

DOCKET #: F1512

PROPOSED ZONING:
LI-S and Special Use Permit

EXISTING ZONING:
RS40

PETITIONER:
J. Westmoreland Inc.
for property owned
by Same

SCALE: 1" represents 700'

STAFF: Roberts

GMA: 5

ACRES: 17.5

**NEAREST
BLDG:** 250' southeast

MAP(S): 654890



July 31, 2009

J. Westmoreland, Inc.
c/o Thomas R. Westmoreland, President
6852 Old Still Trail
Kernersville, NC 27284

RE: ZONING MAP AMENDMENT F-1512

Dear Mr. Westmoreland:

The attached report of the Planning Board to the Forsyth County Board of Commissioners is sent to you at the request of the Commissioners.

When the rezoning is scheduled for public hearing, you will be notified by the Clerk to the County Commissioners, of the date on which the Commissioners will hear this petition.

Sincerely,

A. Paul Norby, FAICP
Director of Planning

Attachment

pc: County Manager's Office
Jim Bryan, 5261 High Point Road, High Point, NC 27265

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: _____ **AGENDA ITEM NUMBER:** _____

SUBJECT:-

- A. Public Hearing on zoning map amendment of J. Westmoreland, Inc. from RS-40 to LI-S (Building Contractor, General; Building Contractor, Heavy; Landfill, Land Clearing/Inert Debris, 2 acres or less; Dirt Storage; Wholesale Trade B; Agricultural Crop Production; and Agricultural Livestock Production) and Special Use Permit for access to RS-40 zoning through LI-S zoning: property is located on the west side of Walnut Cove Road, north of Pine Hall Road (Zoning Docket F-1512).
- B. Ordinance amending the Forsyth County Zoning Ordinance and Official Zoning Map of the County of Forsyth, North Carolina.
- C. Approval of Special Use District Permit
- D. Approval of Site Plan
- E. Approval of Special Use Permit

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:-

See attached staff report.

After consideration, the Planning Board recommended approval of the rezoning petition and Special Use Permit.

ATTACHMENTS:- YES NO

SIGNATURE: _____ **DATE:** _____
County Manager

COUNTY ORDINANCE - SPECIAL USE

Zoning Petition of J. Westmoreland, Inc., Docket F-1512

AN ORDINANCE AMENDING
THE FORSYTH COUNTY
ZONING ORDINANCE AND THE
OFFICIAL ZONING MAP OF
THE COUNTY OF FORSYTH,
NORTH CAROLINA

BE IT ORDAINED by the Board of County Commissioners of the County of Forsyth as follows:

Section 1. The Zoning Ordinance of the *Unified Development Ordinances* of the County of Forsyth, North Carolina, and the Official Zoning Map of the County of Forsyth, North Carolina, are hereby amended by changing from RS-40 to LI-S (Building Contractor, General; Building Contractor, Heavy; Landfill, Land Clearing/Inert Debris, 2 acres or less; Dirt Storage; Wholesale Trade B; Agricultural Crop Production; and Agricultural Livestock Production) the zoning classification of the following described property:

PIN #s 6859-52-4442 and 6859-52-7349

Section 2. This Ordinance is adopted after approval of the site plan entitled J. Westmoreland, Inc., and identified as Attachment A of the Special Use District Permit issued by the Forsyth County Board of Commissioners the _____ day of _____, 20____ to J. Westmoreland, Inc..

Section 3. The Board of Commissioners hereby directs the issuance of a Special Use District Permit pursuant to the Zoning Ordinance of the *Unified Development Ordinances* for a development to be known as J. Westmoreland, Inc.. Said Special Use District Permit and site plan with associated documents are attached hereto and incorporated herein.

Section 4. This Ordinance shall be effective from and after its adoption.

COUNTY, SPECIAL USE DISTRICT PERMIT

SPECIAL USE DISTRICT PERMIT

Issued by the Forsyth County
Board of Commissioners

The Forsyth County Board of Commissioners issues a Special Use District Permit for the site shown on the site plan map included in this zoning petition of J. Westmoreland, Inc. (Zoning Docket F-1512). The site shall be developed in accordance with the plan approved by the Board and bearing the inscription: "Attachment A, Special Use District Permit for LI-S (Building Contractor, General; Building Contractor, Heavy; Landfill, Land Clearing/Inert Debris, 2 acres or less; Dirt Storage; Wholesale Trade B; Agricultural Crop Production; and Agricultural Livestock Production)", approved by the Forsyth County Board of Commissioners the ____ day of _____, 20 ____" and signed, provided the property is developed in accordance with requirements of the LI-S zoning district of the Zoning Ordinance of the *Unified Development Ordinances* of the County Code, the Erosion Control Ordinance, and other applicable laws, and the following conditions be met:

- **PRIOR TO THE ISSUANCE OF GRADING PERMITS:**
 - a. Developer shall obtain a driveway permit from the North Carolina Department of Transportation.
 - b. Developer shall file a reclamation plan for the reuse of this property with the Inspections Division.
 - c. Developer shall obtain approval from Duke Energy for activity taking place within their right-of-way.

- **PRIOR TO THE ISSUANCE OF OCCUPANCY PERMITS:**
 - a. Developer shall install all improvements as per driveway permit which shall include right-of-way dedication of 35' from centerline of Walnut Cove Road (US 311).

COUNTY ORDINANCE - SPECIAL USE PERMIT

Special Use Permit of J. Westmoreland, Inc.,
Docket F-1512

AN ORDINANCE ISSUING A SPECIAL USE
PERMIT FOR ACCESS TO RS-40 ZONING THROUGH LI-S ZONING

BE IT ORDAINED by the Board of Commissioners of Forsyth County as follows:

Section 1. The Board of Commissioners hereby makes an affirmative finding as follows, based upon the material and competent evidence presented at the public hearing:

1. That the use will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved;
2. That the use meets all required conditions and specifications;
3. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,
4. That the location and character of the use, if developed according to the application and plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with *Legacy*.

Section 2. The Forsyth County Board of Commissioners hereby issues a special use permit for access to RS-40 zoning through LI-S zoning in accordance with Section 6-1.5 of the Zoning Ordinance of the *Unified Development Ordinances* to J. Westmoreland, Inc. to be established on the following described property:

PIN #s 6859-52-4442 and 6859-52-7349

Section 3. This Ordinance is adopted after approval of the site plan entitled J. Westmoreland, Inc. and identified as Attachment "A" of the Special Use Permit issued by the Board of Commissioners the _____ day of _____, ____ to J. Westmoreland, Inc.

Section 4. The Board of Commissioners hereby directs the issuance of a Special Use Permit pursuant to Section 6-1.5 of the Zoning Ordinance of the *Unified Development*

Ordinances for a development to be known as J. Westmoreland, Inc.. Said Special Use Permit and site plan with associated documents are attached hereto and incorporated herein.

Section 5. This Ordinance shall be effective from and after its adoption.

**CITY-COUNTY PLANNING BOARD
STAFF REPORT**

PETITION INFORMATION			
Docket #	F-1512		
Staff	Gary Roberts, Jr. AICP		
Petitioner(s)	J. Westmoreland, Inc.		
Owner(s)	Same		
Subject Property	PIN #s 6859-52-4442 and 6859-52-7349		
Address	5964 Walnut Cove Road (US 311)		
Type of Request	Special use rezoning and Special Use Permit for access to RS40 zoning through LI-S zoning		
Proposal	<p>The petitioner is requesting to amend the Official Zoning Maps for the subject property from RS-40 (Residential, Single Family District; 40,000 sf minimum lot size) to LI-S (Limited Industrial District Special Use Zoning). The petitioner is requesting the following uses:</p> <ul style="list-style-type: none"> • Building Contractor, General; Building Contractor, Heavy; Landfill, Land Clearing/Inert Debris, 2 acres or less; Dirt Storage; Wholesale Trade B; Agricultural Crop Production; and Agricultural Livestock Production 		
Zoning District Purpose Statement	The LI District is primarily intended to accommodate limited manufacturing, wholesaling, warehousing, research and development, and related commercial and service activities which, in their normal operations, have little or no adverse effect upon adjoining properties. The district is established to provide locations for industrial development in Growth Management Areas 1, 2, 3, and 4, and Metro Activity Centers.		
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(S)	(S)(1) - Is the proposal consistent with the purpose statement(s) of the requested zoning district(s)?		
	The site is located within the Rural Area, Growth Management Area 5, whereas the LI District is recommended for GMAs 1, 2, 3, and 4.		
GENERAL SITE INFORMATION			
Location	West side of Walnut Cove Road, north of Pine Hall Road		
Jurisdiction	Forsyth County		
Site Acreage	Approximately ± 17.5 acres		
Current Land Use	A portion of the site is currently being used for a Landfill, Land Clearing/Inert Debris, 2 acres or less. The site is also traversed by 3 overhead electrical transmission lines within a 320' plus wide right-of-way.		
Surrounding Property Zoning and Use	Direction	Zoning District	Use
	North	RS-40	Undeveloped
	East		
	South		Single family homes & undeveloped property
West	Undeveloped		

Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(S)	(S)(2) - Is/are the use(s) permitted under the proposed classification/request compatible with uses permitted on other properties in the vicinity?			
	The site is within a sparsely populated portion of the county. However, due to traffic, noise, dust and glare the commercial uses of Building Contractor, General and Heavy and Wholesale Trade B are more intense than the existing development pattern.			
Physical Characteristics	The site is partially wooded and has moderate to steep topography sloping downward to the west. The National Wetlands Inventory map (Walkertown Quad sheet) shows the stream on western edge of the petition site as a wetland.			
Proximity to Water and Sewer	Public water and sewer are not available.			
Stormwater/ Drainage	No known issues.			
Watershed and Overlay Districts	The site is not within a water supply watershed.			
Analysis of General Site Information	The site has significant constraints in regard to said overhead electrical transmission lines and steep topography; however, it appears to be suitable for the proposed improvements.			
SITE ACCESS AND TRANSPORTATION INFORMATION				
Street Name	Classification	Frontage	ADT Count	Capacity/LOS D
Walnut Cove Road	Major Thoroughfare	409'	5,100	11,100
Proposed Access Point(s)	Use of the existing driveway onto Walnut Cove Road is proposed.			
Trip Generation - Existing/Proposed	<u>Existing Zoning: RS-40</u> $17.5 \times 43,560\text{sf}/40,000 = 19 \text{ dwellings} \times 9.57 \text{ (SFR Trip Rate)} = 182 \text{ Trips per Day}$ <u>Proposed Zoning: LI-S</u> $6,160\text{sf} / 1,000 \times 6.97 \text{ (General Light Industrial Trip Rate)} = 43 \text{ Trips per Day}$			
Sidewalks	There are no sidewalks located in the general area			
Traffic Impact Study (TIS)	A TIS was not required.			
Analysis of Site Access and Transportation Information	Access to the site is adequate; however, a Special Use Permit to access RS-40 zoned property through the proposed LI-S zoning will be required.			

CONFORMITY TO PLANS AND PLANNING ISSUES	
Legacy GMA	Growth Management Area 5, Rural Area
Relevant Legacy Recommendations	<ul style="list-style-type: none"> • <i>Legacy</i> states that provisions will be made for the protection of farmland, natural areas, and rural character in GMA 5 (the Rural Area). <i>Legacy</i> also states that this area is intended to remain in very low density residential and agricultural uses for the Plan’s 15-year time horizon. <i>Legacy</i> also specifically discourages rezonings to more intense districts in the Rural Area.
Relevant Area Plan(s)	The site is not within the boundaries of an area plan or development guide
Other Applicable Plans and Planning Issues	<p><u>Spot Zone Opinion:</u> The County Attorney is of the opinion that based on the current interpretation of the law, the proposed rezoning would <u>not</u> successfully withstand a legal challenge. In summary the County Attorney believes that the proposed rezoning <u>would</u> constitute an illegal spot zoning.</p> <p><u>Special Use Permit:</u> For Special Use Permits (SUP) requiring approval by the Elected Body, certain findings have to be met. Findings of the Planning Board accompanying a favorable recommendation shall include:</p> <p><u>Planning Board Findings:</u></p> <ol style="list-style-type: none"> 1. The development is in conformity with <i>Legacy</i>. 2. Water and sewer service are available in adequate capacity. (<i>No public water is available nor is it needed for the proposed access</i>) 3. Where buildings greater than thirty-five (35) feet in height are proposed within the City of Winston-Salem limits, there is adequate access for aerial fire-fighting equipment. (<i>No buildings greater than 35’ are proposed on the Special Use Permit property</i>) 4. Streets and highways, both within and in the vicinity of the development, are of such design and traffic-carrying capacity that the development will not create a traffic hazard. (<i>Yes</i>) 5. General layout and design of the development meet all requirements of this Ordinance. (<i>Yes</i>) 6. Adequate, safe and convenient provision is made for vehicular and pedestrian movement on the site with particular attention paid to the needs of public safety equipment and personnel (fire, police, etc) and service vehicles and personnel (sanitation, postal delivery, etc). (<i>Yes</i>) 7. The Planning Board may recommend to the Elected Body conditions as identified in Section 6-1.3(A)(1) for the issuance of the special use permit to reduce impacts associated with the project. (<i>See “SITE-SPECIFIC RECOMMENDED CONDITIONS OF APPROVAL” section below</i>)

	<p>The Elected Body shall issue a special use permit only when the Elected Body makes an affirmative finding as follows:</p> <p><u>Elected Body Findings:</u></p> <ol style="list-style-type: none"> 1. That the use will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved. <i>(Yes)</i> 2. That the use meets all required conditions and specifications. <i>(Yes)</i> 3. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and, <i>(Yes)</i> 4. That the location and character of the use, if developed according to the application and plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with <i>Legacy</i>. <i>(Yes)</i> 					
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(S)	(S)(3) - Have changing conditions substantially affected the area in the petition?					
	No					
Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(S)	(S)(4) - Is the requested action in conformance with <i>Legacy</i>?					
	No					
Analysis of Conformity to Plans and Planning Issues	<p>The subject request is to rezone 17.5 acres of RS-40 zoned property in GMA 5 to LI-S. <i>Legacy</i> discourages rezoning to more intense districts in the Rural Area. The County Attorney is of the opinion that if challenged, the request could be considered by the courts to be illegal spot zoning.</p> <p>In addition to the use of LCID, which is currently located on the site, the petitioner is requesting Building Contractor, General and Heavy and Wholesale Trade B. Due to their potential traffic, outdoor activity and nuisance impacts such as noise, dust and glare, these commercial uses are not compatible with the very low intensity single family residential and rural uses permitted on the surrounding properties. Establishing industrial zoning in this Rural Area is completely inconsistent with the intent of GMA 5 and would establish a precedent for other industrial and commercial rezonings in the area.</p> <p>There is no other LI zoning in the general area and staff sees little benefit in arbitrarily selecting this parcel to rezone in a different manner from all the surrounding property.</p>					
RELEVANT ZONING HISTORIES						
Case	Request	Decision & Date	Direction from Site	Acreage	Recommendation	
					Staff	CCPB
F-1404	RS-40 to NB-S	Approved 4-12-04	±1,000' north	.92	Approval	Approval

SITE PLAN COMPLIANCE WITH UDO REQUIREMENTS			
Building Square Footage	Square Footage		Placement on Site
	6,160		Front portion
Parking	Required	Proposed	Layout
	26 spaces	26 spaces	Mainly to the side or rear of proposed building
Building Height	Maximum		Proposed
	70'		One story
Impervious Coverage	Maximum		Proposed
	90%		18.1%
UDO Sections Relevant to Subject Request	<ul style="list-style-type: none"> • Chapter B, Article II, Section 2-1.4 (A) Limited Industrial District • Chapter B, Article II, Section 2-5.27 Dirt Storage Use Conditions • Chapter B, Article II, Section 2-5.41 LCID Use Conditions • Chapter B, Article II, Section 2-5.2 Access Easement Use Conditions 		
Complies with Chapter B, Article VII, Section 7-5.3	(A) Legacy policies:	No	
	(B) Environmental Ord.	NA	
	(C) Subdivision Regulations	NA	
Analysis of Site Plan Compliance with UDO Requirements	The revised site plan complies with the requirements of the UDO.		
CONCLUSIONS TO ASSIST WITH RECOMMENDATION			
Positive Aspects of Proposal		Negative Aspects of Proposal	
The request may provide some employment opportunities to the local area.		Request is inconsistent with the LI District purpose statement.	
		Request is not consistent with <i>Legacy</i> which recommends protection of residential areas from more intense commercial and industrial encroachment.	
		County Attorney is of the opinion that if challenged, the request could be considered to be illegal spot zoning.	
		Request would establish a precedent for additional commercial/industrial rezonings in this rural area.	
SITE-SPECIFIC RECOMMENDED CONDITIONS OF APPROVAL			
The following proposed conditions are from interdepartmental review comments and are proposed in order to meet codes or established standards, or to reduce negative off-site impacts.			
<ul style="list-style-type: none"> • <u>PRIOR TO THE ISSUANCE OF GRADING PERMITS:</u> <ol style="list-style-type: none"> a. Developer shall obtain a driveway permit from the North Carolina Department of Transportation. 			

- b. Developer shall file a reclamation plan for the reuse of this property with the Inspections Division.
- c. Developer shall obtain approval from Duke Energy for activity taking place within their right-of-way.
- **PRIOR TO THE ISSUANCE OF OCCUPANCY PERMITS:**
 - a. Developer shall install all improvements as per driveway permit which shall include right-of-way dedication of 35' from centerline of Walnut Cove Road (US 311).

STAFF REZONING RECOMMENDATION: Denial

STAFF SPECIAL USE PERMIT RECOMMENDATION: Approval

NOTE: These are **staff comments** only; final recommendations on projects are made by the City-County Planning Board, with final decisions being made by the appropriate Elected Body, who may approve, deny, table or request modification for any project. **THE APPLICANT OR REPRESENTATIVE IS STRONGLY ENCOURAGED TO ATTEND THE PUBLIC HEARINGS WHERE THE CASE WILL BE CONSIDERED BY THE PLANNING BOARD AND THE ELECTED BODY.**

Gary Roberts presented the staff report.

PUBLIC HEARING

FOR:

Jim Bryan, 5116 Sedge Brook Road, Kernersville, NC 27284

- I represent J. Westmoreland Inc.
- There is an existing LCID landfill on this site. It's been there since about 1995.
- Duke Power has a 300+ foot right-of-way through the property.
- It does have a unique topography with some steep slopes.
- The railroad trestle and tracks are easily seen from the driveway that enters the property.
- The property already has an industrial feel to it.
- It's quite limited in its uses and this petitioner wants to improve this site in a way which is harmoniously consistent with the neighborhood.
- About six people will be employed at the site.
- They want to recycle more of the waste which comes into the facility and offer that back to the community. They currently try to recover some top soil. They set aside wood for wood-burning purposes. They recycle concrete pipe and whatever they can they try to recycle. They'd like to increase that by recycling concrete, asphalt, block, screen some top soils and offer that back to the community which would in some ways become a benefit to that area north of Walkertown.

- Under the current ordinance, they can do that today as an accessory use.
- Today because many developers are trying to get a LEED certification (a rating for development which says they are energy efficient and environmentally responsible) the petitioner is wanting to help the developers and others meet those requirements.
- The proposed elevations of the shop puts the shop a little bit down the hill. That was intentional so it would not be in a direct line of site from the road.
- We also know that if the petitioner wanted to apply for a building permit today for a large agricultural barn, he could do that. It would be the same size. He could also park large excavators there - front end loaders, bobcats, tractors, anything that's used on a farm.
- Basically the thought that this would be inconsistent with what could be there is not exactly so.
- This particular building would be primarily used to support the hand equipment that is used for this business. This contractor keeps most of his equipment off the site on work sites. He has contracts with the companies he buys this equipment from to service the equipment in the field. It doesn't necessarily mean equipment will come back from the field to service and repair or even storage on site. That would be inconsistent with his objectives. He has to keep it working in order to be successful.
- The actual life of the landfill is expected to be 5-8 years from today. That part will not change.
- With the increased recycling capability, the site may have an indefinite life. In other words, he could start recovering materials that are already in the landfill and returning that for back a good use, in essence reusing those materials.
- My experience tells me that whenever a zoning change is requested and all the surrounding properties with their collective zoning remains the same, the first inclination is that it is spot zoning. However, in this particular case, the activities there can be conducted in a way that's not going to increase or change the way business is being done there now. It can be done maybe with conditions from the Planning Board that maintain that harmonious feel with the community.
- I have spoken with the neighbors. I haven't gone way down the road, but I went to see the Ellers who live closest by and they said they had no problem with the proposed rezoning.
- The next nearest occupied dwelling is over 2,000 feet away and they are well screened by woods and there's a requirement in the plan that we have additional plantings that we have to perform as a part of approval.
- We ask that you consider approval. We know that it is setting LI-S, special use, in that neighborhood. However, we basically could do everything we want to do except that we couldn't sell the recycled goods on site and we couldn't have a construction office in the building.
- As I said, I could go get a building permit and I could park equipment out there and it would be extremely difficult to tell which one is working on the farm and which one goes out and works somewhere else. This petitioner wants to do right, wants to sleep good at night, doesn't want to be looking over his shoulder, so he asks that we try to get the correct zoning and move forward.

AGAINST: None

WORK SESSION

During discussion by the Planning Board, the following points were made:

Clarence Lambe: Okay, and he has to have LI-S to sell the recycled materials.

Gary Roberts: For Wholesale Trade B and Heavy Contractor.

Brenda Smith: Can you limit the Wholesale Trade to a particular product that's , to his recycled product for that... make it anywhere else?

Gary Roberts: We could discuss that with the petitioner and Inspections. That may be something that could be enforceable.

Brenda Smith: I know that's a broad area of activity.

Paul Mullican: So if they were willing to do that condition, that would come under the, you know, be part of the S zoning. Is that what you're saying?

Paul Norby: It would have to be a condition that would be put on there. Now, I don't believe that would change the County Attorney's opinion about it being illegal spot zoning. And just to clarify there are two different kinds of spot zoning. One is the legal kind and the other is what the courts have held as illegal spot zone so I don't think that would change the Attorney's opinion.

Arnold King: What happens if a neighbor challenges this as a spot zoning and the courts determine it is an illegal spot zoning, then what happens?

Paul Norby: Then the zoning is basically remanded. It is basically erased and is sent back to the County to correct, well I don't know if it's erased or not but it's remanded back to the County to correct the zoning back to where it was.

Arnold King: But the petitioner would have to cease and desist? Stop the operation? I mean the risk is the petitioner's. He understands this going in and builds the building and it's deemed illegal spot zoning, he's just out the cost I guess?

Paul Norby: Yeah, and I don't want to appear as an agent for the County Attorney, but I think the County Attorney would probably also say the risk is to the County for the costs of defending the case and things like that.

Wesley Curtis: Before we go there, is there some merit to look back at what the staff has reviewed as we've got GMA 5 and the idea that we're trying to, we're putting zoning in those areas that we always said we don't want them there. I think, I applaud the idea of recycling. I think that's a great thing. I think the whole point of zoning is we want those things to happen in certain areas. That's kind of the whole point of it so GMA 5 is really one of the most protected areas, that we want to try to protect at this point. If we're trying to limit activities in those areas that

hopefully zoning does not support. That's one of the things I think we need to look at carefully versus anything else because I don't know. He may actually, his business may not generate a lot of traffic. It may not, in reality, but the zoning doesn't say that. I think we just have to be careful about changing or allowing a zoning change in an area that potentially could generate more traffic though this petition may not.

Arnold King: The trip generation in our books says 43 trips a day versus 182 under current zoning. So it shouldn't generate much traffic.

Wesley Curtis: So should the issue of zoning be based just on traffic?

Arnold King: No, but I mean you brought that point up. This indicates less traffic than what could be done now. Put that map up there - the map of GMA 5.

Clarence Lambe: AG is allowed in GMA 5, right? That's where most of it is. That's the problem I always have with these things. There ain't nothing more industrial than AG. Then we can't do things like this in GMA 5.

Brenda Smith: And I'm thinking about some of the comments were made about the relationship to the surrounding area and I think what actually is happening there with the landfill is the relationship with the area. This is so closely tied to the existing relationship that I have a hard time looking at it as something that's not closely related to what's already going on at the site. I think there are a lot of unique things about this property. The biggest one being something no one had any control over which is the power line easement through there. If you're looking to make a decision against something that goes against what you're talking about, I think the relationship between what's going on and what's going to happen and then the uniqueness of the property and what's going on there would give us a basis for considering making that decision.

Clarence Lambe: Makes it very distinguishable from any other cases in the future.

Brenda Smith: That's what I was trying to get to. Thank you.

Clarence Lambe: I agree. Absolutely.

Wesley Curtis: So if you had another area in GMA 5 that had power lines and there were a lot of gullies, then you would be willing to rezone that as LI-S?

Arnold King: Depending on the use.

Paul Norby: Let me just say, you've probably got several thousand acres like that.

Arnold King: I think personally knowing the location and the site I'd rather see the type operation being proposed be placed there than Walkertown. I mean I wouldn't want to bring it into a community you know you got heavy equipment, recycling,

landfill. It's a pretty good spot for that. There are no neighbors much around. It is still pretty rural. It's agricultural in nature. What's being proposed looks very much like a farming operation to me. I personally having been out to the site I don't have any problem with it at all, if it's GMA 5, 4 or wherever. Where I was at with that map, you know, the dark green was just kind of drawn for some arbitrary reason. It's pretty close to GMA 4.

Wesley Curtis: You could make that case for a lot of areas because it is just a map, but it is that. It is a map. It is our guide.

Paul Norby: And if I could, it wasn't just arbitrarily drawn. It was based on drainage basins and what is likely to be sewerred without tremendous expense and things like that so there was some rational thought given to it.

Lynne Mitchell: I have a question. Given that the landfill's life is 5-8 years, and then if you were allowed to do this recycling it may be indefinite lets say because you're recycling a lot of products so it's not filling up. But let's say it didn't go and the landfill filled up, what happens to the property then? It's just RS-40 and there's no need to have a contractor, no need for the business I guess.

Jim Bryan: Well, that won't happen with the technology that's developing and the ability to crush concrete and screen the soils the landfill becomes a closed, not a closed loop, but a loop that has an outlet and his problem would just be getting rid of the marketable materials.

Clarence Lambe: He'd have to transport, he could conduct the recycling activity now, correct? He just couldn't sell his product. He can't see his recycled material so he could put it on a truck and haul it off somewhere where he could sell it.

Jim Bryan: He could haul it off to a site now and sell it, but the idea here being that he could actually conduct sales there.

Clarence Lambe: The bigger issue for me is why do we and it's not pertinent exactly to this, but for future discussions we need to look at GMA 5. We've got so many things that we do in GMA 5 that are much more invasive or intensive than this use and this is a natural expansion of what the guy's doing there now. It is very, I have no fear with us not being able to distinguish this in the future. Yeah, we approved LI-S here but it had a 300' power line through it. While there may be 9,000 acres of it, not much of it, only a fraction of that has road frontage to support this kind of activity.

Wesley Curtis: I would support, I guess, if this in fact is compatible with agriculture then we look at having this as a use in that particular...

Clarence Lambe: Absolutely.

Wesley Curtis: Versus trying to come through now with a business to do that.

Clarence Lambe: I wonder what the trouble is in doing a text amendment for GMA 5. I mean that's something that would take a long time because obviously you would want to not have any undesired, unthought of consequences so it would take a long time to work through that, but that might be a better way to handle things in the future.

Brenda Smith: So you can sell things you recycle from LCID.

Paul Mullican: One thing I want to make a comment on is there's a real need for this. Let me tell you contractors are having a hard time getting rid of when they tear down buildings and things like this. Another good thing they're doing, everything is going green now, and this is, this is, this is a big part of that, I mean a huge part of that. Basically he can go out there and separate all this stuff turn it into viable material, but he can't sell it there on that property. Well, I guess you know part of the going green is not putting all those fumes out into the air to haul that somewhere else to another piece of property to be allowed to sell that product. So, you know, I think this is a win-win situation. I admire what he's trying to do as far as the building say. Yeah, he could go out there and put up a big barn and put him a little cubicle in there as an office and get on with what he's doing. But he is trying to do what's right. As far as the spot zoning, I don't think it's a problem per say. I think if anybody is going to have any problem or whatever they step forward today and nobody has come forward for that. With that being said, I'd just go ahead and make a motion.

Wesley Curtis: Chris is going to comment.

Paul Mullican: Oh, sorry.

Chris Murphy: I do just want to point out that one of the reasons why they're in here is while it's an important part of their operation, the selling, the recycling and selling of their materials, I believe they're in here really for the heavy contractor use because as Jim pointed out in his presentation, currently under the current requirements the Zoning Board of Adjustment may issue a permit for the separation, processing, storage, or wholesale sell of materials received through lawful operation of the LCID on the site as an accessory use provided such activities occur within the original boundaries of the State approved LCID landfill. What they're doing as far as the recycling component can be done so long as it's within the original boundaries of the LCID. It's more of the function of the Heavy Contractor; General Contractor, Heavy and some of the other associated things plus it gives them the ability to do this outside of those original boundaries so they can use the whole LI-S site to sell their materials. I just wanted to make sure y'all understood they could currently do this under the accessory use provisions for LCIDs with Board of Adjustment....

Clarence Lambe: They can sell the recycled material within the original bounds of the LCID, right?

Chris Murphy: Correct.

Clarence Lambe: Okay, and the other component of what the petitioner is requesting has to do with heavy construction? From what I understand it looks like it's they're talking about equipment storage is what they're talking about. What is the Commercial, I can't remember the classifications you just used. But what I'm...

Jim Bryan: May I make a clarification as well? The state does not allow you to actually do the, I mean we have to, following this we'll have to get a treatment and processing permit from the State and I cannot do that within the footprint of the landfill. That is where there is an inconsistency between the State law and the County ordinance. So I have to be able to move outside that footprint and do that. Now, it might... I'm very familiar with this. I work with this a lot. So our request is to have a place where we can produce the stuff and in a way actually display it so that a person when they pull in can see that yes we have mulch and we have crushed rock and we have fines that look like sand but they came from concrete and we have maybe the crushed brick and maybe some reusable pipe and some stuff like that, stuff that we can wholesale out of that facility.

Arnold King: Make a motion?

Paul Mullican: Yup. I'd like to make a motion that we approve this.

Arnold King: Okay.

Clarence Lambe: Second.

Paul Mullican: Does it need to be a double motion?

Arnold King: Yes, we'll do the Special Use Permit later. We have a motion on the rezoning by Mr. Mullican and a second by Mr. Lambe for the rezoning request. Any discussion?

Wesley Curtis: I'll be voting against this particular and specifically because I think if there are uses that we think should be allowed within a certain area, they should be included in the zoning classification for the area. I have nothing against the recycling. I think it's a good thing to do and I think it may be compatible in this case but I don't want to start the precedent of based on our interpretation we just allow zoning to happen wherever it wants to happen. I think we need to really look close to those areas that need to, that we feel is compatible and we can allow certain activities for us to go ahead and look at that so we're not constantly having different kinds of zoning throughout the county. So to that end I'll be voting against it.

Clarence Lambe: I respect that. The biggest thing though is that this body does exactly what, it takes that technical application of that UDO to these petitioners requests and where they just don't quite jive, that's what this body does so I do think it's

within our power and it's actually one of the express things that we're supposed to do is to take these unusual circumstances and where the law says, or where the guidelines say you really shouldn't do this, it makes all the sense in the world for the petitioner to do it, that is our job. That's why I will be supporting it.

Arnold King: Any other discussion?

Arthur King: Yeah, I do have to say something. I wrestle with this and it's for me a very difficult decision. I think that when you hire legal advice you ought to pay attention to it, number one. Number two, I have some concern about not following the Growth Management Plans that we established and I understand that this is, I saw this piece of property and it is unique. It's very, very difficult to use it probably for anything else. And yet, I have some real concerns about approving something that the plans say ought not be done. So, I'm on the fence. I guess I'll decide when you call for a vote.

Arnold King: Let me see if I can help you. I'm going to support it. I mean I certainly respect what staff's saying about being in GMA 5 and I respect Mr. Curtis' opinion. Personally having seen the site, knowing a lot about the operation, to me it makes a lot of sense, more sense than it would in a GMA 3 or 4 or in a more urban type setting. I mean, heavy equipment, recycling, landfill, as the gentleman said, across from the railroad track, power lines, given where it's located I think this is an ideal highest and best use for this piece of property. It makes a lot more sense than the RS-40 that it's currently zoned, so I'm going to support it.

Brenda Smith: This made me think of the day going out and getting my free mulch from the City when we drove along the residential area to go back and to have that kind of activity there so that kind of gave me some perspective for this site and that it does fit for that area.

Paul Mullican: As I said earlier and the reason I made the motion on this and I want to reiterate this, you know along with everything that you two, that everyone has said here today, being close to the construction industry and knowing the need that we have, everything can't be zoned RS-40 or for houses or businesses or whatever, we've got to have zoning where we can do, can rework these materials, can take them to it, that's part of the going green. That's part of the system that we're going through. I appreciate everything that's been said here today, but I just don't want to lose sight that, you know, that there's a real need for this. I really want everyone to remember that and in anything that we go through. As far as the zoning or whatever, I think yeah we've got a plan and this is what we, but that's what it is. It's a plan. But each case, and Lynne when you mentioned while ago about the cases, to me each case is an individual case as has been said. This site is strictly industrial. I mean it's just, what else is ever going to go there? With railroad tracks and with power lines and deep gullies and all that type thing. But if you don't take anything, and whether you agree with me or not, please take away from here that we need these type sites.

Arnold King: Any other discussion?

Lynne Mitchell: I'm just going to say, it makes sense and I appreciate what Jim said too about when you go to the State they won't allow you to, that you need this space to sell it and to display it I guess. That's just real interesting to me as well. I support recycling. I'm for it.

MOTION: Paul Mullican moved approval of the zoning map amendment, certified that the site plan meets all code requirements and recommends staff conditions.

SECOND: Clarence Lambe

VOTE:

FOR: Arnold King, Arthur King, Clarence Lambe, Darryl Little, Lynne Mitchell, Paul Mullican, Brenda Smith

AGAINST: Wesley Curtis

EXCUSED: None

MOTION: Paul Mullican moved approval of the Special Use Permit.

SECOND: Clarence Lambe

VOTE:

FOR: Wesley Curtis, Arnold King, Arthur King, Clarence Lambe, Darryl Little, Lynne Mitchell, Paul Mullican, Brenda Smith

AGAINST: None

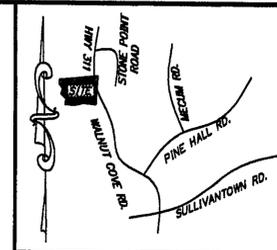
EXCUSED: None

According to information furnished on July 28, 2009 by the Office of the Tax Assessor, the subject property was in the name of J. Westmoreland Inc.

A. Paul Norby, FAICP
Director of Planning

PRELIMINARY SURVEY: NOT FOR DEEDS, CONVEYANCES, OR SALES.

Preliminary - NOT for construction



VICINITY MAP NOT TO SCALE

Line	Bearing	Distance
L2	N 8°-55'-30" W	55.31'
L3	N 36°-08'-40" W	98.51'
L4	N 2°-18'-10" W	100.00'

Curve	Radius	Chord Bearing and Distance
C1	52.50'	N 83°-09'-10" W 68.74'
C2	52.50'	N 15°-09'-30" W 18.52'

FRANCIS GRUBBS TUCKER
PIN# 6859-53-8128
D.B. 1705 PG. 443
ZONED: RS-40

NEW R/W FOR WALNUT COVE ROAD/
US HWY 311 (PUBLIC) (RIBBON PAVEMENT)
RIGHT-OF-WAY VARIES SEE DB 2165 PG 3898
5' ADDITIONAL R/W TO BE DEDICATED TO NCDOT

BILLY G. LANDRETH A/W
WANDA J. LANDRETH
PIN# 6859-43-8418
D.B. 2168, PG. 2871
ZONED: RS-40

DUKE POWER UTILITY EASEMENT WITH
DOUBLE ROW OF EVERGREENS
TO BE PLANTED (MAX 10 FT/LEGS)

RICHARD T. KELLEY HEIRS
PIN# 6859-72-0834
D.B. 288 PG. 65
ZONED: RS-40

NOTE CLOSEST FIRE HYDRANT 2000'

DUKE ENERGY NOTES:
1. PER CONVERSATION WITH ERVIN SUMMERS OF DUKE ENERGY, THE CONCRETE BARRIERS AS SHOWN AT BASE OF TRANSMISSION TOWERS ARE TO BE 25' FROM BASE OF TRANSMISSION TOWER LEGS AND ABLE TO WITHSTAND 15MPH IMPACT;
2. THE PARKING AREA AND ROAD WILL BE ADJUSTED ACCORDINGLY 5' FROM CONCRETE BARRIERS.
3. OWNER WILL REQUEST DUKE ENERGY APPROVAL OF FINAL PRODUCT FROM DUKE ENERGY UPON COMPLETION.

NC DEPARTMENT OF TRANSPORTATION
PIN# 6859-62-3172
D.B. 2154, PG. 2608
ZONED: RS-40

REVISION DATE: JULY 1, 2009 - SEE DUKE ENERGY NOTES.

OWNER/DEVELOPER: J. WESTMORELAND, INC.
E-MAIL: jwest@jwestmoreland.com
6831 OLD STILL TRAIL
KERNERSVILLE, N.C. 27284
(336)385-8115 (Phone)
(336)385-3317 (Fax)

CONTACT: TOM WESTMORELAND 336-345-3586
PIN #'S 6859-52-4442
6859-52-7349

J. WESTMORELAND, INC. TOWNSHIP COUNTY STATE DATE JOB NO. SALEM CHAPEL FORSYTH NC 05-25-09 S-9820-A				
McAnally Land Surveying, P.C. 827 Burke Street Winston-Salem, NC 27101 Phone/Fax # 336-631-9805 Email: william@survey@tridod.twcbo.com				
SCALE 1" = 50' 50 25 0 50 100				

NOTES:

ZONING (CURRENT RS-40
PROPOSED LI-S)

- PURPOSE OF REZONING REQUEST TO ALLOW FOR:
- 1: AGRICULTURAL PRODUCTION, CROPS
 - 2: AGRICULTURAL PRODUCTION, LIVESTOCK
 - 3: WHOLESALE TRADE B
 - 4: BUILDING CONTRACTORS, GENERAL
 - 5: BUILDING CONTRACTORS, HEAVY
 - 6: DIRT STORAGE
 - 7: LANDFILL, LAND/INERT DEBRIS, 2 ACRES OR LESS

OWNER HAS MET WITH DUKE POWER REGARDING PROPOSED USES NEAR, ADJACENT AND UNDER POWER LINES

NOTE: TOPOGRAPHY TAKEN FROM CITY/COUNTY TOPOGRAPHY MAP WITH ON-GROUND VERIFICATION IN DISTURBED AREAS.

* ANY ACTIVITIES IN DUKE ENERGY TRANSMISSION LINE RIGHT OF WAY TO COMPLY WITH ALL REGULATIONS OF DUKE ENERGY PER ERVIN SUMMERS

J. WESTMORELAND, INC.
PIN# 6859-51-5740
D.B. 2871, PG. 2887
ZONED: RS-40

OFF-STREET PARKING

Proposed Use	2 SPACES/3 EMPLOYEES + 1 SPACE/VEHICLE	2 EMPLOYEES + 2 VEHICLES	4 SPACES
1. WHOLESALE TRADE B	1 SPACE / 750 SF	6160/750	8 SPACES
2. BUILDING CONTRACTORS, GENERAL & HEAVY	2 SPACES	2 SPACES	2 SPACES
3. DIRT STORAGE			
4. LANDFILL, LAND/INERT DEBRIS, 2 ACRES OR LESS			

Required Parking: 17 Spaces/
Parking Provided: 28 Spaces 1 Handicapped 8 Truck & Equipment

SITE PLAN LEGEND

REVIEW INFORMATION Type of Review: X Special Use Reasoning X Site Plan Amendment X Special Use Permit (Elected Body Only) X Final Development Plan X Preliminary Subdivision X Planning Board Review Jurisdiction: X City of Winston-Salem X Forsyth County X Office of Community Development X Town of Wakekern Purpose Statement: The purpose of this rezoning is request to allow for: 1. AGRICULTURAL PRODUCTION, CROPS 2. AGRICULTURAL PRODUCTION, LIVESTOCK 3. WHOLESALE TRADE B 4. BUILDING CONTRACTORS, GENERAL 5. BUILDING CONTRACTORS, HEAVY 6. DIRT STORAGE 7. LANDFILL, LAND/INERT DEBRIS, 2 ACRES OR LESS	ZONING Existing Zoning: RS-40 Proposed Zoning: LI-S Proposed Uses: 1. AGRICULTURAL PRODUCTION, CROPS 2. AGRICULTURAL PRODUCTION, LIVESTOCK 3. WHOLESALE TRADE B 4. BUILDING CONTRACTORS, GENERAL 5. BUILDING CONTRACTORS, HEAVY 6. DIRT STORAGE 7. LANDFILL, LAND/INERT DEBRIS, 2 ACRES OR LESS	OFF-STREET PARKING SEE ABOVE
INFRASTRUCTURE Public Private Water Sewer Streets	DENSITY CALCULATIONS # of Units or Lots: NA Density: NA Units/Lots per Acre (Note: If more than one type of residential product is proposed, provide the number of units & density broken down by type.)	OFF-STREET LOADING (if applicable) Loading/Unloading Spaces Required: _____ Loading/Unloading Spaces Provided: _____ Size: 12' ft. X 65' ft.
PROPERTY INFORMATION PIN# 6859-52-4442 PIN# 6859-52-7349	WATERSHED CALCULATIONS This section only needs to be completed for projects located within designated water supply watersheds. See reverse side for calculation legend. > WS-III Watersheds - Salem Lake, Abbotts Creek, and Lake Brandt > WS-IV Watersheds - Oak Hollow/Randleman Lake, Kernersville Lake, Yadin River, and Dan River	BUFFER YARDS Adjoining Zoning: RS-40 Type Required: TYPE IV Width Provided: 40'-100' ft.

NOTE ALL AREAS BY COORDINATES.
 NOTE THIS PLAT IS SUBJECT TO ANY EASEMENTS, AGREEMENTS OR RIGHTS-OF-WAY PRIOR TO THE DATE OF THIS PLAT, WHICH WERE NOT VISIBLE AT THE TIME OF MY INSPECTION.
 DECLARATION IS MADE TO THE ORIGINAL PURCHASER OF THE SURVEY, IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR OWNERS.



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