent: Tuesday, March 24, 2015 3:28 PM
To: Weyen Burnam
Subject: RE:Construction Commencement

Hello,

I received your letter/map regarding construction of the road behind our properties on Northland Drive.

Just a couple of questions:

I see from the map that nothing has been done about the lot behind our property (2738 Northland) It still shows up as belonging to you rather than being a part of the dedicated buffer zone between our properties, and so it could be cleared and a house built on it. I thought you had mentioned getting that lot vacated/deeded away to us. I am worried the construction people will use that area to park their equipment, cut down trees, dump concrete, etc. because they will not know otherwise. We have a Bicentennial Oak on the rear edge of our property and I don't want it to sustain any unnecessary shock as it is so old. I talked to Clint Smith in P&Z; he showed me the site map which shows you owning the piece of land behind my house; he suggested that if that piece of land needs to be vacated/deeded to us that it be done before the construction on the street begins as the contractors will work from the map.

Also, the map from the Assessor's Office shows the cross-hatched lines indicating the Construction Zone to include the 100 foot buffer zone. The Construction site map does not show that, so I would guess that was just an error on the part of the Assessor's Office.

Thank you for taking the time to update me on your progress; and let me know if I can be of any assistance regarding the matter of the lot

behind the property my son and I own.

Regards,
Annette Kolling-Buckley Greenlee

WARRANTY DEED

841

THIS INDENTURE, made on the 25th day of October, 1994, by and between Russell R. Rouse and Jewell M. Rouse, husband and wife, of Boone County, Missouri, parties of the first part, and Russell R. Rouse and Jewell M. Rouse, Trustees of the Russell R. Rouse and Jewell M. Rouse Joint Trust Agreement dated October 11, 1994 or their successors, of the County of Boone, in the State of Missouri, parties of the second part.
(Mailing address of said first named grantee is 2734 Northland Drive, Columbia, MO 65202)

WITNESSETH, that the said parties of the first part, in consideration of the sum of One Dollar and other good and valuable consideration, to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents, GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM, unto the said parties of the second part, their successors and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the County of Boone and State of Missouri, to-wit:

Lot 30 in Northland Acres, a subdivision of the Southwest Fractional Quarter of Section 31, Township 49, Range 12 and a part of the East Half of the Southeast Quarter of Section 36, Township 49, Range 13, in Boone County, Missouri.

All that part of the North 100 feet of Kitty Hawk Manor Plat No. 2 as recorded in Plat Book 12, page 66 that adjoins Lot 30 (Except the West 160 feet) of Northland Acres, as recorded in Plat Book 4, page 25, Boone County Records. Subject to easements and restrictions of record. Subject to the following restrictions which shall run with the land forever: Said property is to be left in its natural state, is never to be developed and is to act as a buffer zone from the remainder of Kitty Hawk Manor Plat 2.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in anywise appertaining, unto the said parties of the second part and unto their successors and assigns forever; the said grantors hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same, that the said premises are free and clear of any encumbrances done or suffered by or those under whom they claim and that they will warrant and defend the title to the said premises unto the said parties of the second part and unto their successors and assigns forever, against the lawful claims and demands of all persons whomsoever.

April 21st 94 1:47:26P
8548 1074 297

BENEFICIARY DEED

THIS DEED, made this 16 day of April, 1994, wherein GRANTORS: Russell R. Rouse and Jewell M. Rouse, husband and wife, of the County of Boone State of Missouri, without consideration do by these presents GRANT, CONVEY AND CONFIRM unto the following GRANTEE BENEFICIARY or if he predeceases Grantors, then to his lineal descendants per stirpes who survive the death of the last to die of Grantors:

Ronald McCollom Rouse, 2726 Northland Drive, Columbia, MO 65202;

the following described Real Estate, situated in the County of Boone, State of Missouri, to-wit:

Lot 30 in Northland Acres, a subdivision of the Southwest Fractional Quarter of Section 31, Township 49, Range 12 and a part of the East Half of the Southeast Quarter of Section 36, Township 49, Range 13, in Boone County, Missouri.

All that part of the North 100 feet of Kitty Hawk Manor Plat No. 2 as recorded in Plat Book 12, page 66 that adjoins Lot 30 (Except the West 160 feet) of Northland Acres, as recorded in Plat Book 4, page 25, Boone County Records. Subject to easements and restrictions of record. Subject to the following restrictions which shall run with the land forever: Said property is to be left in its natural state, is never to be developed and is to act as a buffer zone from the remainder of Kitty Hawk Manor Plat 2.

TO HAVE AND TO HOLD the same together with all rights and appurtenances to the same belonging unto the said Grantee Beneficiary and substitutes, and his heirs and assigns forever.

Grantors hereby covenanting that Grantors and their heirs and personal representatives, shall and will Warrant and Defend the title to the premises unto Grantee Beneficiary and substitutes, and his heirs and assigns forever against the lawful claims of all persons whomsoever, excepting, however, record restrictions, general and special real estate taxes, notes secured by deed of trust or mortgage and all other taxes, liens and encumbrances to which the real estate is subject at the death of the last to die of Grantors.

A grantee beneficiary or substitute may disclaim all or any part of this conveyance in the time and manner provided by law by filing a Deed of Disclaimer with the Recorder of Deeds in the city or county wherein the real estate is situated.

THIS BENEFICIARY DEED is executed pursuant to Section 461.025, RSMo. It is not effective to convey title to the above described real estate until the death of the last to die of Grantors. It is subject to revocation and change in the manner provided by law.

IN WITNESS WHEREOF, Grantors execute this beneficiary deed on the day and year first above written.

Russell R. Rouse

Russell R. Rouse

Jewell M. Rouse

Jewell M. Rouse

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this 16th day of April, 1994, before me personally appeared Russell R. Rouse and Jewell M. Rouse, husband and wife, known to me to be the persons described in and who executed the foregoing beneficiary deed as Grantors, and acknowledged to me that they executed the same as their free act and deed for the purposes therein stated.

IN TESTIMONY WHEREOF, I set my hand and affixed my official seal in the County and State aforesaid, on the day and year above written.

My commission expires May 28, 1994

James E. Baldwin

Notary Public

JAMES E. BALDWIN



STATE OF MISSOURI)
COUNTY OF BOONE) ss.

Document No. 8548

I, the undersigned Recorder of Deeds for said county and state do hereby certify that the foregoing instrument of writing was filed for record in my office on the 21st day of April, 1994 at 1 o'clock and 47:26 minutes PM and is truly recorded in Book 1074 Page 297.

Witness my hand and official seal on the day and year aforesaid.

BETTIE JOHNSON, RECORDER OF DEEDS

by *Lisa Victor* deputy
Lisa Victor





Clinton Smith <clinton.smith@como.gov>

July 21, 2016 P&Z meeting

1 message

Mac Rouse [REDACTED]

Wed, Jul 20, 2016 at 1:31 PM

To: clinton.smith@como.gov

Clint,

I dropped off some material concerning the platting of 2716 Northland Drive, the property to the east of me.

I highlighted several passages that I believe are germane to the issue. I realize they are taken out of context but my goal is to establish the intention of Burnam Properties to not develop the 100' on the north boundary of their current development.

The back-and-forth discussions between Burnam and the Northland Drive neighborhood association goes back to 1990 when a plat was put forth before the Planning and Zoning Commission to develop the property along Parker Street, south of Northland Drive. The initial plat was denied by P&Z but subsequent compromises between the two parties led to Burnam deeding 100' on the north boundary of the property to serve as a green space to be left in its natural state in perpetuity.

As late as March 2015 Weyen Burnam sent an e-mail to my neighbor to the west, Annette Weaver 2738 Northland Drive, stating, ***“So you know, we do not plan to develop anything on the North side NOR to allow any of the Northland owners access to develop on this land either, thus making this a substantial buffer zone.”***

I realize this is a civil issue in which the City will not become involved but we private landowners do have the option of seeking legal redress. My hope is that litigation will not be necessary.

I work at [REDACTED] so I will be unavailable the remainder of the day. If you have any questions or comments about this letter or the material I laid in your lap, I will respond after my work. Otherwise, I plan to be at the P&Z meeting tomorrow night at 7 PM. If you think I should come sooner, please say so.

Thank you for your time.

Mac Rouse
2726 Northland Drive
[REDACTED]

Mac Rouse
2720 Northland Dr



Recorded in Boone County, Missouri

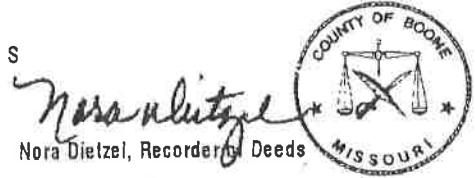
Date and Time: 06/02/2016 at 10:04:05 AM

Instrument #: 2016011246 Book: 4600 Page: 50

Instrument Type: WD

Recording Fee: \$27.00 S

No. of Pages: 2



(Space above reserved for Recorder of Deeds certification)

GENERAL WARRANTY DEED

This Deed, made and entered into this 1st day of June, 2016, by and between

Randy Cheek and Vicki Cheek, husband and wife Grantor(s)

Of the County of Boone, State of Missouri party of the first part.

Manor Hill, LLC, a Missouri limited liability company Grantee(s)

Grantee's Address: 215 N Stadium, Ste 207, Columbia, MO 65203
Of the County of Boone, State of Missouri party or parties of the second part.

WITNESSETH, that the said party or parties of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations paid by the said party or parties of the second part, the receipt of which is hereby acknowledged, does or do by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the said party or parties of the second part, the following described Real Estate, situated in the County of Boone and State of Missouri, to wit:

Parcel 1: Lot Number Thirty-three (33) of NORTHLAND ACRES, a Subdivision of the Southwest Fractional Quarter (SWF 1/4) of Section Thirty-one (31), Township Forty-nine (49), Range Twelve (12) and a part of the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Thirty-six (36), Township Forty-nine (49), Range Thirteen (13), in Boone County, Missouri.

Parcel 2: All that part of the North One Hundred feet (N 100') of KITTY HAWK MANOR PLAT NO. TWO (2) as recorded in Plat Book 12, Page 66 that adjoins Lot Thirty-three (33) of Northland Acres, as recorded in Plat Book 4, Page 25, Boone County Records.

Subject to building lines, conditions, restrictions, easements, and zoning regulations of record if any.

TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said party or parties of the second part, and to the heirs and assigns of such party or parties forever.

The said party of the first part or parties hereby covenanting that the said party or parties and the heirs, executors and administrators of such party or parties, shall and will WARRANT AND DEFEND the title to the premises unto the said party or parties of the second part, and to the heirs and assigns of such party or parties forever against the lawful claims of all persons whomsoever, excepting, however, the general taxes for the calendar year 2016 and thereafter, and special taxes becoming a lien after the date of this deed.

CORPORATION GENERAL WARRANTY DEED

THIS INSTRUMENT, made this 10 day of January 1991, by and between
BURNAM HOLDING COMPANIES CO., INC.
corporation of the State of Missouri, Party of the First Part, Grantor, and I. H. HARGIS JR. & RONNIE L. HARGIS
Party or Parties of the Second Part, of the County of Boone State of MISSOURI
Grantor's Mailing Address: 7216 Northland Drive, Columbia, MO 65202

WITNESSETH, that the said Party of the First Part, for and in consideration of the sum of One Dollar and other valuable consideration paid by the Party or Parties of the Second Part, the receipt whereof is hereby acknowledged, and by virtue and in pursuance of a resolution of the Board of Directors of said Party of the First Part, corporation, does by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the said Party or Parties of the Second Part, their heirs and assigns, the following described real estate, situated in the County of Boone State of Missouri, to wit:

The North ~~Plat~~ 100 feet of the following:
Lot 11, Lot 12, Lot 13, Lot 14, Lot 15, Lot 16, Lot 17, Lot 18, Lot 19, Lot 20, Lot 21, Lot 22, Lot 23, Lot 24, Lot 25, Lot 26, Lot 27, Lot 28, Lot 29, Lot 30, Lot 31, Lot 32, Lot 33, Lot 34, Lot 35, Lot 36, Lot 37, Lot 38, Lot 39, Lot 40, Lot 41, Lot 42, Lot 43, Lot 44, Lot 45, Lot 46, Lot 47, Lot 48, Lot 49, Lot 50, Lot 51, Lot 52, Lot 53, Lot 54, Lot 55, Lot 56, Lot 57, Lot 58, Lot 59, Lot 60, Lot 61, Lot 62, Lot 63, Lot 64, Lot 65, Lot 66, Lot 67, Lot 68, Lot 69, Lot 70, Lot 71, Lot 72, Lot 73, Lot 74, Lot 75, Lot 76, Lot 77, Lot 78, Lot 79, Lot 80, Lot 81, Lot 82, Lot 83, Lot 84, Lot 85, Lot 86, Lot 87, Lot 88, Lot 89, Lot 90, Lot 91, Lot 92, Lot 93, Lot 94, Lot 95, Lot 96, Lot 97, Lot 98, Lot 99, Lot 100
on Plat recorded in Plat Book 12, Page 66, Boone County, Missouri.

All that part of the North 100 feet of KITTY HAWK MANOR PLAY NO. 2 as recorded in Plat Book 12, Page 66 plus adjoins lot 33 of Northland Acres, as recorded in Plat Book 4, Page 25.
SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD. Boone County Records.

THIS DEED IS BEING RE-RECORDED FOR THE SOLE PURPOSE OF CORRECTING THE LEGAL DESCRIPTION AND FURTHER SUBJECT TO THE FOLLOWING RESTRICTIONS WHICH SHALL RUN WITH THE LAND FOREVER:

SAID PROPERTY IS TO BE LEFT IN ITS NATURAL STATE, IS NEVER TO BE DEVELOPED AND IS TO ACT AS A BUFFER ZONE FROM THE REMAINING OF SAID KITTY HAWK MANOR PLAY NO. 2 TO HAVE AND TO HOLD the same, with all and singular the rights and appurtenances thereto in anywise by law in anywise so called, unto the said Party or Parties of the Second Part and their heirs and assigns, FOREVER, and the said Party of the First Part hereby covenants that it is lawfully seized of an indefeasible estate in fee simple in the premises herein conveyed, that it has good right to convey the same, that the premises are free and clear of any encumbrances whatsoever done or suffered by it or those under whom it claims; that it will make and execute such other and further assurances and do such other acts and things as may be necessary for perfecting the title and confirming the premises hereby granted; and that it will warrant and defend the title to said premises unto the said Party or Parties of the Second Part and their heirs and assigns, against the lawful claims of all persons whatsoever, excepting, however, the general taxes for the year 1990 special assessments becoming a lien after the date of this deed.

IN WITNESS WHEREOF, the said Party of the First Part has caused these presents to be executed by its Mike Burnam President, attested by its Kim Flower Secretary, and its corporate seal hereto affixed, the day and year first above written.

BURNAM HOLDING COMPANIES CO., INC. a corporation
MIKE BURNAM
By Mike Burnam
KIM FLOWER
Attest: Kim Flower
Secretary

STATE OF MISSOURI
COUNTY OF Boone

On this 10th day of January 1991
before me appeared I. H. HARGIS JR. & RONNIE L. HARGIS
to me personally known, who, being by me duly sworn (or affirmed) did say that he is the President of the Corporation of the State of Missouri, and that the foregoing instrument is the representation of the Board of Directors and that the said instrument was signed and confirmed on behalf of said corporation by authority of its Board of Directors, and said President acknowledged said instrument to be free act and deed of said corporation.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in County and State aforesaid, the day and year first above written. My term expires on 5th day of January 1994
Pamela M. Matney
Notary Signature
PAMELA M. MATNEY
NOTARY PUBLIC, STATE OF MISSOURI
First or Second Class Notary Public
MY COMMISSION EXPIRES JAN. 5, 1994



I, the undersigned Recorder of Deeds for said County and State do hereby certify that the foregoing instrument of writing was filed for record in my office on the 14 day of January 1991 at 3 o'clock and 40 minutes P M. and is truly recorded in Book 806 page 303

Bettie Johnson Recorder of Deeds
By Den Boone Deputy

Filed for record on Sept 9 1991 at 1:57 P. M. in Boone Co. Mo.
Document No. 4452 recorded in Book 897 page 312 E. J. Johnson, Recorder of Deeds

WARRANTY DEED

841

THIS INDENTURE, made on the 27th day of October, 1994, by and between Russell R. Rouse and Jewell M. Rouse, husband and wife, of Boone County, Missouri, parties of the first part, and Russell R. Rouse and Jewell M. Rouse, Trustees of the Russell R. Rouse and Jewell M. Rouse Joint Trust Agreement dated October 11, 1994 or their successors, of the County of Boone, in the State of Missouri, parties of the second part.
(Mailing address of said first named grantee is 2734 Northland Drive, Columbia, MO 65202)

WITNESSETH, that the said parties of the first part, in consideration of the sum of One Dollar and other good and valuable consideration, to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents, GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM, unto the said parties of the second part, their successors and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the County of Boone and State of Missouri, to-wit:

Lot 30 in Northland Acres, a subdivision of the Southwest Fractional Quarter of Section 31, Township 49, Range 12 and a part of the East Half of the Southeast Quarter of Section 36, Township 49, Range 13, in Boone County, Missouri.

All that part of the North 100 feet of Kitty Hawk Manor Plat No. 2 as recorded in Plat Book 12, page 66 that adjoins Lot 30 (Except the West 160 feet) of Northland Acres, as recorded in Plat Book 4, page 25, Boone County Records. Subject to easements and restrictions of record. Subject to the following restrictions which shall run with the land forever: Said property is to be left in its natural state, is never to be developed and is to act as a buffer zone from the remainder of Kitty Hawk Manor Plat 2.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in anywise appertaining, unto the said parties of the second part and unto their successors and assigns forever; the said grantors hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that they have good right to convey the same, that the said premises are free and clear of any encumbrances done or suffered by or those under whom they claim and that they will warrant and defend the title to the said premises unto the said parties of the second part and unto their successors and assigns forever, against the lawful claims and demands of all persons whomsoever.



Recorded in Boone County, Missouri

Date and Time: 10/17/2002 at 08:30:38 AM

Instrument #: 2002031130 Book: 02026 Page: 0690

First Grantor BUCKLER, SHARON ANN SUCCESSOR...

First Grantee CHEEK, RANDY

Instrument Type TRST

Recording Fee \$29.00

Bette Johnson
Bette Johnson, Recorder of Deeds



(Space above reserved for Recorder of Deeds certification)

1. Title of Document: **TRUSTEE'S GENERAL WARRANTY DEED**
2. Date of Document: October 16, 2002
3. Grantor(s): **Sharon Ann Buckler, Successor Trustee of the Hargis Family Revocable Living Trust u/t/a dated February 11, 1992**
4. Grantee(s): **Randy Cheek and Vicki Cheek, husband and wife**
5. Statutory Mailing Address(s): 5206 Brown Station RD, Columbia, MO
65202
6. Legal Description:

Lot Number Thirty-three (33) of NORTHLAND ACRES, a Subdivision of the Southwest Fractional Quarter (SWF 1/4) of Section Thirty-one (31), Township Forty-nine (49), Range Twelve (12) and a part to the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Thirty-six (36), Township Forty-nine (49), Range Thirteen (13), in Boone County, Missouri.

All that part of the North 100 feet of KITTY HAWK MANOR PLAT NO. TWO (2) as recorded in Plat Book 12, Page 66 that adjoins Lot 33 of Northland Acres, as recorded in Plat Book 4, Page 25, Boone County Records.

7. Reference Book and Pages(s):

(If there is not sufficient space on this page for the information required, state the page reference where it is contained within the document)

TRUSTEE'S GENERAL WARRANTY DEED

THIS DEED, Made and entered into this 16th day of October, 2002, by and between

Sharon Ann Buckler, Successor Trustee of the Hargis Family Revocable Living Trust u/t/a dated February 11, 1992

of Columbia, Boone County, Missouri, (said Trustee is hereinafter referred to as "the First Party") and

Randy Cheek and Vicki Cheek, husband and wife

of Boone County, Missouri, (hereinafter referred to as "the Second Party").

The mailing address of the Second Party (the Grantee) is: 5206 Brown Station RD,

WITNESSETH:

Columbia, mo 65202

WHEREAS, Ivan H. Hargis died on the 1st day of July, 2001 and Bonnie L. Hargis died on the 14th day of January, 2001; and

WHEREAS, Sharon Ann Buckler is the sole successor trustee and is presently acting as successor trustee of the Hargis Family Revocable Revocable Living Trust Dated February 11, 1992, (said trust is hereinafter referred to as "the Trust Agreement"); and

WHEREAS, the Trust Agreement has not been revoked and is presently in full force and effect; and

WHEREAS, the Trust Agreement granted to the undersigned, as Successor Trustee, full power to sell and convey the real estate hereinafter described; and

WHEREAS, the Second Party has purchased the real estate hereinafter described from First Party.

NOW, THEREFORE, the First Party, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations paid by the Second Party, the receipt of which is hereby acknowledged, does by these presents, GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto the Second Party the following described real estate lying, being and situated in Boone County, Missouri, to-wit:

Lot Number Thirty-three (33) of NORTHLAND ACRES, a Subdivision of the Southwest Fractional Quarter (SWF 1/4) of Section Thirty-one (31), Township Forty-nine (49), Range Twelve (12) and a part fo the East Half (E 1/2) of the Southeast Quarter (SE 1/4) of Section Thirty-six (36), Township Forty-nine (49), Range Thirteen (13), in Boone County, Missouri.

All that part of the North 100 feet of KITTY HAWK MANOR PLAT NO. TWO (2) as recorded in Plat Book 12, Page 66 that adjoins Lot 33 of Northland Acres, as recorded in Plat Book 4, Page 25, Boone County Records.

TO HAVE AND TO HOLD the same; together with all rights, immunities, privileges and appurtenances to the same belonging, unto the Second Party and unto their heirs, personal representatives, successors and assigns forever. Said First Party, as Trustee, hereby covenants that he and his heirs, successors and assigns shall and will WARRANT AND DEFEND the title to the above described real estate unto the Second Party and unto their heirs, personal representatives, successors and assigns forever, against the lawful claims of all persons whomsoever, excepting however, real estate taxes for the calendar year 2002 and thereafter, and special taxes becoming a lien after the date of this deed.

IN WITNESS WHEREOF, the First party has hereunto set his hand the day and year first above written.

Sharon Ann Buckler
Sharon Ann Buckler, Successor Trustee of the Hargis Family Revocable Living Trust dated February 11, 1992

STATE OF MISSOURI)
(ss.
COUNTY OF BOONE)

On this 11th day of October, 2002, before me personally appeared Sharon Ann Buckler, Successor Trustee of the Hargis Family Revocable Living Trust w/t/a dated February 11, 1992, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed in her capacity as Successor Trustee under the above described Trust Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Columbia, Missouri, the day and year first above written.

Maureen A. Dalton

NOTARY PUBLIC

(Seal)

(print/type name of notary public)

MAUREEN A. DALTON
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
COUNTY OF BOONE
MISSION EXPIRES: OCT 07, 2006

MAUREEN A. DALTON
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
COUNTY OF BOONE
MY COMMISSION EXPIRES: OCT 07, 2006

Subject RE: RE:Construction Commencement
From Weyen Burnam <weyen.burnam@storage-mart.com>
To <colbooks@tranquility.net>
Cc Weyen Burnam <weyen.burnam@storage-mart.com>
Date 25.03.2015 18:27



Annette

I'll have to see about the deed work but this was the responsibility of the previous owner to record as we can not record the document. I'll see about re-creating something in the near future but it might take a while as we're in the middle of a large financial transaction that our legal team is swamped with for probably the next 30 days. We can provide a document, but it is up to you to record it so that it shows in the assessor's file. So you know, we do not plan to develop anything on the North side NOR to allow any of the Northland owners access to develop on this land either, thus making this a substantial buffer zone.

As for the disturbance; our plan is to disturb only what we need in order to achieve both the street and city required sidewalk on the North side of the road. We have a staging and concrete clean out area designated on our plans at the entry to the subdivision, not anywhere close to your property. Additionally, if you have some specific trees you are concerned about please mark these with some sort of brightly colored indicator material so that we can avoid this area if possible.

Please feel free to follow up if you have not heard anything from me by May on the lot transfer.

Thanks.

Weyen Burnam

From: colbooks@tranquility.net [colbooks@tranquility.net]
Sent: Tuesday, March 24, 2015 3:28 PM
To: Weyen Burnam
Subject: RE:Construction Commencement

Hello,

I received your letter/map regarding construction of the road behind our properties on Northland Drive.

Just a couple of questions:

I see from the map that nothing has been done about the lot behind our property (2738 Northland) It still shows up as belonging to you rather than being a part of the dedicated buffer zone between our properties, and so it could be cleared and a house built on it. I thought you had mentioned getting that lot vacated/deeded away to us. I am worried the construction people will use that area to park their equipment, cut down trees, dump concrete, etc. because they will not know otherwise. We have a Bicentennial Oak on the rear edge of our property and I don't want it to sustain any unnecessary shock as it is so old. I talked to Clint Smith in P&Z; he showed me the site map which shows you owning the piece of land behind my house; he suggested that if that piece of land needs to be vacated/deeded to us that it be done before the construction on the street begins as the contractors will work from the map.

Misc, the map from the Assessor's Office shows the cross-hatched lines indicating the Construction Zone to include the 100 foot buffer zone. The Construction site map does not show that, so I would guess that was just an error on the part of the Assessor's Office.

Thank you for taking the time to update me on your progress; and let me know if I can be of any assistance regarding the matter of the lot

behind the property my son and I own.

Regards,
Annette Kolling-Buckley Greenlee

Introduced by W.C. Collins
First Reading 2-19-90 Second Reading 3-5-90
Ordinance No. 012542 Council Bill No. B 65-90A

012542

Permanent Record
Filed in Clerk's Office

AN ORDINANCE

amending the Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, by changing and amending the zoning map whereby property located west of Parker Street approximately 1,500 feet north of Vandiver Drive, will be rezoned and become a part of R-3, Medium Density Multiple-Family Dwelling District; repealing all conflicting ordinances or parts of ordinances; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended and changed so that the following described property, to wit:

Lots 11 through 17 of Kitty Hawk Manor, Plat #1, as recorded in Plat Book 12, Page 48 of the Boone County, Missouri records.

Lots 18 through 53 of Kitty Hawk Manor, Plat #2, as recorded in Plat Book 12, Page 66 of the Boone County, Missouri records, excepting Gypsy Moth Drive, the north 140 feet of Ryan Avenue and all of Stinson Avenue bounded by Lots 67, 68, 69 and 70.

will be rezoned and become a part of R-3, Medium Density Multiple-Family Dwelling District, and taken away from R-1, One-Family Dwelling District, so that hereafter the property may be used for all the purposes permitted in District R-3.

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this 5th day of March, 1990.

ATTEST:

Laura H. Daniel City Clerk
Chester B. Edwards, Jr. Mayor and Presiding Officer

APPROVED AS TO FORM:

Paul J. Search
City Counselor

AGENDA REPORT
PLANNING AND ZONING COMMISSION MEETING
FEBRUARY 8, 1990

ITEM NO. 3 (b)

APPLICANT

D.V.R. Enterprises for the Burnam Companies

LOCATION

West of Parker Street, approximately 1,500 feet north of Vandiver Drive.

PROPERTY SIZE

Approximately 22 acres.

EXISTING ZONING

R-1 (One-Family Dwelling District)

REQUESTED ZONING

R-3 (Medium Density Multiple-Family Dwelling District)

EXISTING CONDITIONS

	<u>ZONING</u>	<u>LAND USE</u>
<u>SITE</u>	R-1	Vacant
<u>NORTH</u>	A-1 & R-1	Single-Family Residential
<u>SOUTH</u>	R-3 & C-1	Vacant
<u>EAST</u>	R-1 & C-1	Vacant & Multi-Family Residential
<u>WEST</u>	R-1	Vacant & City Park

LAND USE PLAN DESIGNATION

The 1983 Land Use Plan designates the property as "Low Density Residential" to reflect the existing R-1 zoning. The staff is in the early stages of preparing a revised land use plan for the "Northeast Area", which will include the subject property.

ACCESS

Access to the property is off Parker Street, an improved collector street. The applicant proposes to replat the property and possibly eliminate the platted internal street system.

PUBLIC UTILITIES

All City utilities are available to the site and are adequate.

HISTORY

The property was annexed into the City in 1964 and was zoned R-1. In 1965 the northeastern and southeastern portions of the property were rezoned to C-1. In 1978 the C-1 portions of the property were revised by eliminating the northeastern portion and expanding the southeastern portion.

DISCUSSION

The subject property comprises most of the Kitty Hawk Subdivision, which was platted in 1978. The intent at the time of platting was to develop a single family subdivision. As a part of that development, however, the developer obtained some C-1 zoning on both sides of the intersection of Holly Avenue and Parker Street.

The C-1 zoning designation was a rearrangement of some C-1 zoning granted in 1965. The intent of the rearrangement was to allow for a developable parcel at the Holly/Parker intersection in exchange for removing the C-1 zoning that had been granted in 1965, at the northeast corner of the subject site.

After the 1978 rezoning and platting of the Kitty Hawk Subdivision, apartments were constructed on portions of the C-1 zoned property on both sides of Parker Street. Since construction of the apartments, no additional development of the remainder of Kitty Hawk has taken place.

The proposal now before the Commission is to rezone the remaining R-1 zoned portion of Kitty Hawk to R-3 for apartment development. The applicant feels that the neighborhood character, which is a mix of various housing types and a mobile home park, is not conducive to marketing single-family homes. The applicant believes the fact that the property has not developed for 12 years is further evidence in support of his case.

The staff has examined the general area and concurs that in order to develop the subject tract, some higher density zoning may be necessary. The staff has also been made aware of some concerns from owners of single-family homes in the area, that a proliferation of apartments may damage their property values. In addition, there were apparently some assurances made by the original subdivider/developer in 1978 that the R-1 zoned portion of Kitty Hawk would serve as a buffer between the C-1/R-3 zoned land to the south and the residential area along Northland Drive. Neighborhood sentiment is that those original assurances should be honored.

The subject property lies within the area to be known as the "Northeast Area" which is the next area to be reviewed as part of the land use plan update. Ideally, the proposed rezoning should be tabled until staff has had a chance to present a draft "Northeast Area" plan. By doing so, the request could be studied in the context of a land use plan review, rather than trying to deal with a

rezoning request without the benefit of up-to-date land use policy. That option is not acceptable to the applicant, however, who wants a decision on his request by mid-March.

At this point the staff suggests that the applicant meet with the neighbors and try to work out an acceptable compromise proposal. The staff does not support the request as it stands, but would look favorably upon a revised request, which might alleviate some of the neighbors' concerns and still allow the applicant a reasonable use of this difficult tract of land.

STAFF RECOMMENDATION

Staff recommends either of the following:

- 1) That this item be tabled for approximately 90 days while a "Northeast Area" plan is prepared; or
- 2) That the request be amended to show a land use transition going from R-3 at the south end of the property, to a combination of R-2 and R-1, towards the north end of the property.

Source

Agenda Item No. _____

J. Hancock

VA

TO: City Council

FROM: Planning and Zoning Commission

DATE: February 12, 1990

RE: REQUEST BY DVR ENTERPRISES FOR THE BURNAM COMPANIES TO REZONE FROM R-1 (ONE-FAMILY DWELLING DISTRICT) TO R-3 (MEDIUM DENSITY MULTIPLE-FAMILY DWELLING DISTRICT), PROPERTY LOCATED WEST OF PARKER STREET, APPROXIMATELY 1500 FEET NORTH OF VANDIVER DRIVE, CONTAINING APPROXIMATELY 22 ACRES.

Fiscal Impact

YES

NO

Other Info.

COUNCIL SUMMARY

At its meeting of February 8, 1990, the Planning and Zoning Commission voted 6-3 to recommend denial of the above rezoning request, which the applicant had modified as follows: The northernmost 100 feet to be rezoned to district A-1; the remainder to be rezoned to R-3.

Several neighboring property owners suggested that a planned unit development be used rather than R-3 zoning.

The majority of the commission members felt that the concerns of the neighbors regarding development density and a buffer strip could be addressed by a planned unit development.

The staff report, locator map, and excerpts from the minutes of the meeting are attached.

SUGGESTED COUNCIL ACTION

The Planning and Zoning Commission recommends denial of the above rezoning request.

EXCERPTS
PLANNING AND ZONING COMMISSION
FEBRUARY 8, 1990

ITEM 3 (b) REQUEST BY DVR ENTERPRISES FOR THE BURNAM COMPANIES TO REZONE FROM R-1 (ONE-FAMILY DWELLING DISTRICT) TO R-3 (MEDIUM-DENSITY MULTIPLE FAMILY DWELLING DISTRICT), PROPERTY LOCATED WEST OF PARKER STREET, APPROXIMATELY 1500 FEET NORTH OF VANDIVER DRIVE, CONTAINING APPROXIMATELY 22 ACRES.

Staff report was given by Charles Bondra, Department of Planning and Development. Staff recommended a 90 day continuation while the Northeast Area Plan was being worked on. Mr. Bondra stated one possibility might be for Mr. Burnam to reduce the size of his R-3 request at least temporarily and possibly ask for zoning on the land used for the first phase. He could request a PUD in the future on the remainder of the property. This would allow Mr. Burnam to get started on this project without being delayed by a PUD process, and to work details out with the neighbors. He said most neighbors were in agreement with an R-3 zoning as long as the density was limited and they had some buffering between this development and their properties.

Mr. Bondra stated staff's recommendation of a 90-day continuance might not be appropriate at this point. He said that other than a PUD, staff did not know any other way to insure the kind of things the neighbors wanted and to allow the developer to develop the land with apartments.

Mr. Bondra stated the staff's recommendation presently would be for denial of the proposal as it stands, or for approval of some reduced version of the request.

PUBLIC HEARING OPENED

Chris Burnam, 1110 I-70 Drive, S.W., came forward. He stated he and his company were familiar with the area. He stated a lot of the things mentioned by Mr. Bondra, i.e, the mobile home park to the south, the R-3 to the east and west of Parker Street, were familiar to his company as they owned that particular mobile home park and apartments. He said they had undertaken the mobile home park to upgrade it at significant expense. He said from an economic standpoint, it had been a real benefit. Burnam said his company had purchased the apartments three years ago.

Mr. Burnam said that currently they were developing a mobile home park addition located on Holly Avenue. He said there were approximately 120 units there and they were in the process of adding an additional 35 units.

Mr. Burnam said they had worked with the Northland Homeowners' Association in the past very successfully. He said they were very close to coming to an agreement now.

Mr. Burnam requested an amendment to his zoning request. He asked that the northern 100 feet of the entire property around Gypsy Moth Drive be rezoned to A-1.

Mr. Burnam commented on meeting with the neighborhood association. He said they discussed their plans at length. He said it appeared that they had reached a compromise. He said the neighbors were concerned about a buffer zone. He said that currently the area is very thickly brushed with a lot of wildlife. He felt that all the homeowners' requests regarding a buffer was certainly reasonable. He said that at that time, Burnam had indicated they would propose that at the platting stage with a covenant, restricting that 100 feet from all development in the future. That would take the form of a binding covenant into a subdivision plat. He said that with the A-1 zoning, it added additional assurances to some of the property owners.

Mr. Burnam commented on additional R-1 housing directly across the street from the project. He commented on the irregular shape of the piece they were buying. He said there were two property owners involved. He stated the piece of property they were attempting to rezone now was owned by DVR. The other piece was owned by George Spencer, The Perry Phillips Trust. He said they had talked about buying that piece and squaring off the property. He said that from the surface when you were looking at a map, it made a lot of development sense to square it off. He said an agreement had not been reached and they did not plan to reach one. He said there were some significant natural barriers to any future development. To begin with, the first, second, and part of the fourth lot contained a major natural gas pipeline. He said it was their opinion that this particular tract of land was certainly undevelopable, or if it was developable, it would be at a very significant expense. They had, therefore, decided not to purchase that piece.

Mr. Burnam said that further to the north, where Gypsy Moth connected with Parker Street there was a very significant ravine.

Mr. Burnam stated that his request for A-1 zoning was two-fold. He said he did not mind making a compromise with the adjacent property owners and giving them the buffer. The flip side of it was that he was not giving that much away. He said a lot of the land was suitable as a wildlife area or a green belt. It was not very suitable for development.

Mr. Knipp asked how far the property line was from Gypsy Moth Drive.

Mr. Burnam replied that it ranged from approximately 105 feet to 120 feet deep.

Mr. Knipp asked if Mr. Burnam was withdrawing his request down to Gypsy Moth Drive.

Mr. Burnam replied that was correct. He said they would have a building setback of about 25 feet from the 100 foot area. He said that would put their closest building line to the north, approximately 125 feet from the property line. He said he felt there would be a pretty significant buffer.

Mr. Burnam said that if you drove through the area, you would see something of a mix. He said some people involved in the Northland Neighborhood Association were very aggressive about keeping their homes nice and well kept. He said the tragedy of this particular area was that adjacent to some of the nice single-family homes were trash heaps. He said that other houses in the area made it unfeasible to develop anything next to.

Mr. Burnam said that one of the primary motivations for his company not going with a grand, fully-scaled out PUD plan, was that they were very close to Elleta Boulevard. He said the Bear Creek Park area tails into an R-3 strip there which is part of the Columbia Housing Authority's property.

Mr. Burnam showed an example of what they intended to build; they would use the same blueprints. He said that generally they catered to a mix of gray collar, working people. He said the quality of tenants had certainly improved of the last three years. He said they were looking for good, working class people. He said they did no Section 8 development and they were not interested in doing that. He also said they were not interested in developing a student ghetto.

Mr. Burnam said he found it tough to argue against some of the residents' request for a PUD. He said he understood the need for assurances. He felt that some of the assurances were already in place, particularly, with the site development problems faced with the R-1 along Parker and the dedication or setback of the natural area to the north. He said he was not sure he was ready to commit resources to go in and develop a major apartment complex in the area. He said he was prepared to go in and replat and build City streets. He said they were contemplating developing a 4, 6 and 8-plex configuration with each building being on individual lots. He said they would adhere to all input from staff through the platting process. He said at the present time, they would like to build 20-40 units of apartments to test the market. He said they did not control the C-1 lot on the corner of Parker and Kitty Hawk Drive. He said they did have control over two interior lots. He said that if they were turned down on the R-3 request, they could go in and develop those two lots immediately; the zoning was in place and the streets were in place.

Mr. Burnam stated that very few people have the track record that Burnam Companies have of promoting quality developments. He felt they had developed a sound plan and had a valid concept. He said that the objections of the neighborhood had been adequately addressed. He said that because of the flexibility issue, he asked for a recommendation of approval from the Commission.

Mr. Knipp asked how many apartments would be in each building.

Mr. Burnam replied that in the particular building shown to the Commission there were eight apartments.

Mr. Burnam said that from a financial standpoint, they had found that it was much easier to get construction loans on smaller size units - 4, 6, or 8-plexes rather than 16, for example.

Harold Anderson, President of the Northland Parker Neighborhood Association, came forward. He said they had reached a compromise that many residents were in favor of by meeting with Mr. Burnam. He said they were a small neighborhood association with few families, but they were very proud of their neighborhood. He said he had moved to the area because of the rural nature of the neighborhood. He said they did not expect someone to come in and build houses comparable to the ones in the south.

Mr. Anderson commented on a meeting with Mr. Burnam and Mr. Shy. He said Mr. Burnam presented the neighbors with a plan which looked good. He said they felt

the buffering was pretty well taken care of. He said that Mr. Burnam had offered to do things by covenant.

Mr. Anderson said they had talked to their Councilman, Jim Loveless, City staff, and their attorney about the issue. He said the advise given to them was that the protection would be there under the PUD. He said the neighborhood association felt the PUD was the proper thing for this particular development. He said Mr. Burnam's proposal was not at the maximum density that an R-3 district would allow.

Mr. Anderson said there was a large tract of land west of Mr. Burnam's property. He said that piece of ground was not developed and was zoned R-1. He felt that whatever happened to the piece Mr. Burnam owned would happen to the western piece.

Mr. Anderson said they had tried to encourage Mr. Burnam to develop the land as a PUD. He said that if Mr. Burnam had turned in a PUD during the present week, it would only have delayed Mr. Burnam until about April 15th. He said Mr. Burnam did not get it in during the present week.

Mr. Anderson said the neighbors did not vote to completely support Mr. Burnam. He said that they did vote to not actively support the developer until they had more details. They had appointed a committee to pursue ideas and get more information. He again stated they felt a PUD was necessary.

Mr. Anderson said they were willing to work with Burnam, but were not going to go against what their lawyer had advised.

Mr. Anderson stated there was concern about an increase in traffic flow if 140-200 units were constructed.

In conclusion, Mr. Anderson said they supported the concept, but they needed help in reaching a consensus that would be reasonable for both parties. He said that the neighborhood wanted him to ask the Commission to reject the R-3 zoning in favor of a PUD.

Ronald Rouse, 2726 Northland Drive, came forward. He said he and his parents own about 2 to 2-1/2 acres. He said the reason there were not a lot people at the meeting was that the houses were quite modest, but characterized by large lots. He said most people had lived there for a considerable length of time. He said he supported Mr. Anderson's recommendation that Mr. Burnam request a PUD.

Mr. Anderson came forward again. He pointed out property owners' lots on the overhead.

Paul Albert, 2702 Parker, came forward. He spoke regarding the rezoning request. He asked that the neighbors be polled so the Commission could see who thought what. He said there was diversity there. He said in fairness to Mr. Anderson, the Commission should see who was backing him and who was not. Mr. Albert turned around to see who was in the audience. He returned to the podium.

Mr. Albert suggested tabling the request until the following week. He said there was no life and death rush on the request, except in the eyes of Mr. Burnam.

He said Mr. Burnam was a fine fellow, but he would not starve if he could not being construction immediately. That would give the neighbors more time to think.

Mr. Albert said he had donated land for a park and it had been hell on earth and damnation because of that. He thought the park helped the value of all the neighbors' houses. He said Anderson had wanted a street to the park. He said it had cost each lot \$1,200.00 which couldn't be paid and it was now \$2,400.00 as the Finance Department could show. He said he should pay for this street; he sure wished his neighbors would pay for the damned interest for 10 years that he couldn't pay. Anderson had wanted a bicycle there and be able to play tennis. He said that even a large landowner could not pay for quite awhile.

Mr. Albert said he had not had a chance to speak to some of his neighbors about an R-3 zoning. Mr. Albert said he was in the Planning Department at 5:00 p.m. He quoted Mitch Skov as stating there was 646 acres of vacant ground which was zoned R-3 at present. He felt the area did not need anymore R-3. He did not think he or his neighbors should have to worry about helping out some bonafide people, specifically, Ron Shy and Burnam. He said they were fine people who had more money than him, more clothes, education. He said he would welcome them to buy one of his lots.

Mr. Albert said that if they put R-3 in his neighborhood, he would have a hell of a time selling his lots.

Mr. Albert said Burnam had upgraded their trailer court, planted trees, etc. He also said they had raised the rent. He said, "God bless them", but the homeless needed to be considered. He felt they needed to be helped.

Mr. Albert addressed the "yellow" going up Northland Drive. He said the people there would get a 100-foot buffer of wild timber. He thought that was fine; the only thing was that they were only part of the picture.

Mr. Albert said they had not put in a design for that trailer court. He said they had no real standing on that. He said we needed more R-3 in their neighborhood like we needed more holes in our heads. He said he and his neighbors were just some hard working slobs at a nickel and dime. He said unfortunately Mr. Anderson thought Burnam was a pretty swell fellow and he did too. He said he would be glad to have them buy one of his lots. He said they would have fine neighbors there. He said they did not want to live near them. He said apartment owners did not want to live in their apartments; they just wanted those apartments in the other fellow's back yard tearing down the value of that homes. He asked if we should help out the Burnams and the Shys and cut the throat of everyone else.

Mr. Albert said he did not make up the agenda. He said it was made up by the Planning Department. He started to comment on the Chinn rezoning. He said that everything the Blue Ridge residents had said was true and that it applied to his neighborhood also.

Mr. Albert commented on the "L" shaped piece of land. He said it had a deep valley. He said it should not be mowed; the land had a lot of nice trees that should stay there. He said people would be dead for 100 years before anyone would want to build in the deep valley. He commented on nice houses on Blue Ridge Road take a year to sell.

He said that one Councilman sitting where Mr. Schrader was sitting years ago said that the only reason he ran for Council was to get Nifong built out to his house.

Mr. Albert said he would like to see Mr. Burnam and Mr. Shy living with them. He said he'd be glad to sell them one of his lots; he was hard up to sell them.

Mr. Albert said he had contributed the park, with the restriction that they would have the right to have a cul-de-sac there because of the way the water crested.

Mr. Albert said Mary Anne McCullom did not give Mr. Albert 10 minutes to let him show the scum (trailer court) put another road in with another young fellow. He said everybody could go to hell where the rich thrive and get some more blood out of them. The poor slobs would suffer.

Mr. Albert stated there were a lot of apartments empty. He said Whitegate and lots on Oakland Road were hurting. He felt there was only a market for the high class people that the Burnams strive for (God bless them). He said there was a lot of R-3 sitting empty and 646 acres that could be built on.

Mr. Albert again suggested tabling the request. He said a PUD was not worth a hoot unless it was in a deed.

Mr. Albert stated his own yard could stand some improvement; he said he did not like to see papers, bottles, and cans go to the dump. Therefore, he picked it all up. Hopefully, he said there would be a pick-up someday for that.

Tom McNabb, 104 Clinkscales, came forward. He said he owned 18 acres northeast of the subject site, and had signed the contract on the property April 12, 1977. He said the property there was zoned R-2 and it was the first instance of down-zoning in the City of Columbia. He said this did not work out, and several other issues had been brought up concerning trees, birds, landscaping, etc. He said there was one delay after the another. Consequently, after the delays, interest rates went up, winter came along and delayed the building season. Prices got out of hand. Therefore, he had not done any building there.

Mr. McNabb said he had the second largest financial interest in the area. He said he was very much concerned about what the Burnams did, but he also knew that the longer something was drawn out, money that could be spent on landscaping, trees, and actual building could just go to waste. He felt if the issue was drawn out, it would not be in the best interest of the neighborhood. He said he would like to see the amended version passed where there was a buffer along the north side.

Mr. McNabb said that after the vote was taken, he would like to made a couple of comments concerning the particular neighborhood in question.

Mr. Willey explained to Mr. McNabb that if he had further comments, he probably should make them now, or under Comments of Visitors.

E.L. Miller, 2742 Northland Drive, came forward. He said Mr. Anderson had spoken for all the people on Northland Drive.

Mr. Miller pointed out where Mr. Gutis had built a new house three years ago. He said that before the Gutis came in, he was the "new kid on the block", moving into the area in 1980. He said it was a stable neighborhood and he would like to see it stay that way.

Mr. Willey asked Mr. Burnam about the proposed plan that Mr. Anderson had. He asked if that was the plan he was interested in following, or if it was a very, very rough draft.

He said it was very rough; he suspected the general pattern of what was shown on the sketch would come about.

Mr. Willey asked Mr. Burnam if he had any idea what the maximum number of units would be on the tract.

Mr. Burnam said he thought the maximum would be around 250. He said they had 66 units in the immediate vicinity existing right now. They felt that to achieve any kind of economies of scale and an effective management plan, they needed to have a minimum of 100-150 units in the area. He said that at this point in time though, they were reserving flexibility to look at future developments. He felt they could come up with some sort of a compromise on the density. He knew Mr. Anderson was very concerned about the density.

Mr. Knipp asked Mr. Burnam to clarify their basic agreement.

Mr. Burnam stated they had reached an agreement, specifically regarding the buffers to the north, the type of development to be structured, i.e, maintenance free exterior, vinyl siding, something tasteful. He said that until they had full-scale engineering done on the site, he could not commit to a finished density of what it would end up being.

Mr. Burnam said that in the particular area, he was not particularly interested in investing a significant amount of money in developing a PUD. He said it was too costly and he did not know what would happen in the future.

Mr. Anderson said he felt in all fairness, Mr. Burnam was pushing for a maximum of 175 units, and he had asked them to hold it to two times the number of lots he owned, or 144 units.

Ronald Rouse, 2726 Northland Drive, came forward again. He said he felt all residents, if given their preference, would like to keep the area as it is. He said he was attractive out there because of the vacant land.

He felt the request had taken a lot of residents by surprise.

PUBLIC HEARING CLOSED

Mr. Schuster asked for the pros and cons of covenants vs. a PUD.

Mr. Hancock said the City staff was not in a position to enforce private covenants or restrictions.

Mr. Willey said that had to be enforced through the courts privately.

Mr. Niedergerke added that many of the PUD restrictions are also privately enforced.

Mr. Knipp said he felt that, if Mr. Burnam would be willing to modify his request to include all of the land north of Gypsy Moth Drive, the Commission should go along with his request. He thought he had practically offered to do that.

Mr. Lister felt the neighbors would prefer to see that area in question in a PUD. He said he sympathized with Mr. Burnam's situation in not really knowing what was going on with interest rates. He felt that in looking at the numbers and the size of the tract, it seemed that many of the possibilities that Mr. Burnam suggested would work under R-2. He commented on the fact that promises of an owner tended to leave with that owner, if they decided to sell the property to someone else. He said that essentially, the bottom end of R-3 would go far beyond what Mr. Burnam was suggesting in the number of units. He said he would rather see this in a PUD with the large R-1 section still to the west of it and the concerns to the north.

Mr. Schrader stated he understood that the request before the Commission had been modified so that the north 100 feet would be requested to be zoned A-1, with the rest R-3.

Mr. Schrader moved to recommend approval of the modified proposal. Seconded by Mr. Knipp.

Mr. Whiteside stated he felt Mr. Burnam's offer to change the north 100 feet to an A-1 request was made in good faith; but he suspected that 10 years from now, someone would try to figure out how that happened and they would not be able to come up with good reasoning. He felt that someday the north 100 feet would be zoned similarly to the rest of the property.

Mr. Whiteside felt, in looking at the whole thing, the staff's recommendation in regard to a phased zoning from south to north across the tract of land made considerable sense. He felt an R-3 PUD, somewhere along the plans Mr. Anderson had, made sense. He felt the A-1 buffer area on the north would, in all likelihood, be something of a temporary nature. He said it was unlikely that the property would remain A-1 from now on. He felt if the development was successful, someone would wish it to be zoned something other than A-1. He did not think the Commission could concern itself with private restrictions and covenants. He said they were not in a position to require anyone to have private restrictions and covenants.

Mr. Willey commented on the lack of turnover in the neighborhood. He noted that the people did not want to sell their place, they wanted to live there and enjoy

it. He saw nothing wrong with building apartments in the area, but the number of apartments did bother him. He felt that if Burnam Companies did not fill the property up and sold part of it, the new buyer might go in and try to put in more density than what the Burnams intended to do. This did bother him. He said he would like to find a method where the two parties could get together - letting Mr. Burnam get along with his project and where the neighbors would be in a position where they would be satisfied that the density was going to be something not to exceed 150 units.

Mr. Willey said the only way the Commission had to control the number of units was to make it a planned unit development. He said that it bothered him to make the entire 22-acre tract R-3 with the possibility being 374 dwelling units going in there. He did not think that would ever happen because of the constraints of the topography and the gas line. However, he said that as they examined other areas in town, it seemed like there was no hill that was too tall or no gully too deep to be cut or filled. He felt, at this point in time, he would vote to table the request to see if there would be some way that the neighbors and the developer could get together, or perhaps vote denial.

Mr. Niedergerke commented on the property to the west. He said he had no idea at this time what would be appropriate there.

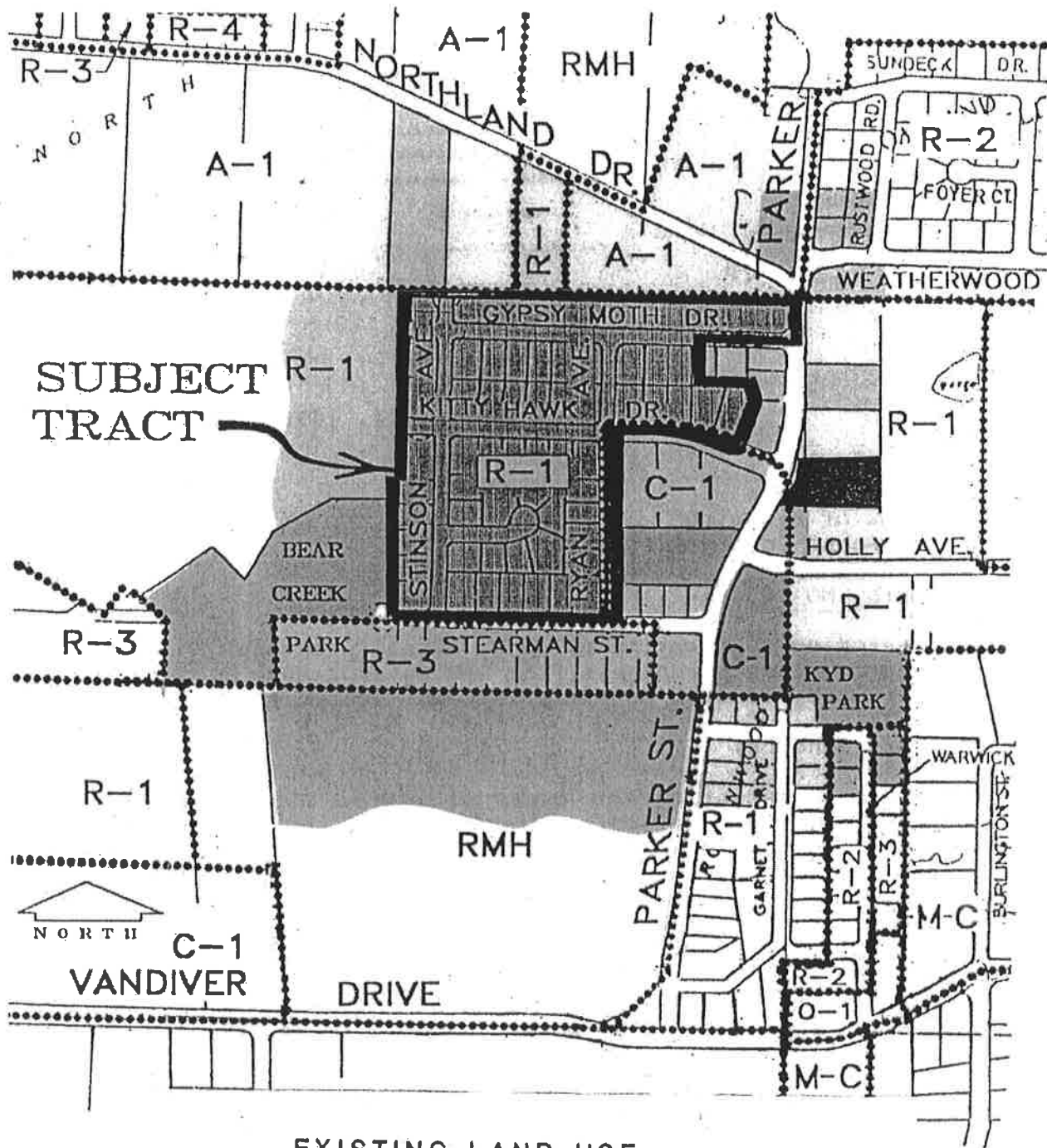
Mr. Schuster asked Mr. Hancock if he had mentioned working with Mr. Burnam to get started with the project and starting a PUD later.

Mr. Bondra stated he had mentioned that. He said one suggestion was that he rezone whatever portion of the property he needed for his first phase to R-3, and withdraw the rest, coming back with a PUD on the remainder of the property.











Mr. Burnam stated the problem with that was that you had to build an expensive street to get into the property and you were not assured of any future rezoning once the street was built and the first phase was complete. He was not willing to take the gamble of putting in a \$50,000-60,000 street to service 10-30 units of apartments.

Call for Question

Roll Call Vote: Yes is to recommend approval of the amended rezoning request; the north 100 feet would be rezoned from R-1 to A-1 and the remainder of the tract from R-1 to R-3. Voting yes: Mr. Knipp, Mr. Reed, Mr. Schrader. Voting no: Mr. Whiteside, Mr. Willey, Mr. Lister, Mr. Niedergerke, Mr. Nolan, Mr. Schuster. Motion denied 6-3.



EXISTING LAND USE

- | | |
|--|---|
|  Single Family Res. |  Commercial |
|  Duplex Res. |  Industrial/Util. |
|  Multi-Family Res. |  Community Facil. |
|  Mobile Home |  Parks, Open Space |
|  Office |  Vacant |

LAW OFFICES OF
DAVID B. ROGERS

ATTORNEYS AT LAW
SUITE 8, VILLAGE SQUARE BUILDING
813 EAST WALNUT STREET
COLUMBIA, MISSOURI 65201

(314) 442-0131

FAX: CALL FIRST (314) 442-0132

DAVID B. ROGERS
MARY ROGERS GORDON*
*ALSO LICENSED IN ILLINOIS

RECEIVED

FEB 14 1990

DEPARTMENT OF PLANNING

February 14, 1990

Mr. John Hancock
Director of Planning
Daniel Boone County-City Building
7th & Broadway
Columbia, MO 65201

Re: Rezoning application filed by Burnam Companies
as contract purchasers from DVR Enterprises
Property located on Parker Street, Columbia, MO

Dear Mr. Hancock:

I am now representing the owner of record DVR Enterprises, 5600 South Highway KK, Columbia, Missouri, and the contract purchaser Burnam Companies, 1110 I-70 Drive Southwest, Columbia, Missouri, 65201. Please enter my appearance as attorney of record.

On behalf of the owner and the contract purchaser, I wish to amend our application prior to the time that the same goes to the City Council as follows:

Please delete Lots 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81 and 82 of Kitty Hawke Manor, Plat No. 2 as the same is shown of record in Plat Book 12, Page 66 of the Boone County, Missouri Records, as well as all of Gypsy Moth Drive, the north 140 feet of Ryan Avenue and all of Stinson Avenue bounded by Lots 67, 68, 69 and 70 from our rezoning application.

The effect of this will be to eliminate from our application all that portion of the property for which rezoning was requested which lies north of the south line of said lots 59 through 68, both inclusive.

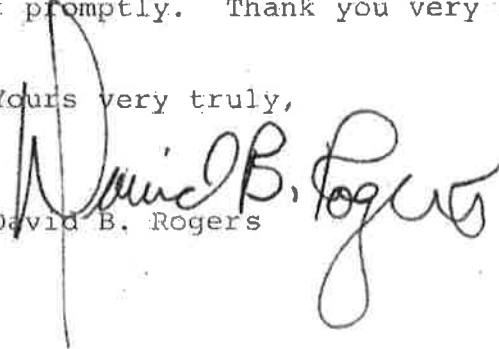
I would like to have this application amended so that the advertisement which goes to the paper this Friday, advertising our application for hearing at the Council meeting on March 5, 1990 shows this property as amended. I believe that we are permitted

Page 2

Mr. John Hancock
February 14, 1990

to make this amendment as a matter of right, since we are asking for less than the original rezoning request. We will be reducing the amount of R-3 zoning and we are not asking for anything in the way of rezoning on the property described above. If for any reason you do not think that you can make this amendment and amend the rezoning ad which will be going to the paper, please contact me immediately. If there are any additional expenses involved in revising this rezoning map which will be published in the paper, please advise and I will remit promptly. Thank you very much for your cooperation.

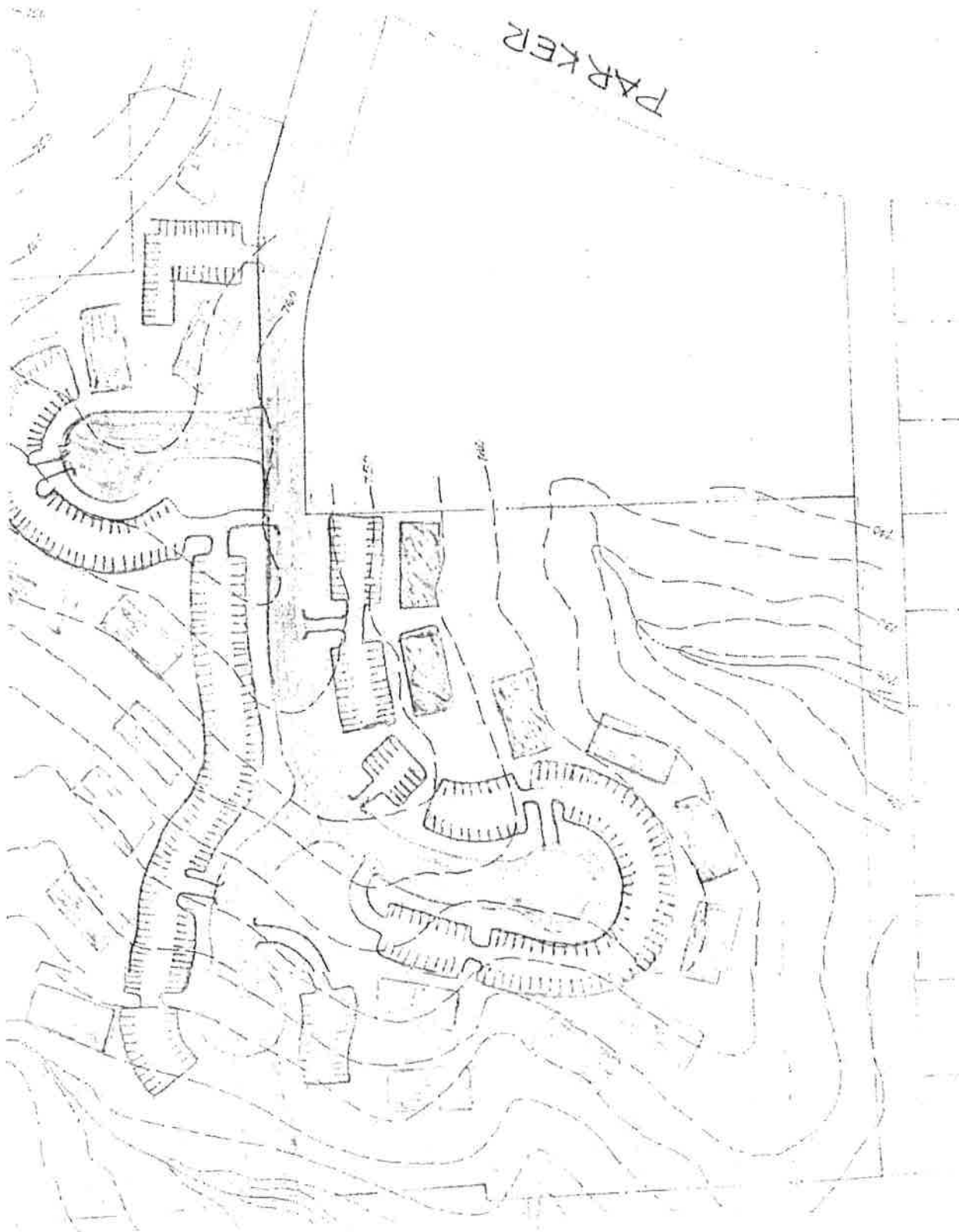
Yours very truly,


David B. Rogers

DR/bc

cc: Mr. Cris Burnam

PARKER



NOTICE OF PUBLIC HEARING

Notice is hereby given of a public hearing before the Planning and Zoning Commission of the City of Columbia, Missouri, to be held in the City Council Chamber on the Fourth Floor of the Daniel Boone Building, 701 East Broadway, in said City on Thursday, February 8, 1990, at 7:00 p.m. to give all citizens and interested parties an opportunity to be heard in relation to the following:

REQUEST BY D.V.R. ENTERPRISES FOR THE BURNAM COMPANIES TO REZONE FROM R-1 (ONE-FAMILY DWELLING DISTRICT) TO R-3 (MEDIUM DENSITY MULTIPLE-FAMILY DWELLING DISTRICT), PROPERTY LOCATED WEST OF PARKER STREET, APPROXIMATELY 1500 FEET NORTH OF VANDIVER DRIVE, CONTAINING APPROXIMATELY 22 ACRES.

PLANNING AND ZONING COMMISSION

Stephen H. Willey
Chairman

INSERTION DATE: TUESDAY, JANUARY 23, 1990

NOTICE TO PAPER:

PLEASE SEND TWO COPIES OF THE AFFIDAVIT OF PUBLICATION IMMEDIATELY TO THE CITY OF COLUMBIA, DEPARTMENT OF PLANNING AND DEVELOPMENT, PO BOX N, COLUMBIA, MISSOURI 65205. (MEZZANINE, CITY/COUNTY BUILDING). OUR PURCHASE ORDER IS 70128.

PAPER: COLUMBIA DAILY TRIBUNE DATE MAILED: JANUARY 19, 1989

**APPLICATION
FOR
REZONING OF PROPERTY
(Revised May 2, 1989)**

General location of property (use street intersections if possible) _____

A portion of Kitty Hawk Manor Plats 1 & 2

Street address of property _____ N/A _____

Size of tract (acreage or square feet) _____ 22 ± acres _____

Deed to property recorded in Book _____, Page _____

Present zone(s) _____ R-1 _____

Requested zone(s) _____ R-3 _____

Present use(s) of property _____ Vacant _____

Columbia Land Use Plan designation _____ Low Density Residential _____

Reason for requesting zoning change _____ To accommodate expansion of multiple
family development _____

*****SEE REVERSE FOR DESCRIPTION OF ALL ITEMS WHICH MUST BE INCLUDED WITH THIS APPLICATION****

1. Check \$200.00(City of Columbia) -
2. Legal Description -
3. Location Map -
4. Owners within 185' -

OWNERS

of record:

D. V. R. Enterprises
name
5600 South Hwy. KK
address
Columbia, MO 65201
city state zip
(314) 445-1637
phone

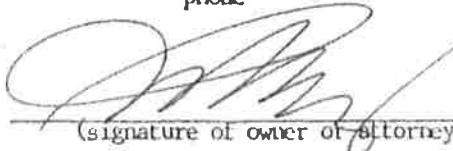
**CONTRACT PURCHASER
(if applicable):**

Burnam Companies
name
1110 I-70 Drive SW
address
Columbia, MO 65201
city state zip
(314) 449-0093
phone

AGENT

(if other than owner):

Ron C. Shy
name
1407 Vandiver Dr.
address
Columbia, MO 65202
city state zip
(314) 443-5223
phone



(signature of owner or attorney representing owner)

1/17/90

(date)

DVR. log

REQUEST FOR COUNCIL BILL

Department requesting ordinance: PLANNING & DEVELOPMENT

Description of ordinance (scratched up copy of another ordinance, rough draft, or memo describing all aspects of ordinance): _____

____ REQUEST BY DVR ENTERPRISES FOR THE BURNAM COMPANIES TO REZONE FROM R-1 (ONE-FAMILY DWELLING DISTRICT) TO R-3 (MEDIUM DENSITY MULTIPLE-FAMILY DWELLING DISTRICT), PROPERTY LOCATED WEST OF PARKER STREET, APPROXIMATELY 1500 FEET NORTH OF VANDIVER DRIVE, CONTAINING APPROXIMATELY 22 ACRES. _____

P+Z recommended denial.

Appropriation: Amount _____

From the _____ Acct # _____
(name of account or fund)

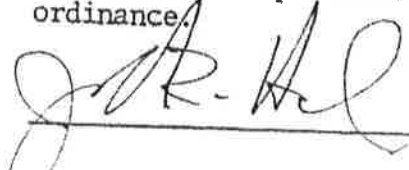
To the _____ Acct # _____
(name of account or fund)

For: _____

Approval of appropriation: _____
Finance Director

Form of certification (to be filled in by the Finance Director): _____

Signature of department head requesting ordinance.



Date Submitted: 2-9-90

**EXCERPTS
PLANNING AND ZONING COMMISSION
FEBRUARY 8, 1990**

ITEM 3 (b) REQUEST BY DVR ENTERPRISES FOR THE BURNAM COMPANIES TO REZONE FROM R-1 (ONE-FAMILY DWELLING DISTRICT) TO R-3 (MEDIUM-DENSITY MULTIPLE FAMILY DWELLING DISTRICT), PROPERTY LOCATED WEST OF PARKER STREET, APPROXIMATELY 1500 FEET NORTH OF VANDIVER DRIVE, CONTAINING APPROXIMATELY 22 ACRES.

Staff report was given by Charles Bondra, Department of Planning and Development. Staff recommended a 90 day continuation while the Northeast Area Plan was being worked on. Mr. Bondra stated one possibility might be for Mr. Burnam to reduce the size of his R-3 request at least temporarily and possibly ask for zoning on the land used for the first phase. He could request a PUD in the future on the remainder of the property. This would allow Mr. Burnam to get started on this project without being delayed by a PUD process, and to work details out with the neighbors. He said most neighbors were in agreement with an R-3 zoning as long as the density was limited and they had some buffering between this development and their properties.

Mr. Bondra stated staff's recommendation of a 90-day continuance might not be appropriate at this point. He said that other than a PUD, staff did not know any other way to insure the kind of things the neighbors wanted and to allow the developer to develop the land with apartments.

Mr. Bondra stated the staff's recommendation presently would be for denial of the proposal as it stands, or for approval of some reduced version of the request.

PUBLIC HEARING OPENED

Chris Burnam, 1110 I-70 Drive, S.W., came forward. He stated he and his company were familiar with the area. He stated a lot of the things mentioned by Mr. Bondra, i.e, the mobile home park to the south, the R-3 to the east and west of Parker Street, were familiar to his company as they owned that particular mobile home park and apartments. He said they had undertaken the mobile home park to upgrade it at significant expense. He said from an economic standpoint, it had been a real benefit. Burnam said his company had purchased the apartments three years ago.

Mr. Burnam said that currently they were developing a mobile home park addition located on Holly Avenue. He said there were approximately 120 units there and they were in the process of adding an additional 35 units.

Mr. Burnam said they had worked with the Northland Homeowners' Association in the past very successfully. He said they were very close to coming to an agreement now.

Mr. Burnam requested an amendment to his zoning request. He asked that the northern 100 feet of the entire property around Gypsy Moth Drive be rezoned to A-1.

AN ORDINANCE

amending the Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, by changing and amending the zoning map whereby property located at the southwest corner of Business Loop 70 and Sexton Road will be rezoned and become a part of M-1, General Industrial District; repealing all conflicting ordinances or parts of ordinances; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended and changed so that the following described property, to wit:

A tract of land located in the easterly part of Lot "G" in Farley's Second Addition to the City of Columbia, Missouri and more particularly described as being Tract 3 of a survey recorded in book 448 page 186 except that part zoned M-1, containing 1.8 acres.

will be rezoned and become a part of M-1, General Industrial District, and taken away from C-3, General Business District, so that hereafter the property may be used for all the purposes permitted in District M-1.

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this 5th day of March, 1990.

ATTEST:

/s/ Launa H. Daniel
City Clerk

/s/ Chester B. Edwards
Mayor and Presiding Officer

B65-90 To rezone from R-1 to R-3 property located west of Parker Street, 1500 ft. north of Vandiver Drive.

The bill was given second reading by the Clerk.

Mr. Beck pointed out that the Planning and Zoning Commission had recommended denial of this request on a 6-3 vote. After that vote the City received a letter from an attorney representing the applicant. An amendment sheet, providing a buffer on the north side, was included in the packet. There was also a memo from the Parks and Recreation Commission indicating that they did not oppose the proposed rezoning.

Mr. Hancock displayed a sketch on the overhead reflecting the proposed amendment brought in by the attorney representing the property owner. He said it would pull the zoning district boundary about 310 feet south of the A-1 and R-1 zoned property along Northland.

Mr. Edwards asked the approximate size of the tract. Mr. Hancock said it was about 14 to 16 acres. Mr. Edwards asked if the amendment sheet reflected the request of Mr. Rogers on behalf of the applicant. Mr. Hancock said it did and added that it no longer included an acreage reference.

Mayor pro-tem Edwards opened the public hearing.

David Rogers, an attorney representing the Burnam Companies, the contract purchaser of the subject ground. He explained that it had originally been an approximately 23-acre tract and the effect of the amendment, moving the northern line southward approximately 310 feet had the effect of reducing it to between a 15 or 16-acre tract. Mr. Rogers said this was an area where it was difficult to make sound zoning decisions at best because of the mixed uses and zonings in the area including some very nice residential homes to the north and the immediate east of the property along with two sets of apartments immediately in the area and two trailer parks. He said the Burnams own apartment units immediately to the south of the subject property consisting of 33 units and immediately across the street consisting also of units numbered in the 30's. They own Vandiver Park to the south and Holly Park Village to the east. He said they had created a substantial improvement in the area in the last two or three years that they have owned the properties and have substantially upgraded the apartment units in the area. Mr. Rogers said if the Council were to approve the rezoning request in its amended form it would allow them to get started this construction season on the part there is no argument about. He didn't think the neighborhood had objected to the R-3 zoning in the area, but were concerned about what was going to happen when they get up toward Northland Drive. He said this would allow them to test the market and that they were planning on building a slightly better unit than they have in the existing apartments in the immediate area. He said it would give them a chance to develop an area without impacting, at all, on the area up toward Northland Drive because there are a substantial amount of trees in there that will not be touched and some elevation differences which would totally buffer that area. Then if they see that the project is successful and want to expand it at all, the Council would be in a position to completely control any such expansions. He said if they had to come back with a FUD for the entire tract they will have lost this construction season and probably the contract. Mr. Rogers asked that they pass the ordinance in its amended form. Harold Anderson, President of the Parker Northland Neighborhood Association, explained the makeup of their neighborhood. Mr. Anderson spoke in opposition to the proposal and disagreed with Mr. Rogers' statement when he said they didn't oppose the R-3. He said that was not correct, they did not want it because they felt they would have no protection if the property should be sold later on. Mr. Anderson said they thought the area would develop R-1 if given the chance and given time. He said they wanted something they could be proud of and that they weren't proud of the two apartments on Parker Street although Mr. Burnam had

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painted them and had done some landscaping. Mr. Anderson said they appreciated the fact that they had had several friendly meetings with the developer, but that the density question kept coming up and where they would be if the land was sold to someone else. He said the developer had withdrawn his offer of the buffer zone to the neighborhood because they could not agree with him on the concept. They felt their only protection left was the R-1. Mr. Anderson said they would have backed the developer if he would have come back with an R-2 FUD. He had a signed petition by all of the neighborhood homeowners opposing the R-3 zoning.

Paul Albert, 2703 Parker, questioned a developer destroying a single family neighborhood. He said they didn't need R-3 in their neighborhood nor did they need more apartments in their neighborhood.

Andy Gutti, a member of the Northland Drive Neighborhood Association, said they didn't want to come out in opposition to just any kind of development, but that they would like to have it develop as an R-1 if at all possible. He said their main concern with apartments was the number of units that could possibly be put in there with R-3 zoning. They had tried to come to an agreement on that issue but couldn't. He felt they could support an R-2 FUD.

Chris Burnam said their strategy over the past few years had been to buy distressed properties in the area and significantly upgrade them. He felt they had done that, and had also been very good corporate citizens in the area. He said it not only benefits the neighborhood but also benefits them economically. He said they had tried their best to accommodate the Homeowners Association in regards to density and at one time they had offered capping the density at 160 units, the deed restrictions, in the 16-acre property. Mr. Burnam said they would make an immediate effort to follow up on something like that if the Council chose to support them.

There was a discussion about transferring the area north of Gypsy Moth to the adjacent property owners and the area from Gypsy Moth Drive to Kitty Hawk as an R-2 FUD. Mr. Burnam said their philosophy had been to try to get along with the neighbors as best they could. He said they felt the 16 acres with 160 units would be a reasonable density and would work from an economic standpoint. Mr. Burnam said starting from the northernmost Gypsy Moth — from Gypsy Moth north it would be a buffer area, Gypsy Moth south to the southern boundary line of the row of lots to the south of Gypsy Moth would be an R-2 FUD and from there south would be R-3. Mr. Edwards asked how they would access. Mr. Burnam said they would abrogate the plat as it stands right now and would access the R-2 FUD through the R-3 property. As far as the R-2 FUD goes, Mr. Burnam said that was really not land they were planning on developing in the foreseeable future, but in order to ease fears in the neighborhood he said they would be willing to file for the R-2 FUD.

Ms. Lynch asked if they would still be willing to limit the density in the R-3 area to 160. Mr. Burnam said he would. Mr. Hutton asked if there was any way to limit the density other than a covenant. Mr. Boeckmann said that private covenants would not be enforceable by the City. Mr. Burnam asked about offering a deed restriction. Mr. Boeckmann said they were basically the same thing but would be enforceable by private landowners. Mr. Rogers said they would pledge to the City that they would not sell it to a subsequent buyer without such a restriction in it. Mr. Loveless asked how the City stood on enforcing that restriction. Mr. Rogers said that was a private covenant enforced by private parties but the City had two things going; their representation that they won't do it, and that they would have given all of the adjoining landowners the right to enforce it because a private covenant was very much enforceable by anyone in the neighborhood of the land involved. Mr. Edwards asked if this bordered on conditional zoning. Mr. Rogers said he didn't think so because there was no condition. He said there was a 300-foot strip that is not being rezoned and they were representing to the Council that they were not only asking it not to be rezoned, but said they would not in the future ask for a density greater than R-2 FUD and probably less.

Mr. Anderson explained that their first agreement broke down because their lawyer had told them it would be conditional zoning.

Mayor pro-tem Edwards closed the public hearing.

Mr. Loveless said he had serious reservations about this rezoning because he was concerned about the amount of traffic generated by a potential 160 units additional exiting onto Parker Street. He said there was no signal at the intersection of Parker and Vandiver and to get onto Vandiver at any high traffic time during the day is difficult as it is, particularly in the morning and evening as people go and come from work. He was also concerned about the relatively high rate of apartment vacancies that presently exist in the City. Another problem he had was the land use plan and he said this particular rezoning would be against the current plan. Since the North Area Land Use Plan was under revision currently, Mr. Loveless thought the rezoning to be premature. He said he would feel much better if the Burnam Companies would be willing to dedicate the north part of the tract as a City park so we could be assured that it would benefit all Columbians.

Mr. Beck said there would be a public hearing this spring on the North Area Land Use Plan.

Mr. Campbell was troubled by the large area involved and the fact that it was an open zone.

Mr. Scheurich said the property was bordered on the south by R-3, and on the east by C-1, and doubted that the property would ever develop as an R-1 district. With the amendment, Mr. Scheurich said he would vote in favor of the rezoning.

Mr. Campbell said he thought at times a very poorly done R-1 could be as bad, if not worse, than an R-3.

Ms. Lynch felt the compromise was reasonable with the developer having taken approximately 8 acres out of the R-3 development and gone with an R-2 FUD, which was exactly what the neighbors had requested, as well as the buffer area. She didn't agree that it should be dedicated as park land because that would take it off the tax rolls, although she said she was in favor of green space. Ms. Lynch requested that deed restrictions be included to limit the number of R-3 units to a maximum of 160. She also didn't think that single family residences would develop in the area due to the mobile homes and the commercial zoning in the area. She felt there could be some very discouraging projects in R-1 that the neighbors would fight much more aggressively.

Mr. Campbell made the motion that B65-90 be amended per the amendment sheet. The motion was seconded by Mr. Scheurich with the vote recorded as follows: VOTING YES: SCHEURICH, LOVELESS, HUTTON, CAMPBELL, EDWARDS, LYNCH. VOTING NO: NO ONE. ABSENT: MCCOLLUM. Motion passed.

Ms. Lynch asked that Mr. Burnam file for an R-2 FUD for the strip as soon as possible. Mr. Rogers said it would sit there in an undevelopable form. She said she would

like it done as protection for the neighbors.

B65-90, as amended, was given third reading with the vote recorded as follows:
 VOTING YES: SCHEURICH, CAMPBELL, EDWARDS, LYNCH. VOTING NO: LOVELESS, HUTTON. ABSENT:
 MCCOLLUM. Bill declared enacted, reading as follows:

Introduced by McCullum

First Reading February 19, 1990 Second Reading March 5, 1990

Ordinance No. 012542 Council Bill No. B.65-90 A

AN ORDINANCE

amending the Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, by changing and amending the zoning map whereby property located west of Parker Street approximately 1,500 feet north of Vandiver Drive, will be rezoned and become a part of R-3, Medium Density Multiple-Family Dwelling District; repealing all conflicting ordinances or parts of ordinances; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The Zoning District Map established and adopted by Section 29-4 of the Code of Ordinances of the City of Columbia, Missouri, is hereby amended and changed so that the following described property, to wit:

Lots 11 through 17 of Kitty Hawk Manor, Plat #1, as recorded in Plat Book 12, Page 48 of the Boone County, Missouri records.

Lots 18 through 53 of Kitty Hawk Manor, Plat #2, as recorded in Plat Book 12, Page 66 of the Boone County, Missouri records, excepting Gypsy Moth Drive, the north 140 feet of Ryan Avenue and all of Stinson Avenue bounded by Lots 67, 68, 69 and 70.

will be rezoned and become a part of R-3, Medium Density Multiple-Family Dwelling District, and taken away from R-1, One-Family Dwelling District, so that hereafter the property may be used for all the purposes permitted in District R-3.

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this 5th day of March, 1990.

ATTEST:

/s/ Laina H. Daniel
 City Clerk

/s/ Chester B. Edwards
 Mayor and Presiding Officer

B66-90 To rezone from A-1 to R-1 property located on east side of Oakland Gravel Road, 500 ft. north of Northridge Drive.

The bill was given second reading by the Clerk.

Mr. Edwards explained that a protest petition had been submitted against this rezoning request which meant that 5 of the 7 Council members needed to vote in favor of the rezoning.

Mr. Beck said that the rezoning had been recommended by the Planning and Zoning Commission on a 7-2 vote. He said questions had been raised about building streets in a flood plain area. Mr. Beck said a street could be built in the area if it was built across the flood plain with compensation made to allow water to pass through it. He added that if the tract was properly platted and properly engineered it could technically be developed.

Mr. Hancock displayed on the overhead a rendering of the 100-year flood plain.

Mr. Loveless asked about restrictions for building residences in a flood plain. Mr. Patterson said they were showing a typical cross section and in the area labeled floodway there could be no development that increases the elevation of the 100-year flood in the floodway. He identified floodway fringe and explained they were areas in the 100-year flood plain that could be developed provided the improvements are elevated to the point where they would offer 1-foot freeboard over the 100-year flood elevation. He said the 100-year floodway elevation could not be increased. There was a discussion about the accuracy of the elevations and Mr. Patterson explained how they were arrived at. He said the elevations were pretty accurate but the cross sections probably vary considerably. Mr. Campbell asked how frequently they were revised to take into account the changes in the runoff caused by development upstream. Mr. Patterson explained that the responsibility for changes in the identified floodway, profile, and cross section was the developers.

Mayor pro-tem Edwards opened the public hearing.

Dennis Palmer, 8455 Westlake Rd., the applicant, asked the Council to keep in mind that he wasn't asking for anything that Council hadn't passed routinely for anyone else asking for R-1 zoning.

Mr. Campbell asked if this parcel was part of a much larger tract. Mr. Palmer said it was. Mr. Campbell asked if plans had been developed for the entire tract. Mr. Palmer said he had not.

Mr. Hutton said the only way he could develop it was by one single road off of Oakland. Mr. Palmer agreed.

Mike Gilbert, 2615 Pine Drive, explained that his property was directly south of the