

VARIANCE OR APPEAL APPLICATION



TOWN OF CHAPEL HILL
Planning Department

405 Martin Luther King Jr. Blvd.
phone (919) 968-2728 fax (919) 969-2014
www.townofchapelhill.org

Parcel Identifier Number (PIN): 9789-41-7342 Date: _____

Section A: Project Information

Project Name: N/A
Property Address: 607 and 612 Hillsborough Street, Chapel Hill, NC Zip Code: 27514
Existing Zoning District: R-4
Description of Request: Appeal of NOV dated June 14, 2022 regarding parking-off street at 612 Hillsborough Street, Chapel Hill, NC 27514

Section B: Applicant, Owner, and/or Contract Purchaser Information

Applicant Information (to whom correspondence will be mailed):

Name: ECP Hillsborough, LLC/ Daniel Eller, Manager
Address: c/o Morningstar Law Group, Attn: Jeffrey L. Roether, 700 West Main Street
City: Durham State: NC Zip Code: 27701
Phone: (919) 590-0368 Email: jroether@morningstarlawgroup.com

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: [Signature] Date: 7-11-22

Owner/Contract Purchaser Information:

☒ Owner

☐ Contract Purchaser

Name: ECP Hillsborough, LLC
Address: 1350 Environ Way
City: Chapel Hill State: NC Zip Code: 27514
Phone: _____ Email: _____

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: [Signature] Date: 7-11-22



VARIANCE OR APPEAL APPLICATION
SUBMITTAL REQUIREMENTS
TOWN OF CHAPEL HILL
Planning & Development Services

Variances and Appeals may be granted by the Board of Adjustment for dimensional regulations, water and sewer regulations, steep slope regulations, house size limitations, Resource Conservation District regulations, Jordan Buffer regulations, and Watershed Protection District regulations. The following must accompany your application. Failure to do so will result in your application being considered incomplete.

<input checked="" type="checkbox"/>	Application fee (refer to fee schedule)	Amount Paid \$	660.00
<input type="checkbox"/>	Digital Files – provide digital files of all plans and documents		
<input type="checkbox"/>	Mailing list of owners of property within 1,000 foot perimeter of subject property (see GIS notification tool)		
<input type="checkbox"/>	Mailing fee for above mailing list	Amount Paid \$	
<input type="checkbox"/>	Written Narrative describing the proposal		
<input type="checkbox"/>	Statement of Justification – Respond to subsection 4.12.2(a)(1-4) of the Land Use Management Ordinance.		
<input type="checkbox"/>	Recorded Plat or Deed of Property		
<input type="checkbox"/>	Stream Determination – necessary for all submittals		
<input type="checkbox"/>	Jurisdictional Wetland Determination – if applicable		
<input type="checkbox"/>	Reduced Site Plan Set (reduced to 8.5" x 11")		

Type of Variance or Appeal (Choose one of the following):

- ☐ Dimensional Variance ☐ Water and Sewer Variance ☐ Steep Slope Variance
- ☐ House Size Variance
- ☐ Resource Conservation District Variance
- ☐ Jordan Watershed Riparian Buffer Variance
- ☐ Watershed Protection District Variance
- ☒ Appeal

Standing: Explain to the Board how the applicant is an aggrieved party (NC General Statute Sec. 160A-388(b1)(1))
Statement of Justification: Provide justification for decision that is being appealed.

ECP Hillsborough , LLC has standing under N.C. Gen. Statute §§160D-405(b) and 160D- 1402(c) because it has an ownership interest in the property that is the subject of the decision being appealed.
See letter from Jeffrey L. Roether for basis of appeal.



VARIANCE OR APPEAL APPLICATION
SUBMITTAL REQUIREMENTS
TOWN OF CHAPEL HILL
Planning & Development Services

Plan Sets (2 copies to be submitted no larger than 24" x 36")

Plans should be legible and clearly drawn. All plan set sheets should include the following:

- Project Name
- Legend
- Labels
- North Arrow (North oriented toward top of page)
- Property Boundaries with bearing and distances
- Scale (Engineering), denoted graphically and numerically
- Setbacks
- Streams, RCD Boundary, Jordan Riparian Buffer Boundary, Floodplain, and Wetlands Boundary, where applicable

☒ X

Area Map

- a) Overlay Districts
- b) 1,000 foot notification boundary

☐ N/A

Detailed Site Plan



Jeffrey L. Roether | Partner
700 West Main St.
Durham, NC 27701

919-590-0368
jroether@morningstarlawgroup.com
www.morningstarlawgroup.com

July 13, 2022

BY HAND DELIVERY

Sabrina Oliver, Town Clerk
Town of Chapel Hill
405 Martin Luther King Jr. Boulevard
Chapel Hill, NC 27515

Re: Appeal of Notice of Violation

Dear Ms. Oliver:

We represent ECP Hillsborough LLC (“ECP”) with regard to the First and Final Written Notice of Zoning Code Violation dated June 14, 2022 (Violation # ZO-22-16; hereinafter “the NOV” – copy attached) issued by Code Enforcement Officer Jessica Goodstein relating to ECP’s property located at 612 Hillsborough Street, Chapel Hill, North Carolina (the “Property”).

In accordance with N.C. Gen. Stat. § 160D-405 and Land Use Management Ordinance (“LUMO”) §§ 4.10 and 4.12, ECP hereby appeals the NOV to the Town of Chapel Hill Board of Adjustment (“BOA”). We have enclosed (i) a completed and signed copy of the Town’s Appeal Application form; (ii) a check in the amount of \$660.00 as payment of the application fee; (iii) a list of owners of property located within 1,000 feet of the Property; (iv) a check in the amount of \$343.00 as payment of the mailing fee; (v) a copy of the deed pursuant to which ECP acquired the property (Book 5906, Page 154, Orange County Registry); (vi) a map image prepared through GIS showing the zoning district for the Property and properties within 1,000 feet of the Property; and (vii) a USB drive containing digital copies of this letter and each of the referenced enclosures.

The purpose of this letter is to state the basis for ECP’s appeal of the NOV. The NOV should be overturned and dismissed because ECP’s use of a portion of the Property for parking is a permitted accessory use under the LUMO, even when excess spaces are rented to non-residents. Any contrary finding will render the applicable provisions of the LUMO unconstitutional. In addition, enforcement of the NOV is barred by the applicable statute of limitations. For those reasons and others that may be raised at the BOA’s quasi-judicial hearing, ECP asks the NOV to be overturned and dismissed.

Background

The Property is zoned R-4 and has been developed for many years with multi-family apartment units that are available for rent on a long-term basis. The Property also has been

developed for many years with paved parking lots in which parking spaces are made available for use by tenants and other users. ECP currently provides each tenant the right to use one parking space as part of its standard lease agreement. In addition, ECP provides each tenant the choice to rent a second parking space in exchange for a fee. Since 2015, ECP also has rented parking spaces to non-residents when less than all of the parking spaces on the Property have been rented by residents of its apartment community.

The NOV generally asserts that ECP's act of renting parking spaces on the Property to non-residents of its apartment community violates the LUMO. Section 3.7-1 of the LUMO provides that "off-street parking" is allowed in the R-4 zoning district as an accessory use. However, the NOV concludes that renting "a parking space to someone who does not reside onsite is not a use considered 'accessory' to the primary use" of the Property (residential multi-family). The NOV was issued in error and should be overturned.

The LUMO

The LUMO defines "Use" as follows:

The specific activity or function for which land, a building, or a structure is designated, arranged, intended, occupied, or maintained

In other words, the "use" of a property refers to a "specific activity or function" for which the property is arranged or maintained, without regard to the identity of the persons engaging in that "specific activity or function."

The LUMO defines "Use, principal" as follows:

The primary use and chief purpose of a lot or structure

There is no dispute that the "principal use" of the Property (*i.e.*, the "primary use and chief purpose of [the] lot") is multi-family residential, and that this use was established on the Property long before the enactment of the LUMO.

The LUMO defines "Parking, Off-street" as follows:

Space located outside any street right-of-way or easement and designed to accommodate the parking of motor vehicles

There is no dispute that the establishment and maintenance of the parking lot on the Property constitutes "Off-Street Parking," (a use which also was established long before the enactment of the LUMO) because it is the use of "space located outside [the street] designed to accommodate the parking of motor vehicles."

The only question in this matter is whether ECP's use of a portion of its Property for "Off-Street Parking" constitutes an "accessory use." The LUMO defines "Use, accessory" as follows:

A use on the same lot or in the same structure with, and of a nature and extent customarily incidental and subordinate to, the principal use of the lot or structure

In most circumstances, “Off-Street Parking” is a permissible “accessory use” on a residential property under the LUMO because the designation of space on a property “designed to accommodate the parking of motor vehicles” is “customarily incidental and subordinate to” the use of property for residential purposes. Indeed, nearly every single-family home in Chapel Hill has a driveway to park vehicles, and nearly every apartment community has a parking lot or garage. However, to qualify as an accessory use, the amount of space designated for off-street parking must be “*of a nature and extent*” that is “customarily incidental and subordinate” to the residential use. For example, an owner of property improved with a three-bedroom house cannot improve the property with a paved lot of 20 parking spaces because, in that case, the “nature and extent” of the area “designed to accommodate the parking of motor vehicles” is not “customarily incidental and subordinate to” that house. Similarly, a 10-unit apartment community cannot establish a 200-space parking garage as an accessory use.

In this case, there is no allegation that ECP’s parking lot is too large, or contains too many spaces. The Town cannot make that claim because the Property was developed in its current form before the enactment of the LUMO. The only allegation is that ECP’s parking lot is not a permissible “accessory use” when used by non-residents. There is no basis for that conclusion under the LUMO, as the ordinance clearly defines “use” in terms of the activity or function of property, not the identity of the person engaging in the activity on the property. Accordingly, ECP’s designation of a portion of its Property as a parking lot is a permissible accessory “off-street-parking” use, regardless of the identity of the persons parking there.

North Carolina Law

ECP’s interpretation of the LUMO is in accord with North Carolina law. When interpreting a municipal ordinance, all provisions of an ordinance must be considered “as a whole” and “construed together.” *George v. Town of Edenton*, 294 N.C. 679, 684, 242 S.E.2d 877, 880 (1978). When the ordinance provisions, taken together, are clear and unambiguous, their plain meaning should be enforced. *Darbo v. Old Keller Farm Prop. Owners’ Ass’n*, 174 N.C. App. 591, 594, 621 S.E.2d 281, 284 (2005).; *Lipinski v. Town of Summerfield*, 230 N.C. App. 305, 309, 750 S.E.2d 46, 49 (2013). To the extent there is any doubt as to the meaning of a zoning ordinance, it should be “construed strictly in favor of the free use of real property.” *Morris Communs. Corp. v. City of Bessemer*, 365 N.C. 152, 157, 712 S.E.2d 868, 871-72 (2011). See also *Yancey v. Heafner*, 268 N.C. 263, 266, 150 S.E.2d 440, 443 (1966). In addition, “[w]here a statute or ordinance is susceptible to two interpretations—one constitutional and one unconstitutional—the [Board] should adopt the interpretation resulting in a finding of constitutionality.” *Smith v. Keator*, 285 N.C. 530, 534, 206 S.E.2d 203, 206 (1974).

As discussed above, the plain text of the LUMO supports ECP’s position. Further, if the interpretation put forth in the NOV is given effect, it will render the applicable provisions of the

LUMO unconstitutional. In *City of Wilmington v. Hill*, 189 N.C. App. 173, 657 S.E.2d 670 (2007), the North Carolina Court of Appeals found unconstitutional a Wilmington ordinance requiring the owner of an accessory apartment to reside at the property for it to qualify as a permissible accessory use. The Court recognized that the City's zoning authority only allowed it to regulate the use of the property, and once the City allowed garage apartments as an accessory use, it could not go further to regulate who could make use of those garage apartments. *See id.* at 177, 657 S.E.2d. at 672. Similarly, the Town has allowed residential property owners to maintain parking facilities on their property that are of a nature and extent customarily incidental and subordinate to the residential use. To the extent the Town contends that LUMO also regulates and restricts the identity of the persons making use of those parking facilities, it is unconstitutional.

Statute of Limitations

The Notice of Violation also should be overturned and dismissed because this enforcement action is barred by the statute of limitations contained in N.C. Gen. Stat. §§ 1-49(3) and/or 1-51(5). ECP has rented its parking spaces to non-residents since 2015 without any prior enforcement action by the Town. The alleged unlawful activity (i.e., the use of the parking lot by non-residents) is apparent from the right-of-way, and upon information and belief, the Town has known of this activity for longer than the limitations period before commencing any enforcement actions against ECP.

Conclusion

For the foregoing reasons, ECP respectfully requests that the Board of Adjustment overturn and dismiss the NOV. If Town requires anything further from ECP in connection with this appeal, we trust that you will contact us.

Very Truly Yours,

MORNINGSTAR LAW GROUP



Jeffrey L. Roether

Enclosures

cc: Ann Anderson, Esq. (by email w/o enclosures)
William J. Brian, Jr., Esq. (by email w/o enclosures)



BUILDING AND DEVELOPMENT SERVICES

Town of Chapel Hill

405 Martin Luther King Jr. Blvd.

Chapel Hill, NC 27514

phone (919) 968-2718 fax (919) 932-2954

codeenforcement@townofchapelhill.org

www.townofchapelhill.org

June 14, 2022

Certified Receipt No.:

ECP HILLSBOROUGH LLC.
1350 ENVIRON WAY
CHAPEL HILL, NC 27517

FIRST AND FINAL WRITTEN NOTICE OF
ZONING CODE VIOLATION

LUMO Matrix 3.7-1 - Parking-off street at 612 HILLSBOROUGH ST CHAPEL HILL NC 27514
Violation Reference# ZO-22-16

Dear ECP HILLSBOROUGH LLC. ,

This notice is to advise you that your property at 612 HILLSBOROUGH ST (the "Property"), is in violation of the Town of Chapel Hill Land Use Management Ordinance # LUMO Matrix 3.7-1 - Parking-off street. This notice constitutes the **First and Final Notice** as outlined in Article 4.13 of the Land Use Management Ordinance (LUMO). This is the only notice that you will receive regarding the violation.

DESCRIPTION OF THE VIOLATION

On 03/11/2022 town staff observed that your property was out of compliance with

Please see attached matrix table.

In summary, Lumo defines the parking in this situation as "Parking-Off Street". Parking- Off street is allowed in the properties zoning districts (R-1, R-2, and R-3) as an accessory use to the primary use (residential multi-family). Renting/leasing/lending a parking space to someone who does not reside onsite, is not a use considered "accessory" to the primary use.

Below is a summary of relevant facts:

On June 06, 2022 Town staff observed a sign on Hillsborough Street, advertising "Off Campus Parking" in relation to 612 Hillsborough Apartments. Photos were taken for documentation.

On June 13, 2022 Town staff made an inquiry with the leasing consultant of the property and found that property managers sell excess parking spaces to non-residential students for a fee.

In order to bring the "Property" into compliance, and to stay addition enforcement action, the **following actions must be taken within the time limits as described below:**

COMPLIANCE STEPS
<p>Remit payment of \$ for civil penalty incurred by this violation per LUMO 4.13.1 <u>no later than ten (10) days of receipt of this notice.</u></p> <p>Must cease operations of renting parking spaces to non-residents within thirty (30) days of receiving this notice.</p> <p>Must cease advertising the operation of the off-campus parking immediately.</p> <p>Documentation must be provided to the code enforcement officer, proving that the off-campus parking business is no longer in operation.</p>

If you fail to take the necessary steps as outlined above in order to bring "the Property" into compliance, you may be subject to the imposition of up to a \$500.00 penalty, **for each day** that the violation exists **for each separate violation**, which shall run retroactively from the date of this Final Written Notice and will accrue daily until the property is brought into compliance per Section 4.13 of the Land Use Management Ordinance.

Note that this determination of violation and order may be appealed to the Board of Adjustment in accordance with Section 4.10 of the Land Use Management Ordinance. An application to appeal must be filed within **thirty (30) days of receipt of this letter.** Should you have any questions regarding the Board of Adjustment process, please contact Planning at planning@townofchapelhill.org.

If there are any further questions pertaining to the contents of this letter, or complying with the ordinances as outlined above, please contact me at jgoodstein@townofchapelhill.org or 919-724-6373.

Sincerely,

Jessica Goodstein
Code Enforcement Officer

CC: Joseph Kelly, Leasing Consultant

Attachments: LUMO Matrix 3.7-1 - Parking-off street



20150211000026530 DEED
Bk:RB5906 Pg:154
 02/11/2015 11:21:14 AM 1/6

FILED Mark Chilton
 Register of Deeds, Orange Co., NC
 Recording Fee: \$26.00
 NC Real Estate TX: \$7200.00

STATE OF NORTH CAROLINA

SPECIAL WARRANTY DEED

COUNTY OF ORANGE

Excise Tax: \$7,200.00

~~PARENT~~ PIN(s): 9789-41-6179 9789-40-7938 9789-41-4550 *ms*

MERGED PIN: 9789417342 ms

Prepared by: Eric W. Hinson, 1709 Legion Road, Ste 229, Chapel Hill, NC 27517
(Without Benefit of Title Examination)

RETURN TO: Grantee @ c/o Eller Capital Partners, LLC, Attn: Daniel Eller
 1480 Environ Way, Chapel Hill, NC 27517

THIS DEED, made and entered into this the 10th day of February, 2015, by and between **Holton Rentals, LLC**, a North Carolina limited liability company, (hereinafter referred to as “Grantor”), whose mailing address is PO Box 4507, Chapel Hill, NC 27515-4507, and **ECP Hillsborough, LLC**, a North Carolina limited liability company, (hereinafter referred to as “Grantee”), whose mailing address is **c/o Eller Capital Partners, LLC, Attn: Daniel Eller, 1480 Environ Way, Chapel Hill, NC 27517;**

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that said Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Chapel Hill, Chapel Hill Township, Orange County, North Carolina, more particularly described as follows:

See Exhibit “A” attached hereto and incorporated herein by reference.

The subject property ~~does~~ does not X contain the primary residence of the Grantor.



TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereunto belonging to Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the exceptions set forth on **Exhibit B** attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

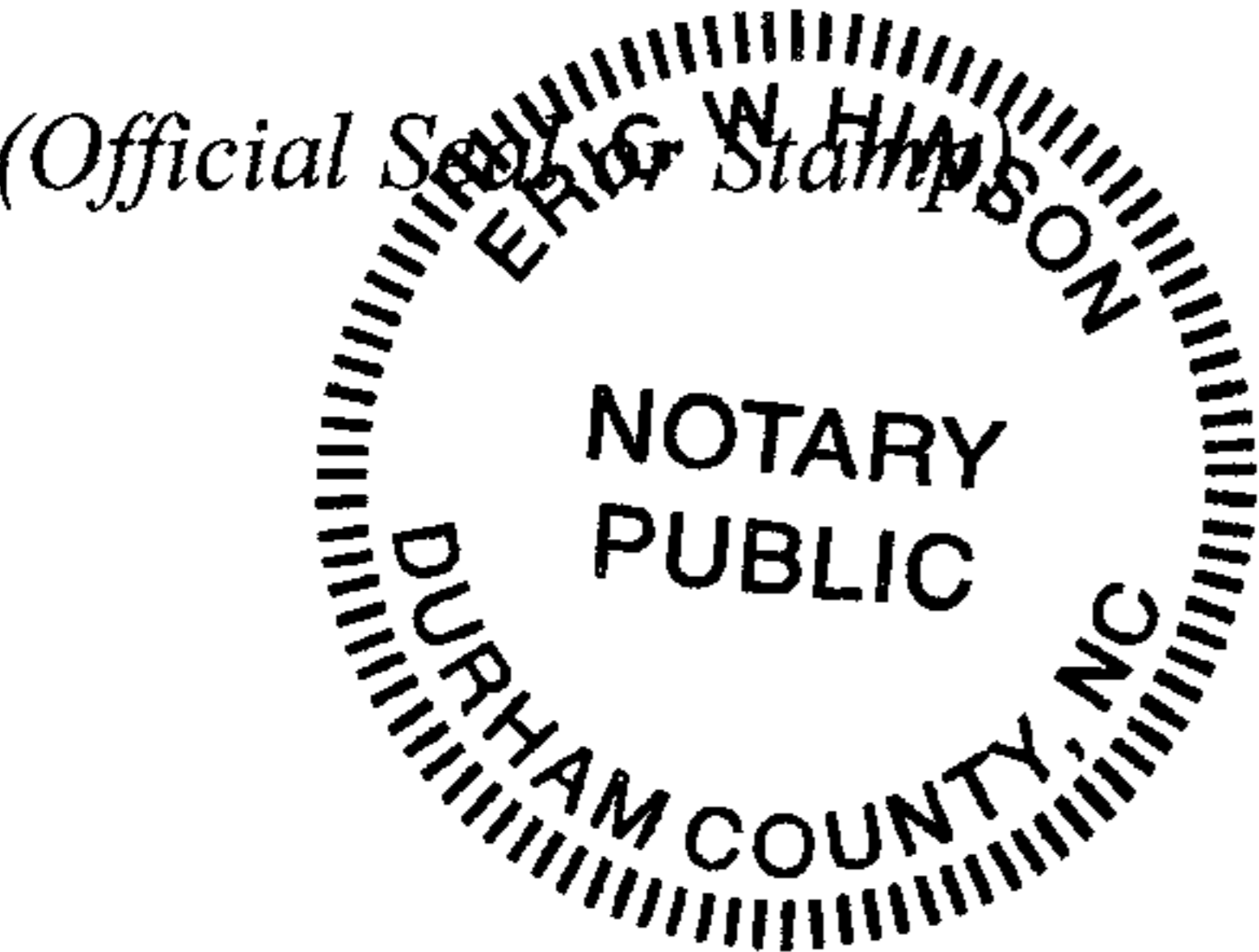
Holton Rentals, LLC
a North Carolina limited liability company

By: Grace H. Holton, Manager (Seal)
Grace H. Holton, Manager

STATE OF NORTH CAROLINA, ORANGE COUNTY ss:

I, the undersigned Notary Public of the County of DURHAM and State of North Carolina, do hereby certify that Grace H. Holton, personally appeared before me this day and acknowledged that (s)he is Manager of Holton Rentals, LLC, a North Carolina limited liability company, and further acknowledged that by authority duly given, (s)he signed the foregoing and annexed instrument in its name on behalf of the said limited liability company.

Witness my hand and notarial seal, this 10th day of February, 2015.



[Signature]
Notary Public
Printed Name: Eric W. Hinson
My Commission Expires: 11/24/2016



Exhibit "A"

All those certain tracts, parcels or pieces of land, lying and being in Orange County, North Carolina, being more particularly described as follows:

Property Address: 612 Hillsborough Street, Chapel Hill, Orange Co., NC 27514
[consisting of Tracts 1 and 2]

TRACT 1: PIN: 9789-41-6179
[containing three (3) Parcels]

Parcel 1 of TRACT 1:

ALL THAT certain tract or parcel of land situated, lying and being in the Town of Chapel Hill, NC and on the East side of Hillsboro Street and containing 5.75 acres, more or less, according to the survey by F.M. Carlisle on December 28, 1962, and more particularly described as BEGINNING at an iron in the East property line of said street, the Southernmost corner of the Ralph Morgan lot (which said stake is 30.74 feet from the center line of said street); running thence South 19 deg. 43' East 12.10 feet to a highway right of way monument, the control corner, and continuing thence along the same course a distance of 23.5 feet to a stake; running thence North 65 deg. 27' East 29.44 feet to an iron in the center line of a branch; running thence down said branch and along the Coker property the following courses and distances: North 82 deg. 34' East 262.36 feet to an iron and North 39 deg. 24' East 102.22 feet and South 75 deg. 50' East 114.83 feet to a stake and North 45 deg. 29' East 39.85 feet to a stake in the Southeast property line of Bolin Creek; running thence along the center line of Bolin Creek, the meanders of which are described as North 41 deg. West 162.58 feet to a stake on the Northeast bank; North 47 deg. 39' West 261.90 feet to a stake in the Southwest bank; North 14 deg. 14' West 115.9 feet to a stake in the Northeast branch; North 56 deg. 17' West 150.33 feet to a stake in the South bank; North 61 deg. 26' West 302.95 feet to a stake in the South bank; running thence South 10 deg. 54' West 180 feet to a stake in the Northeast property line of Hillsboro Street; running thence with the said property line of South 22 deg. 21' East 127 feet to a stake and South 17 deg. 37' East 204 feet to a stake a short distance North of a 24" concrete pipe and South 29 deg. East 204 feet to an iron, corner of J.A. Morgan; thence with his line North 61 deg. 16' East 150 feet to an iron, South 28 deg. 07' East 75 feet to an iron, and South 61 deg. 16' West 150.03 feet to the beginning, SAVE AND EXCEPT that parcel of land conveyed to J.A. Morgan and wife and Marvin Morgan and wife by deed dated September 2, 1964 and recorded in the Office of the Register of Deeds of Orange County.

Parcel 2 of TRACT 1:

BEGINNING at a stake in the Northeast property line of Hillsborough Street, corner of the property owned by Property Investors, Inc., and North 19 deg. 43' West 210 feet from a concrete monument, control corner in the Property Investors, Inc. property, running thence from said beginning stake and with Property Investors, Inc. line the following courses and distances: North 61 deg. 16' East 150 feet, North 28 deg. 7' West 75 feet to a stake, and South 61 deg. 16' West 150 feet to a stake in the Northeast property line of Hillsborough Street, running thence with the said street South 28 deg. 7' East 75 feet to the BEGINNING, and being that certain lot or parcel of land and situated, lying and being in the Town of Chapel Hill, and being on the northeast side of Hillsborough Street, and surrounded on three sides by the property owned by Property Investors, Inc. as set forth in Deed Book 248, Page 344, Orange County Registry. See also, Book 299, Page 598 of the Orange County Registry.



Parcel 3 of TRACT 1:

BEING all of Lot 1, containing 5625 square feet, more or less, as shown on that plat of survey entitled "Proposed Resolution of Boundary Dispute Between: Sun Development Co. & Samuel & Margaret Holton" drawn by Freehold Land Surveys, Inc., dated February 3, 1994 and revised February 22, 1994, Job No. 3210, and more particularly described as follows:

BEGINNING at an existing iron pipe bearing North Carolina grid coordinates of X=1,984,626.34 and Y=790,930.97; running thence from said beginning point North 57 deg. 9' 15" East 75.98 feet to a calculated corner; running thence South 30 deg. 42' 19" East 75.07 feet to a calculated corner in the right-of-way of Bolinwood Drive; running thence South 57 deg. 9' 15" West 73.98 feet to a calculated corner within the right-of-way of Bolinwood Drive; running thence North 32 deg. 13' 55" West 75.02 feet to an existing iron pin, the point and place of BEGINNING.

TRACT 2: PIN: 9789-40-7938

BEING all of lot 2, containing 5625 square feet, more or less, as shown on that plat of survey entitled "Proposed Resolution of Boundary Dispute Between: Sun Development Co. and Samuel & Margaret Holton" drawn by Freehold Land Surveys, Inc., dated February 3, 1994, Job No. 3210, and recorded with that instrument recorded in Book 1222, Page 361, Orange County Registry, and more particularly described as follows:

BEGINNING at an existing iron pipe which is located North 57 deg. 09' 15" East 149.96 feet from an existing iron pipe bearing North Carolina Grid Coordinates of X = 1,984,626.34 and Y = 790,930.97; running thence from said beginning point South 32 deg. 13' 55" East 75.02 feet to an existing iron pipe; running thence South 57 deg. 09' 15" West 75.98 feet to a calculated corner within the right of way of Bolinwood Drive; running thence North 30 deg. 42' 19" West 75.07 feet to a calculated corner; running thence North 57 deg. 09' 15" East 73.98 feet to an existing iron pin, the point and place of BEGINNING.

Property Address: 607 Hillsborough Street, Chapel Hill, Orange Co., NC 27514
[consisting of Tract 3]

TRACT 3: PIN: 9789-41-4550

All that certain lot or parcel of land situated, lying and being on the Northeast side of Hillsboro Street and more particularly described as Beginning at a stake, the Southeast corner of property of Theodore Danziger; running thence with Hillsboro Street South 22 deg. 21' East 15 feet to a stake in the Northern property line of Cardinal Drive; running thence with and leaving Cardinal Drive North 67 deg. 39' East 132 feet to a stake; running thence North 22 deg. 21' West 112.5 feet to a stake at the edge of Bolin Creek; running thence with said Creek North 61 deg. 25' West 68 feet to a stake, corner of Danziger; thence with his line South 10 deg. 45' West 173 feet to the BEGINNING.



THE FOREGOING THREE TRACTS ARE ALSO DESCRIBED BY THE FOLLOWING COMPOSITE DESCRIPTION:

All that certain tract or parcel of land lying and being situated in Chapel Hill, Orange County, North Carolina, and more particularly described as follows:

Beginning at a nail set in the centerline of a bridge on Bolinwood Drive as it crosses Bolin Creek, said nail having N.C. Grid Coordinates (NAD '83) of N=791,188.28' & E=1,985,127.93' and running thence with the center of Bolin Creek S 57°03'56" E, 30.57' to a computed point on the Right-of-Way line of Bolinwood Drive; thence continuing with Bolin Creek, S 57°03'56" E, 121.47' to a computed point in the center of Bolin Creek; thence leaving Bolin Creek and running with the lines of Mill Race Subdivision (5 calls) S 30°52'23" W, 42.98' to a computed point; thence N 88°55'58" W, 92.19' to a computed point; thence S 58°27'22" W, 127.33' to an existing iron pipe; thence S 78°27'43" W, 90.64' to a computed point; thence S 70°50'51" W, 189.19' to a computed point on the Right-of-Way line of Hillsborough Street; thence with the R/W of Hillsborough Street along a curve to the left (east of chord) having a radius of 426.74' and a chord of N 22°07'09" W, 18.61' for a distance of 18.61' to an iron rod set at the end of the southern R/W line of Bolinwood Drive; thence N 27°26'22" W, 60.59' to an iron rod set at the end of the northern R/W of Bolinwood Drive; thence continuing with the R/W of Hillsborough Street (6 calls) along a curve to the left (east of chord) having a radius of 426.74' and a chord of N 33°23'17" W, 27.96' for a distance of 27.97' to a computed point; thence N 35°15'56" W, 132.23' to a computed point; thence along a curve to the right (west of chord) having a radius of 559.47' and a chord of N 27°59'58" W, 141.52' for a distance of 141.90' to a computed point; thence N 20°44'00" W, 147.68' to a computed point; thence along a curve to the left (east of chord) having a radius of 607.58' and a chord of N 25°14'48" W, 95.62' for a distance of 95.72' to a computed point; thence with a curve to the left (east of chord) having a radius of 311.79' and a chord of N 34°10'42" W, 48.04' for a distance of 48.09' to a computed point; leaving the R/W of Hillsborough Street and running with the line of C Lloyd, LLC, N 03°24'53" E (crossing an existing iron pipe at 0.87') for a total distance of 158.75' to a nail set at the base of an existing iron pipe on the southern bank of Bolin Creek; thence N 03°24'53" E, 18.28' to a computed point in the center of Bolin Creek; thence with Bolin Creek (5 calls) S 61°39'35" E, 151.29' to a computed point; thence S 65°59'56" E, 256.76' to a computed point; thence S 32°01'07" E, 165.42' to a computed point; thence S 47°55'12" E, 254.49' to a computed point on the Right-of-Way line of Bolinwood Drive; thence S 47°55'12" E, 30.02' to the **Point of Beginning** and containing 6.366 acres and being shown by that certain map and survey by Philip N. Post, PLS of Philip Post & Associates, dated December 17, 2014, to which said map and survey reference is hereby made. No warranty of title is made with respect to that portion of the above-described property traversed or containing the right-of-way of Bolinwood Drive to its full length width and length.

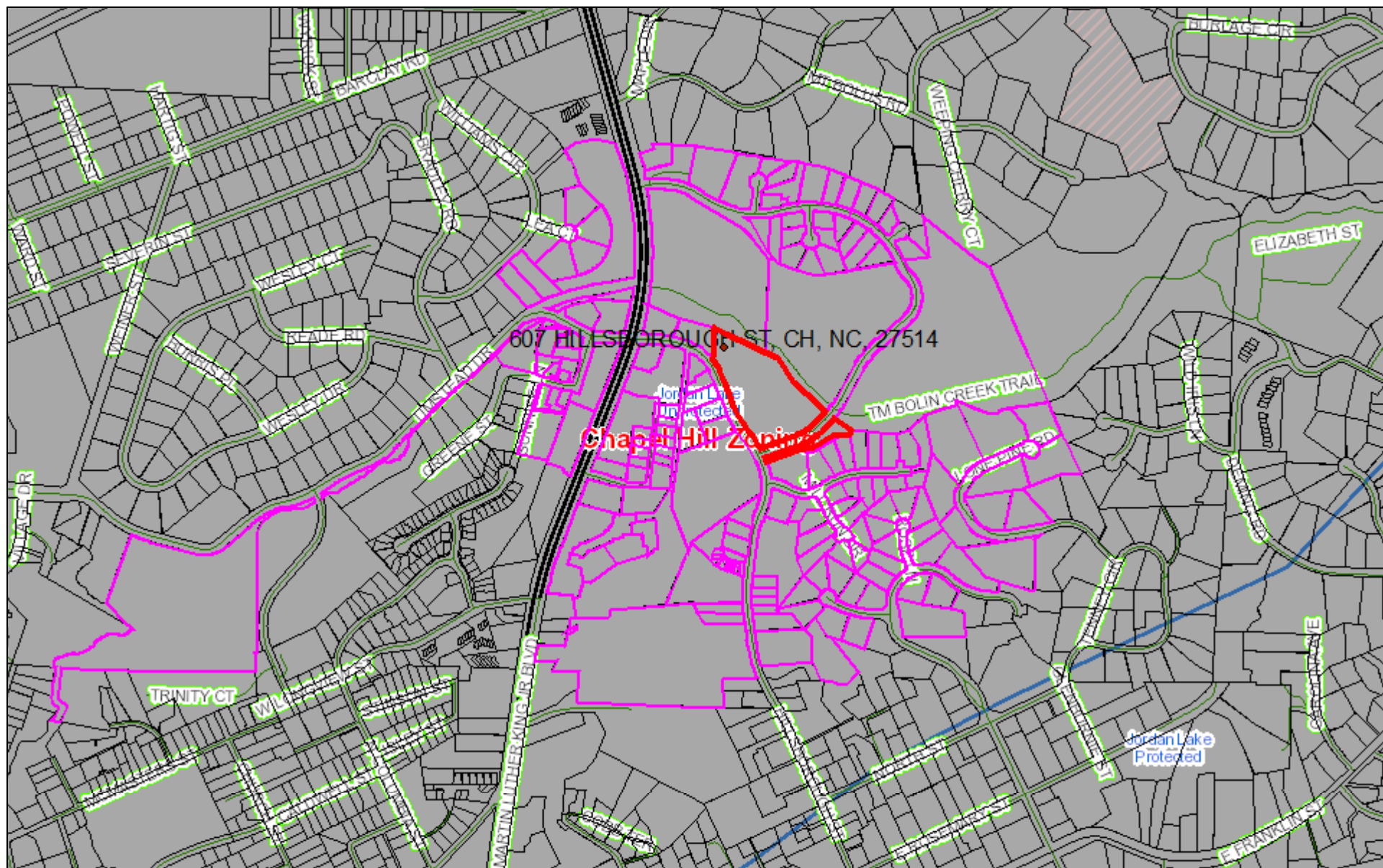
The intent of this instrument is to merge the above described parcels into one for tax purposes.



EXHIBIT B
Permitted Exceptions

1. Taxes or assessments for the year 2015, and subsequent years, not yet due or payable.
2. Rights of tenants in possession, as tenants only.
3. Service utilities disclosed on survey entitled "ALTA/ACSM Land Title Survey - Colonial Arms - Eller Capital Partners" by Philip N. Post, P.L.S., of Philip Post & Associates, dated January 28, 2015 (the "Survey").
4. Rights of others in and to the continuous and uninterrupted flow of the waters bounding or cross the property and riparian and/or littoral rights incident to the above-described real property.
5. Deed of Easement and Dedication recorded in Book 213, page 665, Orange County Registry, and as shown on the Survey.
6. Deed of Easement to Orange Water and Sewer Authority recorded in Book 1077, page 517, Orange County Registry, and as shown on the Survey.
7. Easement set forth in Deed recorded in Book 199, page 58, Orange County Registry.
8. Easement set forth in North Carolina General Warranty Deed recorded in Book 425, page 264, Orange County Registry.
9. Easement recorded in Book 3565, page 215, Orange County Registry, and as shown on the Survey.
10. Easement and Memorandum of Agreement to Time Warner Entertainment-Advance/Newhouse Partnership recorded in Book 4611, page 209, Orange County Registry. (As to Tract 1 and Tract 3)
11. Easement and Memorandum of Agreement to Time Warner Entertainment-Advance/Newhouse Partnership recorded in Book 4374, page 269, Orange County Registry. (As to Tract 1 only)
12. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variations or other adverse circumstance affecting the Title disclosed by plat(s) recorded in Plat Book 16, page 62 and Plat Book 14, page 23, Orange County Registry.
13. Notice of Residual Petroleum recorded in Book 5893, page 136, Orange County Registry.
14. Such matters as would be disclosed by an accurate physical inspection of the above-described real property.

1000-ft Map



July 11, 2022

