



ZONING MAP CHANGE REPORT

Meeting Date: September 10, 2024

A. Executive Summary

Steve Gillooly, of Gillooly Realty, proposes to change the zoning designation of one parcel of land totaling 4.5 acres, and located at 1301 Doc Nichols Road. The current zoning is Residential Rural (RR). The applicant proposes to change this designation to Planned Development Residential 5.555 (PDR 5.555) with a textual development plan to allow up to 25 residential townhouse units.

The property is currently designated Mixed Residential Neighborhood (MRN) on the Place Type Map (PTM) (Attachment C). The proposed Planned Development Residential 5.555 (PDR 5.555) zoning is consistent with the designated Place Type. There is an associated annexation petition with this proposal, case BDG2400008.

B. Application Summary

Application Information			
Case Number	Z2400015	Submittal Date	March 18, 2024
Case Name	Doc Nichols Towns		
Proposal	Up to 25 residential townhouses on a 4.5-acre parcel		
Applicant Contact	Steve Gillooly, sgillooly@gilloolyrealty.com		
Staff Contact	Sarah Long, sarah.long@durhamnc.gov		
Site Information			
Location	1301 Doc Nichols Road	Legacy Cases	
Site Acreage	4.5 acres	Existing Use	Undeveloped
REID(s)	193358		
Request			
Designation	Existing	Proposed	
Jurisdiction	County	City	
Development Tier	Suburban	No Change	
Place Type Map	Mixed Residential Neighborhood (MRN)	No Change	
Zoning District(s)	Residential Rural (RR)	Planned Development Residential 5.555 (PDR 5.555)	
Zoning Overlay(s)	Falls/ Jordan District B (F/J-B)	No Change	
Urban Growth Boundary	Within UGB	No Change	
Allowable Use(s)	All uses allowed in the RR District	Townhouses	

C. Environmental Summary

Environmental Data	
River Basin	The site is within Neuse River Basin.
Watershed Overlay	The site is within the Falls/Jordan District B (F/J-B) watershed overlay.
NC Natural Heritage Inventory	The NCNHI does not identify any unique, endangered, or sensitive species or vegetation on the site.

	<p>*Disclaimer: An NHI inventory has not been conducted on this site. The lack of designation on the NHI dataset does not necessarily mean there are no unique, endangered, or sensitive species or vegetation on the site, but rather, a survey has not been completed in relation to the subject site.</p>		
<u>Wildlife Corridor</u>	The site is not within a wildlife corridor.		
UDO Compliance	Does Not Apply	Meets UDO	Exceeds UDO
Impervious Surface			The maximum amount of impervious surface is 70%. The development plan commits a maximum of 50% impervious surface.
Regulated Floodplain	None on site		
Steep Slopes UDO Section 8.8	None on site		
Stream Buffers	None on site		
Stream Buffer or Floodplain Intrusion	N/A		
Project Boundary Buffers		This proposal does not require project boundary buffers. If mass graded: a minimum of 0.6 opacity around entire site.	
Wetlands	No wetland over an acre has been identified on the site.		
Open Space		The plan commits to minimum open space required of 16% (0.74 acres), which isn't in excess of UDO requirements. One-third of the open space will be required to be active recreational open space as defined by the UDO.	
Tree Coverage UDO Section 8.3.1		The plan commits to 20% (0.92 acres) of tree preservation.	

D. Housing and Income Impact Summary

Proposed Housing Conditions Information	
Number of Units	Up to 25 townhouses
Density of Units	5.555 units/acre
Number/Percent Units Affordable (AMI)	0
Unit Types (UDO Category)	Townhouses
Unit Design (Commitments in Excess of UDO)	No home can be constructed with a front exterior elevation (front facade) or color palette that is identical to the home on either side or directly across the street from it.
Does the proposal add to or subtract from the housing supply?	This proposal adds up to 25 units to the inventory of market-rate housing available in Durham.

Median Sale Prices			
<u>City of Durham</u>	\$393,000 (as of January 2024)	Proposed Sale Price or Valuation:	N/A
Median Rental Rates			
<u>City of Durham</u>	\$1,555 (as of January 2024)	Proposed Rental Rate:	N/A
Median Household Income			
<u>Census Tract (Site)</u>	\$106,465		
City Overall	\$78,105	County Overall	\$80,089

2024 HUD Adjusted Income Limits – Durham-Chapel Hill, NC								
	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
Extremely Low Income (30% AMI)	\$22,250	\$25,400	\$28,600	\$31,750	\$36,850	\$41,960	\$47,340	\$52,720
Very Low Income (50% AMI)	\$37,100	\$42,400	\$47,700	\$52,950	\$57,200	\$61,450	\$65,700	\$69,900
Durham Affordability Standard (60% AMI)	\$44,520	\$50,880	\$57,240	\$63,540	\$68,640	\$73,740	\$78,840	\$83,880
Low Income (80% AMI)	\$59,300	\$67,800	\$76,250	\$84,700	\$91,500	\$98,300	\$105,050	\$111,850

E. Social and Built Infrastructure Summary

Current Conditions						
Intensity of Current Zoning	Planning staff has estimated that the most intense use under the current zoning designation would be six single family lots.					
Potential Impacts						
Durham Public Schools						
Schools Potentially Impacted	Durham Public Schools serving the area include Spring Valley Elementary, Neal Middle, and Southern School of Energy and Sustainability High.					
Number of Projected Students	Elementary School Students	Middle School Students	High School Students			
Potential Students Generated – Current Zoning	2	1	1			
Potential Students Generated – Proposed Zoning	7	2	3			
Potential Impact of Proposed Zoning	+5	+1	+2			
Durham County Per Pupil Costs	\$5,374 per pupil for annual operating costs \$100,000 per pupil estimated capital costs for new construction					
School Capacity						

Percent of Existing Capacity	117.85%	110.25%	86.30%
Infrastructure Impacts			
Water Connection and Capacity	The proposed project site is within the 615-foot pressure zone and the development will require one waterline connection. The water main shall be extended from 12-inch waterline in Doc Nichols Road.		
Sewer Connection and Capacity	The proposed project site is within the Southeast Regional Lift Station (SRLS) sewer basin and will be subject to the Southeast Regional Lift Station fee. Capacity is formally reserved at the Southeast Regional Lift Station when a sewer extension permit is approved by Public Works. The project shall extend a gravity sewer from the Fowler Tract development on the East.		
Operational Impact Analysis	See Attachment I		
Cost Benefit Analysis	See Attachment J		

F. Transportation Impact Summary

Current Conditions			
Intensity of Current Zoning	Transportation staff has estimated that the most intense use under the current Residential Rural (RR) zoning designation for transportation-related impacts would be six single family lots.		
Transportation Impacts			
Infrastructure Impacts	Doc Nichols Road is the major road impacted by the proposed zoning change. There are no scheduled City of Durham or NCDOT roadway improvement projects in the area.		
Transit Service	Transit service is not currently provided within one-quarter mile of the site.		
Existing Roadway Characteristics			
Affected Roadway	Doc Nichols Road		
Type of Roadway	Two-lane undivided city/county class I arterial without left-turn lanes		
Current Roadway Capacity (LOS D) (AADT)	12,700		
Latest Traffic Volume (AADT)	950		
Traffic Generation			
	Traffic Generated by Present Designation (average 24 hour)	Traffic Generated by Proposed Designation (average 24 hour)	Potential Impact of Proposed Designation
Number of Trips	67	160	93
Assumptions	Residential Rural (RR): Six single family lots, Planned Development Residential 5.555 (PDR 5.555): 25 townhouse units		
Sources	ITE Trip Generation Manual, 11th Edition		
Improvements			
Roadway Improvements	The applicant proposes to construct an exclusive southbound left-turn lane with adequate storage and appropriate taper and a northbound right-turn extended taper.		

Site Access Points and Stub Outs	The site will be accessed from Doc Nichols Road.
Right-Of-Way Dedication or Reservation	Will be determined at the site plan stage.
Sidewalks	None
Bicycle Lanes	Prior to the issuance of a certificate of occupancy, developer shall construct a 10-foot-wide shared path for the full frontage of the site along the east side of Doc Nichols Road.

G. Equity and Engagement Summary

Neighborhood Meeting Information					
Required Meeting Date & Additional Meeting(s)	December 19, 2023	Number of Attendees	12		
Equity: Potential Displacement					
Potential Displacement Risk (Source)	22.1% (Block Group) 26.6% (County)	1 per square mile (Census Tract) 21 per square mile (County)	33.9% (Census Tract) 48.7% (County)		
Demographics					
(Source)	Census Tract	County			
People of Color	50.3%	57.4%			
Median Age	46.5	35.7			
Equity: Geography					
Is the area identified as "Disadvantaged" by the Climate and Economic Justice Screening Tool ?	This area is not identified as "disadvantaged" by the Climate and Economic Justice Screening Tool.				
Is this in a formerly redlined area, as found in the Durham redline map ?	The proposal is not within a formerly redlined area as seen in the redlined map.				
Is this area in an opportunity area as identified in the Green Infrastructure Program ?	This area is not located in one of the priority areas identified by the Green Infrastructure Program.				

H. Adjacent and Surrounding Development

Active Cases	
Active Site Plans (Within a half mile)	D2400015 Ovation at Sweetbrier - Phase 2 &3: 360 Single family Detached lots and 113 Townhome lots with supporting open space. D2200264 Nicols Village: Level 4 site plan and preliminary plats for 54 townhouse units D2100317 Fowler Tract – Phase 1: Changes to sub-phasing, lot depths and street l, main amenities site, impervious area, open space dedication, and updated donor area to Sweetbrier Phase 3 (D2200390)
Active Zoning Map Changes (Within a half mile)	Z2400010 Heartland at the Park: Zoning Map Change and Annexation for proposed single Family Residential Subdivision
Active Annexations	BDG2400007 Heartland at the Park: Zoning Map Change and Annexation for proposed single Family Residential Subdivision

(Within a half mile)		
Proximity to Amenities		
	Distance from Site	Amenity
Proximity to Grocery/Food	2.3 Miles 3.3 Miles	Food Lion, Pizza and other restaurants Harris Teeter
Proximity to Retail/Commercial	2.3 Miles	Family Dollar, Pharmacies, other commercial
Proximity to a Park/Public Space	5.1 Miles	Ponse Park
Proximity to Healthcare	3.3 Miles	Wake Med Brier Creek
Proximity to a School	4.4 Miles 4.7 miles 2.3 Miles 5.8 Miles	Bethesda Elementary School Spring Valley Elementary School Neal Middle School Southern High School
Proximity to a Transit Stop	3.9 Miles	Mineral Springs Road at Wake Forest Highway

I. Compliance with the UDO and Adopted Plans

Unified Development Ordinance (UDO) Compliance	
District intent Statement	The intent statement is not used for regulatory purposes but provides insight as to the general purpose and goals of the district. The following is the intent of the district pursuant to Sec. 4.4.1: The PDR District is established to allow for design flexibility in residential development. The district is intended to encourage efficient use of the land and public services and to promote high quality design that will provide a variety of dwelling types as well as adequate support services and open space for the residents of the development. The district regulations are intended to allow innovative development that is integrated with proposed adjacent uses and compatible with existing patterns of development.
UDO Compliance	The zoning map change request has been reviewed by staff and determined to be compliant with UDO requirements.

J. Commitments in Excess of the UDO

Commitments Exceeding the UDO Requirements at Time of This Report
All buildings shall be at least 20 feet from the perimeter site boundary line and ten feet from any tree coverage or environmentally regulated area
All buildings shall be located a minimum of 10-feet from any tree coverage area and from any environmentally regulated area.
Less than four acres shall be disturbed during site preparation for construction and during construction on the property.
Prior to the issuance of a certificate of occupancy, developer shall construct a 10-foot wide shared path for the full frontage of the site along the east side of Doc Nichols Road.
One-time contribution of \$5,000 to Durham Public Schools
One-time contribution of \$25,000 to Durham Dedicated Housing Fund
No townhouse can be constructed with a front exterior elevation (front facade) or color palette that is identical to the townhouse on either side or directly across the street from it.
Impervious surfaces shall be limited to a maximum of 50 percent.
Required Street Trees planted shall be of native species where permitted by the Durham Landscape Manual.
Prior to the issuance of a certificate of occupancy, construct an exclusive southbound left-turn lane with adequate storage and appropriate taper and a northbound right-turn extended taper.

K. Comprehensive Plan Policies

Comprehensive Plan Policy Consistency		
Generally consistent with the following number of applicable policies of the Comprehensive Plan	Consistent by Exceeding UDO	6
	Consistent by Meeting UDO	11
	Policy Not Met	4
	Policy Not Applicable	12
Comprehensive Plan Policy Consistency Analysis	Attachment F	

L. Place Type Consistency

Existing Place Type	
Place Type Designation	Mixed Residential (MRN)
Elements of a Place Type	
Housing and Land Use Characteristics The proposal introduces a new housing type into an area that is predominantly single-family residential, therefore meeting the intent of the MRN Place Type.	Mobility There is no transit service near the site. Access is from Doc Nichols Road. A 10' side path will be constructed along Doc Nichols Road. An advisory comment has been made regarding connections to abutting properties.
Green Space The proposal will meet tree coverage and open space requirements at the site plan stage.	Service Provision Water and sewer will need to be extended to the site. Annexation of the site helps to fill in an existing donut hole.
Place Type Policy Analysis	See Attachment F

M. Case Timeline Summary

Timeline of Activity on the Case

Date of Presubmittal Meeting	November 16, 2023
Date of Required Neighborhood Meeting	December 19, 2023
Date Application Submitted (and Deemed Complete by Staff)	March 18, 2024
Date All Comments Addressed	June, 14, 2023
Date of Planning Commission Public Hearing	September 10, 2024
Date of City Council or BOCC Public Hearing	TBD

N. Advisory Body Recommendations

Bicycle and Pedestrian Advisory Commission (BPAC)	
Bicycle Pedestrian Advisory Commission (BPAC) Comments	<p>The Durham Bicycle and Pedestrian Advisory Commission (BPAC) has reviewed the project and believes the project would better serve the needs of the community, adopted plans, Vision Zero goals and the goals of the Durham Comprehensive Plan if the following items are included:</p> <ol style="list-style-type: none"> 1. Construct a 12-foot paved multi use path with a yellow thermo paint dashed centerline and a 10-foot buffer from the road, with trees planted in the buffer along the project frontage on SR 1908 Doc Nichols Road. <ul style="list-style-type: none"> o The proposal includes a 10-foot multi-use path along the site's Doc Nichols Road frontage. The buffer will be reviewed during site plan preparation. 2. Provide connectivity to neighboring adjacent developments via stub-out roads with sidewalks and/or existing or planned adjacent neighborhood trails. <ul style="list-style-type: none"> o The proposal states that with a small site, the 10' MUP along the right-of-way will provide this connectivity which is consistent with UDO standards. 3. Build raised crosswalks at all access points to the property. <ul style="list-style-type: none"> o The proposal states that this is a public street connection and therefore would require special approval by 911 Emergency services.
Planning Commission	
Planning Commission Vote	TBD

O. Conclusion

The proposal would allow for the development of 25 residential townhouses on an undeveloped lot in Southeast Durham.

The textual development plan commits to additional environmental and transportation conditions including a minimum 10-foot buffer from tree coverage and environmentally regulated acres, a reduced maximum impervious surface, and a 10-foot shared path along the frontage of the site. The proposal proffers a one-time contribution of \$5,000 to Durham Public Schools, and \$25,000 to the Durham Dedicated Housing Fund. The area is auto-dependent, lacks access to multimodal infrastructure, and is not in close proximity to daily services like grocery stores, retail, or healthcare.

This proposal is consistent with 17 of 21 of the applicable policies of the Comprehensive Plan, as found in Attachment F – Comprehensive Plan Consistency. The proposal is generally consistent with the Place Type Map designation of (Mixed Residential Neighborhood (MRN)).

P. Notification

Staff certifies that newspaper advertisements, letters to property owners, and the posting of the property have been carried out in accordance with paragraph 3.2.5 of the UDO. In addition, email notice was provided per the Durham Planning Public Notification Service.

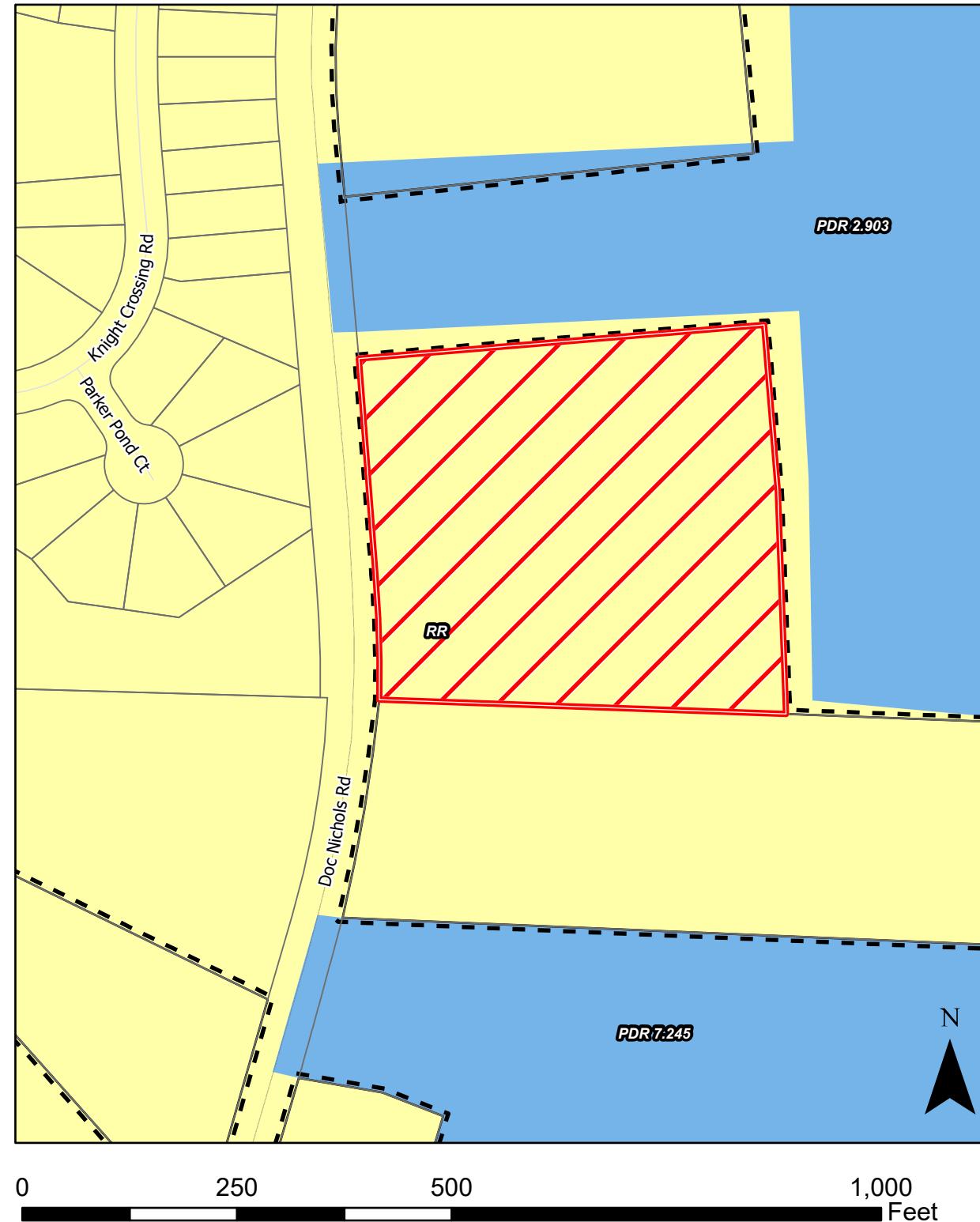
Q. Attachments

- Attachment A – Zoning Context Map
- Attachment B – Aerial Map
- Attachment C – Place Type Map
- Attachment D – Annexation Map
- Attachment E – Textual Development Plan
- Attachment F – Comprehensive Plan Consistency Review
- Attachment G – Utility Extension Agreement
- Attachment H – Vicinity Utility Map
- Attachment I - Operational Impact Analysis
- Attachment J – Cost Benefit Analysis

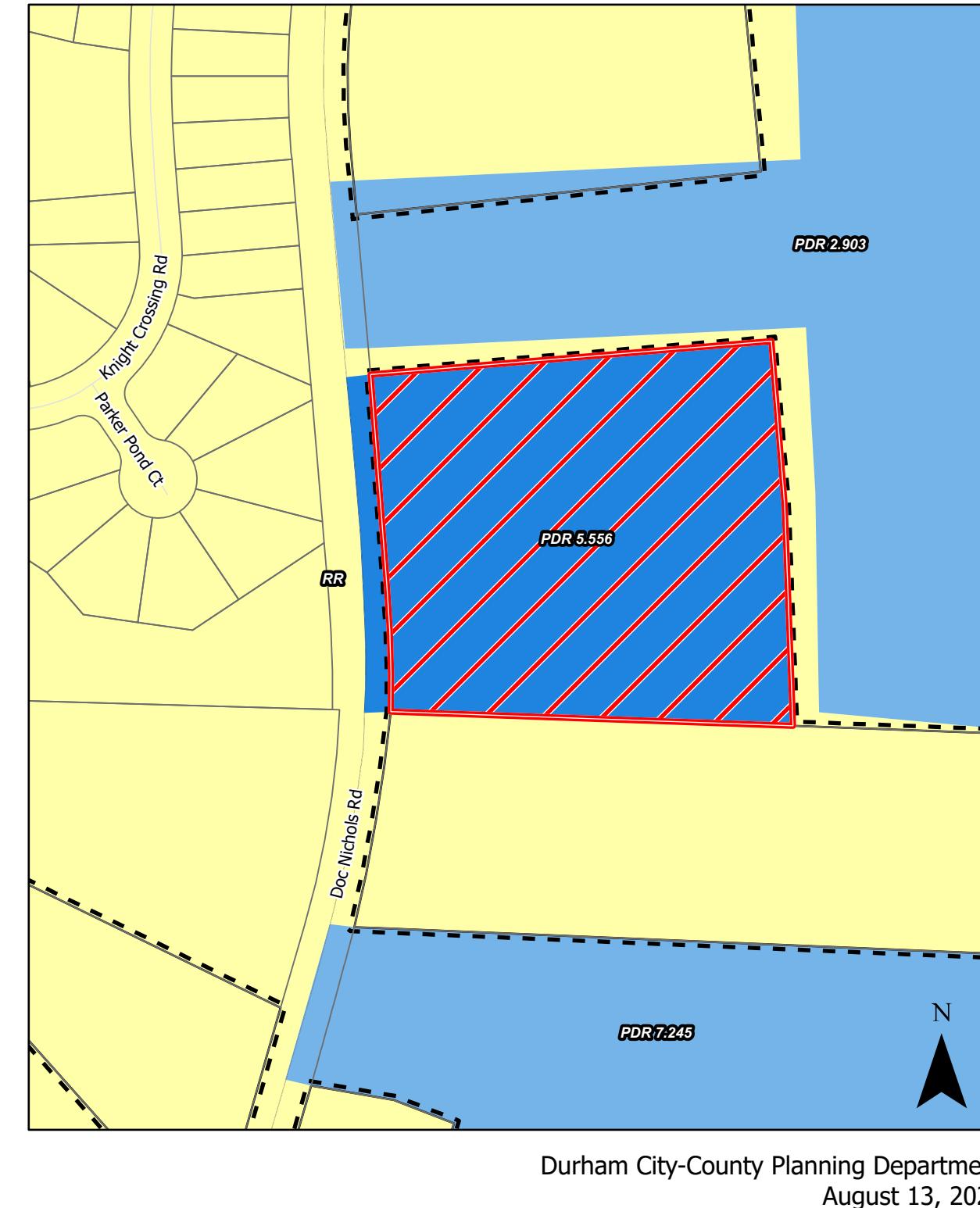
Attachment A: Zoning Context Map

Z2400015 and BDG2400008 - Doc Nichols Towns

Existing: Rural Residential (RR)

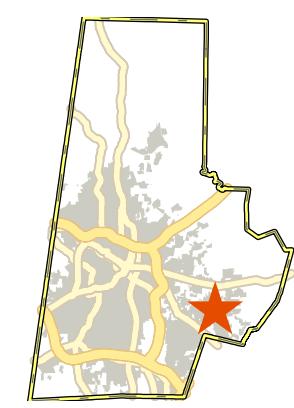


Proposed: Planned Development Residential (PDR 5.555)



Legend:

-  Z2400015
-  Parcels
-  City of Durham
-  Durham County
- Durham Zoning
 -  PDR-MDR (4 - 8 du/ac)
 -  PDR-LDR (2 - 4 du/ac)
 -  RR



Attachment B: Aerial Map

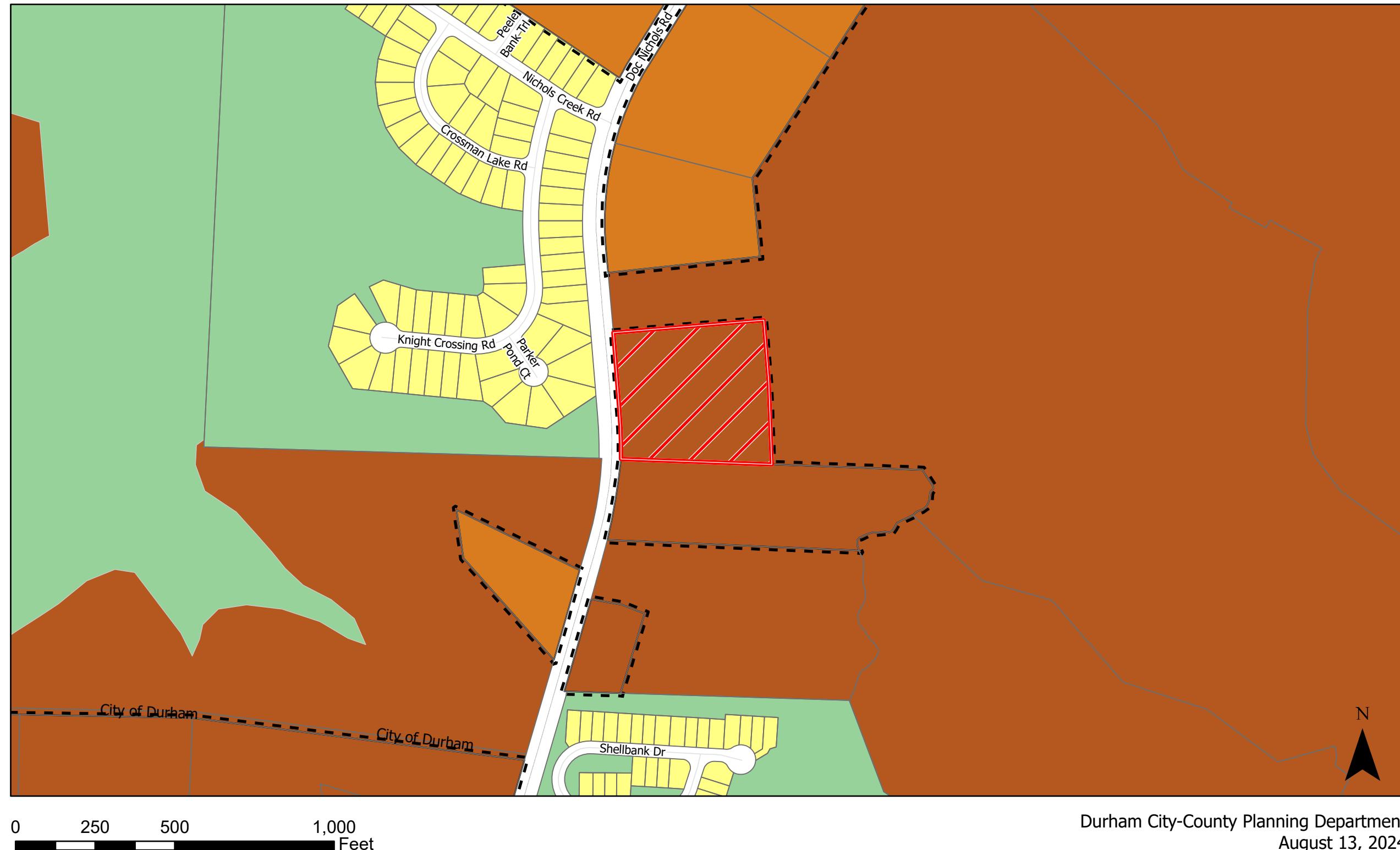
Z2400015 and BDG2400008 - Doc Nichols Towns



Attachment C: Place Type Map

Z2400015 and BDG2400008 - Doc Nichols Towns

Existing: Mixed Residential Neighborhood

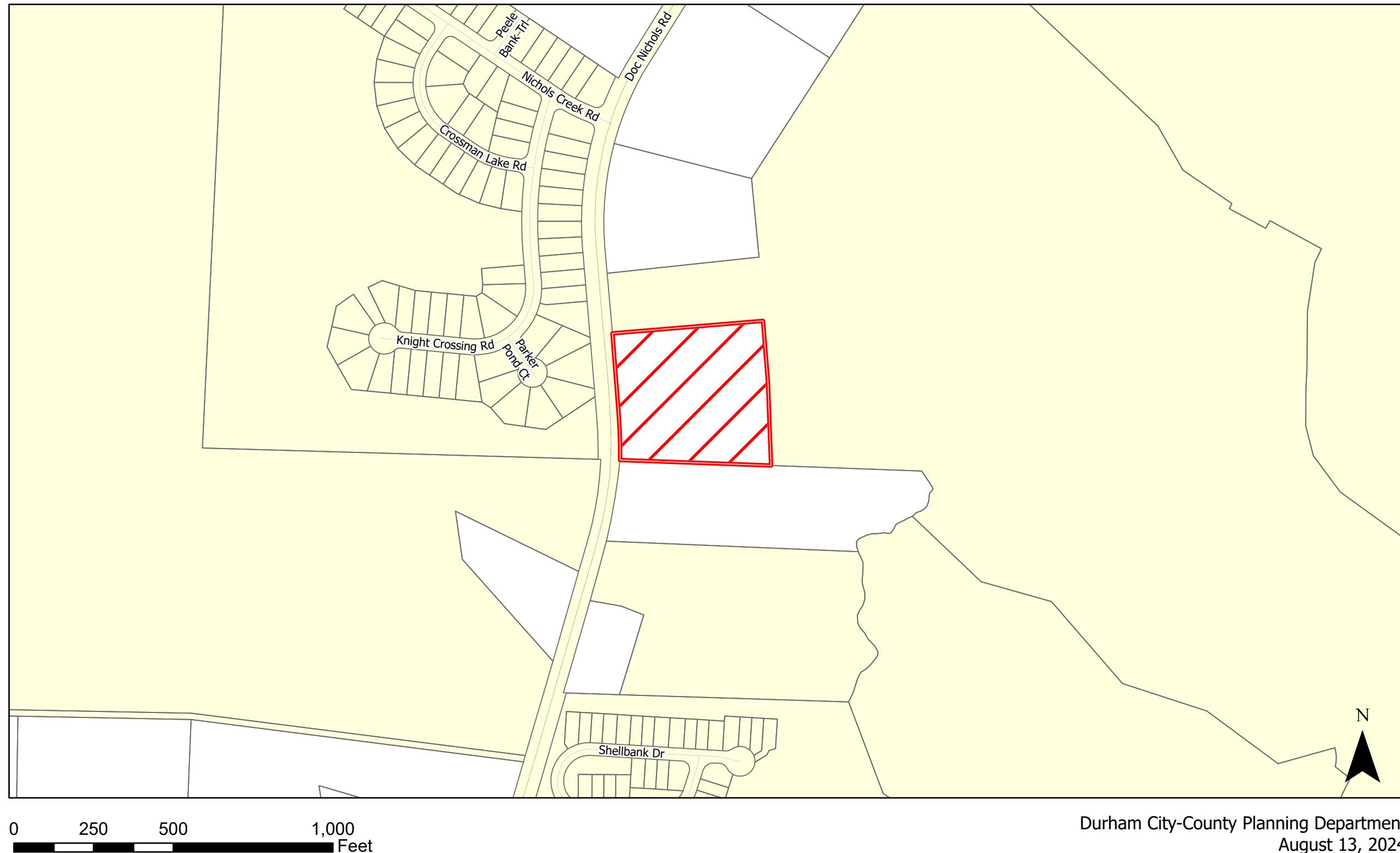


Attachment D: Annexation Map

Z2400015 and BDG2400008 - Doc Nichols Towns



Planning



Doc Nichols Towns: Textual Development Plan

1. No more than 25 residential townhouse units shall be established upon the property.
2. All buildings shall be located a minimum of 20-feet from the perimeter site boundary line.
3. All buildings shall be located a minimum of 10-feet from any tree coverage area and from any environmentally regulated area.
4. Less than four acres shall be disturbed during site preparation for construction and during construction on the property.
5. Prior to the issuance of a certificate of occupancy, developer shall construct a 10-foot wide shared path for the full frontage of the site along the east side of Doc Nichols Road.
6. Prior to issuance of a certificate of occupancy, developer shall provide a one-time contribution of \$5,000 to Durham Public Schools.
7. Prior to the issuance of a certificate of occupancy, developer shall provide a one-time contribution of \$25,000 to the City of Durham Dedicated Housing Fund.
8. No townhouse can be constructed with a front exterior elevation (front façade) or color palette that is identical to the townhouse on either side or directly across the street from it.
9. A minimum of 30,000 square feet of open space shall be provided along the northern property line.
10. Impervious surfaces shall be limited to a maximum of 50 percent.
11. Required Street Trees planted shall be of native species where permitted by the Durham Landscape Manual.
12. Prior to the issuance of a certificate of occupancy, construct an exclusive southbound left-turn lane with adequate storage and appropriate taper and a northbound right-turn extended taper.

DENSITY CALCULATIONS

GROSS TRACT AREA:	4.500 AC
AREA OF RIGHT-OF-WAY DEDICATED:	0.000 AC
85% OF STEEP SLOPES OUTSIDE STREAM BUFFER:	0.000 AC
50% OF FLOODWAY FRINGE OUTSIDE:	0.000 AC
NET DEVELOPABLE RESIDENTIAL AREA:	4.500 AC
MAXIMUM DENSITY ALLOWED:	5.555 DU/AC
PROPOSED RESIDENTIAL UNITS (4.500 AC X 5.555 DU/AC):	25 UNITS



COMPREHENSIVE PLAN CONSISTENCY REVIEW

Comprehensive Plan Development Applicable Policies		
Applicable Policy	Consistent	How consistent
Policy 32: Preserve and protect historic resources in the design of new developments and neighborhoods and design them to respect Durham's unique identity and reflect the nearby historical context. Promote new developments that are compatible with the architectural elements of significant historic resources.	Not applicable as there are no historic sites located on site	
Policy 33: Discourage development patterns, such as exclusively single-family neighborhoods, that segregate and concentrate high-wealth communities.	Consistent by meeting UDO standards	Proposal is for townhouses in an area that is mostly single-family.
Policy 37: Design new developments to prioritize pedestrians in ways compatible with existing neighborhoods, such as by placing buildings close to the street, oriented toward sidewalks, green spaces, or community areas where people gather; locating vehicle access and parking to the side or rear of buildings and lots; maintaining connected streets and frequent intersections; and designing buildings to engage with the street through stoops, porches, or other welcoming entranceways.	Consistent by meeting UDO standards	Setbacks and building placement will meet UDO standards at the site plan stage.
Policy 39: Preserve and create natural areas, open spaces, community gardens, and trees within new housing developments or redevelopments—particularly for affordable housing—to improve the physical and mental health of residents.	Consistent by meeting UDO standards	UDO requirements of tree save and open space will be met at the site plan stage.

<p>Policy 40: Affordable housing should be included in new development proposals. Encourage and incentivize housing that meets the needs of Durham residents in terms of cost, unit size, housing type, ADA accessibility, and location. Tenures for housing affordability should run, where feasible, with the land in perpetuity. When this is not possible, affordability tenures should last for a minimum of 30 years and have an associated deed restriction.</p>	<p>Consistent by exceeding UDO standards</p>	<p>The development plan commits to a \$25,000 donation to the Durham Dedicated Housing Fund.</p>
<p>Policy 48: Encourage, incentivize, and require a variety of housing types in new developments that allow for a mix of age groups, and discourage developer commitments that isolate seniors by restricting housing based on age.</p>	<p>Policy not met</p>	<p>The proposal does not provide commitments that encourages a mix of age groups or a variety of housing design features (for example, first-floor ADA accessible walk-out units).</p>
<p>Policy 49: Work towards healthier housing and lower utility costs for residents by using green building techniques and technologies (such as solar panels, passive solar design, low VOC materials), particularly in affordable housing units. Use durable, environmentally sustainable materials in publicly and privately funded affordable housing to create healthier homes.</p>	<p>Policy not met</p>	<p>The proposal does not provide commitments for green building techniques or technologies.</p>
<p>Policy 50: Encourage the location of new residential development such that homes are within a safe ten-minute walking distance (approximately one-half mile) of public parkland.</p>	<p>Policy not met</p>	<p>The development is not sited within 1/2 mile of public parkland.</p>
<p>Policy 52: Encourage the preservation of existing mobile home parks. Provide a re-housing plan for residents when mobile home parks are redeveloped, prioritizing locations near existing parks or with similar access to amenities.</p>	<p>Not applicable as the site is not currently a mobile home park</p>	
<p>Policy 55: Fill in gaps in the existing sidewalk, bicycle, and transit infrastructure to create an accessible, safe, and direct transportation network for all residents. Focus on improving residents' access to needed resources, including healthcare services, grocery stores, employment areas, and schools.</p>	<p>Consistent by meeting UDO standards</p>	<p>The proposal provides a ten-foot shared use path along Doc Nichols Road as directed by the Comprehensive Transportation Plan.</p>
<p>Policy 57: Encourage new developments to fill in gaps or upgrade transportation infrastructure by building or dedicating rights-of-way within and adjacent to the project site.</p>	<p>Consistent by meeting UDO standards</p>	<p>The proposal provides a ten-foot shared use path as directed by the Comprehensive Transportation Plan. Any required right-of-way dedication will be determined at the site plan stage.</p>

<p>Policy 63: Improve ADA accessibility at crosswalks, sidewalks, and bus stops for all people, regardless of ability or age. Improve pedestrian infrastructure, including street crossings, intersections, signals, wayfinding, and sidewalks prioritizing the safety of people with disabilities, senior citizens, students, and families with young children.</p>	<p>Consistent by meeting UDO standards</p>	<p>UDO requirements will be met at the site plan stage.</p>
<p>Policy 70: Reduce the amount of land used for automobile travel and parking and encourage pedestrian- and transit-friendly design. Discourage conversion of land into uses primarily or exclusively supportive of automobiles, such as gas stations and car washes.</p>	<p>Consistent by meeting UDO standards</p>	<p>No commitments in excess of UDO requirements for pedestrian connectivity are provided. Will meet UDO requirements at the site plan stage.</p>
<p>Policy 72: Ensure new development is connected to adjacent neighborhoods and commercial areas with walking and biking infrastructure. This can include building, improving, or dedicating right-of-way for sidewalks, and constructing bicycle paths, greenways, off-street bicycle and pedestrian connections, bus stop infrastructure, and collector streets, as called for in locally adopted transportation plans.</p>	<p>Consistent by meeting UDO standards</p>	<p>Stub outs will not be required. Staff has encouraged non-vehicular connectivity to adjacent properties. .</p>
<p>Policy 79: Protect Durham's most sensitive natural areas (including floodplains, wetlands, wildlife habitats, hillsides, drinking water sources, critical watersheds, and natural heritage areas) from the impacts of development.</p>	<p>Not applicable as there are no sensitive lands on site</p>	
<p>Policy 81: Locate open space in new development so that it protects the most environmentally sensitive portions of the site and creates large and contiguous habitat areas, rather than narrow and disconnected strips of open space</p>	<p>Consistent by exceeding UDO standards</p>	<p>A significant portion of the required open space is committed to being in one location.</p>
<p>Policy 83: Existing habitat areas and wildlife movement corridors should be left largely undisturbed to remain in their natural, vegetated state and to avoid fragmentation and disruption. These areas include Wildlife Habitat Areas or Natural Corridors in adopted open space plans or identified NC Natural Heritage Areas. Some disturbance may be allowed for road crossings, utilities, and stormwater infrastructure, if minimized. Staff will recommend against proposed structures or parking in these areas</p>	<p>Not applicable as there are no wildlife corridors on site</p>	

<p>Policy 84: Discourage development that contributes to a loss of biodiversity, particularly through disruptive clear-cutting and mass grading. Mass grading should be discouraged for new residential projects. When mass grading of new development sites is proposed, it should occur in phases rather than across the entire area at once, to reduce on-site stormwater runoff and erosion, and to retain tree cover between the phases of construction.</p>	<p>Not applicable</p>	<p>With provision of 20% tree coverage, the site is too small to meet a mass grading threshold.</p>
<p>Policy 85: New developments should include tree coverage beyond that required by development regulations. Tree canopy should be distributed throughout new developments to maintain a consistent mature tree canopy wherever possible.</p>	<p>Policy not met</p>	<p>The proposal does not include commitments to tree coverage beyond what is required by the UDO.</p>
<p>Policy 94: Increase Durham's urban tree canopy, prioritizing neighborhoods and communities with comparably less canopy. Prioritize native trees in replanting efforts.</p>	<p>Consistent by exceeding UDO standards</p>	<p>The proposal commits to planting native trees as defined in the Durham Landscape Manual for street trees.</p>
<p>Policy 95: Strongly discourage new development in floodplains. For existing development in floodplains, support and encourage retrofits to increase flood resilience.</p>	<p>Not applicable as there is no floodplain on the site</p>	
<p>Policy 96: Implement strategies to reduce the heat island effect and its impact on residents. Ensure that new developments mitigate the urban heat island effect in areas currently experiencing it. Encourage new developments that minimize impervious surfaces and include green infrastructure, reflective materials, and plentiful tree canopy.</p>	<p>Consistent by exceeding UDO standards</p>	<p>The proposal commits to a maximum impervious surface of 50 percent.</p>
<p>Policy 101: Encourage new development that incorporates native plants, wildlife habitats, natural landscaping, and that discourages invasive exotic species.</p>	<p>Consistent by UDO standards</p>	<p>The proposal will meet the Durham Landscape Manual requirements at the site plan stage.</p>
<p>Policy 104: In new development, dedicate parks, recreation facilities, and other amenities for public use rather than as private space.</p>	<p>Not applicable as no parkland is proposed</p>	
<p>Policy 105: New developments should build or dedicate right-of-way for trails and greenways as per adopted trails and greenway plans. The trails and greenways system should link residential areas, schools, parks, institutions, shopping centers, and other greenway corridors.</p>	<p>Not applicable as there are no planned trails or greenways on site</p>	

<p>Policy 108: Encourage green infrastructure, such as native trees and vegetation, protected green spaces, green roofs and walls, bioswales, rain gardens, and permeable pavement. Green infrastructure should be prioritized in low-income and BIPOC communities if desired by those communities.</p>	<p>Consistent by exceeding UDO standards</p>	<p>The proposal commits to the planting of native species for street trees.</p>
<p>Policy 111: Encourage innovative stormwater management practices that will preserve and enhance water quality and will not increase the quantity of water discharged downstream of new developments. Encourage innovative stormwater management practices that will prepare our community and its infrastructure for increasingly heavy precipitation events.</p>	<p>Consistent by meeting UDO standards</p>	<p>The proposal will meet UDO requirements for stormwater at the site plan stage.</p>
<p>Policy 114: Encourage reuse of existing buildings, infrastructure, and construction materials, rather than their new creation from scratch. (Ensure that existing infrastructure is adequate for infill development, upgrade if not).</p>	<p>Not applicable as there are no existing structures on the site</p>	
<p>Policy 145: Co-locate childcare facilities within or adjacent to employment centers, education and medical institutions, and community and civic places.</p>	<p>Not applicable as this is a residential development</p>	
<p>Policy 152: Coordinate school planning and land use planning to proactively prepare for increased student growth from new development. When a proposed residential development causes any school level (ex: elementary, middle, and high school) within a region to be over-capacity, Durham Public Schools, the Durham City-County Planning Department, and the development team should consider mitigation measures for the school system (ex: land dedication, payments in-lieu-of improvements, or other proffers). Coordinate with Durham Public Schools to calculate what mitigation is necessary based on the best available estimates.</p>	<p>Consistent by exceeding UDO standards</p>	<p>The proposal provides for a one-time donation of \$5,000 to Durham Public Schools.</p>
<p>Policy 155: When a proffer of land dedication for school sites is made, review of acreage and feasibility should be assessed in coordination with Durham Public Schools and Durham City-County Planning.</p>	<p>Not applicable as there is no school dedication on the site</p>	

Place Type Policies		
Policy	Consistent	How Consistent
Policy 174: Housing types should be mixed throughout Mixed Residential Neighborhood Place Types and not isolated in discrete parts of the development.	Consistent	The site is 4.5 acres and is proposed to be only one housing type
Policy 175: Mixed Residential Neighborhoods smaller than 20 developable acres should increase the mix of housing types in the immediate vicinity. Mixed Residential Neighborhood Place Types generally between 20 and 50 developable acres should include a mix of at least two housing types. Mixed Residential Place Types generally more than 50 developable acres should include a mix of three or more place types. All Mixed Residential Neighborhoods should include housing at a variety of price points and sizes.	Not applicable	The site is 4.5 acres and therefore does not meet the threshold for more than one housing type.

UTILITY EXTENSION AGREEMENT FOR WATER, SEWER, AND STORMWATER SERVICES

THIS UTILITY EXTENSION AGREEMENT (hereafter "Contract"), is made and entered into as of the _____ day of _____, 20____, by and between **Milan Realty, LLC**, a limited liability company (hereafter "Developer") and the **CITY OF DURHAM**, a North Carolina municipal corporation (hereafter the "City");

WHEREAS, the Developer proposes to extend water and sewer to serve **Doc Nichols Towns**, a residential development with a maximum of 25 townhouse units, located at 1301 Doc Nichols Road, further described as Real Estate Identification (REID) 193358 ("the Property").

WHEREAS, the Developer requires water and sewer lines that will connect to the City's water and sewer systems in order to enable construction of the above described development or such other development as may be approved by the Durham City Council; and

WHEREAS, the Property is outside the City limits and Developer has submitted a petition for annexation of the Property to the City;

WHEREAS, the City is not obligated to offer utility service to property outside its corporate limits and requires, among other things, that such properties enter into a utility extension agreement and be annexed into the City, unless annexation is excused by the City Council;

WHEREAS, unless annexation has been excused by the City Council, the City's obligations under this Contract are effective upon the effective date of City annexation of the property;

WHEREAS, under City ordinance, Developer is required to pay all costs associated with this Contract, in particular the costs associated with the design, materials, and installation of water, sewer, and stormwater infrastructure, required street infrastructure, and other related costs; and

WHEREAS, at its meeting held _____, 20____, the City Council authorized this Contract in accordance with the terms set forth below;

NOW THEREFORE, in consideration of ten dollars and other valuable consideration, the receipt of which is hereby acknowledged, the Developer and the City, and their heirs, successors, and assigns agree:

1. **Included Appendices.** Appendix A (Annexation) and Appendix B (Project Specific Provisions) are a part of this Contract.

2. **Effective Date.** If Appendix A (Annexation) has been included in this Contract, the City's obligations under this Contract are effective upon the effective date of City annexation. This Contract creates no obligation for the City to annex the Property or to proceed with the annexation of the Property on any particular timetable, which decisions shall be in the discretion of the City Council. In the event the Property is not annexed, this Contract shall be null and void unless the City Council approves a Contract modification to allow extension of utility services without annexation. If Appendix A (Annexation) is not part of this Contract, the obligations of this Contract shall become effective upon execution by the parties.

3. **Definitions and Rules of Interpretation.** In this Contract, the following terms, whether capitalized or not, shall have the meanings set forth below, unless it is clear in the Contract that the context requires otherwise. In addition, the rules of interpretation set forth below shall apply.

"City" means the City of Durham.

"City Requirements" mean all ordinances, policies, standards, and specifications prescribed by the City applicable to the development activity, work, or construction undertaken pursuant to this Contract. Such Requirements may include, but are not limited to, the Unified Development Ordinance, the City Code, and standards for processing of and construction of infrastructure many of which are contained in the City's Reference Guide for Development maintained by the City Department of Public Works.

"Developer" is the owner of the Property or the entity which has contracted to purchase the various parcels composing the Property thereby becoming the owner of the Property, and is the entity identified in the first paragraph of this Contract. "Developer" includes successors in interest and assigns.

"Improvements" means all infrastructure required by the City that allows water and sewer to be delivered to or from the Property and integrated into the City's utility system, and all infrastructure, which may include natural features, that allows stormwater from the Property to be managed in accordance with City Requirements. It includes, but is not limited to, lines, mains, outfalls, water and sewer connections to the street mains including meter box and meter yoke, water meters to the extent required under City Requirements, all construction and repair to streets and rights of way within which water, sewer, or stormwater infrastructure is located, pump stations, water towers, water booster stations, and all natural and constructed stormwater infrastructure that carries or treats stormwater, or mitigates the impact of stormwater. It may include, if allowed under City Requirements, natural features and improvements located on individual lots to the extent they are part of the planned stormwater system or contribute to meeting water quality requirements.

"Person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities.

"Project" means the development approved by the Durham City Council for the Property through a zoning action, and any committed elements that, if also approved, would establish additional conditions for such zoning.

"Property" means the land located at REID 193358.

"Water and/or sewer" refer to the particular utilities being installed by Developer, which may include water only or sewer only, or both, as generally described in Appendix B and as ultimately determined through City review of site plans and construction drawings.

The following rules of interpretation apply: (1) The singular includes the plural, and the plural the singular; (2) The word "shall" is mandatory.

4. Developer's Obligation. The Developer shall bear the total cost and expense of all the obligations and duties created by this Contract unless otherwise explicitly stated in this Contract. Those obligations and duties are, generally, to create all Improvements as may be required by the City in accordance with this Contract and with City Requirements. Such Improvements include but are not limited to: i) all Improvements within the Project; ii) all Improvements connecting to water, sewer, or stormwater infrastructure outside the Project, whether existing or planned; iii) modifications to any existing water, sewer, or stormwater infrastructure outside the Project that facilitate provision of utility service to the Project, or compliance with City Requirements, or integration of the Improvements with the surrounding existing or planned water, sewer, or stormwater system; and iv) new streets or alterations to existing streets or rights of way within which the Improvements are located. The Developer's obligations also include all costs, including but not limited to legal costs, of acquiring all fees or easements within which the Improvements will be located.

5. Improvements. A general description of the Improvements to be constructed to serve the Project is set forth in Appendix B. The final determination of the number, scope, size, materials, and location of required Improvements shall be as determined in the discretion of the City with jurisdiction over the utility service provided and shall be made in connection with site plan and construction drawing approval.

6. Street work. Streets within the Project shall be constructed in accordance with City Requirements, which include payments for installation of particular types of streets.

7. City Requirements. Design, construction, materials, sizing, other specifications, permitting, inspections, testing, documentation and furnishing of as-built drawings, and acceptance of completed infrastructure shall be in accordance with City Requirements. Design and construction shall be by professionals licensed in the state of North Carolina to do the relevant work. City approval of the design of the Improvements shall be required prior to construction, as set forth in City Requirements. If Developer is connecting to the County sewer system, the City may require Developer to furnish the contract providing for such connection.

8. **Contracts.** Developer shall ensure that its contracts for design and construction of the Improvements do not shorten or limit any otherwise applicable warranties or statutes of limitation. In addition, Developer shall ensure that such contracts contain an assignment clause that allows assignment of any warranties regarding the constructed Improvements to the City. For certain Improvements, the City may require that Developer's contracts identify the City as a 3rd party beneficiary, or may require prior consultation regarding contractors for the project. If such requirements are applicable to this Project, it shall be shown in Appendix B, or the City will notify Developer in a timely manner of such requirements prior to the Developer's contracting for Improvements.

9. **Compliance; Permits.** All activity undertaken pursuant to this Contract shall be in compliance with federal and state law and regulations and City Requirements. Developer shall obtain all permits and approvals required to do the work authorized under this Contract.

10. **Conflicts.** In the event of conflict between this Contract and any law, state or federal regulation, or City Requirements, the stricter of the applicable provisions shall control.

11. **Testing.** Developer shall pay for any testing deemed necessary to determine that the Improvements, and their environmental impact, comply with federal or state law and regulations, or City Requirements.

12. **Dedication to City.** With the exception of Improvements that are designated in Appendix B or in site plan approvals as private, upon completion of the Improvements in accordance with City Requirements, the Developer shall dedicate to the City, in the manner specified by the City, the Improvements located within public streets, and all outfalls, pump stations, water booster stations, and water towers. In addition, any property in which the Improvements are located shall be dedicated if it has not already been dedicated. Upon acceptance of the dedicated Improvements by City Council, the City shall thereafter be responsible for maintenance. The determination as to whether the Improvements comply with City Requirements shall be made by the Director of Public Works or designee in his or her sole discretion. The City may require, among other things, certified as-built plans for the Improvements; a release of liens from contractors and subcontractors; additional plats or deeds for property containing the Improvements; releases of any mortgage or security interests in such property; and any other information the City deems to be necessary to accept the constructed Improvements.

13. **Warranty/Repair.** Developer warrants that the Improvements shall be constructed in accordance with City Requirements and other applicable professional standards, fit for the purpose for which they were constructed, and free from defects for a one year period which shall run from the time of acceptance by the City. Developer shall be responsible for repairs needed during the one year period. Upon request by the City, Developer will assign any warranty rights it has under its contracts to the City.

14. **City Extensions.** Developer agrees that in accordance with City Requirements, the City may make extensions from or connections to water, sewer, and stormwater improvements that Developer has dedicated to the City. City Requirements provide for reimbursements to be made

to the Developer for such connections/extensions in certain circumstances. If such are available under this Contract, they are described in Appendix B.

15. Assignments/Reimbursements. Developer shall notify the City in writing of any assignment of the obligations under this Contract and/or change in the entity to receive reimbursements under this Contract, in the event that future reimbursements are provided for in Appendix B or pursuant to City Requirements. An assignment by Developer of the obligations under this Contract does not limit the obligations of successor owners of the property unless i) the assignee owns a substantial part of the property; and ii) there is a written modification of this Contract approved by the parties to replace the Developer with the assignee to the exclusion of other owners. If reimbursements are provided for under this Contract, they shall be made to the original Developer or to a successor in interest who has been identified in writing as entitled to the reimbursements. In the absence of a party that legally exists that has been identified as entitled to the reimbursements, the City shall hold the reimbursements for three years from the various dates they are received. After the three year period, the reimbursements shall be forfeited to the City. The City may, but is not required to, provide notice of potential reimbursements to successors in interest to the original Developer. In the event of dispute between owners claiming an interest in the reimbursements, the City shall hold the reimbursements until legal resolution, if a lawsuit has been filed. If legal action is not filed within three years, the reimbursements shall be forfeited to the City. Identification of new owners entitled to reimbursements shall be in a manner which in form and substance meets the City's directives.

16. No obligations. This Contract does not create any express or implied obligation that the City: i) reserve or create water or wastewater treatment capacity; ii) approve a permit or connection, which shall be granted only upon compliance with all requirements of law, including City Requirements; iii) offer utility services to any user within the Project; iv) provide a particular quantity, quality, or pressure for the water serving the Project; v) waive or not charge fees that are otherwise applicable pursuant to City Requirements; or vi) approve annexation of the Property or a particular zoning of the Property.

17. No vesting. Developer agrees that no vested rights exist that would impact the City's consideration of its proposed development, and that no vested rights shall be claimed for the proposed development until and unless annexation and zoning are approved, if they are approved, and such further development approvals are given as would, under the law, create a claim regarding vested rights.

18. Contract a Covenant that Runs with Land. The obligations and entitlements of this Contract are covenants that run with the Property, and are binding on all heirs, assigns, successors in interest, and other subsequent owners. Within 30 days of the latter of either Contract execution or the Developer becoming the owner of the Property, Developer shall record this Contract, and shall furnish the City a copy of the recorded document and a statement from an attorney licensed to practice law in North Carolina, in form and substance acceptable to the City, that the Contract has been recorded, and that the obligations of the Contract are binding upon all subsequent owners of the Property. No development approvals shall be issued by the City in the absence of recordation and certification as described above.

19. **Notice.**

(a) *Mode and Designated Recipients.* All notices and other communications given under this Contract shall be written, and made by personal delivery, fax, Federal Express, or United States mail, addressed as follows. The parties are also requested to send a copy by email.

To the City:

Public Works Director
Department of Public Works
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
Fax: (919) 560-4316
Email: Marvin.Williams@durhamnc.gov

With copy to:

City Attorney's Office
City of Durham
101 City Hall Plaza
Durham, NC 27701

To the Developer:

Milan Realty, LLC
Attention: Steve Gillooly
PO Box 1866
Cary, NC 27512-1866
Phone: 919-612-9885
Fax: 919-800-3821
Email: sgillooly@gilloolyrealty.com

(b) *Change of Address.* Notice of a change of address, fax number, or person to receive notice shall be provided to the other party in writing through one of the means described above.

(c) *Time of Receipt.* A notice or other communication is effective upon delivery to the other party if it is personally delivered or sent by fax. Notice sent by mail or Federal Express is effective upon the second work day after the date it was sent, as evidenced by a postmark or similar indicia, or upon actual delivery.

20. **No Third Party Rights.** This Contract is intended for the benefit of the City and Developer and not for any other Person, and no such Persons shall enjoy any right, benefit, or entitlement under this Contract.

21. **Nondiscrimination Policy; EEO.** The City of Durham opposes discrimination on the basis of race and sex and urges Developer to provide a fair opportunity for minorities and women to participate in its work force and to contract with Developer. During the performance of this Contract Developer agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

22. **Governmental Authority Retained.** Nothing contained in this Contract shall be deemed or construed to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions, or shall limit the City's discretion in the exercise of such powers and functions.

23. **Remedies; Breach.** The parties shall have all remedies allowed by law to enforce this Contract. Substantial breach of this Contract shall result in the Contract becoming void, at the election of the nonbreaching party. Prior to voiding the Contract, the party alleging a substantial breach shall give notice to the other party and shall afford an opportunity to cure of at least 60 days. In addition, in the event of breach by Developer, the City may withhold any permit or approval related to development, construction, or occupancy in the Project. Enumeration of these remedies is not exclusive.

24. **Services Dependent on Improvements.** The City's furnishing of water and/or sewer service to the Property is dependent upon completion of the Improvements. In the event Developer does not complete the Improvements, Developer and its successors in interest shall have no entitlement to receive water and/or sewer service. Entitlement to water and/or sewer service is dependent upon: annexation (if required); city zoning; completion of and conformance with this Contract; construction of the Improvements by Developer or its successors in interest; water and/or sewer capacity at the time of completion; and compliance with all other lawful requirements.

25. **Termination.** Developer's failure to initiate substantial construction activity within five years of execution of this Contract, and continue said construction expeditiously toward completion, with adequate forces, and in good faith may result in termination of this Contract, at the election of the City. The City's Public Works Director shall determine if such failure exists, and shall notify Developer in writing. Developer shall have at least 90 days to initiate or increase construction activity. Final notice of termination shall be given by the City Manager or a Deputy City Manager.

26. **Waiver.** No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Contract, or constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

27. **Contract not Severable.** In the event any substantive provision of this Contract is declared unenforceable the Contract shall become void. This paragraph, however, does not prohibit the parties from agreeing to eliminate or modify the unenforceable provision or enter into a new agreement.

28. **Modifications.** Substantial modifications of the Contract shall be approved by the City Council. Minor modifications, modifications of Appendix B regarding Improvements, and substitution of an assignee owner of a substantial portion of the Property for the original Developer may be approved by the City Manager or deputy or assistant City Manager without Council approval. Without exclusion as to other minor modifications, a modification to the Project which both reduces the overall density of and utility demand within the Project or which would not be considered to be a significant deviation under the standards set forth in Section 3.5 of the Unified Development Ordinance is a "minor modification" under this Paragraph. A modification of this Contract is not valid unless it is signed by both parties and is otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager or a deputy or assistant City Manager.

29. **Recordation of Status of Agreement.** The City shall cooperate with the Developer in executing any form to be filed by the Developer in the event that the Contract is voided, terminated or superseded, or its requirements are fully satisfied.

30. **Entire Agreement.** This Contract contains the entire agreement between the parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Contract.

31. **Choice of Law and Forum; Process Agent.** This Contract shall be deemed made in Durham County, North Carolina. This Contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This limitation, however, shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. Developer shall maintain a registered agent in North Carolina with the office of the N. C. Secretary of State.

32. **Indemnification.**

(a) In general. The terms of subsection (c) (Standard Indemnification Provision) below shall apply to the Contractor, subject to subsections (d) through (k), where applicable.

(b) Definitions. These definitions apply to this Section unless otherwise stated.

Contractor – Each party to this contract except the City of Durham.

Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

Defend –In this Section except in subsection (c), defend means to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Design professional agreement -- any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services.

Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Fault -- a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

Indemnitees -- City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Subcontractor -- any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.

(c) Standard Indemnification Provision. (i) The Contractor shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subsection "c," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (ii) "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within "Charges" are (1) interest and reasonable attorney's fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract. By appropriate litigation, each Indemnitee, severally, shall have the right to enforce this section (titled "Indemnification") directly against the Contractor, but not against the City of Durham.

(d) Restriction regarding Indemnitees' Negligence. This contract shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(e) Restriction regarding Fault in Construction Agreements and Design Professional Agreements. If this contract is a construction agreement or design professional agreement, nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

(f) Restriction regarding Negligence of Design Professionals. Nothing in this contract requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney's

fees, proximately caused or allegedly caused by the professional negligence, in whole or in part, of the Contractor, the City, or their derivative parties, whether the claim is alleged or brought in tort or contract.

(g) Liability When at Fault. The parties intend that nothing in this contract shall be construed to exclude from any indemnity or hold harmless provisions enforceable under subsection (d) (Restriction regarding Indemnitees' Negligence) and subsection (e) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified. Every provision in this contract that violates the parties' intent expressed in the preceding sentence shall be construed and revised to the extent that it is lawful in order to make the provision conform with such intent.

(h) Insurance Contracts and Bonds. This Section does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer; and this Section does not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.

(i) Other Provisions. Every provision in this contract that violates subsection (d) (Restriction regarding Indemnitees' Negligence), subsection (e) (Restriction regarding Fault in Construction Agreements and Design Professional Agreements), or subsection (f) (Restriction Regarding Negligence of Design Professionals) shall be construed and revised to the extent that it is lawful in order to make the provision conform with those subsections.

(j) Survival. This Section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(k) Compliance with Law. This Section shall be applied to the maximum extent allowed by law but it shall be construed and limited as necessary to comply with N.C.G.S. § 22B-1. This Section is not to be construed in favor or against any party as the drafter. The preceding sentence is not intended to imply or direct how the remainder of this Section or of this contract is to be construed.

33. **E-Verify Requirements.** (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the Developer represents and covenants that its contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

34. **Iran Divestment Act Certification.** Developer certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Developer was not identified on the Iran List. If it did not submit a bid for this contract, the Developer certifies that as of the date that this contract is entered into, the Developer is not identified on the Iran List. It is a material breach of contract for Developer to be identified on the Iran List during the term of this contract or to utilize on this contract any contractor or subcontractor that is identified on the Iran List. In

this Iran Divestment Act Certification section -- “Developer” means the person entering into this contract with the City of Durham; and “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

[Signatures continue on the following page]

IN TESTIMONY WHEREOF, the parties hereto have executed this Contract as of the dates shown below.

Milan Realty, LLC

By: _____ (SEAL)

Name: _____

Title: Manager

State of _____
County of _____

Acknowledgment by Limited Liability Company
(Type or print state and county where notarial act was performed)

I, _____ (Type or print name of notary public), a notary public, certify that _____ (Type or print name of individual who signed) personally (1) appeared before me this day, (2) stated that he or she is a manager of **Milan Realty, LLC**, a limited liability company organized and existing under the laws of the State of _____, and that if he or she is a manager of the company automatically by reason of being a member of the company, the operating agreement does not change that status, (3) acknowledged that the foregoing contract with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract on behalf of the company. This the _____ day of _____, 20 _____.

My commission expires:

Notary Public

ATTEST:

CITY OF DURHAM

_____ By: _____

preaudit certificate, if applicable _____

APPENDIX A -ANNEXATION PROVISIONS

1. The Developer shall ensure that all actions are taken to ensure that the Property may be legally annexed by the City. Developer shall ensure that the annexation petition it has submitted and all supporting documents and certifications required by the City are updated as required in the discretion of the City and remain valid until the City Council gives final approval or disapproval to the annexation. Prior to the effective date of annexation, if the City determines to annex the Property, Developer shall not seek any development approvals from any governing unit other than the City of Durham. Such approvals include, but are not limited to, zoning (if it has not already been granted by the County for the Property), and in addition site plans, preliminary plats, final plats, building permits, or construction drawings for properties or buildings contained within the Property, except where another governmental entity has jurisdiction. Applications for approval of a sedimentation and erosion control permits, and other State and Federal permits, may be made, but if granted, no activity shall be conducted pursuant to any such approval.
2. A valid annexation petition shall consist of a petition signed by all owners of and within the Property that meets the requirements of State law for petitioned annexation for contiguous or noncontiguous areas, whichever is applicable. Necessary supporting documents shall include a certificate of title for the Property, current as of the date of submittal to the City, a metes and bounds description of the Property, a map of the Property that corresponds to the metes and bounds description of the Property, and any other information specifically requested by the City.
3. The City may terminate this Contract, and/or refuse to provide such service to any part of the Property, and/or void or deny permits to construct water and/or sewer lines to any part of the Property if the Developer does not comply with the annexation provisions of this Contract.
4. In the event the Property includes lots that have already been developed, or have already received building permits, Developer shall pay to the City the equivalent of the City's capital facility fees for such lots, calculated as of the date of execution of this Contract, unless the proposed development for the Project to be approved by City Council eliminates the already existing development from the Property. Such payment shall be made to the Department of Inspections prior to the approval of the first additional building permit requested within the Property, and prior to issuance of permits for construction of water and/or sewer lines within the Property.

APPENDIX B -PROJECT SPECIFIC PROVISIONS

1. Water service shall be provided as described in the Summary Utility Development Statement issued by the Department of Water Management dated April 16, 2024 (Exhibit 1). Water lines shall meet all City Requirements, including but not limited to size, design standards, loop feed requirements (with two waterline feeds constructed and operational prior to the subdivision of the Property into 100 or more residential lots), fire flow requirements, and system needs. There shall be no City participation in the cost. The Developer shall extend water lines through the Project to its boundaries as directed by the City to allow for future extension.
2. Sewer service shall be provided as described in the Summary Utility Development Statement issued by the Department of Water Management dated April 16, 2024 (Exhibit 1). All sewer Improvements, including size, location, and service area shall meet City Requirements. There shall be no City participation in the cost. The Developer shall extend sewer and easements through the Project to its boundaries as directed by the City to allow for future extensions. The Developer shall acquire all offsite sewer easements.
3. The Property is located within the Service Area for the Southeast Regional Lift Station established on May 18, 2015 pursuant to Durham Code section 70-50. The Developer shall pay the following Service Area Fees which Developer acknowledges serve to reimburse the City for services furnished by the City in designing and constructing the Southeast Regional Lift Station which is being constructed in part to serve the Development:

Single Family Residence	\$ 6,608.65/unit
Multi-Family and Non-Residential	\$ 18.36/Gallon of Average Daily Flow

This Service Area Fee shall increase 5% annually effective July 1 of each year. Payment of Service Area Fees shall be made at the time the sewer collection lines are permitted for construction. Payment of the Service Area Fee does not guarantee that said infrastructure shall be available by any particular date.

4. The City will make refunds to the Developer for connections made by subsequent property owners to City water, and/or sewer lines constructed by the Developer in a street, if any, in accordance with City Requirements. These refunds will be made to the Developer for a period of ten (10) years after the completion of the water and/or sewer line. After ten (10) years have expired, charges received for connecting to the water and/or sewer lines will not be refunded to the Developer. These refunds will be in an amount equal to the frontage charge collected, not to exceed one-half the average cost to the Developer per linear foot of pipeline installed.
5. The Developer shall pay frontage charges at the prevailing rate to the City for any street frontages within or adjacent to the Project where the Developer does not install a City water or sewer line. These frontage charges shall be paid to the City prior to the time that the Project's water or sewer lines are constructed (Section 70-17 of the City of Durham Code of Ordinances). Developer acknowledges that frontage charges are paid to the City as payment for the City's past investment in water and sewer line infrastructure that will serve the Project and also anticipated future maintenance and upgrades to this water and sewer line infrastructure.

6. The Developer shall pay water and/or sewer capital facility fees at the current rate as set by City Council for all new water and/or sewer connections to the City's water and/or sewer system. If the Project did not require the subdivision of land, the capital facility fees shall be paid to the City at the time water meters and/or sewer service connections are paid for. If the Project required the subdivision of land, then the capital facility fees shall be paid for prior to the issuance of a building permit for the Project. These requirements are consistent with N.C.G.S. §162A-213. Developer shall pay the City for the installation of water and/or sewer service laterals installed by the City (Durham City Code of Ordinances § 70-50). Developer acknowledges that these fees and charges are reimbursement to the City for services provided to the Project by the City and for the City's past investment in the City's water and wastewater treatment facilities and also anticipated future maintenance and upgrades to these facilities.

7. The Developer shall construct necessary Improvements to manage stormwater quantity, rate of runoff, and stormwater quality in accordance with City Requirements in effect at the time of site plan submission for each portion of the Project. Prior to submission of the first site plan within the Property, the Developer shall submit a stormwater plan that covers the entire Project and that addresses storm water quantity and quality as required under City Requirements and that proposes appropriate phasing of Improvements as part of such Plan. No site plan shall be issued until such stormwater plan is approved. In addition to compliance with City Requirements in effect at the time of site plan submission, the Developer shall ensure that any stormwater mitigation or offsite credits proposed as part of its stormwater plan is achieved within Durham County, or outside Durham County if none are available in Durham County, and meets any additional requirements regarding location that may exist in City ordinance at the time.

EXHIBIT 1



CITY OF DURHAM - SUMMARY UTILITY DEVELOPMENT STATEMENT

Department of Water Management
 1600 Mist Lake Drive | Durham, NC 27704
 919.560.4381 | F 919.560.4479
www.durhamnc.gov

Date: 4/16/24

PROJECT INFORMATION SUMMARY

Project Name: Doc Nichols Towns (Z2400015/BDG2400008)

Parcel ID(s) (not PINs): 193358

Project Description/Type, per RGD Section 5.0, and Unit Count:
 Townhomes; 25 units (2,000 gpm required fire flow)

UTILITIES STATEMENT

Per discussion with the applicant and review of the attached Utility Impact Analysis Questionnaire, the City of Durham Department of Water Management has determined the following utilities will be required to serve the proposed project:

GENERAL: The applicant may increase the proposed development by 5 units without triggering a new Summary Utility Development Statement.

WATER: The proposed project site is within the 615' pressure zone and the development will require one waterline connection. The water main shall be extended from 12-inch waterline in Doc Nichols Rd (see exhibit). All public water mains must be constructed within public ROW. Public waterlines under private streets or common areas are not permitted.

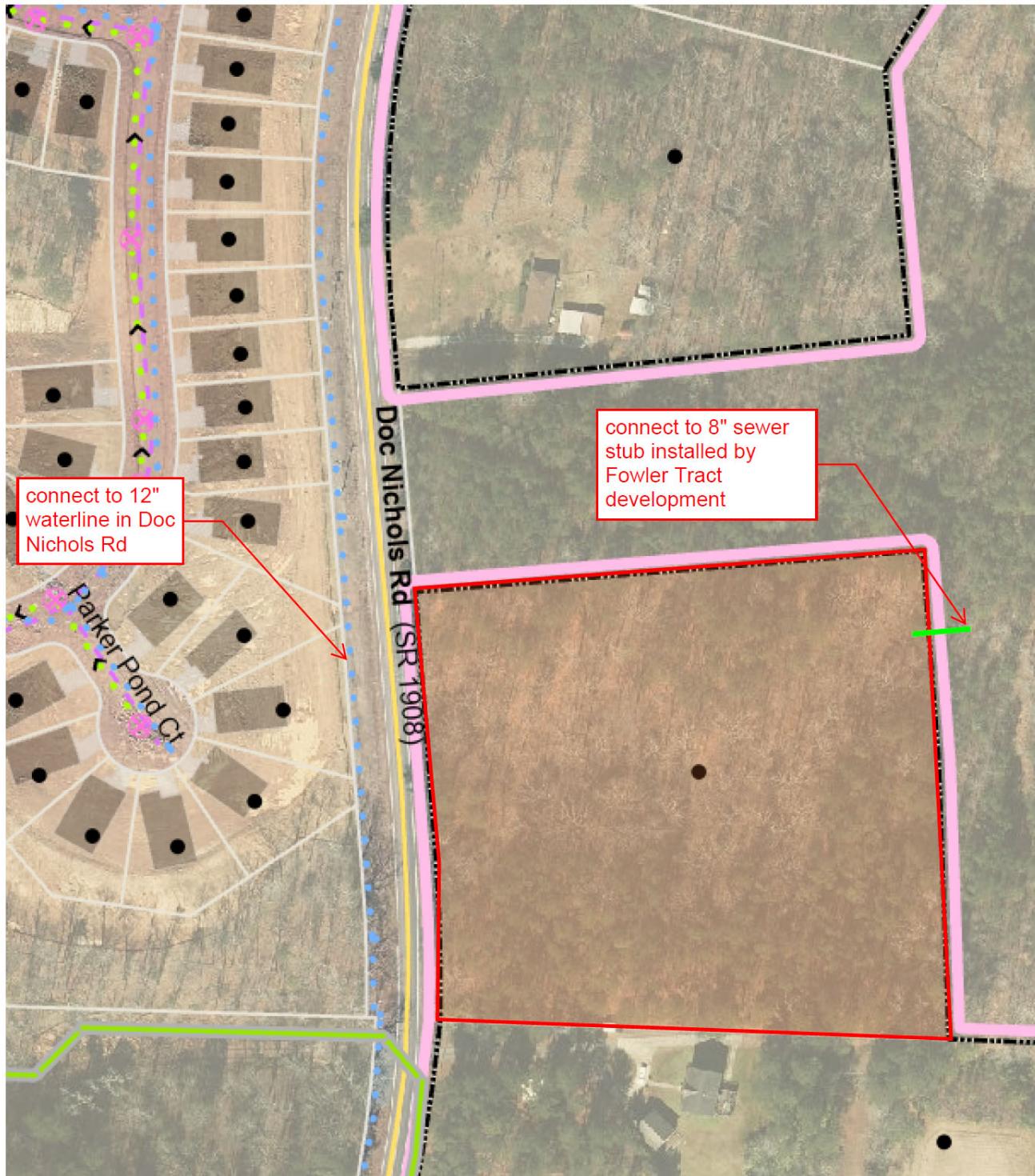
SEWER: The proposed project site is within the SRLS sewer basin and will be subject to the SRLS fee. Capacity is formally reserved at the Southeast Regional Lift Station when a sewer extension permit is approved by Public Works. The project shall extend a gravity sewer from the Fowler Tract development on the East (see exhibit). All public sewer mains must be constructed within public ROW. Public sewer lines under private streets or common areas are not permitted.

ADDITIONAL REQUIREMENTS

- Review and approval of a Lift Station PER is required before any lift station drawings will be reviewed
- Flow calculations are required for water meters 3-inch or greater
- Applicant is responsible for performing fire flow analyses to ensure that the required fire flow can be provided to each proposed hydrant
- Utility Extension Agreement required
- Reimbursement Agreement required

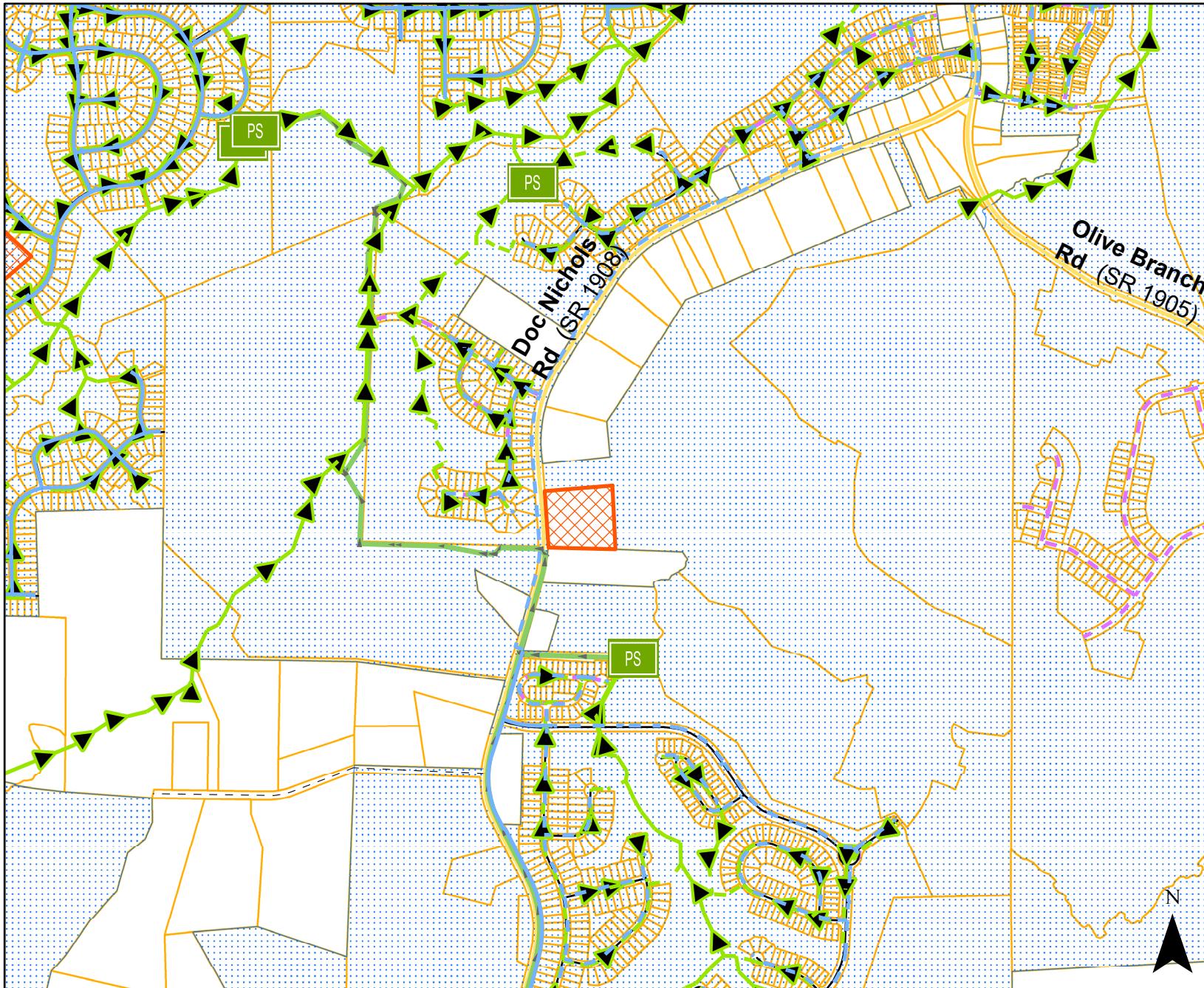
Signed:

Title: Director



Attachment H: Vicinity Utility Map

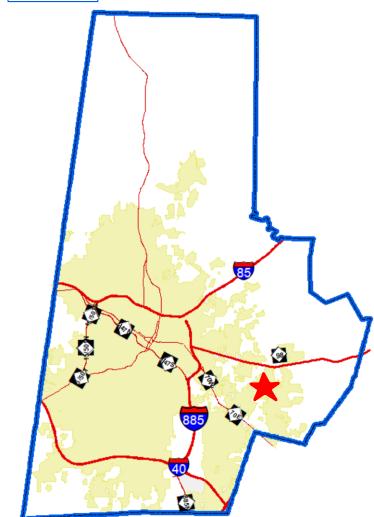
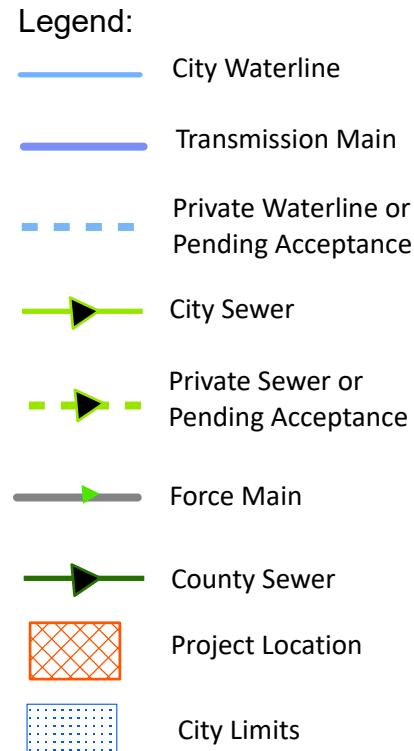
Z2400015 & BDG2400008 - Doc Nichols Towns



1,000 500 0 1,000 Feet

City of Durham Public Works

May 30, 2024



Cost-Benefit Impact Overview: BDG2400008 – Doc Nichols Townes

The estimated General Fund revenues generated from this annexation at buildout in FY25-26 are \$91,476. The estimated General Fund expenditures associated with providing City services at buildout are \$15,849. The estimated cumulative General Fund net gain to the City at buildout is \$72,058. These calculations do not include Impact Fee revenues, as these support Capital Improvement Projects. A cost-benefit analysis is attached that provides cost and revenue projections through FY2032-33. The chart below contains additional details regarding departmental revenue and expense projections.

Department/Type	Revenues	Expenses
Fire	No revenues are anticipated.	<p>A. Capital Expenses The following capital expenses will be required to support the annexation petition over a 10-year period, post-construction: Cumulative FY 24 through FY 33: The following cumulative capital expenses will be required to support the annexation petition over a 10-year period, post-construction: \$9,426.</p> <p>B. Equipment & Operational Expenses The following equipment-related costs and purchases will be required to support the annexation petition over a 10-year period, post-construction: Cumulative FY 24 through FY 33: The following cumulative equipment and operational-related costs and purchases will be required to support the annexation petition over a 10-year period, post-construction: \$4,178.</p> <p>C. Personnel Expenses The following personnel costs will be required to support the annexation petition over a 10-year period, post-construction: Cumulative FY 24 through FY 33: The following cumulative personnel costs</p>

		will be required to support the annexation petition over a 10-year period, post-construction: \$15,264.
Planning	The department anticipates receiving \$13,391 in development review fees for this requested annexation.	No additional expenses are anticipated.
Police	No additional revenues are anticipated.	<p>A. Capital Expenses The following cumulative capital expenses will be required to support the annexation petition over a 10-year period, post-construction: \$0.00.</p> <p>B. Equipment & Operational Expenses The following cumulative equipment and operational-related costs and purchases will be required to support the annexation petition over a 10-year period, post-construction: \$0.00.</p> <p>C. Personnel Expenses The following cumulative personnel costs will be required to support the annexation petition over a 10-year period, post-construction: \$81,336.</p>
Public Works	The department expects increased fees and reimbursements in proportion to the linear feet of streets added to the system. One-time Inspections and development review fees that apply to the build only are not included. Additional revenues over the analysis period are estimated at \$114.	While there is not expected to be any direct repaving or other long-term rebuild on these streets in the short term, there may be routine utility cuts, patching, etc., required depending on when these streets are accepted and their condition at that point. There will also be winter weather costs, could be potholes, etc., as with any other street. Total proportional costs at the current level of services over the analysis period total \$8,596 including CIP.

Solid Waste	<p>The following revenues will be collected with this annexation petition: \$5,040.</p>	<p>A. Capital Expenses The following cumulative capital expenses will be required to support the annexation petition over a 10-year period, post-construction: \$5,397 - debt service for portion of additional vehicles required.</p> <p>B. Equipment & Operational Expenses The following cumulative equipment and operational-related costs and purchases will be required to support the annexation petition over a 10-year period, post-construction: \$3,534 – roll out carts \$19,951 - incremental costs of vehicle fuel and maintenance costs; garbage disposal costs; and recycling and yard waste processing costs.</p> <p>C. Personnel Expenses The following cumulative personnel costs will be required to support the annexation petition over a 10-year period, post-construction: \$5,597 - portion of additional crews required.</p>
Transportation	<p>The City anticipates collecting approximately \$383 in Paratransit revenues and \$243 in Powell bill revenues over the 10-year analysis period.</p>	<p>The City anticipates total costs associated with the project over the 10-year analysis period as follows: \$5,417 for street lighting, \$235 for signs, \$108 for street markings, and \$4,976 for Paratransit service.</p>

COST-BENEFIT ANALYSIS
BDG2400008 – Doc Nichols Townes

PROJECTED ANNEXATION TAX REVENUES										
GENERAL FUND REVENUES	FY2023-24	FY2024-25	FY2025-26	FY2026-27	FY2027-28	FY2028-29	FY2029-30	FY2030-31	FY2031-32	FY2032-33
Personal & Real Property Tax	\$ 930	\$ 958	\$ 55,491	\$ 57,156	\$ 58,871	\$ 60,637	\$ 62,456	\$ 64,329	\$ 66,259	\$ 68,247
Sales Tax	-	-	19,806	20,000	20,196	20,394	20,594	20,796	21,000	21,206
Beer & Wine Tax	-	-	255	257	260	262	265	268	270	273
Gas Tax	-	-	1,078	1,088	1,099	1,110	1,121	1,132	1,143	1,154
Utility Franchise Tax	-	-	742	750	757	764	772	779	787	795
TOTAL TAX REVENUES	930	958	77,372	79,251	81,183	83,167	85,207	87,304	89,459	91,675
PROJECTED ANNUAL DEPARTMENTAL REVENUES										
Fire	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Planning	-	-	-	13,391	-	-	-	-	-	-
Public Works	-	-	-	13	14	14	14	14	15	15
Solid Waste	-	-	630	630	630	630	630	630	630	630
Transportation	-	70	70	70	70	70	70	70	70	70
TOTAL ANNUAL REVENUES	-	70	14,104	713	713	714	714	714	715	715
TOTAL GENERAL FUND REVENUES	930	1,027	91,476	79,964	81,896	83,881	85,921	88,018	90,174	92,389
TOTAL REVENUES RECEIVED	930	1,027	91,476	79,964	81,896	83,881	85,921	88,018	90,174	92,389
PROJECTED ONGOING DEPARTMENTAL EXPENDITURES										
GENERAL FUND EXPENDITURES	FY2023-24	FY2024-25	FY2025-26	FY2026-27	FY2027-28	FY2028-29	FY2029-30	FY2030-31	FY2031-32	FY2032-33
Fire	-	-	1,918	2,014	2,115	2,220	2,331	2,448	2,570	2,699
Police	2,468	2,468	9,550	9,550	9,550	9,550	9,550	9,550	9,550	9,550
Public Works	-	-	939	974	1,011	1,050	1,090	1,132	1,176	1,222
Solid Waste	-	-	2,851	2,943	3,037	3,135	3,236	3,340	3,448	3,559
Transportation	-	591	591	591	1,494	1,494	1,494	1,494	1,494	1,494
TOTAL ONGOING EXPENDITURES	2,468	3,059	15,849	16,072	17,207	17,449	17,701	17,964	18,238	18,523
GAIN/(LOSS) GENERAL FUND ONGOING EXPENSES	(1,538)	(2,032)	75,627	63,893	64,689	66,432	68,220	70,054	71,936	73,866
Tax Rate Equivalent (in cents) for General Fund Net	(0.00)	(0.00)	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02
Cumulative GAIN/(LOSS)	(1,538)	(3,570)	72,058	135,950	200,639	267,072	335,292	405,346	477,282	551,148
PROJECTED CAPITAL AND ONE-TIME EXPENDITURES										
Police	-	-	-	-	-	-	-	-	-	-
Fire	-	-	1,127	-	-	-	-	-	-	-
Public Works	-	-	-	-	-	-	-	-	-	-
Solid Waste	-	-	4,209	675	675	675	675	675	675	675
Transportation	-	-	-	-	-	-	-	-	-	-
Planning	-	-	-	-	-	-	-	-	-	-
TOTAL CAPITAL AND ONE-TIME EXPENDITURES	-	-	5,336	675						
TOTAL GENERAL FUND EXPENDITURES	2,468	3,059	21,184	16,746	17,881	18,123	18,376	18,639	18,912	19,198
GAIN/(LOSS) GENERAL FUND WITH CAP/ONE-TIME	(1,538)	(2,032)	70,291	63,218	64,015	65,758	67,546	69,380	71,261	73,191
Tax Rate Equivalent (in cents) for General Fund Net	(0.00)	(0.00)	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02
Cumulative GAIN/(LOSS)	(1,538)	(3,570)	66,722	135,276	199,965	266,397	334,617	404,672	476,608	550,474
PROJECTED CAPITAL IMPROVEMENT PROJECTS (CIP)										
Pro-rated costs of capital projects	-	-	9,688	273	284	296	309	323	337	352
TOTAL CAPITAL IMPROVEMENT PROJECTS	-	-	9,688	273	284	296	309	323	337	352
GAIN/(LOSS) WITH CIP (ALL COSTS)	(1,538)	(2,032)	60,604	62,946	63,730	65,461	67,236	69,057	70,925	72,840
Tax Rate Equivalent (in cents) for CIP only	(0.00)	(0.00)	0.01	0.02						
Cumulative GAIN/(LOSS)	\$ (1,538)	\$ (3,570)	\$ 57,034	\$ 135,003	\$ 199,681	\$ 266,101	\$ 334,308	\$ 404,349	\$ 476,271	\$ 550,122

NOTES:

1. Property tax values are as of:

7/1/2023

2. Assume one and one-half vehicles per household @

per vehicle

3. Property tax rate, Beer and Wine Tax, Gas Tax and Utility Franchise Tax are FY24 Actuals.

6. One penny on the current tax rate =

4,128,791

4. FY2024 Property tax rate for the City =

\$ 0.005577

5. Assumed tax growth per year =

3.00%

7. Assumed annual PS & operational increase

2.00%