

July 25, 2017

Jason Sullivan
Planning Director
Chatham County Planning Department
P.O. Box 54
80-A East Street
Pittsboro, NC 27312

Re: Elkins Sawmill, Inc. Rezoning Application
Chatham County Parcel ID No. 5595

Dear Mr. Sullivan:

I have enclosed a General Use Zoning District Rezoning Application with supporting documentation, filed on behalf of Elkins Sawmill, Inc. to rezone a portion of their property, Parcel 5595, from R-1 to IH, as highlighted on the Chatham County Tax Map (included in the application). This application packet includes the following required contents:

1. Completed Application for Change in General Use Zoning Districts;
2. A current to-scale Chatham County Tax Map delineating the site;
3. A written legal description of the property;
4. A list of the adjoining/adjacent landowners, almost all of which are owned by Duke Energy Progress;
5. Amendment A describing the circumstances surrounding the request, a detailed description of the property and the conditions which make this request reasonably necessary, and demonstrating how rezoning the property will carry out the intent and purpose of the adopted and the draft Land Use Plan;
6. Payment in the amount of \$1,935.25 reflecting the rezoning of 57.41 acres.

In addition to the required contents, I have also attached the following in support of the request:

1. The Suitability Analysis Map from the Draft Land Use Plan, referenced in Amendment A;
2. A survey of the property.

Chatham County Planning Department
Page 2


Mr. Jay Elkins, Vice-President of Elkins Sawmill, Inc. and undersigned counsel attended a pre-application meeting with the Planning Department on June 14, 2017 and discussed his intention to expand the grinding and mulch operation of Elkins Sawmill, Inc. to Parcel 5595. Initially, Mr. Elkins considered applying for a Conditional Zoning District, since his plans for the property were limited. However, after that process proved to be cost prohibitive, Mr. Elkins decided to apply for a General Use Rezoning to rezone a portion of his property to IH.

Please contact Hayes Finley if you have any questions. We look forward to working with you and appreciate your support and recommendation.

Sincerely,

SMITH MOORE LEATHERWOOD LLP


Hayes J. Finley


Thomas E. Terrell, Jr.



Chatham County Planning Department
 PO Box 54/80-A East Street
 Pittsboro, NC 27312
 Ph: (919) 542-8204
 Fax: (919) 542-2698

**CHATHAM COUNTY APPLICATION
 FOR CHANGE IN GENERAL USE
ZONING DISTRICTS**

Applicant Information:

NAME: Elkins Sawmill, Inc.
 ADDRESS: P.O. Box 365
Goldston, NC 27252
 CONTACT PH: (919) 362-1235
 EMAIL: elkinssawmill@gmail.com

Landowner Information:

NAME: Elkins Sawmill, Inc.
 ADDRESS: P.O. Box 365
Goldston, NC 27252
 CONTACT PH: (919) 362-1235
 EMAIL: elkinssawmill@gmail.com

PROPERTY IDENTIFICATION

Physical (911) Address: King Road PARCEL (AKPAR) No.: 5595
 Township: Cape Fear Total Acreage: 71.775 Acreage to be Rezoned: 57.41
CURRENT ZONING DISTRICT/CLASSIFICATION: R-1 and IH

PROPOSED ZONING DISTRICT/CLASSIFICATION:

- R-1 Residential R-2 Residential R-5 Residential O & I Office & Institutional
 NB Neighborhood Business CB Community Business Regional Business IL Light Industrial
 IH Heavy Industrial

FEMA Flood Map Information:

Flood Map No. : 3720060800K Map Date: 02/02/2007 Flood Zone: X

WATERSHED Information:

Current Watershed Classification: WS-IV PA Within Jordan Lake Buffer Area: Yes No Unknown

APPLICATION SUBMITTAL REQUIREMENTS

Attach the following as required in Section 19.4.C of the zoning ordinance:

- ✓ Map of the property showing the parcel or portions thereof that are affected by this rezoning request.
- ✓ Written legal description of such land
- ✓ Any alleged error in the Ordinance, if any, which would be remedied by the proposed amendment
- ✓ The changed or changing conditions, if any, which make the proposed rezoning reasonably necessary
- ✓ The manner in which the proposed rezoning will carry out the intent and purpose of the adopted Land Use Plan or part thereof
- ✓ List all other circumstances, factors, and reason which the applicant offers in support of the proposed amendment
- ✓ All other information required on this application or as offered by the applicant in support of the request

Please provide 16 sets of this application submittal with all supporting documentation, maps, summaries, etc.

No application packets will be taken after 4pm. All fees must be paid at the time of application submittal. For the purposes of calculating this application fee, use the following:

Application Fee: \$500.00 plus \$25/per acre (ex: \$25 x 1.42ac = \$35.50 plus \$500 = \$535.50 total fee)



Chatham County Planning Department
PO Box 54/80-A East Street
Pittsboro, NC 27312
Ph: (919) 542-8204
Fax: (919) 542-2698

PLEASE SIGN THE MOST ACCURATE SIGNATURE OPTION BELOW (1, 2, OR 3)

(1) I hereby certify that **I am the owner or authorized agent of said property** and that the information provided is complete and the statements given are true to the best of my knowledge.

Jay Elkins
Signature (Elkins Sawmill, Inc. by Jay Elkins)
JAY ELKINS

7/24/17
Date

Print Name (Jay Elkins)

The owner must sign the following if someone other than the owner is making the application.

(2) I hereby certify that (please print) _____ is an authorized agent for said property and is permitted by me to file this application.

Signature

Date

Print Name

(3) I acknowledge that **I am not the landowner OR authorized agent** of the property for which this application is being made, but I do live within the zoned area of the county.

Signature

Date

Print Name

FOR OFFICE USE ONLY

Application No.: PL20

Date Received: _____ 20____

Payment Received: \$ _____

Check No. _____

Cash

Credit Card

Money Order

Planning Department

AMENDMENT A

Applicant Elkins Sawmill, Inc. respectfully requests approval of a zoning map amendment for a portion of parcel No. 5595, located at King Road in Moncure from R-1 to IH. The remaining portion of parcel 5595 is already industrially zoned.

Jay Elkins is the Vice President of Elkins Sawmill, Inc., which owns Parcel 5595. Elkins Sawmill has been a successful business in Chatham County for 43 years. Part of Mr. Elkins' business is the recycling of organic materials (wood chips) for use in residential landscaping. The existing sawmill site is too small for the necessary chip piles, and he wishes to expand into stump and log grinding and needs a better location.

Parcel 5595 is located on King Road, approximately one mile from Elkins Sawmill. There are four abutting parcels in Chatham County, three owned by Duke Energy Progress, LLC (Duke Energy owns both Carolina Power & Light Company and ITAC 27 LLC) and one owned by Harold E. Day which is currently zoned Heavy Industrial. Triangle Brick and the Moncure Megasite, both heavy industrial uses, are located nearby.

Parcel 5595 is also abutting the Shearon Harris Nuclear Power Plant property in Wake County. A portion of Parcel 5595 above King Road is already zoned Heavy Industrial, as are the surrounding parcels, excepting only Parcel 5599 to the South and a portion of 5337, all of which are owned by Duke Energy.

The portion of Mr. Elkins' parcel currently zoned R-1 is mis-categorized. No reasonable person would develop homes in an area surrounded by heavy industry and a nuclear power plant.

Chatham County recently conducted a GIS based analysis of the County to identify land suitability for different land uses. The results are contained in the Draft Land Use Plan, which is in its final stages before adoption. This analysis identifies Parcel 5595 as "High Suitability" for Industrial use and "Low Suitability" for Residential Use. (See attached Suitability Analysis from the Draft Land Use Plan).

Although not required for a rezoning application, Mr. Elkins held a community meeting on July 17, 2017 at 6:00 pm to allow neighbors to provide input on the application. An explanatory letter was mailed to all abutting landowners, with at least 14 days' notice, and no one attended or expressed objection.

Mr. Elkins respectfully requests approval of his rezoning application for the following reasons:

- I. The current zoning of a portion of Parcel 5595 as Residential, although not an error, is an inadequate and unreasonable classification that will be corrected by this application to rezone as Heavy Industrial.

As identified in the Suitability Analysis conducted by Chatham County, this property is not suitable for residential use but is highly suitable for industrial use. While the Applicant does not allege there is an error in the Ordinance, the current classification of a portion of this parcel as Residential is inadequate. Reclassifying a portion of this parcel as Heavy Industrial, to be

consistent with the surrounding properties, is reasonable and in the public interest.

It cannot be overstated: this property is currently surrounded by Duke Energy property, a brick manufacturing facility, and a Nuclear Power Plant. No reasonable person would invest in this land to develop a residential neighborhood, and it is also identified as low preference for recreation in the Draft Land Use Plan, and as not suitable for residential zoning. Reclassifying it to an industrial use is consistent with the draft land use plan and it is reasonable and in the public interest.

II. Rezoning a portion of Parcel 5595 to Heavy Industrial is reasonably necessary to promote the public health, safety and general welfare of Chatham County.

Rezoning this parcel is not a health and safety issue. However, it is an issue of the county's general welfare. A small, established, family-owned business that has been creating jobs in Chatham County for 43 years needs to grow and expand. Rezoning this parcel to Heavy Industrial will allow that to happen. It is important for Chatham County to support the growth of small locally owned businesses.

III. Rezoning a portion of Parcel 5595 to Heavy Industrial will carry out the purpose and intent of the Land Use Plan.

(a) Current Land Use Plan

Chatham County's current Land Use Plan includes balanced growth as a fundamental policy, which is described in the Plan as ensuring that development is guided to suitable locations. As shown in the County's suitability analysis, Parcel 5595 is highly suitable for industrial use, and is not suitable for residential. Rezoning the residential portion of 5595 to heavy industrial will carry out the fundamental policy of the Land Use Plan to ensure that development is guided to suitable locations.

The Land Use Plan also supports a proactive and cooperative approach to meet citizens' aspirations. Jay Elkins is a life-long citizen of Chatham County and his family's business has been successful for 43 years. Rezoning this tract would be tremendously supportive and cooperative in this small business owner's growth.

(b) Draft Land Use Plan

As previously stated, the Draft Land Use Plan identifies Parcel 5595 as high suitability for Industrial Use and low suitability for Residential Use.

IV. Additional Circumstances

Mr. Elkins began the rezoning process intending to add one simple limiting condition: that the property could not be used for any purpose other than grinding wood for mulch.

However, in order to add that simple, limiting condition, the Ordinance requires that he file for a conditional zoning district application, which includes: (1) a detailed site plan (which is time-consuming and costly), and (2) a full-blown environmental impact statement prepared by an

environmental engineer (also costly and time-consuming) that gets into issues such as historic properties, endangered species, etc., all so he can limit the property to what most citizens would consider an innocuous and environmentally desirable use.

Mr. Elkins is fully aware that an application to an open zoning district requires the Board of Commissioners to consider all uses that are allowed by right in IH (e.g. that do not require a CUP). For reasons related to considerable and unnecessary costs and time delays, Mr. Elkins is taking the risk that his county will find land sandwiched between a nuclear power plant and other heavy industrial uses to be an appropriate place for an open IH district. For the most part, any use that would raise a particular concern in IH can only be developed upon application for a CUP.

Although Zoning Ordinance Section 19.3 purports to limit Mr. Elkins' ability to inform the county of his intended use of the property in an open district rezoning, this provision is inconsistent with well-established principles of protected speech. The legal restriction recognized by our courts is not on a zoning applicant's speech but instead is a restriction on the manner in which a county acts when approving a map amendment. See, for example, *Allred v. City of Raleigh*, 277 NC 530, 178 S.E.2d 432 (1971); *Blades v. City of Raleigh*, 280 N.C. 531, 187 S.E.2d 35, (1972).

As a practical matter, if challenged by a party with standing, the county would have to answer as to whether it considered all available by-right uses to avoid claims of contract zoning and spot zoning. Mr. Elkins is confident that any of those uses would be acceptable in this location.

EXHIBIT A

Real property located in Cape Fear Township, Chatham County described as follows:

BEGINNING at a stake in the center of NC State Road 1911 said stake being in the southern property line of Athena Day and running thence along and with the center of said NC State Road 1911 the following courses and distances: South 30° 53' 43" East 52.02 feet to a point; South 35° 38' 13" East 110.37 feet to a point; South 48° 57' 22" East 108.12 feet to a point; South 50° 55' 29" East 108.59 feet to a point; South 29° 39' 07" East 107.24 feet to a point; South 3° 29' 57" West 105.46 feet to a point; South 4° 26' 43" West 110.57 feet to a point; South 3° 0' 51" West 109.87 feet to a point; South 2° 12' 05" West 108.32 feet to a point; South 0° 0' 54" East 110.54 feet to a point; South 17° 4' 49" East 110.63 feet to a point; South 28° 01' 13" East 50.66 feet to a point designated point B as shown on plat and survey hereinafter referred to; said point lying and being in the center of a transmission line 70 feet in width; running thence along and with the center of said transmission line South 53° 43' 29" West 1,214.79 feet to a point; running thence South 8° 31' 37" West 1,801.77 feet to a point in the northern property line of Champion International Corporation designated point E; running thence along and with the northern property line of Champion International Corporation between point E and point D the following courses and distances: North 87° 40' 06" East 114.29 feet to a point; North 87° 40' 47" East 233.98 feet to a point; North 61° 58' 09" East 98.49 feet to a point; South 71° 46' 36" East 210.90 feet to a point; South 84° 17' 40" East 116.62 feet to a point; North 75° 30' 42" East 60.30 feet to a point; North 47° 29' 12" East 97.23 feet to a point designated D in the line of CP & L; running thence along and with the line of CP & L North 17° 59' 21" West 346.14 feet to a stake; running thence North 19° 27' 54" East 2,397.81 feet to a point designated 9; running thence from figure 9 to figure 2 as shown on plat hereinafter referred to the following courses and distances: South 69° 20' 41" West 200.52 feet to a point; North 30° 42' 32" East 202.62 feet to a point; North 65° 42' 16" East 191.19 feet to a point; North 22° 58' 27" East 266.09 feet to a point; North 43° 30' 39" West 184.65 feet to a point; North 5° 18' 26" West 185.42 feet to a point; North 35° 18' 26" West 111.74 feet to a point designated No. 2; running thence North 82° 38' 47" West 121.14 feet to a point designated 1 marking the southeast corner of Athena Day; running thence North 85° 42' 27" West 749.10 feet to point A in the center of NC State Road 1911 the point and place of BEGINNING and being all of Tract A consisting of 71.775 acres, more or less, as shown plat entitled "Merry Oaks Tract", prepared by Gelbert Poole & Associates, P.A., dated November 8, 1983 of record in Plat Book _____, Page _____, Chatham County Registry.

Adjacent/Adjoining Landowners: These are those properties that share a common property line as well as those that are directly across a public or private road, easement, or waterway.

Legal notices are mailed to these owners so please type or write neatly

(1) Carolina Power & Light Co.
Attn: Land Management
P.O. Box 1551-PEB3A
Raleigh, NC 27602

(2) Robert Cutlip/ ITAC 27 LLC
c/o Real Estate Management
121 N. Columbia St
Chapel Hill, NC 27514

(3) Day Harold E
751 Walkertown Guthrie Rd
Winston-Salem, NC 27101

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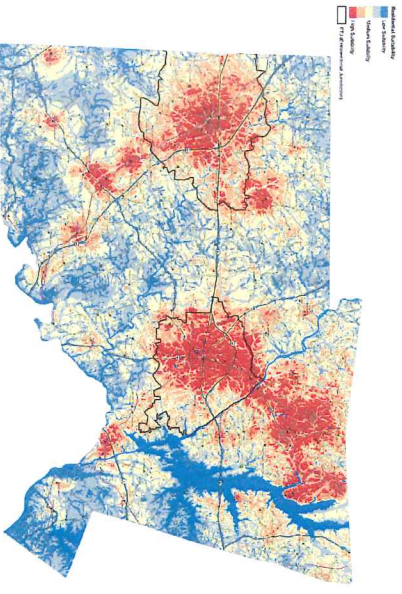
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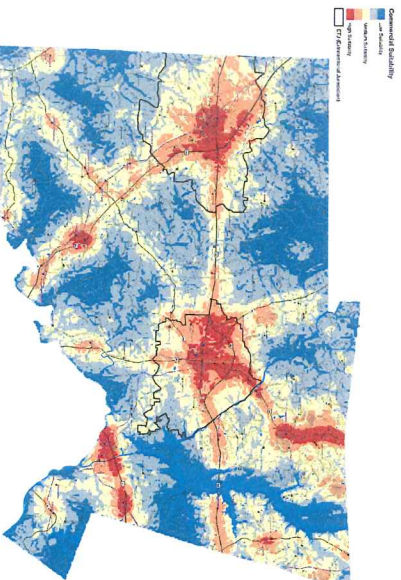
RESIDENTIAL SUITABILITY



RESIDENTIAL FACTORS

- LANDS NEAR EXISTING SINGLE FAMILY DEVELOPMENT
- LANDS PROXIMAL TO MUNICIPAL EITS AND COMMUNITY CENTERS
- LANDS PROXIMAL TO LANDS NEAR SCHOOLS
- LANDS NEAR EXISTING COMMERCIAL AND SERVICES
- LANDS NEAR PARKS
- LANDS NOT PROXIMAL TO INDUSTRIAL USES
- LANDS NEAR EMPLOYMENT CENTERS
- LANDS WITH BUILDABLE SLOPE CONSTRAINTS
- LANDS NOT ADJACENT TO MAJOR ROADS
- LANDS PART OF LARGE PARCELS
- LANDS WITH SOILS APPROPRIATE FOR SEPTIC TANKS

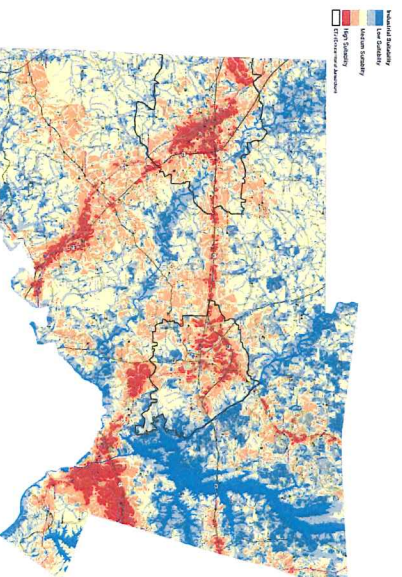
COMMERCIAL SUITABILITY



COMMERCIAL FACTORS

- LANDS NEAR CONCENTRATIONS OF EXISTING RESIDENTIAL DEVELOPMENT
- LANDS PROXIMAL TO EXISTING COMMERCIAL AND SERVICES
- LANDS PROXIMAL TO ACCESSIBLE HIGH TRAFFIC ROADWAYS
- LANDS PROXIMAL TO MAJOR ROADS (EXISTING AND FUTURE)
- LANDS PROXIMAL TO EXITS
- LANDS PROXIMAL TO EXISTING OR APPROVED COMMERCIAL CENTERS
- LANDS PROXIMAL TO SEWER
- LANDS NOT ENVIRONMENTALLY CONSTRAINED

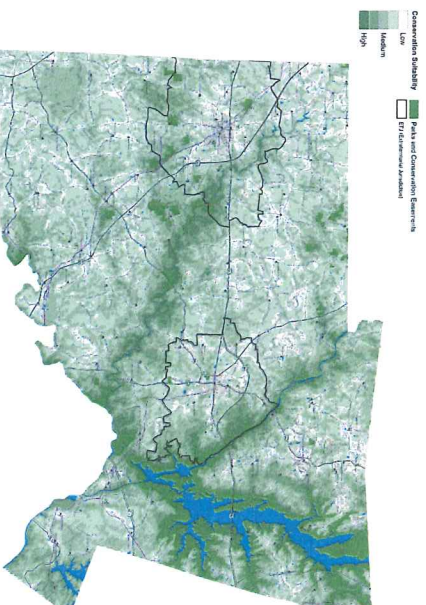
INDUSTRIAL SUITABILITY



INDUSTRIAL FACTORS

- LANDS PROXIMAL TO EXISTING INDUSTRIAL LAND USES
- LANDS NOT PROXIMAL TO INCOMPATIBLE RESIDENTIAL USES
- LANDS PROXIMAL TO 4 LANE ROADS
- LANDS PROXIMAL TO RAILROADS
- LANDS PROXIMAL TO CURRENT AND FUTURE EXITS
- LANDS PROXIMAL TO SEWER
- LANDS PROXIMAL TO WATER SUPPLY LINES
- LANDS WITH BUILDABLE SLOPE CONSTRAINTS
- LANDS NOT IN WATER SHEEP WATERSHEDS
- LANDS PART OF LARGE PARCELS
- LANDS PART OF DUNE ENERGY'S SITE READINESS PROGRAM

CONSERVATION SUITABILITY



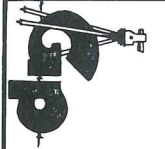
CONSERVATION FACTORS

- IDENTIFY LANDS WITH LOW PARCEL DENSITY
- BIODIVERSITY AND INHERIT VALUE (FROM CHATHAM COUNTY CONSERVATION PLAN)
- DISTANCE FROM ROADS
- PROXIMITY TO NATURAL HERITAGE ELEMENT OCCURRENCES (NHEO)
- PROXIMITY TO DESIGNATED NATURAL HERITAGE NATURAL RESOURCES (DNHR)
- PROXIMITY TO PROTECTED LANDS
- STEEP SLOPES
- ENVIRONMENTALLY CONSTRAINED LANDS

A GIS BASED SUITABILITY ANALYSIS WAS CONDUCTED TO IDENTIFY LANDS ECONOMICALLY AND ENVIRONMENTALLY SUITABLE FOR DIFFERENT LAND USE TYPES. THIS ANALYSIS WAS USED TO INFORM THE DRAFT FUTURE LAND USE MAP.

2:30
37-99
2-15-84
413.50

SOUTHERN PHOTO - GREENSBORO



SCALE 1"=300'

LEGEND
• IRON FOUND
• IRON SET

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71.775 AC.
TRANSMISSION LINE
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TRANSMISSION LINE

CHAMPION INTERNATIONAL CORP.
71.775 AC.
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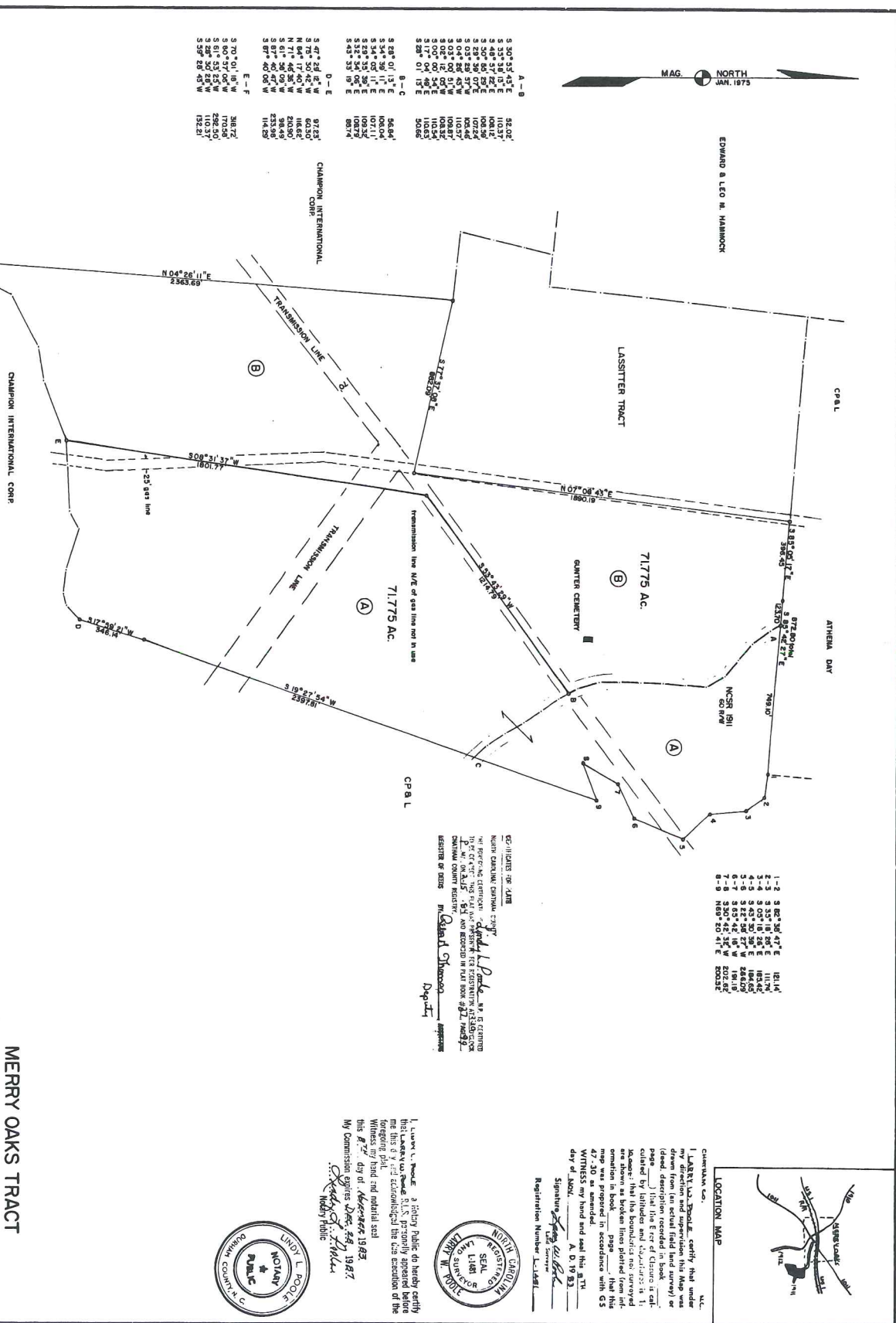
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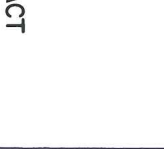
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DEPOSITION OF JIM
MERRY OAKS TRACT
I, JIM MERRY, of the County of Guilford, State of North Carolina, do hereby certify that the foregoing description of the MERRY OAKS TRACT is a true and correct description of the same as the same is shown on the map and plat hereunto annexed and as the same is more fully described in the plat hereunto annexed and as the same is more fully described in the plat hereunto annexed.

Witness my hand and seal this 15th day of February, 1984.
JIM MERRY
Notary Public



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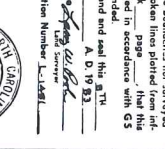
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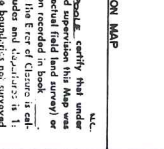
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JIM MERRY
Notary Public



LOCATION MAP
N.C.
I, JIM MERRY, do hereby certify that the map was drawn from an actual field land survey or from a true and correct copy of a map or plat of record of record and is a true and correct copy of the same as the same is shown on the map and plat hereunto annexed and as the same is more fully described in the plat hereunto annexed and as the same is more fully described in the plat hereunto annexed.

Witness my hand and seal this 15th day of February, 1984.
JIM MERRY
Notary Public

MERRY OAKS TRACT
CHAPE FEAR TWP
NO. 8
CHATHAM CO. NC
1983
SURVEYED BY
GELBERT, POOLE & ASSOCIATES PA.
REGISTERED LAND SURVEYORS
DUNHAM N.C. 27701
SCALE 1"=300'
37-99
308 NO. 0110