DOCKET #: W2788
(Continued from 7/14/05 CCPB meeting)

PROPOSED ZONING:
LI

EXISTING ZONING:
RS-9, RSQ, and RM-18

PETITIONER:
City of Winston-Salem and Duke Energy for property owned by Same

SCALE: 1" represents 800'

STAFF: King

GMA: 2

ACRE(S): 34.49

MAP(S): 636866
September 21, 2005

City of Winston-Salem
c/o Bryce Stuart
P. O. Box 2511
Winston-Salem, NC 27102

RE: ZONING MAP AMENDMENT W-2788

Dear Mr. Stuart:

The attached report of the Planning Board to the City Council is sent to you at the request of the Council Members. You will be notified by the City Secretary’s Office of the date on which the Council will hear this petition.

Sincerely,

A. Paul Norby, AICP
Director of Planning

pc: City Secretary’s Office, P.O. Box 2511, Winston-Salem, NC 27102
Duke Power Co., c/o George W. Christian, P. O. Box 1244, Charlotte, NC 28201
ACTION REQUEST FORM

DATE: September 21, 2005
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, AICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on Zoning Map Amendment of the City of Winston-Salem and Duke Power Company

SUMMARY OF INFORMATION:

Zoning Map Amendment of the City of Winston-Salem and Duke Power Company from RSQ, RS-9, and RM-18 to LI: property is located on the north side of Twenty-Sixth Street and Indiana Avenue between Woodland Avenue and US 52 on the west and Fairchild Hills Road on the east (Zoning Docket W-2788).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NOT REQUIRED
CITY ORDINANCE - GENERAL USE

Zoning Petition of City of Winston-Salem and Duke Power Co., Docket W-2788

AN ORDINANCE AMENDING THE WINSTON-SALEM CITY ZONING ORDINANCE AND THE OFFICIAL ZONING MAP OF THE CITY OF WINSTON-SALEM, N.C.

_______________________________________

BE IT ORDAINED by the City Council of the City of Winston-Salem as follows:

Section 1. The Winston-Salem City Zoning Ordinance and the Official Zoning Map of the City of Winston-Salem, N.C. are hereby amended by changing from RSQ, RS-9, and RM-18 to LI the zoning classification of the following described property:

- Tax Lots 167-172, 201, and 202 Tax Block 1972
- Tax Lots 89-105 Tax Block 1967
- Tax Lot 1A Tax Block 2434

Section 2. This ordinance shall become effective upon adoption.
## PETITION INFORMATION

<table>
<thead>
<tr>
<th>Docket #</th>
<th>W-2788</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff</td>
<td>Aaron King</td>
</tr>
<tr>
<td>Petitioner(s)</td>
<td>City of Winston-Salem and Duke Power Company</td>
</tr>
<tr>
<td>Owner(s)</td>
<td>Same</td>
</tr>
</tbody>
</table>
| Subject Property | Tax Lots 167-172, 201, and 202 /Tax Block 1972  
|               | Tax Lots 89-105 /Tax Block 1967  
|               | Tax Lot 1A /Tax Block 2434  |
| Type of Request | General Use Rezoning         |

### Proposal
- The petitioner is requesting to amend the Official Zoning Maps for the subject property from RSQ (Residential Single Family Quadraplex), RS9 (Residential Single Family; 9,000 sf lot size), and RM18 (Residential Multi-Family; 18 du/ac) to LI (Limited Industrial).

### Zoning District Purpose Statement
The LI District is primarily intended to accommodate limited manufacturing, wholesaling, warehousing, research and development, and related commercial and service activities which, in their normal operations, have little or no adverse effect upon adjoining properties. The district is established to provide locations for industrial development in Growth Management Areas 1, 2, 3, and 4, and activity centers.

### Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(S)
(S)(1) - Is the proposal consistent with the purpose statement(s) of the requested zoning district(s)?
Yes, the proposal is located within Growth Management Area 2 as mentioned in the LI zoning district purpose statement.

## GENERAL SITE INFORMATION

<table>
<thead>
<tr>
<th>Location</th>
<th>North side of Twenty-Sixth Street and Indiana Avenue between Woodland Avenue and US 52 on the west and Fairchild Hills Road on the east</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisdiction</td>
<td>City of Winston-Salem</td>
</tr>
<tr>
<td>Ward(s)</td>
<td>Northwest</td>
</tr>
<tr>
<td>Site Acreage</td>
<td>Approximately ± 34.49 acres</td>
</tr>
<tr>
<td>Current Land Use</td>
<td>Undeveloped property</td>
</tr>
<tr>
<td>Surrounding Direction</td>
<td></td>
</tr>
<tr>
<td>Zoning District</td>
<td></td>
</tr>
<tr>
<td>Use</td>
<td></td>
</tr>
</tbody>
</table>
**Property Zoning and Use**

<table>
<thead>
<tr>
<th>North</th>
<th>GI</th>
<th>Airport/Undeveloped Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>East</td>
<td>GI and RM-18</td>
<td>Airport/Undeveloped Property</td>
</tr>
<tr>
<td>South</td>
<td>RM-18</td>
<td>Multifamily units</td>
</tr>
<tr>
<td>West</td>
<td>IP, GI, and HB</td>
<td>Various industrial uses</td>
</tr>
</tbody>
</table>

**Applicable Rezoning Consideration from Chapter B, Article VI, Section 6-2.1(S)**

(S)(2) - Is/are the use(s) permitted under the proposed classification/request compatible with uses permitted on other properties in the vicinity?

Industrial uses are located to the north and west of the subject property. High density residentially zoned property abuts the subject property to the south and east.

**Physical Characteristics**

All existing structures have been removed from the subject property. The property is currently undeveloped and slopes generally down toward Bowen Boulevard Branch Creek, experiencing an approximate elevation change 30-40 feet.

**Proximity to Water and Sewer**

The subject property will be served by public water and public sanitary sewer.

**Watershed and Overlay Districts**

The subject property is not located within a water supply watershed.

**Analysis of General Site Information**

This request is to rezone approximately 35 acres of property from RSQ, RS-9, and RM-18 to LI. The subject property is located south of Smith Reynolds Airport, north of 26th Street and east of Liberty Street. This request was originally submitted with a total of 42.47 acres including land located further to the east. The petitioner has since removed the easternmost and southernmost portions of the property leaving a total of +/- 35 acres for this rezoning request. A portion of the Bowen Boulevard Branch Creek runs east/west through the approximate middle of the property. The site has been cleared of all existing structures and the topography of the site slopes down generally toward Bowen Branch Boulevard Creek.

### SITE ACCESS AND TRANSPORTATION INFORMATION

<table>
<thead>
<tr>
<th>Street Name</th>
<th>Classification</th>
<th>Frontage</th>
<th>ADT Count</th>
<th>Capacity/LOS D</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Liberty Street</td>
<td>Major Thoroughfare</td>
<td>Western</td>
<td>15,000</td>
<td>15,600</td>
</tr>
<tr>
<td>28th Street</td>
<td>Minor/Major Thoroughfare</td>
<td>Southern</td>
<td>13,000</td>
<td>13,100</td>
</tr>
</tbody>
</table>

**Proposed Access Point(s)**

The subject property has access to public roads via either Claremont Avenue or 13th Street.

**Planned Road Improvements**

The Thoroughfare Plan recommends that North Liberty Street between 28th Street to Akron Drive be constructed as a five-lane cross section with curb and gutter and sidewalk. It also recommends that sidewalks be added to 28th Street from Indiana Avenue to North Liberty Street.

**Sidewalks**

Some sidewalks do currently exist on the property but may be removed with future redevelopment of this property.

**Transit**

Route 17
**Analysis of Site Access and Transportation Information**

The subject property is located within close proximity to a major thoroughfare (Liberty Street), a freeway (U.S. 52) and Smith Reynolds Airport. This proximity lends the site well for industrial uses. Since this is a general use rezoning petition, the internal network of streets and access points cannot be determined at this time.

**CONFORMITY TO PLANS AND PLANNING ISSUES**

<table>
<thead>
<tr>
<th>Legacy GMA</th>
<th>GMA 2; Urban Neighborhoods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant Legacy Recommendations</td>
<td>• Legacy recommends protection of residential areas from inappropriate commercial and industrial encroachment. Legacy also recommends stimulation and promotion of economic activity in areas which have become less economically attractive provided that it is compatible with existing residential neighborhoods.</td>
</tr>
<tr>
<td>Relevant Area Plan(s)</td>
<td>East Winston Area Plan (1988)</td>
</tr>
<tr>
<td>Area Plan Recommendations</td>
<td>• The area plan recommends creating the Airport Activity Center at this location. The activity center is proposed as a mixed use development consisting of commercial, office, and residential uses. Strict performance and design standards are recommended to protect existing nearby residential areas and to ensure quality development.</td>
</tr>
<tr>
<td>(S)(3) - Have changing conditions substantially affected the area in the petition?</td>
<td>No</td>
</tr>
<tr>
<td>(S)(4) - Is the requested action in conformance with Legacy?</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Analysis of Conformity to Plans and Planning Issues**

The subject property is also located within the Brookwood Redevelopment Area Plan. The Brookwood Redevelopment Area Plan proposes acquisition and clearance of approximately 75 acres for redevelopment of the site as an airport-oriented industrial park. Implementation of the plan requires rezoning of the site from residential to light industrial. This proposal is in conformance with the recommendation of the East Winston Area Plan which calls for an Airport Activity Center to be created. Since this is not a special use rezoning request, no specifics regarding buffering are provided; however, a Type IV bufferyard is required whenever an industrial use abuts a multifamily residential use.

**RELEVANT ZONING HISTORIES**

<table>
<thead>
<tr>
<th>Case</th>
<th>Request</th>
<th>Decision &amp; Date</th>
<th>Direction from Site</th>
<th>Acreage</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>W-2690</td>
<td>Special Use Permit to expand parking for church</td>
<td>Approved May 3, 2004</td>
<td>Southeast</td>
<td>0.69 acre</td>
<td>Approval</td>
</tr>
<tr>
<td>W-2398</td>
<td>GI to LB-S</td>
<td>Approved</td>
<td>North</td>
<td>0.56 acre</td>
<td>Approval</td>
</tr>
<tr>
<td>Case</td>
<td>Action</td>
<td>Date</td>
<td>Location</td>
<td>Acres</td>
<td>Approval Status</td>
</tr>
<tr>
<td>------</td>
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</tr>
<tr>
<td>W-2363</td>
<td>GI to LB</td>
<td>Withdrawn at the March 9, 2000 PB meeting</td>
<td>North</td>
<td>0.56</td>
<td>NA</td>
</tr>
<tr>
<td>W-2101</td>
<td>RS-7 to NB</td>
<td>Denied November 4, 1996</td>
<td>Southeast</td>
<td>0.38</td>
<td>Approval</td>
</tr>
<tr>
<td>W-1992</td>
<td>HB and RSQ to GI</td>
<td>Approved October 2, 1995</td>
<td>Northwest</td>
<td>0.77</td>
<td>Approval</td>
</tr>
</tbody>
</table>

**UDO Sections Relevant to Subject Request**

- Section 2-1.4(A) LI District

**Complies with Chapter B, Article VII, Section 7-5.3**

- (A) Legacy policies: Yes
- (B) Environmental Ord. NA - General Use Rezoning
- (C) Subdivision Regulations NA - General Use Rezoning

**CONCLUSIONS TO ASSIST WITH RECOMMENDATION**

<table>
<thead>
<tr>
<th>Positive Aspects of Proposal</th>
<th>Negative Aspects of Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>This request will facilitate the redevelopment of this area.</td>
<td>No knowledge of how this site’s internal network of streets and access points will coordinate with the existing street network.</td>
</tr>
<tr>
<td>The subject request is in conformance with the recommendations of Legacy and the East Winston Area Plan.</td>
<td></td>
</tr>
<tr>
<td>While this request would allow industrial zoning to be placed next to an existing neighborhood, the LI district does not allow some of the more intense uses allowed in GI.</td>
<td></td>
</tr>
</tbody>
</table>

**STAFF RECOMMENDATION:** APPROVAL

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

PUBLIC HEARING

FOR:

Derick Paige, Assistant City Manager for the City of Winston-Salem, P. O. Box 2511, Winston-Salem, NC 27102

- Back in 1988, the City-County Planning Board adopted the East Winston Area Plan. That plan was later approved by the City Council. In 1990, the Industrial Opportunity area also was approved by the City-County Planning Board and the City of Winston-Salem. In 1991, the Carver Road/Ogburn Station Development Guide was approved by the Planning Board as well as the City Council. And then in 1995, you adopted the Liberty Street Corridor Study which was also approved by the City Council. Why did I present all of those? Each one of those plans describes an area that is south of Smith Reynolds Airport being an area for ideal light industrial or office development known as the Airport Business Park. For more than 17 years, this plan has been in the development stages. In 1999, the City actually was successful in receiving its first grant, that being a Brownfields Grant for the Liberty Street Corridor Area. Under the options of that grant, we actually began what later became the acquisition of 154 properties for the development of a Smith Reynolds Airport Park. From 1999 to about 2001 we put together a strategy where we would in fact begin acquisition over a three year period then move forward with the development of this park. In 2000, the voters of the City of Winston-Salem approved $4 million as part of an economic development general obligation bond and part of that bond was used for the acquisition and relocation of some of these properties in these Brookwood Development at that point. This board approved the certification of the area as a blighted area of these properties as well as the redevelopment plan for that area to move forward with the acquisition. We began acquisition as scheduled in mid-2001 going through mid-2004 with the acquisition schedule, being successful in the acquisition of all the properties except for one property being this RM-18 parcel which is about 16 acres. So we actually acquired this 35 acres, an additional 7 acres to the east of that site, were unsuccessful in acquiring that 15 acre piece in the middle and then actually went through the condemnation process for that parcel. We had negotiated on a price in the mid $200,000 range. The property owner had an appraisal in this $800,000 range. We went through mediation and settled in the mid $500,000 range, however, as you all may be aware, the staff only has negotiation authority. The Council has to approve any final actions. The City Council chose, no they do not want to pay anything in the mid $500,000 range, given we had an appraisal in the mid $200,000 range for this property. They decided to basically uncondemn the property that had been condemned. So we went back through the process, went through a mediation process, and actually went to court on the uncondemnation of the property to determine what loss of value had occurred for the property owner and that has been settled now. This piece is no longer part of the Airport Business Park as it currently is situated. However, keep in mind that we do have land to the east of this that at some point we still would like to come in for rezoning.

You will recall that this property was in for rezoning last month and at the suggestion of the staff, we have backed out the portion of the land being to the east of the RM-18 land. We did that for several reasons. One is because of the concerns that it would be LI zoning with residential zoning on both sides with RM-18 to one side of it and RM-18 to the other side of it.
But the other reason is that as you may be aware, NCDOT is currently in the process of developing a long term and a short-term strategy for improvements to US 52. As part of the short-term strategies to US 52, an interchange, the ramp at Liberty Street will be closed. As you come off US 52 North onto to Liberty Street, that ramp will be closed. A new cloverleaf interchange will be created at 25th through 28th Streets. That's in the short-term plans for NCDOT so that's about a three to five year strategy. As part of that plan, the interchange would then line up to 26th Street as it comes off US 52 and basically create a boulevard as it comes into the back side of our property. So we recognize that with that boulevard we'll be able to access our property and have direct access onto the interstate. So this site isn't as vital now to go forward with the rezoning.

The reason we see this piece as being critical to go forward for rezoning right now is that in Winston-Salem and Forsyth County we are running short of industrial land. We have very few developable tracts in Winston-Salem of industrial land and this site will at least provide us an opportunity to start attracting users of small tracts in Industrial Parks. Unfortunately we've already lost two companies that were looking at this site within the last three months because we've not had sites available. One was a three-hundred employer that actually located in Rockingham County. It's not because the incentives that we were discussing weren't better, but that we didn't have land ready to go for a project on his time frame. There is a need to go forward with this project at this point. Each week we get one or two calls requesting land in this park. If we wait another month, that's a minimum of four to eight companies that we could potentially lose in this park.

It is LI zoning. That may be a concern for some of you. But keep in mind that this land is owned by the City of Winston-Salem and as redevelopment land owned by the City, any parcels that are sold have to go through the City Council for approval. There are restrictive covenants that were established as part of the redevelopment plan that were approved by both this Board and the City Council. Those covenants will also be part of any lands that are sold in this subdivision.

If I can answer any questions and there again, we will more than likely be coming forward to the Planning Board at some point in the future to discuss maybe even a joint petition with the property owner of the RM-18 that we would like to get that additional land zoned at some point in the future.

I'll be happy to answer any questions that you may have.

Wesley Clark: I had one Derwick. On the, just the entry coming off 31st Street. There's a group of houses along that property that you weren't able to obtain. If there's an entry coming into the property from that side, what about those houses along that 31st Street? Do you know what I'm talking about? The entry on the back side? There's a group of houses along the road there that would be right at your entry to the back side.

Derwick Paige: This is actually part of Piedmont Park. We have all of the single family homes in that area. They were acquired as part of this.
Wesley Clark: So if we go to the other side of the road there……..

Derwick Paige: We own that. That was in the original petition that we chose to pull out that we will also be bringing in at some later point we hope. That is actually cleared.

Arnold King: Why did you pull that little bit out?

Derwick Paige: Because of the fact that in the original plan, that piece was actually going to provide a larger lot with part of the RM-18. Now that we don't have the RM-18 land, and we can't provide the type of protection that we want to for the houses to the west side over here in Piedmont Park, we decided and found it best at this point to pull it out. Then at some point in the future as we may be able to negotiate the acquisition of the RM-18 or see it coming in as a comprehensive piece, there could then be some protection provided. That strip in there is so narrow right now, it has no developable use as LI zoning by itself. It either needs to be combined with something to provide some greater benefit.

Carol Eickmeyer asked for an example of some of the restrictive covenants and Mr. Paige read the list to her.

AGAINST:

Sam Ogburn, Sr., P. O. Box 20189, Winston-Salem, NC 27120

To start with, I am not opposed to the rezoning. I want to make that very clear. Derwick has done a very good job of describing what has been going on. I've been involved since 1999 when I went to Derwick's office to talk to him about this where we were going to try to work roughly 55 acres out at one time. I went through him while we waited to get all the grants from the different people that gave the grants. And I was assured at that time that they would buy this property from me and we wouldn't be go through condemnation but we did have to go through condemnation and the City chose not to buy this property which is fine. I still own the property. I just don't want to be locked in. I think the City, I think this could be one of the best industrial parks, best of anything that's ever happened to Winston-Salem around the Smith Reynolds Airport. We've got something up there that we could really make come alive. But let's do it all together. I like this togetherness. That's the way we started out with this thing. That we were going to do 55 or 60 acres.

I was informed by a letter that I got in the mail for the first the meeting of August 11. I talked to the City planner. I'd just like to be put in with the whole pie. You're rezoning on both sides of me and I said, we need to work out the roads and what's going to happen up there. And all I want to do is keep my property zoned the way that the City of Winston-Salem is and not be in a box so I think it all ought to be done at one time. Roughly the 42 acres, roughly the 8 acres he's pulled, and roughly my 16 acres and let's work it all out together as a whole and as a City and make this one of the best industrial parks anywhere around Winston. I think we need growth up there and I personally would be happy to be involved. I just don't want to wait and come back two or three months later and then the planners decide for some reason that they don't want to zone this the same way as the other is zoned. I just think and in fairness to me that my property ought to be zoned the same way that the City's property is. That's all I asked and I just wish that we could go back and plan for another 30-60 days. Derwick's in a rush. We've been working on this since 1999. I don't know that 60 or 90 more days is going to break up something. Let's see
if the City and I can't sit down and put mine and whatever zoning the City's getting that I get the
same thing. And I certainly do appreciate y'all listening to me. Thank you. And if you have any
question, I'll be happy to answer it.

Arnold King: Well, I've got a question. Why didn't you file for rezoning the same time the City
did?

Sam Ogburn: I wasn't notified that they were going to file. When I knew it was when I got this
wonderful little piece of paper [the required public hearing notice for the Planning Board
hearing] from the City in an envelope. I couldn't file. Why wasn't I asked? That's all I would
have asked. If I would have, I would have filed and I appreciate your asking me that. I think
that the City should have thought enough of me and as much time as I have spent on this with the
City since 1999 to call me and say, "Sam, we're getting ready to rezone ours. Would you like to
put yours in?" I would have said, "Yes", paid my filing fee and gone right along with them.
That's all I'm asking for. And thank you for asking.

Arnold King: Any one else like to speak in opposition to this? Seeing none, then we'll close the
public hearing.

WORK SESSION

Arnold King: Derwick, you've still got how much land on the east side of Mr. Ogburn?

Derwick Paige: 10-15 acres.

Arnold King: That's the pretense under which we got it, so I mean you fully intend to come back
at some time with LI on the balance of your property?

Derwick Paige: Yes I do. Or LI-S.

Arnold King: Why LI-S?

Paul Norby: Because you've got additional multifamily residential to the east and if this doesn't
work out involving Mr. Ogburn's land it would be to the west as well, so just being careful about
how that is going to be laid out I think would be the concern.

Arnold King: So if Mr. Ogburn were to come in with LI, you still want LI-S on the City's part,
right?

Paul Norby: We may just to make sure that it's laid out right with regard to the neighborhood to
the south and to the east.

Arnold King: Would you need for the City's portion to come in at the same time or if Mr.
Ogburn wanted to come in now with LI on his, is there any reason, … You can't give an opinion
here today but give me some reason why you would oppose Mr. Ogburn coming in for LI on his
piece.
Paul Norby: Well, I think it depends. Do you mean him by himself without the part to the east? Well, we don't know for sure what's worked out to the east.

Arnold King: It's going to be LI-S is what we've been told.

Paul Norby: We know that the City owns that. We don't know for sure depending on all the arrangements that are made to get road access how that's going to work.

Arnold King: So would you need the City to come in with their LI-S at the time Mr. Ogburn came in with LI? Would that give you enough …?

Paul Norby: Or all of it LI-S. All that additional part LI-S.

Arnold King: Well, I don’t know how you're going to ask him to do LI-S if you didn't ask the City on this first part.

Paul Norby: Well, the part being considered for rezoning today is much closer to Liberty Street where you've already got general use industrial zoning and also you've got immediately behind it the other development off Fairchild that's general use industrially zoned so we felt that was easier to deal with. And I'm not saying yet that we would take a position that it has to be LI-S, but that's one of the things that the further east you get on this, the more the issue would be how would you design that to make it work along the with the residential areas to the south and to the east.

Arnold King: Well, to the east you've got 10-15 acres of vacant land and the City owns it so we can really make that work any way we want to.

Lavastian Glenn: I think it's really hard to have this conversation because the issue is about the rezoning of the City property before us today and so for us to get into what's going to happen to the east of that property is not appropriate. I mean, we're trying to work out what would come in in the future, but we have to look at what's here now.

Arnold King: Well, but Mr. Ogburn raises a good question.

Jerry Clark: Now, the City's trying to develop this property and it's an industrial park. If Mr. Ogburn were to get LI general use also, can he just develop something else there other than doing what you're trying to do.

Paul Norby: He would not be obligated to do anything in conformance with the City plan. He could develop his own site access for a site that he continues to control right off 26th Street were that tract to be zoned independently LI without some kind of a site plan.

Paul Mullican: But he could come back next month or whenever and ask for that zoning or ask for an LI zoning.

Jerry Clark: That's right and that would be following the procedure, right?
Arnold King: I mean, we can't rezone this today. I understand that.

Paul Mullican: I've got a question for Mr. Paige. The process of trying to acquire Mr. Ogburn's land. My understanding was that you have negotiating power (or the City does or whatever) and then once that amount is approved then it's taken to the Council.

Derwick Paige: Correct. The way that works is that we actually have two appraisals done. Based on those appraisals, we then make an offer. If that appraisal is unacceptable, the property owner has the opportunity to have their own appraisal. In this case Mr. Ogburn had his own appraisal done, thus the discrepancy between our highest appraisal and his appraisal and the reason that we were unable to reach a negotiated settlement.

Paul Mullican: Well, and I'm sure these were certified appraisers, a couple of things. First of all, it seems to me like the appraisals were way off. $200,000 versus $800,000. And another thing is once y'all did negotiate the $500,000 and it went to the Council and the Council you said turned this down? I've never known that to happen before. Is this the first time?

Derwick Paige: The Council was unwilling to pay the amount that was still substantially higher than the original appraisal and said no.

Paul Mullican: Even though he had a certified appraisal for that amount of money?

Derwick Paige: Right. The council said no.

Paul Mullican: That seems like a happy medium.

Arnold King: Would the City be opposed to LI zoning on that adjacent land of Mr. Ogburn's?

Derwick Paige: I think what we would like to do is talk to Mr. Ogburn if there's a way. First of all, we'd love to be able to have that property if it somehow could be negotiated and include all of it in as one park. That … possibility when I talk with Mr. Ogburn about bringing a joint petition in with our land and his land, the land that we have remaining and maybe see if he would also consider applying the restrictive covenants that we have for our land, put those same type of deed restrictions on the development of his land going forward. That would be one of the ways we could address the concerns that might be raised.

Arnold King: I'm just curious why we haven't done that when this one came forward. Knowing that land was sitting there, I mean, and you know, the fact that the City wanted the land at one time, agreed to buy it, condemned it, agreed to buy it, and all that. Why didn't we ask him to come forward now? That's what I don't understand.

Derwick Paige: This matter's been in court since late July, early August. I believe the exact date was probably something like August 4th. So we've been in court for much of this period. Given the fact that we're still going to have to talk with him and if we're not successful in the acquisition of the entire parcel, we're still going to have conversations about acquisition of some portion of the land for a road across land to connect from one part of ours to the other part of ours. We felt that this piece because of its immediate need needed to go forward now. We are
still, he is having conversations with a couple of council members on a fairly regular basis about the possibility of us still trying to acquire his land. There may still be an opportunity for us at some point to acquire that land, but at this point, given the fact that all we had control of was this 35 acres, this is what we decided to bring in for rezoning.

Paul Norby: And then we felt, as Planning staff, looking at the site in question today, that this makes the most sense right now to go from that point to the west because the point to the east was all fluid and uncertain as to what's going to happen. So we felt it made the most logical sense to go from this point at the corner of Mr. Ogburn's property to the west over toward Liberty.

Arnold King: I'm just a little uneasy that we've got a double standard for something that's a City request and a private citizen request and that we're saying LI is okay here up next to his current multifamily residential zoned property yet if he wanted to come in LI we're saying No because there's property on the other side that Mr. Paige owns and he says he intends to make LI or LI-S. Somehow it doesn't seem to be…

Carol Eickmeyer: I don't think that's what's being said.

Arnold King: We're recommending approval of LI adjacent to residential that Mr. Ogburn owns.

Carol Eickmeyer: But it's not built.

Lavastian Glenn: And it's not, we don't have an actual petition in front of us.

Arnold King: Well, the other side's being cleared. What are the houses on the other side of your 10 or 15 acres? Is that vacant now?

Derwick Paige: That's cleared also.

Arnold King: So it's not built either.

Carol Eickmeyer: No, but the 15 acres that are not being rezoned is adjacent to built multifamily on the east side. Whereas Mr. Ogburn's property is in the middle of two vacant spots and hasn't anything built on it.

Arnold King: I understand, but see if I can make myself clear. We're here saying that we approve LI, general use zoning on this adjacent to Mr. Ogburn's property which is currently zoned for residential use. We're saying if Mr. Ogburn came in and asked for LI zoning, we probably wouldn't be inclined to support that although it's adjacent to property that's actually saying it's going to be LI-S which it makes sense to me that if we could recommend approval of LI adjacent to residential, we certainly ought to be able to support LI adjacent to LI-S.

Paul Norby: Well, I'll explain to you my thinking as staff and you're free as a Board to disagree with it. The area of Mr. Ogburn's property and the City property to the east has a whole lot more adjacent border with other residential land than what you have for this property in question today. When you take a look at the map, the City tract under consideration today begins at just a
very small corner of his northwestern border. When you go all the way around the border of that City land, the vast majority of the entire perimeter of that is already zoned industrial so our feeling is that there wasn't near the kinds of potential conflicts involved in this particular piece as there would be with either Mr. Ogburn's property or the City property to the east of his property in terms of what it is adjacent to. That's why we had a concern about either the smaller City piece or would have a concern about Mr. Ogburn's property being just LI general knowing where all the different points of road access could be and all that. That's our position. It's fine if the Planning Board disagrees. I'm just saying what my opinion is.

Arnold King: Okay. I don't have any problem with what you're recommending here with this LI as long as I think we're treating everyone the same. I have a problem recommending approval on this if I thought Mr. Ogburn was going to come back and ask for the same thing and we're going to say "no" to him. It, somehow it doesn't seem like we're being consistent.

Paul Norby: In my mind at least, it's a different situation when you look at what surrounds that property.

Arnold King: And in mine, it's not. That's just where we differ.

Brenda Smith: That whole corner there between north of 26th and then that stream forms kind of a natural divide between the other residential. That to me is all similar in character and I think the initial plan was for all that to be used similar and it fits geographically with the streets and the physical characteristics of it.

Arnold King: Looks like it ought to be all the same, all LI or all LI-S.

Paul Mullican: Let me ask Mr. Paige a question. I would gather if you'd have got that land, if you'd been able to acquire that land from Mr. Ogburn and come in here today you would have been coming in for all LI zoning?

Derwick Paige: That's correct. And it would have then again been conditioned to the restrictive covenants that would be applicable to City redevelopment land, but yes we would have applied for LI for all of it.

Arnold King: So your only issue has been if Mr. Ogburn would agree to the same restrictive covenants you would not have a problem with his being LI.

Derwick Paige: I think that's correct. We still would need to talk to Planning and make sure they were comfortable with that, but I think if we were able to reach an agreement with Mr. Ogburn where we can look at our restrictive covenants and try to apply those to the entire site, then I think yes we would be…

Arnold King: You would support that LI. You don't care whether the City owns it or not if it all gets developed similarly and gets sold and we get jobs up there, right? Whether you have it as LI or whether Mr. Ogburn has it as LI makes no difference to you if the restrictive covenants are the same?
Derwick Paige: Yes.

Arnold King: I think that's fair.

Paul Norby: It's all about having a coordinated plan. Just as a parallel, Union Cross Business Park is LI general for probably 95% of it and it has a perimeter of LI-S around the borders to protect the residential adjacent properties.

Arnold King: And Mr. Paige is going to provide that LI-S on the east side here himself with his 10-15 acres, what he said. We don't need, maybe on the south portion a little bit of Mr. Ogburn's would have to be LI-S maybe, but his borders Mr. Paige on two sides and airport on one side. Okay, I guess I've asked enough questions. I don't know where I am. Any other comments?

Jerry Clark: I tell you what. I want to make one comment here. With all the discussion, I'm kind of wondering why we're discussing Mr. Ogburn's property so greatly today. He did not petition this board to do anything and I think we've spent a lot of time on that. I really have a problem with that. The other thing is the City has come forward and they're trying to do something up in that area that's going to be a benefit to the City of Winston-Salem and I don't have a problem with what they've presented here today. But when we get into talking about someone else's land, maybe they should have talked to him and said let's do it together. They did not. We have a lot of people come before us and they don't do that, so I don't see that as a big issue. I think I can vote for this with no problem.

Arnold King: Okay.

Paul Mullican: Well, I think the reason that we've spent so much time on it is if my understanding of it is from what Mr. Paige said, they've been trying to work this out with Mr. Ogburn which they've negotiated and we all know that story - went to Council and got turned down. But the second item that I feel is more important than that is that according to Mr. Paige they didn't have enough time because of being in court to try to work this out with Mr. Ogburn. That's the only reason that I'm, I know what you're saying about all this time we've spent on it, but I think that's only fair on a piece of land. Anytime an adjoining neighbor comes in, whether it's residential or whatever, we always, you know, we're always trying to look out for that neighbor. We try to be neighborly ourselves and we're trying to look after that neighbor. So I think all we're doing here is just trying to work this out and Mr. Ogburn has been here today, taken a step forward and told us about his feeling on it so that's the only reason I see we did, Jerry. I appreciate your bringing that up.

Arnold King: And I'm going to support this, but I'm glad that Mr. Paige has said that he would also support Mr. Ogburn if he decided to do LI and agreed to the same restrictive covenants. I'm glad to know that and given those assurances, I will support this. I certainly am an advocate for more general use zoning and I would hope that if this had been a private developer that had come in with this that the staff would have taken the same position and recommended approval on this plot of LI zoning.

Paul Norby: There's another industrial zoning case in today's agenda just like that.
Paul Mullican: I got one other question for clarification. Now my understanding is that I'm going to support this and I feel like this is going to pass today. With that being said, then, with Mr. Ogburn's property, Mr. Paige are you telling this board that you're willing to try to work with Mr. Ogburn as far as him developing this piece of property, his piece of property, if he so chooses? Or there may be a chance that the Council will renegotiate with him on buying his property? I mean there's a lot of … the main thing is that when we leave here today, and I'm going to ask Mr. Ogburn the same question. Are you willing to work with Mr. Ogburn, is the City willing to work with him to try to develop his property along with the City's property?

Derwick Paige: I think the former as opposed to the later is truer, that we would be working with Mr. Ogburn to develop his property. We'd actually be providing access, there'll be a new road that'll come across, come from the back of our land and into his land, crossing over into our other land that would then provide access, a new industrial road providing access. I think that's going to probably be more likely as opposed to the City being able to acquire the property. I just don't know if the support is there from the Council as a whole to actually acquire that property at this point.

Paul Mullican: Mr. Ogburn? Come up here please so we can have it on tape.

Sam Ogburn: Thank you for calling me back. We are willing to work with the City. We just want to get our property rezoned just like theirs. That's all I'm asking for.

Paul Mullican: You're willing to work with them.

Sam Ogburn: We just want to get our property rezoned just like theirs and it's a good idea. The City owns a piece on the other side. They want to change their zoning on the other side of the street, that's fine just let us have what they're getting on this tract. Thank you.

Paul Mullican: Well, we can't promise you that, but…

Carol Eickmeyer: I really have to say that this whole discussion has been offensive. We would not have done this with two private developers. Why are we holding the City to a different standard than we would hold private developers? And with that I move that we approve this change.

Lavastian Glenn: Second.

MOTION: Carol Eickmeyer moved approval of the zoning map amendment.
SECOND: Lavastian Glenn
VOTE:
   FOR: Clark, Eickmeyer, Glenn, King, Mullican, Smith
   AGAINST: None
   EXCUSED: None
Written Comments Submitted by Planning Board Members:

NOTE: Although Wesley Curtis left before the vote was taken, he indicated that he would vote for approval of this request if he were still present.

Jerry Clark: The discussion of a non-petitioner's request for LI on his (Sam Ogburn's) property was inappropriate. Anyone listening would surely get the impression that some board members were attempting to litigate Mr. Ogburn's position.

Carol Eickmeyer: In favor - it was unanimous vote - Mr. Ogburn or anyone else's property should not have anything to do with Council's decision.

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A. Paul Norby, AICP
Director of Planning