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June 23, 2025

TO: Megan Morgan, Currituck County Attorney

FROM: Casey Varnell, Attorney for Commercial Ready-Mix Products

RE: PROPOSED RE-ZONING APPLICATION/SPOT-ZONING ANALYSIS

Dear Mrs. Morgan:

Our firm represents Commercial Ready-Mix Products (hereinafter "CRMP") with regard to the proposed re-zoning application relative to a parcel of land located in Poplar Branch. The parcel ID number for the parcel is 008300000050000 and the Global PIN is 9904-47-1630. The re-zoning request pertains to 10.50 acres of the foregoing parcel. The request seeks to convert this particular acreage from an AG zoning designation to a C-HI zoning designation. The intended use of the re-zoned area will be to construct a concrete plant in an ideal location to assist with construction of the Mid-Currituck County Bridge. The purpose of this correspondence is to provide my professional opinion concerning why CRMP's re-zoning application does not amount to illegal spot-zoning.

In every alleged spot zoning case, our courts apply a two-part test in order to determine if the spot zoning is lawful. Specifically, the trial court must consider "(1) did the zoning activity in the case constitute spot zoning as our courts have defined that term; **and (2) if so**, did the zoning authority make a clear showing of a reasonable basis for the zoning." *Chrismon v. Guilford County*, 85 N.C. App. 211, 354 S.E.2d 309 (1987). I will initially address the first prong of the above-quoted analysis, followed by an analysis of the second test prong.

DEFINITION OF SPOT-ZONING

In researching case law pertinent to the definition of "spot-zoning", it is my opinion that my client's request does not qualify as "spot-zoning" as a matter of law. My rationale for the foregoing opinion is as follows:

The definition of "spot-zoning", as per *Blades v. City of Raleigh*, 280 N.C. 531, 546, 187 S.E.2d 35, 43 (1972), is:

> "A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract **owned by a single person** and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."

This definition has been interpreted time and again by our High Courts, with a strict focus on the "single owner" requirement. Said another way, the North Carolina Supreme Court and Court of Appeals have affirmed that as a pre-requisite to "spot-zoning", the property subject of the re-zoning request must be under singular ownership. Our Courts have ultimately held that there are very limited exceptions to this definitional requirement, with ownership by a husband and wife being one such exception.

To aid in emphasizing this rationale, I would point to the North Carolina Court of Appeals case cited as *Oregon Hill Protecting Property Rights v. County of Rockingham*, 242 N.C. App. 280, 774 S.E.2d 902 (2015). In the *Oregon Hill* case, a father and a son jointly owned a parcel of land upon which re-zoning was requested. The dispute at the appellate level, *inter alia*, was over whether a request to re-zone property owned by a father and son met the definition of "spot-zoning" when applying the "single owner" requirement. The *Oregon Hill* Court confirmed that a father and son relationship did not meet the "single ownership" requirement and, as a result, the re-zoning request could not be classified as "spot-zoning" as it did not meet the court-issued definition of the same.

The parcel of land subject of my client's application is owned by seven (7) people per the public record, being Jane Harvey, Raymond Midgett, Suzanne Lea Midgett, Russell A. Midgett, Edward Markert, James Markert, and Jessie Rivers. Each of these individuals are heirs of either James Midgett or Mildred Markert, and none are married to the other. As a result, and using the legal standard that has been and is currently applied by our Courts, I do not believe my client's application would meet the requisites of the legal definition of "spot-zoning". As such, it is my opinion that my client's request for re-zoning cannot be challenged as being "spot-zoning" as a matter of law.

RATIONALE BASIS

Assuming *arguendo*, if my client's re-zoning application does meet the definition of "spot-zoning", it is my opinion that it cannot be considered *illegal* "spot-zoning". When adopting a spot zone, a local government has an obligation to establish there is a reasonable public policy basis for

doing so. The *Chrismon* case sets forth the factors that are to be considered when making this determination, and the same have been codified within N.C. Gen. Stat. 160D and the Currituck County Unified Development Ordinance. Those factors are as follows:

1. The size and physical attributes of the site;
2. The benefits and detriments to the landowner, the neighbors, and the community;
3. How the actual and previously permitted uses of the site relate to newly permitted uses;
4. Any changed conditions warranting the amendment; and
5. Other factors affecting the public interest.

(*See Chrismon v. Guilford County*, 85 N.C. App. 211, 354 S.E.2d 309 (1987).

A. Size and physical attributes of the site.

The 10.50-acre parcel subject of my client's re-zoning application is part of a 147.50-acre parent parcel. If approved, this will result in the creation of a residual parcel of approximately 137 acres. The residual parcel will remain agriculturally zoned, as my client's application does not affect this leftover acreage in any manner. Thus, the impact of my client's proposed use under the new zoning regime will have little to no impact on the manner in which the parent parcel is currently being utilized, as the overwhelming majority of said parcel will remain in its current state.

Further, the location of the subject parcel, for all purposes related to concrete production and installation, is perfectly situated in proximity to the proposed construction site of the Mid-Currituck County Bridge. Restated, the subject parcel is located close enough to the proposed bridge site to allow for the efficient production and installation of the quality of concrete required by State standards. Currently, no concrete plant exists that is situated in such a manner.

B. Benefits/Detriments to Landowner/Neighbors/Community.

While the landowners and applicant will receive obvious benefits from the approval of my client's re-zoning application, the major site plan review process will aid in ensuring that such benefits are not to the detriment of the general public. These safeguards will result from the imposition of conditions determined to be appropriate by the TRC Staff, State regulatory agencies (ex. NCDOT), or the Board of Commissioners. Moreover, the neighboring property immediately to the south of the subject parcel is currently utilized as a motorsport racing park and event site. Events conducted on this neighboring property include racing events, fairs, and carnivals. Given the sporadic and short-term nature of these events, however, my client's proposed re-zoning will have no impact on this neighboring property.

It is important to note that there are no residential communities, or even residences for that matter, located remotely close to the subject parcel. The nearest residence is over 3,600 feet from the subject parcel, with the nearest residential district existing almost 6,000 feet away, across the swamp. This ensures that there will be no impact to the value of any residential properties, which is often the case with illegal "spot-zoning" applications. Given the concrete specification criteria by NCDOT, potential locations for a concrete plant are limited. Further,

given the criteria for Heavy Industrial Zoning and standards for heavy manufacturing, potential acceptable locations are even more limited. By way of example, the State of North Carolina has many regulations affecting the manufacture of concrete, with one such regulation being temperatures - the higher the temperature the less time there is for placement, and this limited timeframe starts when the load is batched and runs until it is placed in the form. As a result, close proximity of a concrete plant to a construction site is critical.

It is my belief that the overall community will be greatly benefited if my client's re-zoning application is approved, as such approval will be instrumental in ensuring for the proper construction of the much-needed bridge project. Also, the re-zoning approval would assist in reducing the distances large, concrete-related vehicles and equipment travel on the County's roads during the construction of the bridge, creating less impact on everyday commuters within the County.

C. Actual/Previous Permitted Uses.

The actual and currently permitted use being conducted on the subject parcel is entirely agricultural in nature. Practically speaking, there are no allowed uses in **any other** zoning district that can be compared to a farming use given the nuanced nature of the farming industry. However, it is critical to remember that my client's application will only affect 10.50 acres of a very large parent parcel, leaving approximately 137 acres undisturbed and suitable for continued agricultural purposes.

D. Changed Conditions Warranting Amendment.

As most everyone knows, the litigation concerning the Mid-Currituck County Bridge project has been disposed of, paving the way for commencement of construction. This has come after a long legal battle and creates a change in the community which warrants the requested zoning amendment. The entire basis for my client's re-zoning application is to place itself in position to construct a concrete plant in a location which is proximate enough to the proposed bridge site to allow for the proper production and installation of concrete in conjunction with said construction. The subject parcel exists in a location which is more than ideal to achieve this precise objective, while also complying with the County's zoning criteria as described within the UDO. And, as noted, other potential locations for a concrete plant are extremely limited due to regulations enacted by other governmental agencies.

E. Public Interest/Conformity With Land Use Plan

For the reasons stated above, it is my opinion that there are no matters of public interest which are affected in such a manner as to warrant denial of my client's request for re-zoning on the basis of "spot-zoning". This has also been evidenced by lack of receipt of any adversarial and/or negative feedback during the mandatory Community Meeting, with notice thereof being advertised, posted, and sent to property owners within 500 feet of the parent tract. Nor has the Applicant been made aware of any other negative effect on any public interest relative to the proposed application. In actuality, approval of my client's request will greatly benefit the public interest as it would

provide the vessel enabling the completion of a major construction project that serves a significant public good.

Moreover, the approval of my client's application will further the purpose(s) of the Currituck County Unified Development Ordinance (hereinafter "UDO"). One of the fundamental purposes of the UDO is "to implement the policies and objectives of county-adopted plans addressing the county's growth and development." (*See* Unified Development Ordinance, Zoning Map & Planning Manuals - Currituck County) In that the State of North Carolina is in ultimate control of the construction of the Mid-Currituck County Bridge, it must be assumed that the bridge will be constructed. Without doubt, the construction of the bridge will increase the growth and development of Currituck County. Given the bridge's proposed location in an area of sparce development, it is a near certainty that significant future development around the bridge site will be proposed. It is also extremely likely that most of this proposed future development will greatly benefit the citizens and tourists of Currituck County by providing goods, services, jobs, etc., which are customary to main thoroughfare junction sites. The re-zoning requested by my client is simply an effort to aid in the proper completion of the above-referenced project which, in turn, will benefit the overall County. It should also be noted that approval of my client's application will help to provide more convenient, efficient, and high-quality concrete services related to future development which is sure to follow the bridge project.

As stated above, the current zoning designation of the parcel subject of my client's zoning request is AG, otherwise referred to as the "Agricultural District". Per the Currituck County UDO, the AG district is:

> "...intended to preserve and protect active agricultural uses, farmlands, and other open lands for current or future agricultural use. The district accommodates small-scale residential uses and allows farmers to capture a portion of the land's development potential through special provisions for conservation subdivisions that allow a portion of a tract or site to be developed with single-family homes while the balance of the site is left as open lands available for continued agricultural use."
>
> (*See* Currituck Unified Development Ordinance 2025; Chapter 3.3.3., Agricultural (AG) District)

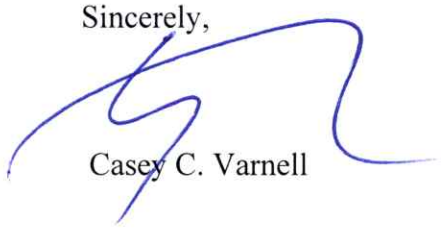
The small acreage encompassed by my client's proposed application for re-zoning will not disturb the agricultural use and farmland on 137 acres of a nearly 148-acre parcel. This is evidence that my client's objective is to utilize only what the anticipated industrial use requires, thus preserving as much agricultural land as is practically possible. Just as with the construction of single-family homes, being a permitted use within the AG District, my client's request affects only a small portion of the parent tract, leaving the balance of the overall site available for continued agricultural use. The small-scale development which would be allowed if my client's re-zoning application is approved, though not residential, is precisely the level of non-agricultural development which is contemplated by the stated purpose of the AG District.

It should also be noted that the subject parcel is located within the G-1 land use classification as described by the Imagine Currituck 2040 Vision Plan which supports agricultural lands and compatible low-density rural residential growth that may be supported by limited small scale neighborhood retail, including County facilities. Further, the subject parcel is located outside of the planned roadway approach as found on NCDOT's website regarding the Mid-Currituck Bridge. And, while compatible within the G-1 classification and the surrounding AG zoning, the subject parcel is situated such that if the County so chose to update zoning map and/or land use classifications, it can be done in concert with the C-HI and proposed use, without limitation.

Given the foregoing, and on behalf of my client, we would respectfully request that the Currituck County Planning Staff make a recommendation to the Board of Commissioners and Planning Board that CRMP's application for re-zoning is not, at a minimum, illegal "spot-zoning".

We thank you immensely for your consideration of this correspondence.

Sincerely,



Casey C. Varnell