



Ryke Longest, Director

Michelle Nowlin, Supervising Attorney

Environmental Law & Policy Clinic
Box 90360
Durham, NC 27708-0360

Telephone: (919) 613-7169
Toll Free: (888) 600-7274
Fax: (919) 613-7262

April 29, 2013

Bruce Nicholson
North Carolina Brownfields Program Manager
Mail Service Center 1646
Raleigh, North Carolina 27699-1646



RE: NOTICE OF APPARENT BROWNFIELD AGREEMENT VIOLATION
Cherokee Oil Site, Project # 06006-06-20

We at the Duke Environmental Law and Policy Clinic represent Scenic North Carolina ("Scenic NC") in protecting America's scenic places from blight. Scenic NC is an affiliate of Scenic America, which is a national 501(c)(3) nonprofit organization dedicated to preserving and enhancing the visual character of America's communities and countryside. In the course of our representation, we came across a billboard situated on the Cherokee Oil Site (#06006-06-20) at 925 South Summit Avenue in Charlotte, North Carolina. Irwin Creek runs along this site, separating the sign from the highway. Trees previously stood on the steep embankment between a parking lot and the creek.

Sometime between June and July of 2012, vegetation was clearcut all along the banks of Irwin Creek, resulting in severe erosion and sedimentation. This is in violation of paragraph five of the Brownfield Agreement, which requires that sediment not be disturbed due to hazardous substances found in the soil. Despite the high likelihood that vegetation removal would result in a violation of the Brownfield Agreement and the City of Charlotte's request to deny the permit due to erosion concerns, the North Carolina Department of Transport (NCDOT) issued a permit for the vegetation removal on May 23, 2012 (ODA permit I-77 60043). The concerns of the people of Charlotte were ignored by NCDOT.

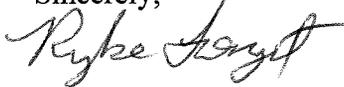
Pursuant to N.C. Gen. Stat. § 130A-310.32 (d) , "Any failure of the prospective developer or the prospective developer's agents and employees to comply with the brownfields agreement constitutes a violation of this Part by the prospective developer." Based upon our visits to the site, it appears that the soil has been disturbed by removing trees and vegetation to make it easier for motorists to be subjected to billboard ads from the property as they drive along the adjacent highway.

This site was an environmental crime scene and a toxic waste dump in the early 1990's. DENR has previously found that it poses a serious threat to public health if the contaminants found in its soil are not contained. Since the Brownfield Agreement was entered into by DNER and M&J Equities on January 20, 2004 the property has been subdivided and has changed ownership several times including the latest conveyance to Adams Outdoor Advertising on July 25, 2012.¹ Despite being on notice that the land conveyed to Adams Outdoor Advertising was subject to certain land restrictions, Adams Outdoor applied for and received a permit to cut vegetation all along Irwin Creek. This clearing appears to have caused soil erosion from the brownfields property.

For your convenience, we have put together a timeline summarizing important dates and transactions as they appear in public records we have obtained. Attached are photos taken shortly after the vegetation removal that show the erosion and sedimentation of Irwin Creek. Also attached, is the deed conveying the subdivided parcel to Adams Outdoor Advertising Limited Partnership.

We would like to set up a meeting with you to discuss our concerns that we have about other specific vegetation removal permits around the state. We are very concerned that other specific vegetation removal permits are being issued without considerations for restrictions that have been placed on those lands by DENR. Please contact me at your earliest convenience at 919-613-7207.

Sincerely,



Ryke Longest
Director
Duke Environmental Law & Policy Clinic

CC:

Thom Tillis, Speaker
NC House of Representatives
16 W. Jones Street, Room 2304
Raleigh, NC 27601-1096

Anthony Fox, Mayor
City of Charlotte
City of Charlotte
Charlotte-Mecklenburg Government Center (CMGC)
600 E. Fourth St.
Charlotte, NC 28202

¹ One of these conveyances were to 1307 LLC whose relationship to M&J Equities is unknown.

April 29, 2013
Page 3

Tony Tata, Secretary
North Carolina Secretary of Transportation
1501 Mail Service Center
Raleigh, NC 27699-1501

Roy Grasse
Outdoor Advertising Coordinator
1567 Mail Service Center
Raleigh, NC 27699-1567

Irwin Creek Timeline

August 1990-1991: Cherokee Resources owned and operated toxic dump at 925 South Summit Avenue (now 935 South Summit Avenue, Parcel ID 07325301), a.k.a. Cherokee Oil site

August 9, 2001: John J. Mancino and Margaret E. Mancino convey Lot No. 073-253-01A and 073-253-01B to M & J Equities, recorded in Book 12540, Page 17

January 20, 2004: M&J Equities and NCDENR enter into Brownfields Agreement

February 2, 2004: M&J Equities (as the "Prospective Developer") filed Notice of Brownfields Property, recorded in Book 16737, Page 54

May 1, 2007: M & J Equities assigned all of Lot 1 of Map Book 41, Page 37, to M & J Equities of Asheville, explicitly reserving from the conveyance ownership and all rights to the billboard located on the property, recorded in Book 22165, Page 766. M&J Equities of Asheville conveys same lot to 1307, LLC, recorded in instrument no. 2007089457

March 29, 2012: Adams Outdoor submits copy of SVR application to Don McSween of the City of Charlotte for Municipal review

March 29, 2012: Adams Outdoor submits application for SVR permit

- Form SVR-1: Requested the use of power-driven vegetation removal equipment for a max. cutting zone distance of 340ft
- Form SVR-2: Selected monetary reimbursement for existing tree compensation

April 25, 2012 City of Charlotte Requests denial of Adam Outdoor's SVR permit application due to NCDOT's obligation to comply with General Statute 136-18(9)

- "Outdoor advertising sign is within SWIM buffer and 100 foot Post Construction Control Ordinance Area. Trees proposed to be removed are growing on and protect steep embankment from erosion into the creek, protecting water quality."
- "While adherence to erosion control requirements, pursuant to NCGS, Art. 4, Ch. 133A of the Sedimentation Pollution Control Act, is not one of the listed criteria for issuance or denial of a SVR permit in 19A NCAC 02E.0609, it is one of the criteria for approval of replanting plans in 19A NCAC 02E.0610. This leads the City to believe that a parallel requirement should be added to the list of conditions of 19A NCAC 02E.0609. Accordingly, the City respectfully requests that should NCDOT not deny the application based on one or more of the criteria provided in the temporary rules, it should require the applicant to submit erosion control plans to ensure that environmental degradation of the streams do not occur."

May 23, 2012: NCDOT issues SVR approval for ODA Permit no. 77 060043

June 25 - July 30, 2012: performance of vegetation removal work

- Pre-existing trees < 20.5": 8 maples (total 48"), 2 myrtles (total 8"), 2 oaks (total

April 29, 2013

Page 5

- 30"), 1 hickory (18")
- Pre-existing trees > 20.5": 1 maple (23"), 1 oak (23")

July 25, 2012: M & J Equities assigned the Rights and Easements to the billboard located on Lot 1 of Map Book 41, Page 37 to Adams Outdoor Advertising Ltd. for a consideration of \$10.00.

May 23, 2013: SVR permit expiration date

Relation of Irwin Creek to highway. Removed Vegetation cast aside onto Brownfield site. July 9, 2012



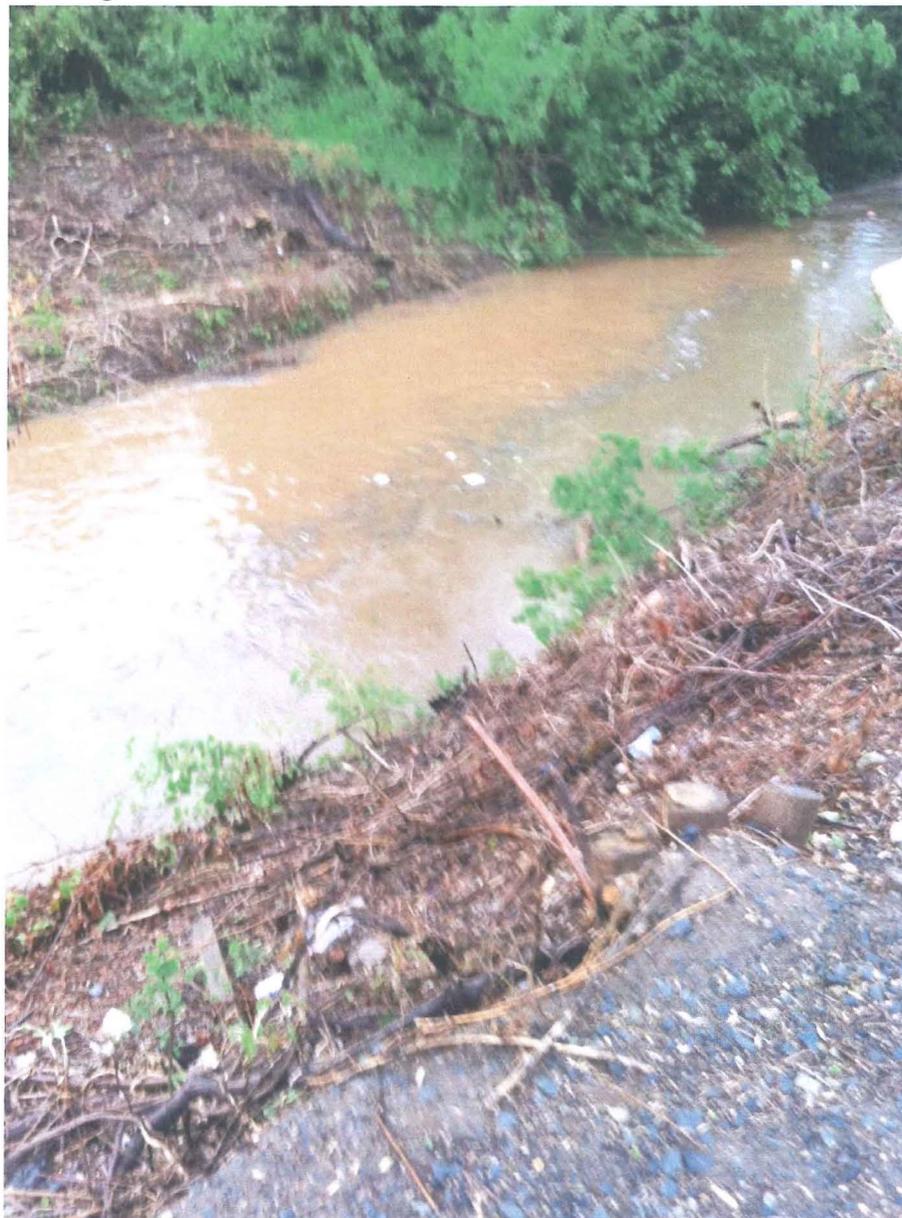
Erosion after a Rainstorm. July 10, 2012



Clearing of trees on both sides of Irwin creek. July 10, 2012.



Cut vegetation and erosion from Brownfield site into Irwin creek. July 16, 2012.



Erosion of sediment from parking lot into Irwin Creek. July 2012



B27522 - P100

FOR REGISTRATION
J. David Granberry
REGISTER OF DEEDS
Mecklenburg County, NC
2012 JUL 26 03:11:31 PM
BK: 27522 PG: 100-104
FEE: \$26.00
EXCISE TAX: \$230.00
INSTRUMENT # 2012101708
JONESAW



ASSIGNMENT OF RIGHTS AND EASEMENTS

Excise Tax: \$230
Tax Parcel ID No. 07325C01. Verified by _____ County on the ____ day
of _____, 2012 By: _____

Mail/Box to: Marc D. Glenn, Esq., Taylor English Duma LLP, 1600 Parkwood Circle, Suite 400, Atlanta, Georgia 30339

This instrument was prepared by: Melissa McMorries, Esq., licensed North Carolina attorney, Taylor English Duma LLP, 1600 Parkwood Circle, Suite 400, Atlanta, Georgia 30339

Brief description for the Index: Lot 1 of Map Book 41, Page 37, Mecklenburg County, North Carolina records; affects rights and easements referenced in instrument recorded at Deed Book 22165, Page 766, aforesaid records.

THIS ASSIGNMENT OF RIGHTS AND EASEMENTS, made this as of this 25th day of July, 2012, by and between:

ASSIGNOR: M & J EQUITIES, LLC, a North Carolina limited liability company, whose mailing address is 3623 Knapdale Lane, Charlotte, North Carolina 28226 (herein referred to as "Assignor"); and

ASSIGNEE: ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP, a Minnesota limited partnership, its successors and assigns, whose mailing address is 500 Colonial Center Parkway, Suite 120, Roswell, Georgia 30076 (herein referred to as "Assignee").

WITNESSETH:

WHEREAS, by virtue of that certain North Carolina Special Warranty Deed dated May 1, 2007 (the "Deed") from Assignor to M & J Equities of Asheville, LLC, a North Carolina Limited liability company ("MJEA"), recorded in Deed Book 22165, Page 766, Mecklenburg County, North Carolina records, Assignor conveyed to MJEA that certain real property more described as "Being all of Lot 1 of M & J Equities, LLC Property, Map 1, as same is shown on map recorded in Map Book 41, Page 37 in the Mecklenburg County Public Registry" as more particularly described in the Deed (the "Property");

WHEREAS, in the Deed, Assignor explicitly reserved from said conveyance to MJEA, and Assignor explicitly

6

\$230

B27522 - P101

retained, the billboard located on the Property (as may have been reconstructed, altered and replaced from time to time, collectively the "Billboard"), and easements for the access to, and reconstruction, repair, alteration, maintenance and replacement of, the aforesaid Billboard, all as more particularly described in the Deed (these reserved and retained rights, together with all other right, title and interest of Assignor in and to the Billboard, the Property and the Deed, may be referred to collectively herein as the "Rights and Easements");

WHEREAS, Assignor and Assignee have agreed, and do hereby agree, that Assignee shall retain ownership of the Billboard, and that Assignor shall grant, bargain, sell and convey to Assignee all of the Rights and Easements;

NOW, THEREFORE, for and in consideration of the sum of TEN and NO/100 DOLLARS (\$10.00), in hand paid by Assignee to Assignor, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor hereby sells, transfers, assigns, delivers and conveys to Assignee, its successors and assigns, all of the Rights and Easements. Assignor agrees to indemnify, defend and hold Assignee harmless with respect to all claims arising under the Rights and Easements arising out of occurrences prior to the date hereof.
2. Assignor and Assignee hereby agree that Assignee shall retain title to, and ownership of, the Billboard, including, without limitation, the structure, base, foundation, faces and supporting members and all associated fixtures, equipment and appurtenances. Assignee hereby reserves and retains, and Assignor hereby covenants and agrees, that Assignee shall retain, the right to all rent, revenue, income and profits derived from or related to the operation of the Billboard and the rental, licensing or leasing thereof.
3. Assignor hereby covenants, represents and warrants to Assignee that:
 - a. Assignor has the right, power and authority to enter into this Assignment and to convey the Rights and Easements pursuant to the terms of this Assignment, and the person executing this Assignment for Assignor has been duly and validly authorized by Assignor to execute and deliver this Assignment and has the right, power, and authority to enter into this Assignment and bind Assignor. Execution and performance of this Assignment, and the consummation of the transactions contemplated hereby, will not result in any breach, violation, or default under, any charter or organizational document, bylaws, note, judgment, rule, order, law, regulation or other agreement by which Assignor is bound. There is no action, suit, proceeding or investigation pending which would become a cloud on the title to the Rights and Easements or any portion thereof or which questions the validity or enforceability of the transaction herein described or any action taken in connection with said transaction in any court or before or by any federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.
 - b. Assignor has not (i) made any assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, (iii) suffered the appointment of a receiver to take possession of any of its assets, (iv) suffered the attachment or other judicial seizure of any of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.
 - c. Assignor has good, marketable, and insurable title to the Rights and Easements, free and clear of all mortgages, security deeds, security interests, liens and encumbrances.
 - d. Assignor has not received notice of any default or breach under any covenants, conditions, restrictions, rights-of-way or easements affecting the Property or the Rights and Easements, or any portion thereof, and no such default or breach now exists, nor has any event occurred which, with the giving of notice, the passage of time, or both, would constitute such a breach or default. In furtherance, and not in limitation, thereof, Assignor has not received any notice from any current owner of the Property indicating any default or dispute that would in any manner affect the Rights and Easements, Assignor's ability to convey such Rights and Easements or Assignee's ability to operate the Billboard from and after the date hereof.

B27522 - P102

4. This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of North Carolina.
5. Assignor shall have the right to assign, transfer or convey, in whole or in part, and subject to this Assignment, every feature of Assignee's rights and obligations hereunder and in the foregoing Rights and Easements, without limitation.
6. This Assignment constitutes the entire agreement between Assignor and Assignee relating to the Rights and Easements described herein, and any prior agreements, promises, negotiations, or representations not expressly set forth in this Assignment are of no force and effect. Any amendment to this Assignment shall be of no force and effect unless it is in writing and signed by Assignor and Assignee.
7. This Assignment shall be binding upon the parties hereto and their respective successors and assigns and, except as otherwise set forth herein, shall inure to the benefit of only the parties hereto. This Assignment shall run with the land. Time is of the essence hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

B27522 - P103

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as of the day and year first above written.

ASSIGNOR:

M & J EQUITIES, LLC,
a North Carolina limited liability company

By: MARGARET MANCINO (SEAL)
Margaret Mancino, Manager

Mecklenburg County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Margaret Mancino, as Manager of M & J Equities, LLC, a North Carolina limited liability company.

Date: July 24, 2012

My Commission Expires:
May 24, 2017

[Signature]
Notary Public

Print Name: Patricia L. Rhame

[Affix Notary Stamp or Seal]



[SIGNATURES CONTINUED ON NEXT PAGE]

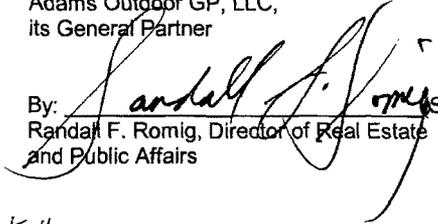
B27522 - P104

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

ASSIGNEE:

ADAMS OUTDOOR ADVERTISING LIMITED
PARTNERSHIP, a Minnesota limited partnership

By: Adams Outdoor GP, LLC,
its General Partner

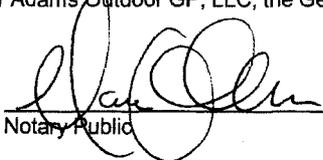
By:  (SEAL)
Randall F. Romig, Director of Real Estate
and Public Affairs

DeKalb
County County, Georgia

I certify that the following person personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Randall F. Romig, as Director of Real Estate and Public Affairs for Adams Outdoor GP, LLC, the General Partner of Adams Outdoor Advertising Limited Partnership.

Date: July 25, 2012

My Commission Expires:
8-15-13

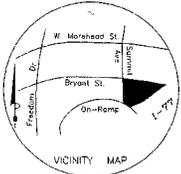


Notary Public

Print Name: Marc Glenn

[Affix Notary Stamp or Seal]





LEGEND
ch. choro
LR curve length & radius
s.f. square feet (by coordinates)
LEIN concrete
conc. concrete
c/c or conditioner
MS DB record map and deed reference
SWIM Surface Water Improvement & Management
IPS Iron Pipe Set
FPE Flood Protection Elevation
FEMA Federal Emergency Management Agency

Review Officer of Mecklenburg County certifies that the map of plat to which this certification is affixed meets all statutory requirements for recording.
Signature: [Signature]
Date: 2/16/2004

FILED FOR REGISTRATION
FEB 03 2004
AT 11:09 AM
PLANNING COMMISSION STAFF

THIS PLAT IS NOT SUBJECT TO THE PROVISIONS OF THE CITY OF CHARLOTTE OR MECKLENBURG COUNTY SURVEYING ORDINANCES AND DOES NOT REQUIRE THE APPROVAL OF THE CHARLOTTE-MECKLENBURG PLANNING COMMISSION. HOWEVER, ANY FURTHER SUBDIVISION OF THIS PROPERTY MAY BE SUBJECT TO THESE PROVISIONS.
CHARLOTTE-MECKLENBURG PLANNING COMMISSION
Signature: [Signature]
Date: 2/16/2004

THIS SURVEY IS CERTIFIED TO ONLY THE PERSONS OR ENTITIES SHOWN IN THE TITLE BLOCK BELOW. THIS IS TO CERTIFY THAT THIS SURVEY IS BASED UPON MY BEST KNOWLEDGE, INFORMATION AND BELIEF. THIS SURVEY DOES NOT REFLECT A COMPLETE TITLE EXAMINATION. PRECISION IS GREATER THAN 1/10,000.

I, Andrew C. Zoutewelle, certify that this plat was drawn under my supervision from an actual survey made under my supervision (as described in Deed Book 12940 Page 17, that the boundaries not surveyed are clearly indicated as dashed lines drawn from adjoining deed sources as shown herein; that the ratio of precision as calculated is 1:10,000; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this 14th day of February, 2003.

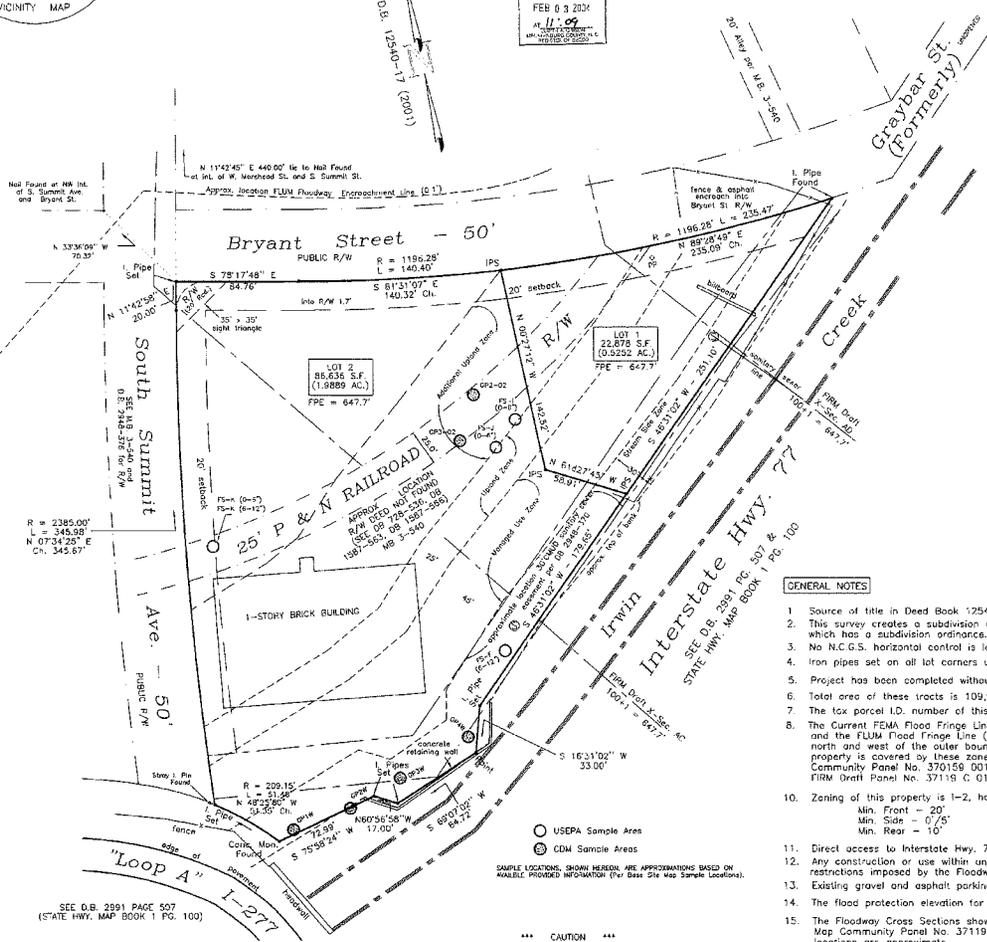
Seal or Stamp
Signature: [Signature]
Surveyor L-3098
Registration Number

Source: Report of Soil and Groundwater Analytical Results, North Carolina Department of Environment and Natural Resources, Division of Waste Management, dated January 24, 2003.

GROUNDWATER CONTAMINANT TABLE
Groundwater contaminants (in micrograms per liter, the equivalent of parts per billion), the standards for which are contained in Rule 0202, Subchapter 21 of Title 15A of the North Carolina Administrative Code.
DATE OF MAX. CONCENTRATION SAMPLING: 12/23/1998
Table with columns: GROUNDWATER CONTAMINANT, SAMPLE LOCATION, DATE OF MAX. CONCENTRATION SAMPLING, MAXIMUM CONCENTRATION ABOVE STD. (ug/L), STANDARD (ug/L)

SOIL CONTAMINANT TABLE
Soil contaminants (in milligrams per kilogram, the equivalent of parts per million), the standards for which are derived using the Guidelines of the Inactive Hazardous Sites Branch of DENR's Superfund Section.
DATE OF MAX. CONCENTRATION SAMPLING: 05/1993 & 12/23/1998.
Table with columns: SOIL CONTAMINANT, SAMPLE LOCATION, DATE OF MAX. CONCENTRATION SAMPLING, MAXIMUM CONCENTRATION ABOVE STD. (mg/kg), STANDARD (mg/kg)

Approved for the purposes of N.C.G.S. 130A-310.55.
Signature: [Signature]
Linda M. Culppeper, Deputy Director
Division of Waste Management
STATE OF NORTH CAROLINA
COUNTY OF WAKE
I, Andrew C. Zoutewelle, a Notary Public of said County and State, do hereby certify that Linda M. Culppeper did personally appear and sign before me this the 23rd day of January, 2003.
Signature: [Signature]
Notary Public (Signature)
My commission expires 10/21/2005



GENERAL NOTES

- 1. Source of title in Deed Book 12540 Page 17.
2. This survey creates a subdivision of land within the City of Charlotte, which has a subdivision ordinance.
3. No N.C.G.S. horizontal control is located within 2000' of this site.
4. Iron pipes set on all lot corners unless otherwise indicated.
5. Project has been completed without bury pits, to the best knowledge of surveyor.
6. Total area of these tracts is 109,514 s.f. (2,514 Ac.), by coordinates.
7. The tax parcel I.D. number of this property is 073-253-01.
8. The Current FEMA Flood Fringe Line, the Proposed FEMA Flood Fringe Line and the FIRM Flood Fringe Line (Ultimate 100-Yr. Flood) are all to the north and west of the outer boundaries of this property. This entire property is covered by these zones. See Flood Insurance Rate Map (FIRM) Community Panel No. 370159-0013 C dated Jan. 6, 1994. See also FIRM Draft Panel No. 37115 C. 0186 with a draft date of 1-25-02.
9. Zoning of this property is 1-2, having the following building setbacks:
Min. Front - 20'
Min. Side - 0'5"
Min. Rear - 10'
10. Direct access to Interstate Hwy. 77 is prohibited.
11. Any construction or use within any delineated Flood areas is subject to the restrictions imposed by the Floodway Regulations.
12. Existing gravel and asphalt parking areas are not shown hereon.
13. The flood protection elevation for these lots is 647.7' (NAVD '88).
14. The Floodway Cross Sections shown hereon were scaled from FIRM Draft Map Community Panel No. 37119C0186, draft date Jan. 25, 2002. Their locations are approximate.
15. Per the City of Charlotte Zoning Manual, SWIM Buffer calculations for the property shown hereon are as follows: 100' from top of creek bank + 50% of the area of the FEMA fringe beyond 100' = 0.6069 Ac.
16. 50% of area of FEMA fringe beyond 100' = 0.6069 Ac.
17. See City of Charlotte Zoning Manual for additional information.
18. The areas and types of contamination depicted hereon are approximations derived from the best available information at the time of filing. These sample locations were not observed by the surveyor but are based on a sketch provided by Enviro Probs, Inc. dated September 17, 2003.

LAND USE RESTRICTIONS FOR 925 S. SUMMIT AVENUE & 1310 BRYANT STREET

- 1. No water supply wells may be installed or used at the Brownfields Property and groundwater may not be otherwise accessed or used at the Brownfields Property for any purpose.
2. No activities which result in direct exposure to or removal of soil from beneath the Brownfields Property's paved surfaces or the building slab may be conducted without prior sampling and analysis of soil in the area where such activities are to be conducted.
3. Portions of the Brownfields Property which remain pervious including planters and landscape portions of the Brownfields Property surrounding the building and slabs in the parking area, must contain or be comprised of clean fill dirt. Existing soils in such areas must either be capped with asphalt or removed from these areas and replaced with clean fill dirt prior to any disturbance of those soils.
4. Without the approval of DENR, the Brownfields Property shall not be used for playground facilities and/or organized sporting activities of any kind, including, but not limited to, golf, football, soccer, and baseball.
5. The Brownfields Property shall not be used for agricultural or grazing purposes.
6. The Brownfields Property shall not be used for mining, including extraction of coal, oil, gas or any other mineral or non-mineral substances.
7. No basements, and no fountains, ponds, lakes, swimming pools or other items which are supplied, in whole or in part, by groundwater, may be constructed on the Brownfields Property without the approval of DENR or its successor in function.
8. The Brownfields Property shall not be used for residential or day care purposes, or for schools, without the approval of DENR or its successor in function.
9. During January of each year after this Agreement becomes effective, this owner(s) of each portion of the Brownfields Property shall submit a notated Land Use Restrictions Update to DENR certifying that the Notice of Brownfields Property containing the land use restrictions set forth above in this paragraph remains recorded at the Mecklenburg County Register of Deeds Office, that the land use restrictions are being complied with, and that all paved and gravel surfaces and the building slab at the Brownfields Property remain in place and are being maintained such that they continue to function as impervious caps.
For purposes of the land use restrictions set forth above, "DENR" shall mean the DENR official and address referenced in paragraph 26a. of Exhibit A hereto.

Copyright 2003
Exhibit "B" to the
NOTICE OF BROWNFIELDS PROPERTY - SURVEY PLAT
M & J EQUITIES, LLC PROPERTY, MAP 1
925 SOUTH SUMMIT AVENUE & 1310 BRYANT STREET
CHARLOTTE, MECKLENBURG COUNTY, N.C.
M & J EQUITIES, LLC (owner)
Scale 1" = 40' August 13, 2002
ANDREW C. ZOUTEWELLE, L-3098
1418 East Fifth Street Charlotte, NC 28204

