

**CITY COUNCIL SPECIAL MEETING
300 WEST CROWELL STREET
MONROE, NORTH CAROLINA 28112
NOVEMBER 17, 2021 – 3:30 P.M.**

AGENDA

www.monroenc.org

Due to the increased risk of exposure and possibility of transmission associated with the Delta strain of COVID 19, **all guests, staff and officials will be required to wear face masks.**

The number of guests will be limited to the number of available seats inside the Council Chambers. There will be an additional room with limited seating for guests to hear the proceedings and/or remain until they are called to speak.

The mask requirement and seating limitation will be enforced by law enforcement.

1. Zoning Map Amendment Request to Rezone Properties Located at Intersection of E. East Avenue and Stafford Street Extension and 2026 Skyway Drive (Tax Parcel #s 09-180-004-90, 09-180-004-G, 09-180-004-H-80 and 09-180-004-H-90) from Residential Low Density (R-20) to General Industrial (GI) and Text Amendment Request to Amend Code of Ordinances – Title XV: Land Usage, Chapter 156: Zoning Code, Section 156.106 titled “Official Zoning Map”
 - A. Public Hearing
 - B. Action
2. Monroe-Union County Economic Development Interlocal Agreement Extension
3. Hearing on Recommendation of Manager Related to Payment of Claims Against Individual Council Member



STAFF REPORT

TO: City Council

VIA: Brian J. Borne, Interim City Manager

DATE: November 17, 2021

FROM: Lisa Stiwinter, Planning and Development Director

PREPARED BY: Doug Britt, Senior Planner

SUBJECT: Zoning Map Amendment for the property located at the intersection of E. East Avenue and Stafford Street Extension and 2026 Skyway Drive further identified as tax parcels 09-180-004-90, 09-180-004-G, 09-180-004-H-80, and 09-180-004-H-90

SUMMARY STATEMENT

City Council is requested to consider a zoning map amendment for the property located at the intersection of E. East Avenue and Stafford Street Extension and 2026 Skyway Drive further identified as tax parcels 09-180-004-90, 09-180-004-G, 09-180-004-H-80, and 09-180-004-H-90 from R-20 (Residential Low Density) to GI (General Industrial).

REVIEW

The City of Monroe has received a request from Sun Cap Property Group to rezone the subject properties from R-20 (Residential Low Density) to GI (General Industrial).

AREA CHARACTERISTICS

Adjoining Land Uses and Zoning District

	Existing Uses	Zoning District
North	Vacant	R-20 (Residential - Low Density)
East	Vacant	GI (General Industrial)
South	Single-Family Residential	R-20 (Residential - Low Density)
West	Commercial and Single - Family Residential	R-20 (Residential - Low Density) and GB (General Business)

LAND USE AND TRANSPORTATION PLAN CONSISTENCY

The Land Use and Transportation Plan indicates this area is within the Community Corridor and the Manufacturing, Logistics, and Aerospace designation. The Community Corridor generally covers most of US 74 and areas adjacent to intersecting major streets. The area serves as a primary conduit to downtown, and the spine of the community with critical connections to major employers, Charlotte-Monroe Executive Airport, the hospital, and the Concord Avenue Area. For this reason, the area's design and performance is important to the entire community. The Community Corridor designation encourages a more unified approach to improving the area's physical environment and economic viability. Commercial/office is a priority use in the Community Corridor character area.

The Manufacturing, Logistics, and Aerospace designation includes the city's existing base of industrial centers. These areas support manufacturing and production at a variety of scales, including assembly and processing, warehousing and distribution, bulk storage, and utilities. Manufacturing, Logistics, and Aerospace areas are found near major transportation assets (e.g., highway, rail, and/or air) and generally are buffered from surrounding development. Commercial/office and industrial are priority uses in the Manufacturing, Logistics, and Aerospace designation character area.

Parcels 09-180-004-H-80 and 09-180-004-H-90 are not consistent with the Land Use and Transportation Plan, because this area is projected as Community Corridor, while parcel 09-180-004-G and 09-180-004-90 are consistent with the Land Use and Transportation Plan, because the vast majority of the area is projected for the Manufacturing, Logistics, and Aerospace designation. Staff is of the opinion the proposed use is reasonable and in the public interest.

PUBLIC NOTIFICATION

A rezoning notification sign was posted 10 days prior to the public hearing.

An official rezoning notification letter was sent to the adjacent property owners located within 150 feet, 10 days prior to the public hearing.

RECOMMENDATION

Planning Board recommends disapproval of the request, while Planning staff is recommending approval.

City Council Action:

Motion to adopt Resolution approving Land Development Plan Compliance **OR** Motion to adopt Resolution denying Land Development Plan Compliance.

Motion to adopt Ordinance amending Section 156.106 **OR** Motion denying zoning map amendment

Attachments:

1. Ortho Map
2. Zoning Map
3. Future Land Use Map
4. Future Land Use Description
5. Draft PB Minutes
6. R-2021-90 Approval
7. R-2021-90 Denial
8. O-2021-70 156.106

Ortho Map

Case #: PLMA202200064

Legend

- Centerlines
- Parcels

Existing: R-20
(Residential- Low Density)

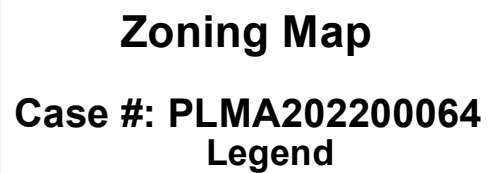
Owner: Dorothy Plyler and
William Franklin Plyler

Acres: 161.18



0 580 1,160
Feet





Case #: PLMA202200064

Legend

☐ Parcels

Zoning Districts

Code

 G-I

 GB CD

UC Zoning Districts

ZONE

LI

 RA-40

**Existing: R-20
(Residential- Low Density)**

Owner: Dorothy Plyler and William Franklin Plyler

Acres: 161.18



0 580 1,160 Feet

Future Land Use Map

Case #: PLMA202200064

Legend

Centerlines

Parcels

FLUM

Community Corridor

Industrial

Suburban

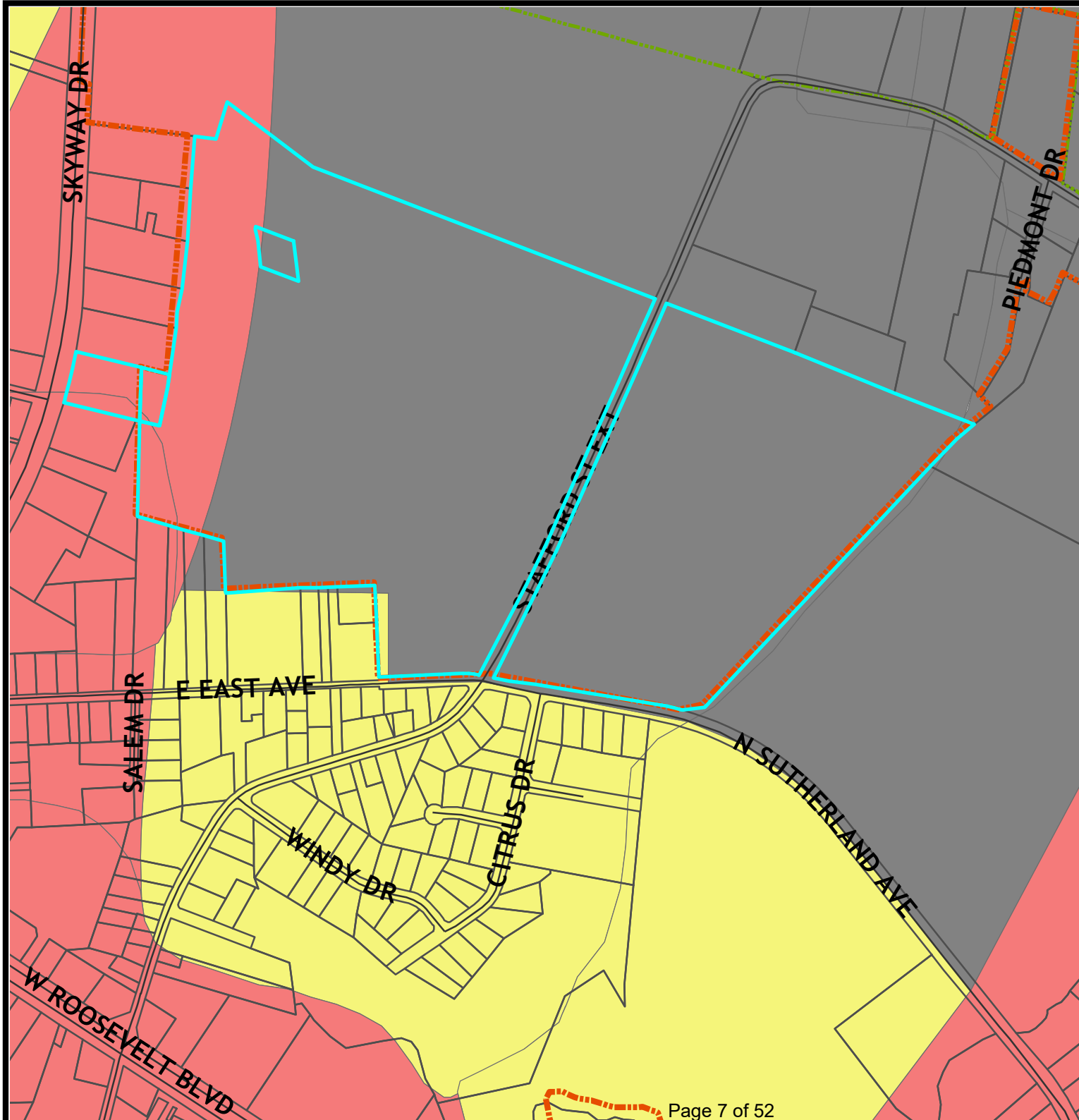
Existing: R-20
(Residential- Low Density)

**Owner: Dorothy Plyler and
William Franklin Plyler**

Acres: 161.18



0 580 1,160
Feet



FUTURE LAND USE PLAN

The Land Development Plan indicates this area is within the Community Corridor and the Manufacturing, Logistics, and Aerospace designation. The Community Corridor generally covers most of US 74 and areas adjacent to intersecting major streets. The area serves as a primary conduit to downtown, and the spine of the community with critical connections to major employers, Charlotte-Monroe Executive Airport, the hospital, and the Concord Avenue Area. For this reason, the area's design and performance is important to the entire community. The Community Corridor designation encourages a more unified approach to improving the area's physical environment and economic viability. Commercial/office is a priority use in the Community Corridor character area.

The Manufacturing, Logistics, and Aerospace designation includes the city's existing base of industrial centers. These areas support manufacturing and production at a variety of scales, including assembly and processing, warehousing and distribution, bulk storage, and utilities. Manufacturing, Logistics, and Aerospace areas are found near major transportation assets (e.g., highway, rail, and/or air) and generally are buffered from surrounding development. Commercial/office and industrial are priority uses in the Manufacturing, Logistics, and Aerospace designation character area.

PLANNING BOARD MEETING

November 3, 2021 @ 6:00 PM

City Hall – Council Chambers

300 W. Crowell Street, Monroe, NC

To Sheri Laney on November 4, 2021

Scheduled for adoption at the December 2021 meeting

Item 1. **Call to Order/Roll Call**

Chair MaryAnn Rasberry called the November 3, 2021 meeting to order at 6:00 p.m. Keri Mendler called the roll. Chair noted that a quorum was present.

Members Present: MaryAnn Rasberry, Richard Ali, Renee Hartis, Jennifer Smith, Patrick Furr (ETJ member), Margaret Desio, Ken Deal, David Dotson and Archie Morgan (Alternate, who was filling in for a vacancy)

Members Absent: Richard Yercheck

Staff Present: Keri Mendler, Senior Planner; Ashley Britt, Assistant City Attorney and Maryann Brown, Administrative Assistant

Guests: See Attached Attendance List

Chair welcomed David Dotson, new Board Member. Mr. Dotson said he was in the Marine Corps for four (4) years and then started working at Charlotte Mecklenburg Police Department. He said he has been doing this for the last 20 years. He said hopefully he can serve the community through this capacity and learn from this and serve on some other committees as well. He said he lives in Fox Hunt Estates, behind Bob Mayberry.

Item 2. **Approval of Minutes of Meetings**

Motion: Renee Hartis made a motion to approve the minutes of the October 6, 2021 meeting.

Second: Jennifer Smith

Action: The motion to approve the minutes passed unanimously with the following votes:

AYES: MaryAnn Rasberry, Richard Ali, Renee Hartis, Jennifer Smith, Patrick Furr, Margaret Desio, Ken Deal, David Dotson and Archie Morgan

NAYS: None

Item 3.

Zoning Map Amendment for the property located at the intersection of E. East Avenue and Stafford Street Extension and 2026 Skyway Drive further identified as Tax Parcels 09-180-004-90, 09-180-004-G, 09-180-004-H-80, and 09-180-004-H-90

Keri Mendler, Senior Planner, said tonight she will be presenting a zoning map amendment for the property located at the intersection of E. East Avenue and Stafford Street Extension. She said there is also a parcel located along Skyway Drive. She said the parcels are located along N. Sutherland Avenue and Stafford Street and E. East Avenue, which is the other side of Stafford Street. She said there is one parcel located along Skyway Drive. Keri said the applicant is requesting a General Rezoning from R-20 to GI (General Industrial). She said the properties to the north are currently zoned R-20. She said the properties to the east are zoned GI. She said properties to the south are zoned Residential and properties to the west are zoned Residential and a little bit of General Business.

Keri said the Future Land Use Plan does indicate this area is within the Community Corridor and the Manufacturing, Logistics, and Aerospace designation. She said the Community Corridor serves as the primary conduit to Downtown and the spine of the community with critical connections to major employers. She said for this reason, the area's design and performance is important to the entire community. She said the Community Corridor designation encourages a more unified approach to improving the area's physical environment and economic viability. She said commercial and office are priority uses within this Community Corridor character area.

Keri said the Manufacturing, Logistics, and Aerospace designation includes the City's existing base of industrial centers. She said these areas support manufacturing and production at a variety of scales, including assembly and processing, warehousing and distribution, bulk storage and utilities. She said Manufacturing, Logistics, and Aerospace areas are found near major transportation assets such as highway, rail, and/or air, and generally are buffered from surrounding development. She said commercial and office and industrial uses are also priority uses listed in this character area.

Keri said parcels 09-180-004H-80 and 09-180-004-H-90 are not consistent with the Land Development Plan because this area is projected as Community Corridor which is for commercial. She said, however, the vast majority is consistent since it is the Manufacturing, Logistics, and Aerospace designation.

Keri said the rezoning notification sign will be posted and an official rezoning notification letter will be sent to the adjacent property owners ten (10) days prior to the public hearing.

Keri said planning staff does recommend approval. She said as a reminder, this is a General Rezoning request. She said, therefore, there can be no conditions that can be placed on the rezoning. She said she would be happy to answer any questions. She said the applicant is here as well.

Chair asked if there were any questions for Keri.

Renee Hartis asked Keri what the applicant wants to rezone the property for. Keri said the rezoning is for industrial use. She said specifically, she is not sure. She said the applicant can answer this question but again, this is a General Rezoning. She said the applicant may provide additional information.

Keri said this is a General Rezoning to industrial and the applicant does not have to say a specific use. She said the Planning Board can make a recommendation for approval or denial.

Patrick Furr said this is a General Rezoning to industrial and there is R-20 all around it. Keri said there is R-20 to the north but there is some GI to the east. She said if this rezoning is approved, the applicant would still have to meet the Ordinance requirements for any future development. She said it is not a Conditional District so you cannot place any specific standards above and beyond the Ordinance requirements.

Margaret Desio said to Keri that she would like a list of everything that would be allowed in GI. She said the reason being is that everything we have here tonight is being rezoned to GI. She said this makes her think that in our new rezoning for the UDO, we must have expanded what you can do in GI. Keri said the new UDO was not adopted yet so we are still using the old UDO which would be manufacturing, distribution, assembly of goods and warehouse. She said that is basically what is allowed in GI.

Margaret Desio said if the property is rezoned to industrial, Stafford Street is a two (2)-lane street, East Avenue and Sutherland Avenue are two (2)-lane streets and if we have a lot of heavy industrial trucks, tractor trailers, etc., this is a concern to her. She said there is also a neighborhood here---Salem, Citrus, Windy Drive. She asked Keri if this was 161 acres. Keri said yes. Ms. Desio said to rezone that huge amount of property to GI and to not really know what the impact is going to be [because we don't know what is going to be there] on this neighborhood, she is concerned. She asked if we can have a list of things that are going to be allowed in GI. Keri said our current Ordinance is very cut and dry. She said it does not have an exhaustive list of individual uses. She said it basically lists manufacturing, distribution, assembly of goods, warehouse and obviously office.

Keri said as far as traffic concerns, obviously, whatever goes there will have to be routed through Engineering and NCDOT will play a part if there are any NCDOT roads. She said they would have to potentially bring the roads up to standard, depending on what the use is and depending on the amount of traffic counts. She said all of this would be sorted out whenever it is going to be developed. She said she does understand the concerns about residential. She said the Future Land Use Plan did save this property for industrial use of Manufacturing, Logistics, and Aerospace designation. She said this was done in 2018 for that type of use.

Margaret Desio said the property ends at the auction barn. She asked Keri if there has been any thought of maybe not doing the whole 161 acres and using the acreage in the back toward the auction barn as GI. She said then have a buffer zoning up to this neighborhood. Keri said this is something that can be addressed with the applicant.

Chair said to Keri if we approve this and the new zonings get approved by City Council between now and the time they start to develop, will they have to abide by the new zoning or will they use the old zoning. Keri said it would depend upon when permits are submitted. She said if the new code is adopted before the site is developed, then the applicant would go by the new code. She said if the permits are submitted before the new code is adopted, then the applicant would go by the current Ordinance that we have in place today.

Chair asked Keri if it is a use by right, which this is [Keri said if the rezoning is approved], then they can go and build whatever they want to and they do not have to do anything to the roads. Keri said NCDOT and City of Monroe still require improvements at times depending upon traffic counts. Chair said if it is a use by right, would they still have to do the traffic study. Keri said depending upon the use, yes. She said they are still going to have to get approval from NCDOT on what improvements are going to be required. She said improvements, access points and driveway permits will still have to get done with by-right development.

Chair asked Keri if she can tell us the difference between the new zoning and old zoning. Keri said in the new zoning map, we did apply the industrial zoning district to this parcel. She said as far as what is allowed there in the new code, we will have two (2) industrial districts. She said one is General Industrial, which is more of your light industrial, and would be your distribution or office warehouse. She said we also have Heavy Industrial, which we do not currently have in our zoning. She said this is more of your heavy, noxious-type uses.

Richard Ali asked Keri if what she is asking for this Board tonight is to approve General Industrial. Keri said yes, staff is recommending approval of a general rezoning from R-20 to General Industrial, without any conditions.

Ken Deal said as a point of discussion, currently it is R-20. He said the UDO could be revised many times between now and then. He said, in fact, he would even make the argument that this should remain R-20. He said if you look at the two (2) parcels separated by Stafford Street, our ideal sites for residential neighborhoods provide more than one (1) entryway options. He said one (1) even has waterfront possibilities on [could not understand] Lake. He said to rezone it to industrial now and write a blank check, doesn't make any sense to him.

Keri said an important thing to also note, if she is not mistaken, is the City of Monroe has also purchased this property here [she pointed to the screen] for a City-owned industrial park. She said this was from a past rezoning that had some townhomes adjacent to it as well. She said this was done with the thought of the 2018 Future Land Use Plan that slated this area in gray for the industrial character area.

Ken Deal said it would make a great park to support these neighborhoods.

Chair asked if there were any more questions. There were none. Chair then asked the owner or developer to come forward.

Ms. Brittany Lins of the law firm of Alexander Ricks came forward and said they are representing SunCap Property Group. She passed around a few copies of her presentation. She said staff did a good job of the overview but she added a few more highlights. She said they are pursuing the GI district for this area and will also pursue an annexation for this area. She said it will bring a great tax based to the City. She said this is a large parcel and will bring with it a significant amount of economic development and tax base into the City of Monroe.

Ms. Lins said she does not have any site plan or specifics to share with this Board. She said, truthfully, she does not know what will be developed. She said she represents SunCap and they are the developers of the site. She said we are just seeking the rezoning. She said as staff mentioned, if approved, this would still go through the permitting process, engineering review, etc.

Renee Hartis said to Ms. Lins that she is pursuing the zoning but has no idea of what they are going to build at this property. Ms. Lins said she, personally, does not. Ms. Hartis said they wanted to speak to the applicant. Ms. Lins said she represents SunCap as the petitioner and she has Darius here as well.

Chair said to Ms. Lins that if they are going to start in February, surely somebody knows what is going to be placing on the property. Ms. Lins said certainly there are plans on the table, but she said as the attorney, she does not know the specific plans. She is not sure if they can be disclosed as well.

Chair said she understands about the neighborhood and she also, as a taxpayer, understands the value of industry from our tax base. She said she is not really sure about what is going in there and there is a lot of land.

Jennifer Smith said Keri had mentioned something about noxious fumes. Ms. Lins said that is not the district that we are pursuing. She said they are pursuing the GI district, which is the light industrial [distribution, warehousing, light office uses]. She said the heavy industrial district would be under the new Ordinance which has not been adopted yet. She said that is not the district they want; they will not be doing anything with noxious uses. Chair said to Ms. Lins that after the new Ordinance is adopted you would be able to. Ms. Lins said no. She said under the current Ordinance, we cannot do any noxious heavy industrial uses. She said under the new Ordinance, there are two (2) categories---GI and HI [heavy industrial]. She said they are two (2) separate districts. She said we are pursuing the GI. She said we are not pursuing the HI. She said we will be locked in the light industrial; we will not be able to do the heavy industrial.

Jennifer Smith said to Ms. Lins that she was still going to have big, semi-trucks in this neighborhood.

David Dotson asked Ms. Lins why she was pursuing this now if it was going to be the same type of zoning if you pursue it in February. He said you may not have to disclose to us, but why are you in such a hurry to get this rezoned. Ms. Lins said for contractual obligations.

Chair asked if anyone else had any questions. There were none.

Chair asked if there was anyone else who would like to speak in favor of this project. There was no one.

Chair asked if there was anyone who would like to speak in opposition of this project. There was no one.

Chair asked for a motion.

Motion: Richard Ali made a motion to recommend adoption of the Resolution Denying the Land Development Plan Compliance.

Second: Ken Deal

Action: The motion to recommend adoption of the Resolution Denying the Land Development Plan Compliance passed unanimously with the following votes:

AYES: Mary Ann Rasberry, Richard Ali, Renee Hartis, Jennifer Smith, Patrick Furr, Margaret Desio, Ken Deal, David Dotson and Archie Morgan

NAYS: None

Motion: Richard Ali made a motion to recommend denial of the Zoning Map Amendment.

Second: David Dotson

Action: The motion to recommend denial of the Zoning Map Amendment passed unanimously with the following votes:

AYES: Mary Ann Rasberry, Richard Ali, Renee Hartis, Jennifer Smith, Patrick Furr, Margaret Desio, Ken Deal, David Dotson and Archie Morgan

NAYS: None

Item 4. Zoning Map Amendment request for the property located at 430 Crow Street and further identified as Tax Parcel 09-231-035A from GB (General Business) to GI (General Industrial)

Keri Mendler, Senior Planner, introduced this item and said tonight she will present a Zoning Map Amendment request for the property at 430 Crow Street. She said the property is located south of Crow Street and west of McCauley Street.

Keri said the applicant is requesting a General Rezoning from GB (General Business) to GI (General Industrial). She said the property currently has a 6,000 +/- square foot building on the site. She said as the property is currently zoned, it can be utilized for uses within the GB zoning district, which includes retail sales and service or restaurants.

Keri said the properties to the north and east are zoned GI (General Industrial). She said the properties to the south and west are zoned GB (General Business).

Keri said this property is located in the Downtown Master Plan and it is located in the Office/Employment classification. She said this parcel is right on the edge of the Downtown Master Plan, which was adopted in 2008. She said as she mentioned, it is in the Office/Employment area since it is tucked back in the main area in the Downtown Central Core.

Keri said planning staff does believe that the proposal is a reasonable use and in the public interest because Office/Employment uses are permitted in the GI district and because it is off the main roads and not within the Central Core of Downtown.

Keri said the rezoning notification sign will be posted and official rezoning notification letter will be sent at least ten (10) days prior to the public hearing. She said she would be happy to answer any questions and the applicant is here as well.

Chair asked if there were any questions.

Jennifer Smith said there is a very small building on the property and she wanted to know if there were any plans for that. Keri said she would defer this question to the applicant. She said this rezoning is for GI as well so there cannot be any conditions.

Chair asked if there were any further questions for Keri. There were none. She asked for the applicant to come forward.

Mr. Charles Griffin came forward and said he is the proud owner of 430 Crow Street. He said Metro Oil is just to the east and they have the big, tall tanks that were there before he bought the property. He said he owns the property across the street which is already zoned GI. He said on the south side, behind him, is CBS Forklift. He said to the west on Crow Street is the City garage and they are zoned GB. He said there are all well-established businesses around him and everyone has been there for a long time. He said it does not look like anybody is going to be moving.

Mr. Griffin said he has been trying to rent the property for several years now. He said it used to be a Southern States store. He said it has been very difficult to try and rent the building. He said he has a potential tenant right now, but even if this goes through he doesn't think he will last that long. He said Keri is checking now if this potential tenant can go into the building if it's GB. He said if anyone has ever been up and down Crow Street, there is not a lot of traffic on Crow Street, so it really doesn't lend itself towards retail space unless you absolutely want to buy something that they are selling on Crow Street. He said McCauley Street is a one-way street. He said it is confusing. He said you have to know exactly where you are going in order to find that place in Monroe. He said as a retail spot it is not the greatest. He said he was hoping to get it zoned GI and then it might open it up to different people. Renee Hartis said it is surrounded by business as it is so she did not think there would be any problem.

Patrick Furr asked Mr. Griffin if he was going to keep the building. Mr. Griffin said yes. Mr. Furr asked if it was fenced in. Mr. Griffin said no. Mr. Furr asked if it had inside access for equipment or storage. He said he was sorry that he didn't look at the place but he is looking for a building. Mr. Griffin said it is a pre-fab steel building, 6,000 square feet, 60 feet wide x 100 feet long. He said half of the building is conditioned, which is 60 x 50 and the other half is not. He said it has a one (1) bay loading dock on the south side of the building. Mr. Furr asked Mr. Griffin if he was going to rent or lease the building. Mr. Griffin said yes.

Ken Deal asked Mr. Griffin that he understood that there was a potential renter for the building. He asked what type of business it would be. Mr. Griffin said it is a company that makes special mixes of concrete. Mr. Deal asked Mr. Griffin if he thought about going through the Special Use Permit process with the City. Mr. Griffin said it is not available for this situation. Keri said it is not. Mr. Griffin said Keri has been very helpful.

Patrick Furr said we are obviously trying to transform and upfit Monroe. He asked Mr. Griffin if he had any plans to upfit the building aesthetically on the outside. Mr. Griffin said when he bought the building it was pretty bad. He said it has been painted and he has been working on the interior and exterior of the building as time has gone on and money has permitted. He said he hasn't had any income on the building for four (4) years.

Chair asked if there were any more questions. There were none.

Chair asked if there was anyone else who would like to speak in favor of this project. There was no one.

Chair asked if there was anyone who would like to speak in opposition of this project. There was no one.

Chair asked for a motion.

Motion: Renee Hartis made a motion to recommend adoption of the Resolution Approving the Land Development Plan Compliance.

Second: Jennifer Smith

Action: The motion to recommend adoption of the Resolution Approving the Land Development Plan Compliance passed unanimously with the following votes:

AYES: Mary Ann Rasberry, Richard Ali, Renee Hartis, Jennifer Smith, Patrick Furr, Margaret Desio, Ken Deal, David Dotson and Archie Morgan

NAYS: None

Motion: Renee Hartis made a motion to recommend the adoption of the Ordinance amending Section 156.106 - Official Zoning Map.

Second: Jennifer Smith

Action: The motion to recommend adoption of the Ordinance amending Section 156.106 – Official Zoning Map passed unanimously with the following votes:

AYES: Mary Ann Rasberry, Richard Ali, Renee Hartis, Jennifer Smith, Patrick Furr, Margaret Desio, Ken Deal, David Dotson and Archie Morgan

NAYS: None

Item 5. Zoning Map and Text Amendment request for property located along E. Roosevelt Blvd further identified as Tax Parcel #09-122-002 from GI (General Industrial) to Conditional District "Camp Sutton Nursery"

Keri Mendler, Senior Planner, introduce this item and said tonight she is presenting a Zoning Map and Text Amendment request for the property located along E. Roosevelt Blvd. She said the request is to utilize the property for a commercial greenhouse with onsite retail and wholesale sales. She said commercial greenhouses require a Conditional District rezoning so that is why the applicant is here tonight.

Keri said the site is north of E. Roosevelt Blvd. and the City's golf course is located to the south. She said the property is zoned GI (General Industrial) so with the current zoning it can be utilized for industrial uses such as manufacturing and distribution. She said the adjoining zoning to the north and east are also GI. She said the zoning to the west is an old mixed-use Special Use District which was utilized for the medical plaza there. She said the zoning to the south, which is across Roosevelt Blvd., is residential.

Keri said the applicant is requesting a Conditional District in order to utilize the property for a commercial greenhouse with onsite retail and wholesale sales. Specifically, she said plants and other landscaping needs such as rock, soil, mulch, etc. She said the site will also have outdoor storage including shrubs and plants. She said the western portion of the property has a lot of floodplain.

Keri said the proposed structures will maintain a 50-foot setback from E. Roosevelt Blvd. and at least a ten (10)-foot setback from all other property lines. She said the development will also have a 50-foot landscape buffer along E. Roosevelt Blvd. She said they are also proposing a 25-foot landscape buffer along the eastern property line.

Keri said the proposed site is going to have a minimum of 30 paved parking spaces. She said there are no minimum parking requirements for commercial and industrial uses at this time. Additionally, she said they are going to do an eight (8)-foot wide sidewalk that will be along the front of E. Roosevelt Blvd. She said the applicant will be required to provide stormwater management to treat stormwater run-off for the project. She said all blue line streams have been provided with a 50-foot buffer as required by the Ordinance.

Keri said the site will be accessed by one (1) entrance off E. Roosevelt Blvd., which is located more or less central to the site.

Keri went over the site plan showing the shrub and tree storage area, a retail store, as well as the greenhouses, and a potting/storage shed to the north. She showed the proposed elevations for the greenhouses. She said the retail building and storage shed will be metal buildings as the industrial district does not have building design standards in the current Code.

Keri said the applicant did hold a neighborhood meeting on October 21st. She said there were no individuals who attended this meeting, nor did anyone reach out to the applicant or staff after the letters were mailed out.

Keri said a rezoning notification sign will be posted and notification letter will be mailed ten (10) days prior to the public hearing.

Keri said the Land Development Plan indicates this area is located in the Manufacturing, Logistics and Aerospace Character Area. She said the Manufacturing, Logistics and Aerospace designation includes the City's existing base of industrial centers. She said these areas support manufacturing and production at a variety of scales, including assembly and processing, warehousing and distribution, bulk storage and utilities. She said Manufacturing, Logistics and Aerospace areas are found near major transportation assets and are generally buffered from surrounding development. She said clusters of uses that support or serve similar industrial uses typically locate nearby. She said the proposed rezoning is consistent with the Land Development Plan as commercial uses are listed as a priority use.

Keri said staff is of the opinion that the proposed project is reasonable and in the public interest because it is located along the main corridor where sales-oriented businesses would typically locate. She said, additionally, this can act as a buffer between E. Roosevelt Blvd. and the residential area to the south and other industrial uses that may locate to the north of this site.

Keri said planning staff does recommend approval of this rezoning. She said she would be happy to answer any questions you may have and the applicant is here as well.

Chair asked if there were any questions.

Margaret Desio said to Keri that she mentioned there would be an entrance off Acme Drive. Keri said no, that is to the north and it is an existing right-of-way. She said their entrance is off Roosevelt Blvd. She said you would come in off Roosevelt and there is a cul-de-sac so you can turn around or go into the parking area and then exit off of Roosevelt Blvd.

Margaret Desio said to Keri that she would like to know how far from Acme Drive the entrance would be off Roosevelt. Keri showed the distance on the site plan.

Mr. Matt Kirchner of Eagle Engineering came forward and said this is the Camp Sutton Nursery. He said if you have driven down that area you will see that there is a pretty good-sized development all the way up to this site. He said the nursery is not by right so we are asking permission to use it as a Conditional District. He said we are developing everything along Roosevelt up to this property as by-right uses. He showed additional site plans and elevations of the property.

Renee Hartis said she felt this is a great addition to the City.

Archie Morgan asked how many acres is the proposed site. Mr. Kirchner said the whole property is 83 acres and we are asking for 34 acres of it. Margaret Desio asked if the 34 acres included the flood plain. Mr. Kirchner said yes.

Tom Crouch from the Moser Group came forward to answer questions.

Patrick Furr said he owns a string of retail nurseries. He said he knows what you are doing here and he likes it. He asked if they will be growing annual, perennials, etc. Mr. Crouch said they will have four (4) greenhouses. He said one (1) greenhouse will be for perennials, two (2) for annuals and the other greenhouse will be for specialty plants. Mr. Furr said our community needs this.

Patrick Furr said whenever he puts in his retail nurseries, he always landscapes the area. He said unfortunately, today we do not have much of a landscape ordinance in Monroe. He asked if this nursery will be landscaped. Mr. Crouch said yes. He said there will be a management team onsite making sure this looks great.

Jennifer Smith said there was a little house on the property. Mr. Crouch said that house will be torn down.

Patrick Furr asked if there would be a sediment control basin. Mr. Crouch said yes. He said everything will be in the warehouse and it will all drain to the sediment pond before it goes back into the flood plain.

David Dotson asked if they would be making deliveries and having dump trucks coming in to pick up. Mr. Crouch said we will not be making deliveries but we will have trucks [trailers, landscapers] coming in to pick up.

Mr. Crouch said they are planning to open by June 2022. Mr. Kirchner said this is part of your “Opportunity Zone” to bring businesses in.

Chair asked if there were any more questions. There were none.

Chair asked if there was anyone else who would like to speak in favor of this project. There was no one.

Chair asked if there was anyone who would like to speak in opposition of this project. There was no one.

Chair asked for a motion.

Motion: Renee Hartis made a motion to recommend adoption of the Resolution Approving the Land Development Plan Compliance with the recommendation from planning staff that the applicant will complete a lot line revision prior to occupancy of the site.

Second: Jennifer Smith

Action: The motion to recommend adoption of the Resolution Approving the Land Development Plan Compliance with the condition passed unanimously with the following votes:

AYES: MaryAnn Rasberry, Richard Ali, Renee Hartis, Jennifer Smith, Patrick Furr, Margaret Desio, Ken Deal, David Dotson and Archie Morgan

NAYS: None

Chair asked for a motion on the Ordinance amending Section 156.98 – Conditional Districts Established and Section 156.106 – Official Zoning Map.

Motion: Renee Hartis made a motion to recommend the adoption of the Ordinance amending Section 156.98 - Conditional Districts Established and Section 156.106 - Official Zoning Map.

Second: Jennifer Smith

Action: The motion to recommend adoption of the Ordinance amending Section 156.98 – Conditional Districts Established and Section 156.106 – Official Zoning Map passed unanimously with the following votes:

AYES: MaryAnn Rasberry, Richard Ali, Renee Hartis, Jennifer Smith, Patrick Furr, Margaret Desio, Ken Deal, David Dotson and Archie Morgan

NAYS: None

Item 7. **Other**

There was no other business.

Item 8. **Next Meeting – December 1, 2021**

Item 9. **Adjournment**

Chair said if there were no further questions, she would entertain a motion at this time to adjourn.

Motion: Renee Hartis made a motion to adjourn the meeting.

Second: Jennifer Smith

Action: The motion to adjourn passed unanimously with the following votes:

AYES: **Mary Ann Rasberry, Renee Hartis, Richard Ali, Jennifer Smith, Patrick Furr,
Margaret Desio, Ken Deal, David Dotson and Archie Morgan**

NAYS: **None**

The meeting was adjourned at 7:02 p.m.

Respectfully Submitted,

MaryAnn Rasberry, Chair
Planning Board

Maryann Brown
Secretary to the Board

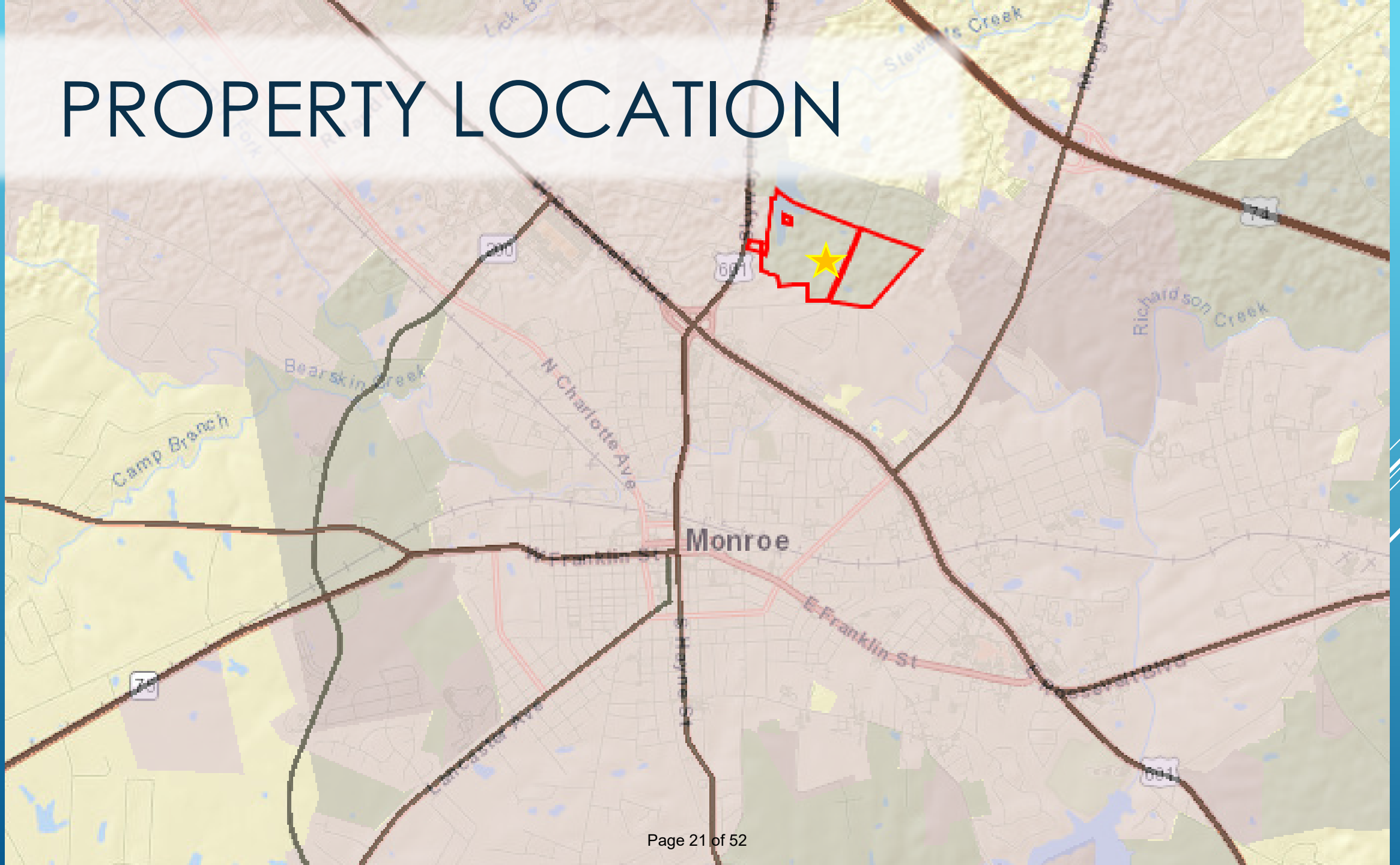


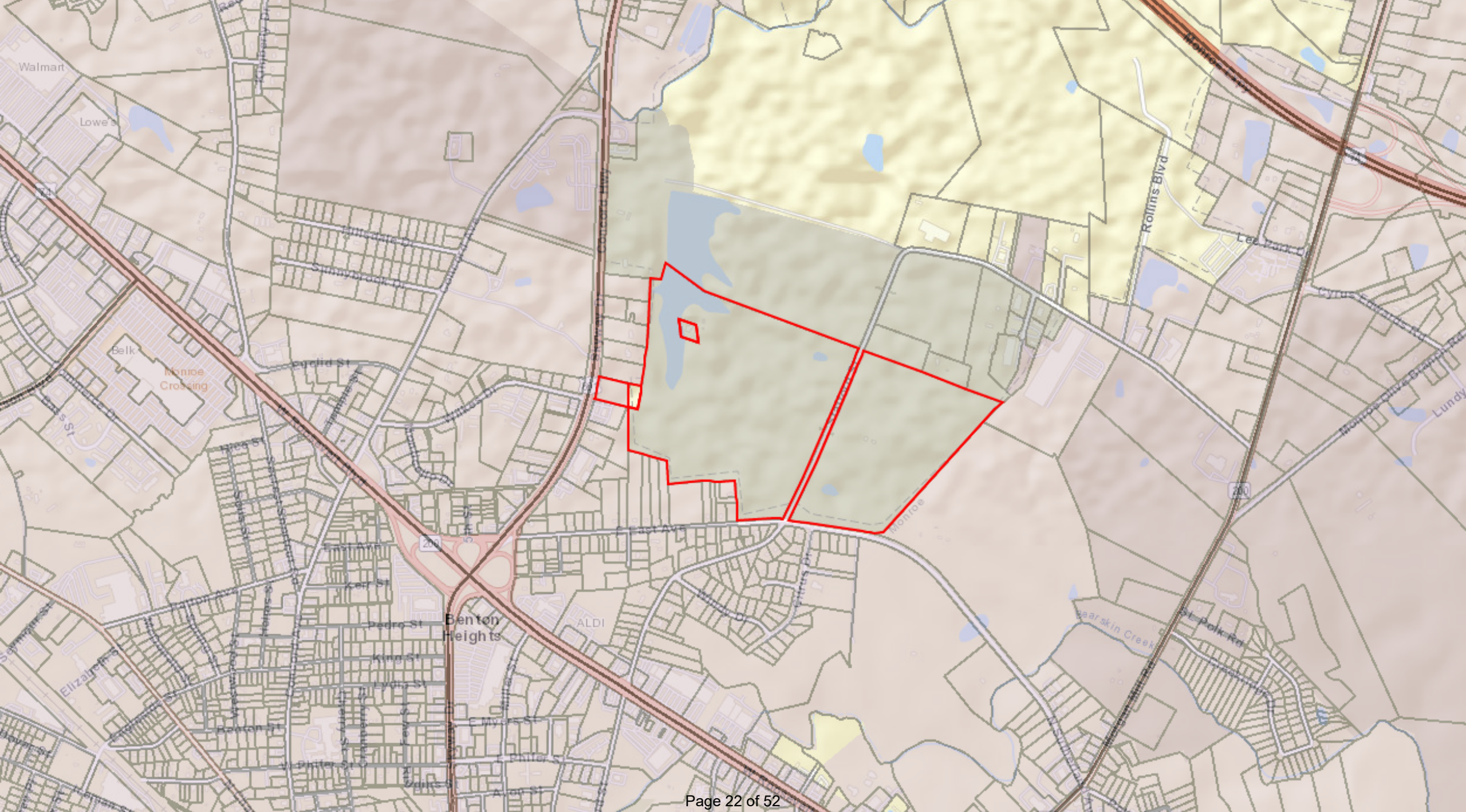
STAFFORD STREET EXT & SKYWAY DRIVE SUNCAP PROPERTY GROUP

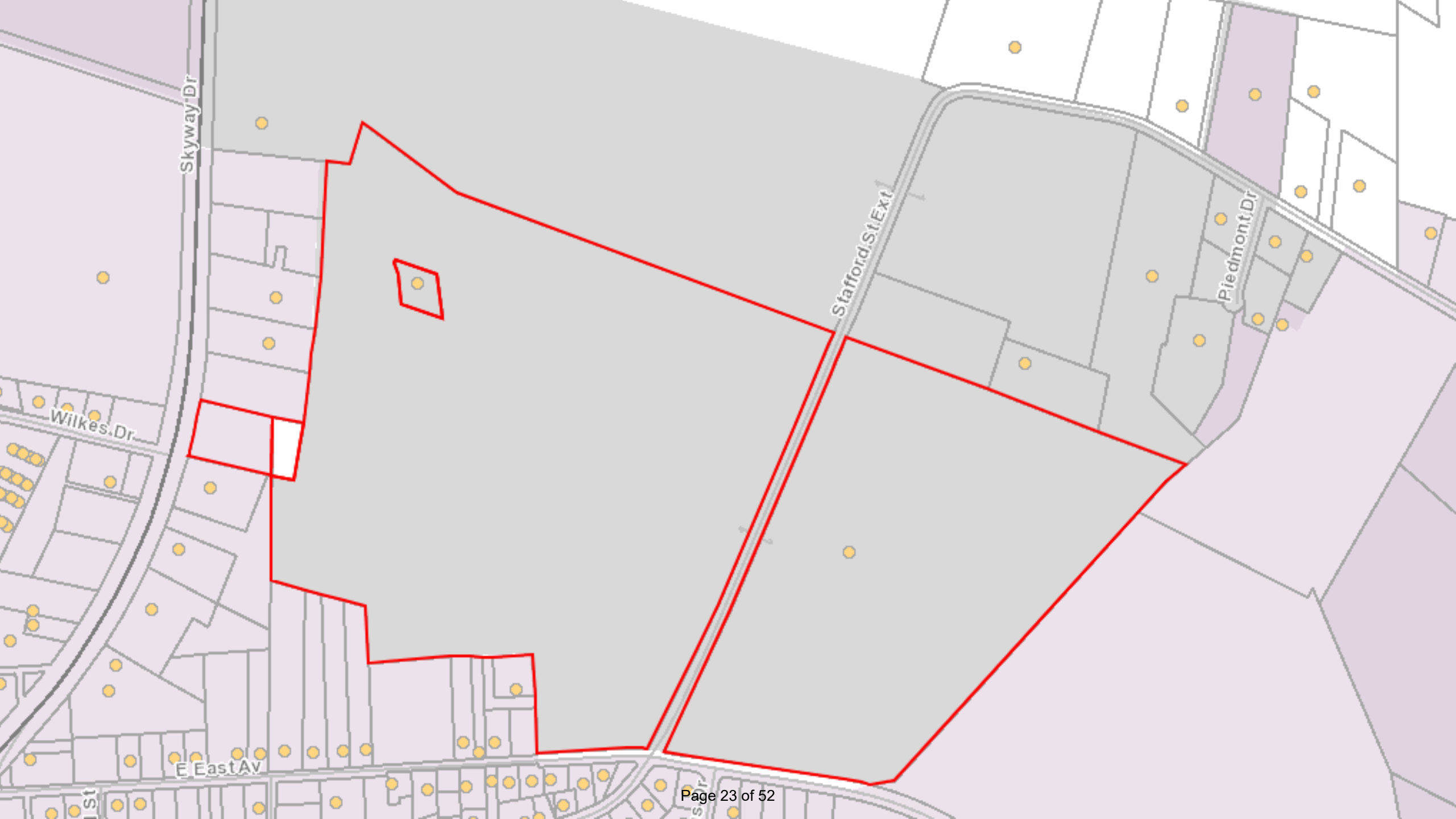
Planning Board Meeting
November 3, 2021



PROPERTY LOCATION







TOTAL AREA TO BE REZONED: 161.1840 AC



REZONING APPLICATION DIAGRAM

MONROE, NORTH CAROLINA

SUNCAP PROPERTY GROUP, LLC
6102 CANNON BLVD., SUITE 100
CHARLOTTE, NC 28209



NO. 1	1
NO. 2	1
NO. 3	1
NO. 4	1
NO. 5	1
NO. 6	1
NO. 7	1
NO. 8	1
NO. 9	1
NO. 10	1
NO. 11	1
NO. 12	1
NO. 13	1
NO. 14	1
NO. 15	1
NO. 16	1
NO. 17	1
NO. 18	1
NO. 19	1
NO. 20	1
NO. 21	1
NO. 22	1
NO. 23	1
NO. 24	1
NO. 25	1
NO. 26	1
NO. 27	1
NO. 28	1
NO. 29	1
NO. 30	1
NO. 31	1
NO. 32	1
NO. 33	1
NO. 34	1
NO. 35	1
NO. 36	1
NO. 37	1
NO. 38	1
NO. 39	1
NO. 40	1
NO. 41	1
NO. 42	1
NO. 43	1
NO. 44	1
NO. 45	1
NO. 46	1
NO. 47	1
NO. 48	1
NO. 49	1
NO. 50	1
NO. 51	1
NO. 52	1
NO. 53	1
NO. 54	1
NO. 55	1
NO. 56	1
NO. 57	1
NO. 58	1
NO. 59	1
NO. 60	1
NO. 61	1
NO. 62	1
NO. 63	1
NO. 64	1
NO. 65	1
NO. 66	1
NO. 67	1
NO. 68	1
NO. 69	1
NO. 70	1
NO. 71	1
NO. 72	1
NO. 73	1
NO. 74	1
NO. 75	1
NO. 76	1
NO. 77	1
NO. 78	1
NO. 79	1
NO. 80	1
NO. 81	1
NO. 82	1
NO. 83	1
NO. 84	1
NO. 85	1
NO. 86	1
NO. 87	1
NO. 88	1
NO. 89	1
NO. 90	1
NO. 91	1
NO. 92	1
NO. 93	1
NO. 94	1
NO. 95	1
NO. 96	1
NO. 97	1
NO. 98	1
NO. 99	1
NO. 100	1

DATE	2/2/2020
SCALE	1"=100'
DRAWN BY	JAM
APPROVED BY	RL

7A1

PROPERTY LOCATION

EXISTING ZONING = R-20



Zoning Districts

R-20-SU

R-10

R-MF

B-1-SU

B-5-SU

G-I-SU

GB

R-40

R-15-SU

R-10-SU

R-MH

B-3-SU

M-U-SU

OT

CD

R-20

R-12-SU

R-P1-SU

R-O-SU

B-4-SU

G-I

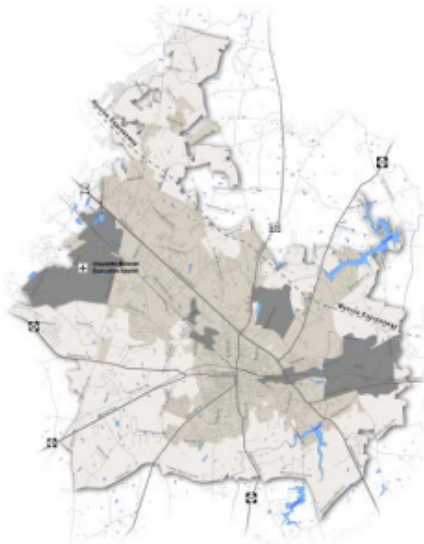
CBD

Page 25 of 52

ADOPTED AREA PLAN

MANUFACTURING, LOGISTICS AND AEROSPACE

The Manufacturing, Logistics, and Aerospace designation includes the city's existing base of industrial centers. These areas support manufacturing and production at a variety of scales, including assembly and processing, warehousing and distribution, bulk storage, and utilities. Manufacturing, Logistics, and Aerospace areas are found near major transportation assets (e.g., highway, rail, and/or air) and generally are buffered from surrounding development. Clusters of uses that support or serve similar industrial uses typically locate nearby.



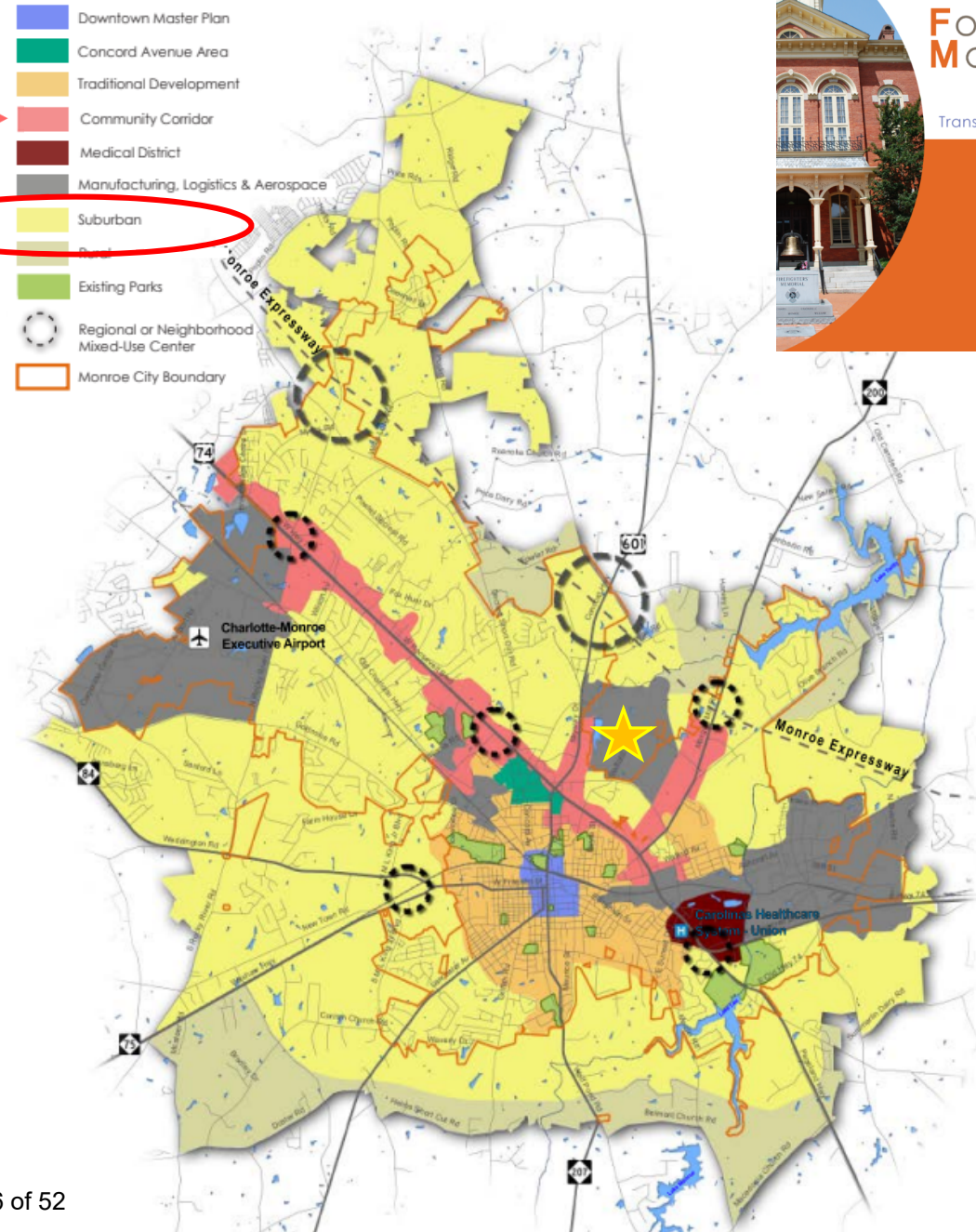
PRIORITY USES

- ☐ single-family residential
- ☐ multi-family residential
- ☒ commercial
- ☒ office
- ☐ medical
- ☒ civic
- ☐ mixed-use
- ☒ industrial
- ☒ open space

Land Use Characteristics	
Land Use Mix	non-residential
Typical Lot Coverage	10% to 60%
Residential Density	n/a
Non-Residential Density	0.10 to 0.20 FAR
Prevailing Building Height	1 to 2 stories
Total Acreage	4,900 acres
Percent of Study Area	12%

Future Land Use Map
Figure 3.1

- Downtown Master Plan
- Concord Avenue Area
- Traditional Development
- Community Corridor
- Medical District
- Manufacturing, Logistics & Aerospace
- Suburban
- Existing Parks
- Regional or Neighborhood Mixed-Use Center
- Monroe City Boundary





Forward Monroe
Land Use and Transportation Plan
Adopted April 10, 2018




Transform Monroe

Development Code & Zoning Map

[home](#)

[documents](#)

[comments](#)

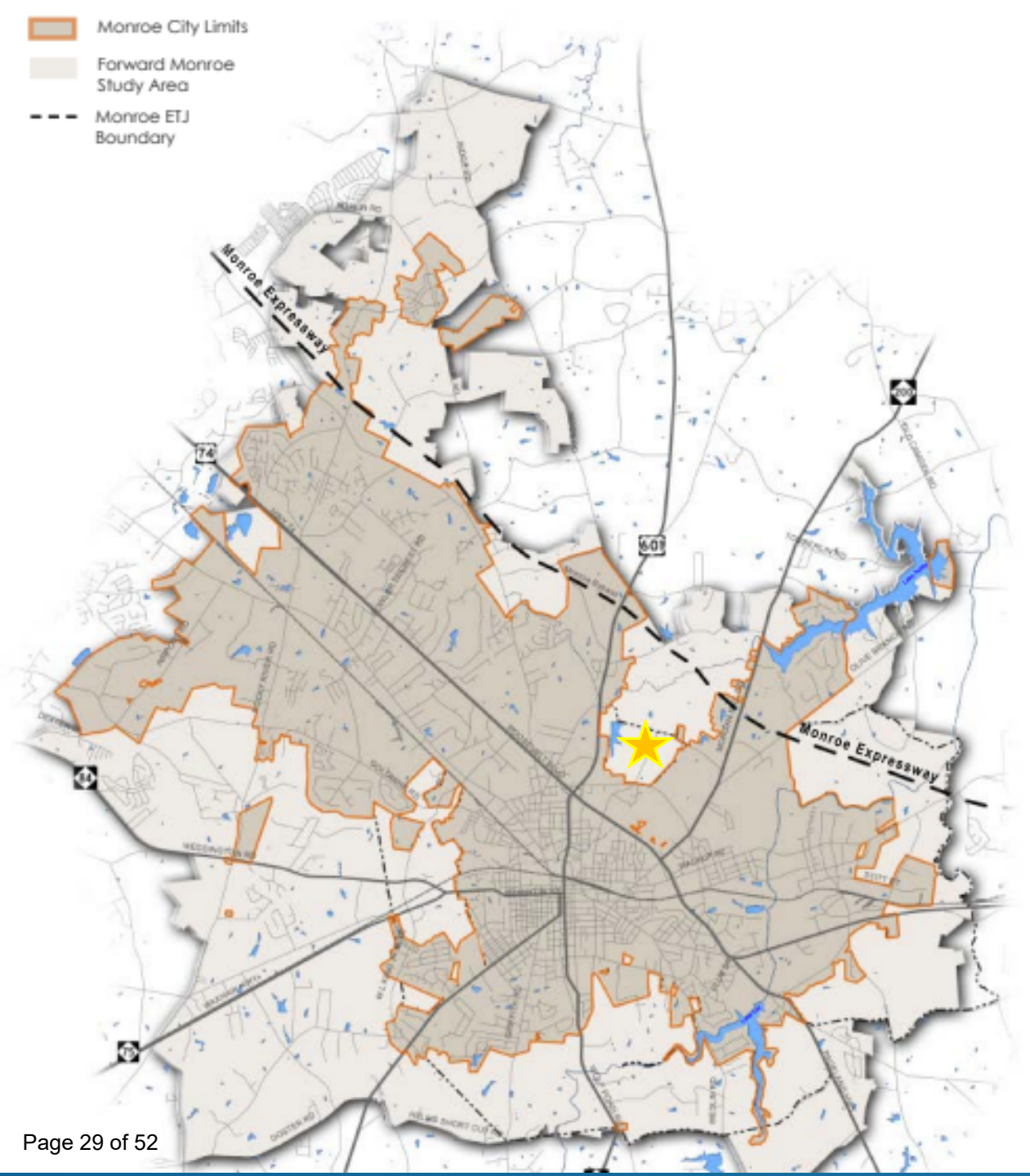
[Forward Monroe](#)

Proposed Zoning

Legend

- Quadrant
- City Boundary
- CAO
- CC-MX1
- CC-MX2
- CD
- DC-MX
- DG-MX
- GB
- GI
- HI
- MD-MX
- NB
- OM
- RC-MX
- RHD
- RLD
- RMD
- RR

PURSuing G-I DISTRICT AND ANNEXATION



UNION COUNTY, NC

THE MANUFACTURING HUB OF THE CHARLOTTE REGION

[WHY UC?](#)[AVAILABLE PROPERTIES](#)

PRECISION MFG

Manufacturing is still the cornerstone of the local economy for the county. It represents a significant portion of our workforce.

[LEARN MORE +](#)

AGRI-BUSINESS

Agri-business is a critical component of Union County's economic fabric. It literally touches every corner of the county.

[LEARN MORE +](#)

LOGISTICS

Allows for capitalization the county's location and abilities in the movement of materials, information and processed goods to the world marketplace.

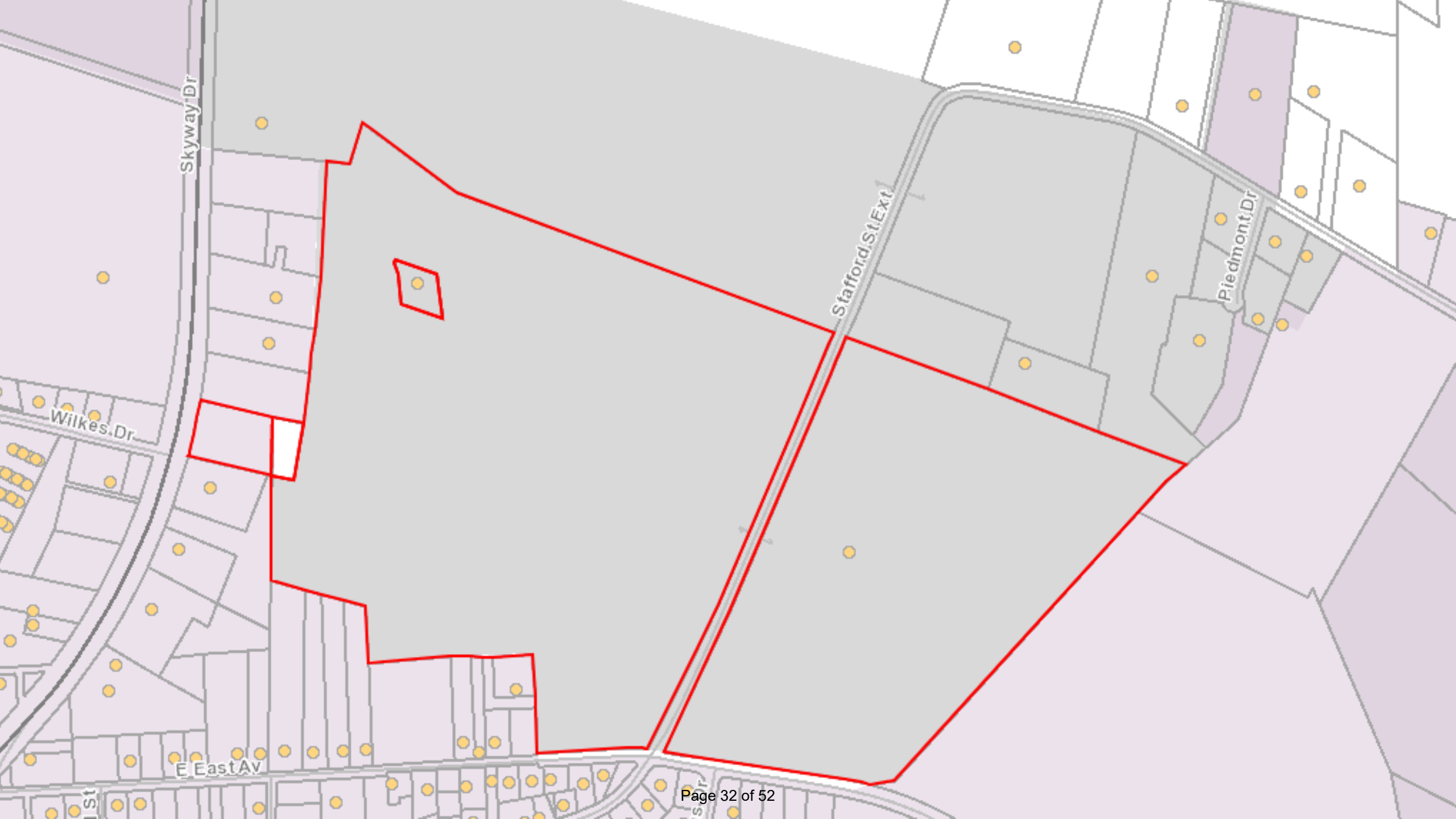
[LEARN MORE +](#)

COMMERCIAL

Based in the location of the county and its proximity to assets throughout the South.

[LEARN MORE +](#)

QUESTIONS?



GI GENERAL INDUSTRIAL → GI GENERAL INDUSTRIAL AND HI HEAVY INDUSTRIAL

FORMER GI District Development Standards

Building Height		Not Applicable
Density		Not Applicable
Setbacks		10' Front/Side/Rear
Lot	Width	Not Applicable
	Area	Not Applicable



NEW GI and HI District Development Standards

Building Height		Maximum 5 Stories
Density		Maximum 2 Units/Acre (Live-Work Only)
Setbacks	Front (Street)	25' (GI) 50' (HI)
	Side	10' (GI) 25' (HI) 50'/100' if abutting residential
	Rear	25' (GI) 50' (HI) 50'/100' if abutting residential
Lot	Width	Not Applicable
	Area	Not Applicable
FAR		1.0 Maximum

**RESOLUTION APPROVING LAND DEVELOPMENT PLAN COMPLIANCE
R-2021-90**

WHEREAS, in accordance with the provisions of North Carolina General Statute 160D-605, the City Council does hereby find and determine that the adoption of the zoning map amendment from R-20 (Residential Low Density) to GI (General Industrial) for the properties further described below is not consistent with the adopted Land Development Plan. The Land Development Plan identifies a portion of the request as Community Corridor (3.31 acres) and a majority of the request as Manufacturing, Logistics, and Aerospace (157.86 acres) designation. Industrial uses are a priority in the latter designation, but industrial uses are not considered a priority use in the Community Corridor. However, the proposed rezoning is a reasonable use and in the public interest because future development would have access off of Skyway Drive/Concord Highway which is a high volume thoroughfare in the City of Monroe and furthermore the subject property is located within two (2) miles of the Monroe Expressway. Based on this information, the conditions have changed which justify amending the Land Development Plan. As a result of this zoning map amendment request approval, the Land Development Plan is amended to reflect the land use modification.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Monroe adopts the Resolution Approving Land Development Plan Compliance for properties with Union County Tax Parcel Number(s): 09-180-004-90, 09-180-004-G, 09-180-004-H-80, and 09-180-004-H-90.

Adopted this 17th day of November, 2021

Bobby G. Kilgore, Mayor

Attest:

Bridgette H. Robinson, City Clerk

**RESOLUTION DENYING LAND DEVELOPMENT PLAN COMPLIANCE
R-2021-90**

WHEREAS, in accordance with the provisions of North Carolina General Statute 160D-605, the City Council does hereby find and determine that the adoption of the zoning map amendment from R-20 (Residential Low Density) to GI (General Industrial) for the properties further described below is not consistent with the adopted Land Development Plan. The Land Development Plan identifies a portion of the request as Community Corridor (3.31 acres) and a majority of the request as Manufacturing, Logistics, and Aerospace (157.86 acres) designation. Industrial uses are a priority in the latter designation, but industrial uses are not considered a priority use in the Community Corridor. The proposed rezone is not a reasonable use or in the public interest, because the surrounding residential property values could be negatively impacted by an industrial development at this location.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Monroe adopts the Resolution Denying Land Development Plan Compliance for properties with Union County Tax Parcel Number(s): 09-180-004-90, 09-180-004-G, 09-180-004-H-80, and 09-180-004-H-90.

Adopted this 17th day of November, 2021

Bobby G. Kilgore, Mayor

Attest:

Bridgette H. Robinson, City Clerk

**ORDINANCE TO AMEND CITY OF MONROE CODE OF ORDINANCES
TITLE XV: LAND USES
CHAPTER 156: ZONING CODE
O-2021-70**

Preamble

Pursuant to authority conferred by Chapter 160D-701 of the North Carolina General Statutes, as amended and for the purpose of promoting the health, safety, morals, or general welfare of the inhabitants of the City by lessening congestion in and around the streets; securing safety; preventing the overcrowding of land; avoiding undue congestion; and facilitating the adequate provision of transportation.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONROE THAT TITLE XV, CHAPTER 156 ZONING CODE OF THE CITY OF MONROE CODE OF ORDINANCES BE AMENDED AS FOLLOWS:

Section 1. Amend §156.106 OFFICIAL ZONING MAP as follows:

Rezone the properties with tax parcel #'s: 09-180-004-90, 09-180-004-G, 09-180-004-H-80, and 09-180-004-H-90 from R-20 (Residential Low Density) to GI (General Industrial).

Section 2. This Ordinance shall be effective upon adoption.

Adopted this 17th day of November, 2021

Attest:

Bobby G. Kilgore, Mayor

Bridgette H. Robinson, City Clerk



STAFF REPORT

TO: City Council

VIA: Brian Borne, Interim City Manager

DATE: November 17, 2021

FROM: R. Christopher Platé, Executive Director of Economic Development

PREPARED BY: R. Christopher Platé, Executive Director of Economic Development

SUBJECT: Amendment to Current Economic Development Interlocal Agreement between the City of Monroe and Union County.

SUMMARY STATEMENT

Authorize the Interim City Manager to negotiate and execute an amendment substantially consistent with this agenda item

REVIEW

In 2013, Union County and Monroe established Monroe-Union County Economic Development as a joint countywide economic development program through interlocal agreement. An interlocal agreement to continue this program was entered into in 2015 (the “Current EDC Agreement”).

At the Council’s October, 12, 2021 meeting, the council adopted a joint resolution with Union County creating the Monroe-Union County Economic Development Commission effective January 1, 2022 and approving the interlocal agreement effective January 1, 2022 (the: New EDC Agreement”). The New EDC Agreement allows for a transition period for the economic development commission until July 1, 2022.

In order to continue funding the current economic development partnership during the transition period from January 1, 2022, through June 30, 2022, the Current EDC Agreement needs to be extended through June 30, 2022. This will allow for already budgeted payments to continue for the remainder of this fiscal year 2022. Funding under the New EDC Agreement for the new Monroe-Union County Economic Development Commission entity will begin July 1 of fiscal year 2023.

There will be zero financial impact as funding remains consistent with the FY22 budget.

RECOMMENDATION

It is the recommendation of the Monroe-Union County Economic Development Staff and the Monroe-Union County Board of Advisors that Monroe City Council approve to extend the Current EDC Agreement through June 30, 2022.



STAFF REPORT

TO: City Council

VIA: Brian J. Borne, Interim City Manager

DATE: November 17, 2021

FROM: Brian J. Borne, Interim City Manager

PREPARED BY: S. Mujeeb Shah-Khan, City Attorney

SUBJECT: Hearing on Recommendation of Manager Related to Payment of Claims
Against an Individual Council Member

SUMMARY STATEMENT

City Council is to hold a hearing on the recommendation of Interim City Manager Brian J. Borne to not defend or pay any amounts due related to individual claims against Councilmember Angelia Nikole James that arose following incidents that took place on September 9 and 10, 2021 and after.

REVIEW

On August 3, 1993, the Monroe City Council approved a “Resolution of the Monroe City Council Establishing Uniform Standards Under Which Claims or Civil Judgments Sought or Entered Against the City Officers and Employees Shall Be Paid” (“Resolution”). Under the Resolution, the City “feels obligated to defend such officers and employees and to satisfy any claims or judgements against such officers or employees, to the extent provided herein, if the facts and circumstances giving rise to the claim or suit show that the officer or employee was engaged in the good faith performance of his duties on behalf of the City when the incident giving rise to the claim occurred.” However, the City will not defend claims or lawsuits:

[W]hen the officer or employee wil[l]fully:

1. Acts or fails to act because of actual fraud, corruption or actual malice;

2. Acts or fails to act as a result of or at a time when his self-indulgence substantially impaired his judgment as, for example, an officer or employee who causes damage or injury while intoxicated or under the influence of drugs while on the job);
3. Acts or fails to act, except in emergencies or the existence of extenuating circumstances, directly contrary to instructions from his superior, or directly contrary to advice of the City Attorney;
4. Acts or fails to act in such manner as to constitute a criminal act (as, for example, misappropriation of property or funds).

The Resolution includes members of the City Council.

Once the City Manager (or Interim City Manager) receives notice of a claim or suit filed against an officer or employee, he or his designee is asked to investigate the matter and recommend to the City Council whether or not the claim or suit meets the standards under the Resolution for whether or not a defense should be provided or paying the claim.

In this case, on October 20, 2021, the City Attorney and the Interim City Manager received a letter from Attorney Thomas C. (“Tee”) Leitner, Jr. Attorney Leitner represents Captain Rhett Bolen, Lieutenant Nick Brummer, Sergeant Adam Craig, Officer Kendall Aycoth and Officer Ragan Broome. The October 20, 2021 letter detailed potential claims against the City and Councilmember James (in both her representative and individual capacities) surrounding the incidents of September 9 and 10, 2021 and after. On November 4, 2021, the Interim City Manager sent Councilmember James a letter noting that the City received the letter from Attorney Leitner and that he investigated the facts and circumstances in accordance with the Resolution. Accordingly, he advised Councilmember James that he would make the following recommendations to the City Council:

1. To the extent any claims are related to your actions in a representative capacity as a member of the Monroe City Council, the representative claims will be subject to coverage, if available from the City’s liability insurance carrier, the Interlocal Risk Financing Fund of North Carolina.
2. To the extent any claims are related to your actions in an individual capacity, the City of Monroe will not defend any claims in your individual capacity or pay any claim or judgment related to any matters related in your individual capacity. This includes the retention of an attorney on your behalf. In my judgment this is because you have:
 - a. Acted or failed to act because of actual fraud, corruption or actual malice (in that your statements were made with knowledge that the statements were false or with reckless disregard of whether the statements were false or not);
 - b. Acted or failed to act as a result of or at a time when your judgment was substantially impaired (namely due your alleged fatigue and/or any potential issues related to any possible mental illness); and

- c. Acted or fails to act in such manner as to constitute a criminal act (specifically your potential assaults against Captain Bolen and Officer Aycoth).

Today, in accordance with the Resolution, the Interim City Manager makes the following recommendations to you as a City Council. The recommendations are:

1. To the extent any claims are related to Councilmember Angelia Nikole James' actions in a representative capacity as a member of the Monroe City Council, the representative claims will be subject to coverage, if available from the City's liability insurance carrier, the Interlocal Risk Financing Fund of North Carolina.
2. To the extent any claims are related to Councilmember Angelia Nikole James' actions in an individual capacity, the City of Monroe will not defend any claims in her individual capacity or pay any claim or judgment related to any matters related in her individual capacity. This includes the retention of an attorney on her behalf. This recommendation is supported as Councilmember James:
 - a. Acted or failed to act because of actual fraud, corruption or actual malice (in that your statements were made with knowledge that the statements were false or with reckless disregard of whether the statements were false or not);
 - b. Acted or failed to act as a result of or at a time when her judgment was substantially impaired (namely due her alleged fatigue and/or any potential issues related to any possible mental illness); and
 - c. Acted or fails to act in such manner as to constitute a criminal act (specifically her potential assaults against Captain Bolen and Officer Aycoth).

Council is asked to conduct a hearing on this recommendation in accordance with the Resolution. The Interim City Manager and other City Staff will present the City's position on the recommendation, and then Councilmember James will have the ability to present her position on the recommendation. Council after hearing the evidence provided by both sides and the arguments of the parties, the Council will make a decision on the Recommendation from the Interim City Manager.

The Interim City Manager asks Council to conduct the required hearing and then act on his recommendation.

RECOMMENDATION

That the City Council conduct a hearing in accordance with the August 3, 1993 Resolution of the Monroe City Council Establishing Uniform Standards Under Which Claims or Civil Judgments Sought or Entered Against the City Officers and Employees Shall Be Paid, and make a decision on the Interim City Manager's Recommendation.

Attachments:

August 3, 1993 Resolution of the Monroe
City Council Establishing Uniform
Standards Under Which Claims or
Civil Judgments Sought or Entered
Against the City Officers and
Employees Shall Be Paid

November 4, 2021 Letter from Interim City
Manager to Councilmember James Concerning
Provision of Defense and Payment of Claims

RESOLUTION OF THE MONROE CITY COUNCIL ESTABLISHING UNIFORM STANDARDS UNDER WHICH CLAIMS OR CIVIL JUDGMENTS SOUGHT OR ENTERED AGAINST THE CITY OFFICERS AND EMPLOYEES SHALL BE PAID.

WHEREAS, the City Manager and City Attorney have recommended to the City Council that protection be afforded to City officers and employees who have claims filed against them or suits brought against them resulting from actions taken within the scope of their employment or duties; and

WHEREAS, the City feels obligated to defend such officers and employees and to satisfy any claims or judgements against such officers or employees, to the extent provided herein, if the facts and circumstances giving rise to the claim or suit show that the officer or employee was engaged in the good faith performance of his duties on behalf of the City when the incident giving rise to the claim occurred; and

WHEREAS, the 1977 General Assembly enacted legislation (Codified as N.C.G.S. 160A-167) authorizing cities and counties to defend and to pay judgments entered against officers and employees, when the acts giving rise to the claim were performed by the officer or employee in the course of his employment or duties, and without actual fraud, corruption or actual malice.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Monroe, that it shall be the policy of the City of Monroe to pay according to this resolution and subject to the limitations and procedures set out herein, defense costs, expenses, judgments, interest on judgments, deductibles on insurance policies and other related costs on behalf of its officers and employees against civil claims and judgements, and to satisfy, in part or in full, same either through the purchase of insurance or otherwise, provided the adoption of this resolution shall not be deemed an assumption of liability for payment of any claims or judgments in excess of any funds appropriated by the City Council for payment of the particular claims or judgments in addition to any insurance coverage or any combination of such an appropriation and insurance coverage. Further, the City will not defend a claim or lawsuit or pay a claim or judgment when the officer or employee wilfully:

1. Acts or fails to act because of actual fraud, corruption or actual malice;
2. Acts or fails to act as a result of or at a time when his self-indulgence substantially impaired his judgment (as, for example, an officer or employee who causes damage or injury while intoxicated or under the influence of drugs while on the job);
3. Acts or fails to act, except in emergencies or the existence of extenuating circumstances, directly contrary to instructions from his superior, or directly contrary to advice of the City Attorney;

4. Acts or fails to act in such manner as to constitute a criminal act (as, for example, misappropriation of property or funds).

Upon notice of a claim or suit filed against an officer or employee, the City Manager or his designee shall as soon as practical cause an investigation to be made of the matter and make a recommendation to the City Council as to whether or not the claim or suit meets the requirements specified herein for providing a defense or paying a claim for such officer or employee. The affected officer or employee shall be sent written notice of the City Manager's recommendation by certified mail, said notice to state that the City Council shall hold a hearing on said recommendation on a date certain at which he and/or his counsel might appear and give evidence, said hearing to be not sooner than ten (10) days after the mailing of notice.

After the hearing and after making appropriate findings the City Council shall determine whether or not the claim or suit filed against the officer or employee meets the requirements of this resolution. If the determination of the City Council is that the claim or suit does meet the requirements of this resolution then an amount deemed initially sufficient shall be appropriated for the defense and/or payment of the claim. This amount may be subsequently modified by the City Council in its discretion.

In determining the amounts to be appropriated pursuant to this resolution for any claim, defense or judgment the Council shall consider:

1. In the case of a claim, the advice of the City Attorney and/or professional adjuster, the impact the claim would have on the fund established for the purpose implementing this resolution including any other claims or judgments pending against said fund and any offer of settlement made by the City's and/or the employee's insurance carrier.
2. In the case of a defense, the estimate of time involved by Counsel and the customary fees charged by Counsel in the area and whether or not representation is being furnished by the City Attorney or the City's and/or the employee's insurance carrier and whether separate counsel is needed to avoid a conflict of interest.
3. In the case of a judgment, the same matters and things set out in 1 above.

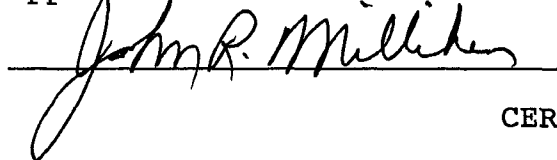
The terms "officer" and "employee" as used herein shall mean present or past Mayors and members of the Council, officers, employees or volunteers and present or past appointed members of City boards, agencies, committees and commissions either in their official or individual capacities who might hereafter have claims or judgments entered against them.

The policies specified herein shall not be applicable unless notice of the claim or suit is given to the City Council through the City Manager or City Attorney within ten (10) days after the affected employee has notice of said claim or suit. This period may be extended by the City Council upon a showing of extenuating circumstances.

Neither this resolution nor any action taken pursuant thereto, shall be interpreted in any way to relieve any insurance company of its obligation under any insurance policy to protect the interest of any insured under said policy, or to reduce or eliminate the rights of any officer or employee of the City against any other party. Further, except as expressly stated herein, this resolution is not to be interpreted as a waiver of any rights the City has against any party. Nor shall the adoption of this resolution be construed to waive the defense of governmental immunity or to create any rights in the injured party or a City officer or employee to funds appropriated to or held in an Uninsured Claims and Judgments Trust Fund created pursuant to this resolution until the City Council has made a specific appropriation for that particular claim or judgment according to the procedures set out herein, provided however, if suit has been filed when the City first has notice of the claim, the City Attorney may take whatever steps he deems necessary to preserve the status quo until the requirements of this resolution have been met. In the event the claim or suit is covered by the City's and/or the employee's insurance policy or policies, said insurance shall be deemed the primary source of payments and the funds appropriated pursuant to this resolution shall be secondary.

This resolution is effective August 3, 1993 and shall constitute uniform standards under which claims made or civil judgments entered against officers or employees of the City shall be paid. A copy of this resolution shall be maintained in the office of the City Clerk for public inspection during all normal business hours.

Approved as to form:



CERTIFICATION

I, Jeanne M. Deese, City Clerk of the City of Monroe, North Carolina, do hereby certify that the foregoing is a true and exact copy of a Resolution adopted by the City Council of the City of Monroe, North Carolina, in regular session convened on the 3rd day of August, 1993, the reference having been made in Minute Book , page .

Witness my hand the corporate seal of the City of Monroe, North Carolina, this the 3rd day of August, 1993.



Jeanne M. Dese
City Clerk



CITY OF MONROE

P.O. BOX 69 • MONROE, NORTH CAROLINA 28111-0069
FAX 704-283-9098

November 4, 2021

**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL**

Councilmember Angelia Nikole James
1600 Tower Court
Monroe, North Carolina 28112-4528

Re: Individual Claims Against You Made By Members of the Monroe Police Department

Dear Councilmember James:

As you know, attorney Thomas C. ("Tee") Leitner, Jr., represents Captain Rhett Bolen, Lieutenant Nick Brummer, Sergeant Adam Craig, Officer Kendall Aycoth and Officer Ragan Broome in connection with claims they have against you and the City in connection with incidents that took place on September 9 and 10, 2021 and in the days and weeks following. On Wednesday, October 20, 2021, you received a copy of the letter from Mr. Leitner and its attachments detailing the potential claims against you. Following my receipt of the letter, I, along with the City Attorney, have met with Mr. Leitner to discuss his clients' specific claims against you and the City. As the claims against you are in both your representative capacity as a City Councilmember and in your individual capacity, the City has to evaluate whether or not it will pay claims made against a member of the City Council in their individual, not representative capacity.

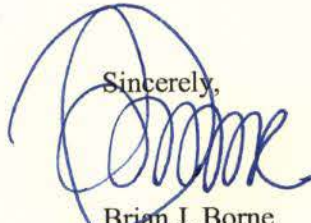
The City's August 3, 1993 "Resolution of the Monroe City Council Establishing Uniform Standards Under Which Claims or Civil Judgments Sought or Entered Against the City Officers and Employees Shall Be Paid" governs this process. A copy of this Resolution is enclosed with this letter. Once I received notice of the potential claims against you and the City, I conducted an investigation of the claims and the facts and circumstances surrounding those claims. Following my investigation, and in accordance with the Resolution, I will make the following recommendation to the City Council:

1. To the extent any claims are related to your actions in a representative capacity as a member of the Monroe City Council, the representative claims will be subject to coverage, if available from the City's liability insurance carrier, the Interlocal Risk Financing Fund of North Carolina.
2. To the extent any claims are related to your actions in an individual capacity, the City of Monroe will not defend any claims in your individual capacity or pay any claim or judgment related to any matters related in your individual capacity. This includes the retention of an attorney on your behalf. In my judgment this is because you have:
 - a. Acted or failed to act because of actual fraud, corruption or actual malice (in that your statements were made with knowledge that the statements were false or with reckless disregard of whether the statements were false or not);

- b. Acted or failed to act as a result of or at a time when your judgment was substantially impaired (namely due your alleged fatigue and/or any potential issues related to any possible mental illness); and
- c. Acted or fails to act in such manner as to constitute a criminal act (specifically your potential assaults against Captain Bolen and Officer Aycoth).

In accordance with the Resolution, as three of the four standards (each of which alone would justify this determination) justify denial of providing a claim or defense to you on an individual basis, I recommend that the Council deny providing payment of claims or a defense on claims related to your individual capacity. Accordingly, I will ask the City Council to hold a hearing on this recommendation, no earlier than ten (10) days from the date of this letter. My intention is to hold this hearing on November 17, 2021 at 3:30 p.m. following consideration of the rezoning matter set for the special meeting of Council on that date. In accordance with the Resolution you and/or your attorney (if you have retained one) may appear and give evidence at the hearing. As the matter involves a direct financial impact to you (namely the costs of defense related to individual claims), it is my understanding that North Carolina General Statutes Section 160A-75 will prohibit you from voting on this matter as a Councilmember. You may wish to recuse yourself from voting on the recommendation, or Council may excuse you from voting if you wish.

Sincerely,


Brian J. Borne
Interim City Manager

BJB/ms

Enclosure

cc: Mayor and Council (w/enc.)
S. Mujeeb Shah-Khan, Esq., City Attorney (w/o enc.)
Bridgette Robinson, City Clerk (w/enc.)
Debra Chestnut Reed, Human Resources Director (w/enc.)
Alvina Nyako, Safety and Risk Coordinator (w/enc.)
J. Ashley Duncan Britt, Esq., Assistant City Attorney (w/o enc.)

RESOLUTION OF THE MONROE CITY COUNCIL ESTABLISHING UNIFORM STANDARDS UNDER WHICH CLAIMS OR CIVIL JUDGMENTS SOUGHT OR ENTERED AGAINST THE CITY OFFICERS AND EMPLOYEES SHALL BE PAID.

WHEREAS, the City Manager and City Attorney have recommended to the City Council that protection be afforded to City officers and employees who have claims filed against them or suits brought against them resulting from actions taken within the scope of their employment or duties; and

WHEREAS, the City feels obligated to defend such officers and employees and to satisfy any claims or judgments against such officers or employees, to the extent provided herein, if the facts and circumstances giving rise to the claim or suit show that the officer or employee was engaged in the good faith performance of his duties on behalf of the City when the incident giving rise to the claim occurred; and

WHEREAS, the 1977 General Assembly enacted legislation (Codified as N.C.G.S. 160A-167) authorizing cities and counties to defend and to pay judgments entered against officers and employees, when the acts giving rise to the claim were performed by the officer or employee in the course of his employment or duties, and without actual fraud, corruption or actual malice.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Monroe, that it shall be the policy of the City of Monroe to pay according to this resolution and subject to the limitations and procedures set out herein, defense costs, expenses, judgments, interest on judgments, deductibles on insurance policies and other related costs on behalf of its officers and employees against civil claims and judgments, and to satisfy, in part or in full, same either through the purchase of insurance or otherwise, provided the adoption of this resolution shall not be deemed an assumption of liability for payment of any claims or judgments in excess of any funds appropriated by the City Council for payment of the particular claims or judgments in addition to any insurance coverage or any combination of such an appropriation and insurance coverage. Further, the City will not defend a claim or lawsuit or pay a claim or judgment when the officer or employee wilfully:

1. Acts or fails to act because of actual fraud, corruption or actual malice;
2. Acts or fails to act as a result of or at a time when his self-indulgence substantially impaired his judgment (as, for example, an officer or employee who causes damage or injury while intoxicated or under the influence of drugs while on the job);
3. Acts or fails to act, except in emergencies or the existence of extenuating circumstances, directly contrary to instructions from his superior, or directly contrary to advice of the City Attorney;

4. Acts or fails to act in such manner as to constitute a criminal act (as, for example, misappropriation of property or funds).

Upon notice of a claim or suit filed against an officer or employee, the City Manager or his designee shall as soon as practical cause an investigation to be made of the matter and make a recommendation to the City Council as to whether or not the claim or suit meets the requirements specified herein for providing a defense or paying a claim for such officer or employee. The affected officer or employee shall be sent written notice of the City Manager's recommendation by certified mail, said notice to state that the City Council shall hold a hearing on said recommendation on a date certain at which he and/or his counsel might appear and give evidence, said hearing to be not sooner than ten (10) days after the mailing of notice.

After the hearing and after making appropriate findings the City Council shall determine whether or not the claim or suit filed against the officer or employee meets the requirements of this resolution. If the determination of the City Council is that the claim or suit does meet the requirements of this resolution then an amount deemed initially sufficient shall be appropriated for the defense and/or payment of the claim. This amount may be subsequently modified by the City Council in its discretion.

In determining the amounts to be appropriated pursuant to this resolution for any claim, defense or judgment the Council shall consider:

1. In the case of a claim, the advice of the City Attorney and/or professional adjuster, the impact the claim would have on the fund established for the purpose implementing this resolution including any other claims or judgments pending against said fund and any offer of settlement made by the City's and/or the employee's insurance carrier.
2. In the case of a defense, the estimate of time involved by Counsel and the customary fees charged by Counsel in the area and whether or not representation is being furnished by the City Attorney or the City's and/or the employee's insurance carrier and whether separate counsel is needed to avoid a conflict of interest.
3. In the case of a judgment, the same matters and things set out in 1 above.

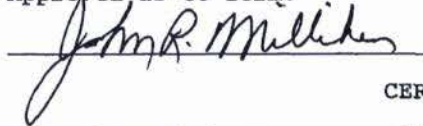
The terms "officer" and "employee" as used herein shall mean present or past Mayors and members of the Council, officers, employees or volunteers and present or past appointed members of City boards, agencies, committees and commissions either in their official or individual capacities who might hereafter have claims or judgments entered against them.

The policies specified herein shall not be applicable unless notice of the claim or suit is given to the City Council through the City Manager or City Attorney within ten (10) days after the affected employee has notice of said claim or suit. This period may be extended by the City Council upon a showing of extenuating circumstances.

Neither this resolution nor any action taken pursuant thereto, shall be interpreted in any way to relieve any insurance company of its obligation under any insurance policy to protect the interest of any insured under said policy, or to reduce or eliminate the rights of any officer or employee of the City against any other party. Further, except as expressly stated herein, this resolution is not to be interpreted as a waiver of any rights the City has against any party. Nor shall the adoption of this resolution be construed to waive the defense of governmental immunity or to create any rights in the injured party or a City officer or employee to funds appropriated to or held in an Uninsured Claims and Judgments Trust Fund created pursuant to this resolution until the City Council has made a specific appropriation for that particular claim or judgment according to the procedures set out herein, provided however, if suit has been filed when the City first has notice of the claim, the City Attorney may take whatever steps he deems necessary to preserve the status quo until the requirements of this resolution have been met. In the event the claim or suit is covered by the City's and/or the employee's insurance policy or policies, said insurance shall be deemed the primary source of payments and the funds appropriated pursuant to this resolution shall be secondary.

This resolution is effective August 3, 1993 and shall constitute uniform standards under which claims made or civil judgments entered against officers or employees of the City shall be paid. A copy of this resolution shall be maintained in the office of the City Clerk for public inspection during all normal business hours.

Approved as to form:



CERTIFICATION

I, Jeanne M. Deese, City Clerk of the City of Monroe, North Carolina, do hereby certify that the foregoing is a true and exact copy of a Resolution adopted by the City Council of the City of Monroe, North Carolina, in regular session convened on the 3rd day of August, 1993, the reference having been made in Minute Book , page .

Witness my hand the corporate seal of the City of Monroe, North Carolina, this the 3rd day of August, 1993.



Jeanne M. Dese
City Clerk