



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

January 22, 2003

MEMORANDUM

TO: Montgomery County Planning Board

VIA: John A. Carter, Chief ^{JAC}
Community-Based Planning Division

FROM: ^{CM} Callum Murray, Potomac Team Leader
Community-Based Planning Division

SUBJECT: Application to File a Corrective Map Amendment (G-807) for Fortune Parc and Lots 40 and 41, Wheel of Fortune, Potomac Subregion

RECOMMENDATION: Request approval to file Corrective Map Amendment G-807 for Fortune Parc and Lots 40 and 41, Wheel of Fortune, at the intersection of I-270 and Montrose Road, Potomac Subregion. The Amendment adjusts O-M, I-3, and R-90 zoning boundaries to correspond with corrected property lines identified through a new property survey and title search.

BACKGROUND:

On March 5, 2002, the County Council, sitting as the District Council, approved the Potomac Subregion Master Plan by Resolution No.14-1170. On April 11, 2002, the Full Commission adopted the approved Potomac Subregion Master Plan by Resolution M-NCPPC No. 02-05.

On October 15, 2002, the County Council approved Sectional Map Amendment (SMA) G-800, with three technical changes, by Resolution No. 14-1468. The SMA application covered approximately 40,583 acres, and reclassified approximately 890 acres, with the remaining acreage reconfirmed as currently zoned.

The Sectional Map Amendment implemented thirteen zoning recommendations proposed by the Potomac Subregion Master Plan, including recommendations for the Fortune Parc property, which was reclassified from R-90 and R-200 to the I-3 Zone. The SMA, prepared on newly digitized maps, also made a total of forty-one (41) corrective amendments to adjust zoning boundaries to correspond to property lines. The Fortune Parc Limited Partnership, the owners of Fortune Parc at the time, supported the Sectional Map Amendment.

The Potomac Subregion Master Plan contemplated that the Fortune Parc property would be developed in tandem with the adjacent Lots 40 and 41, owned by the Lot 40 Limited Partnership and zoned O-M. The Fortune Parc ownership entity is now Fortune Parc Development Partners, while Foulger-Pratt is now the contract purchaser of Lots 40 and 41. Foulger-Pratt and the owners and developers of Fortune Parc have included Lots 40 and 41 in the proposed Fortune Parc development, and have submitted a preliminary plan of subdivision (1-03029), currently under review by planning staff.

As part of due diligence, the contract purchasers commissioned a new property survey which found numerous anomalies and inaccuracies in previous surveys of the property, which is composed of 20 different parcels. The contract purchasers also commissioned a title search and reviewed previous agreements among the Fortune Parc Development Corporation, the Lot 40 Limited Partnership, and the State Highway Administration regarding land purchases and exchanges, and the construction of an access road system and underpass from Fortune Parc to Montrose Road and I-270. The title search located errors in the State of Maryland tax records regarding the ownership of fragments of the affected properties, the same records on which the Potomac Subregion Sectional Map Amendment was based.

Fortune Parc Development Partners and Foulger-Pratt have requested that the Planning Board initiate a Corrective Map Amendment to rectify these technical errors (Attachment 1). The Lot 40 Limited Partnership has consented to the inclusion of Lots 40 and 41 in any action to correct the errors to the zoning map (Attachment 2). Attachment 3 indicates the location of Fortune Parc while Attachment 4 depicts the relevant section of the existing zoning map. Attachments 5 and 6 illustrate the proposed corrections, which are as follows:

1. Portions of the north and south parcels of Fortune Parc along Montrose Road, incorrectly shown as right-of-way, are proposed as I-3, rather than R-90.
2. The northern boundary of Lots 40 and 41 is incorrectly depicted. The adjacent section of Fortune Parc is proposed as I-3, rather than O-M and R-90.
3. A portion of Lot 41 along Montrose Road, incorrectly shown as right-of-way, is proposed as O-M, rather than R-90.
4. The western portion of Lot 40, including a section of the Montrose Road/I-270 Access Road, and incorrectly shown as right-of-way, is proposed as O-M, rather than R-90.

The total area of these four corrections is approximately 79,979 square feet, or 1.84 acres out of a total gross area of 54.8 acres (including the south parcel of 3.43 acres.) There will be no change to the development density, FAR, total square footage, or maximum number of dwelling units specified by the Master Plan as a consequence of the Corrective Map Amendment. Specific dedication requirements as part of the pending preliminary plan of subdivision have yet to be decided, but it is likely that a significant portion of the parcel on the south side of Montrose Road will be dedicated by the applicants to comply with the Master Plan recommended right-of-way.

CONCLUSION:

Had the property owners or planning staff been aware of the earlier survey inaccuracies or property tax record errors, there is little doubt that the proposed classifications would have been included with the corrective amendments in Sectional Map Amendment G-800 in October 2002. Planning staff therefore recommends that Corrective Map Amendment G-807 be filed with the County Council with a Planning Board recommendation of approval for the following reasons:

1. There were technical errors in Sectional Map Amendment G-800.
2. The proposed technical adjustments to zoning classification boundaries are proper to correct the errors.
3. The proposed zoning pattern conforms with the land use recommendations of the Master Plan.

CM:ha: g:\murray\G-807.doc

Attachment 1	Linowes and Blocher letter of January 7, 2003
Attachment 2	Abrams, West & Storm, P.C. letter of December 30, 2002
Attachment 3	Location Map, Fortune Parc
Attachment 4	Existing Zoning, Fortune Parc
Attachment 5	Proposed Zoning, Fortune Parc
Attachment 6	Corrective zoning exhibit submitted by property owner

LINOWES AND BLOCHER LLP

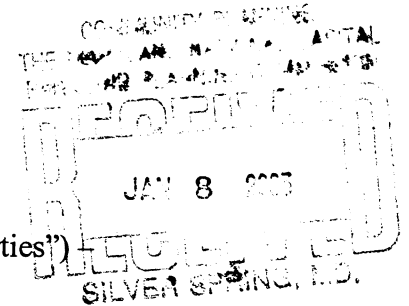
ATTORNEYS AT LAW

1010 Wayne Avenue, Tenth Floor
Silver Spring, MD 20910-5600
301.588.8580
Fax 301.495.9044
Website: www.linowes-law.com

January 7, 2003

Barbara A. Sears
301.650.7057
bas@linowes-law.com

Mr. Callum Murray
Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910



Re: Fortune Parc and Lots 40 and 41, Wheel of Fortune (the "Properties")
Corrective Map Amendment

Dear Callum:

Thank you for taking the time to meet with Scott Wallace earlier this week regarding the above matter. As discussed at your meeting, this letter will confirm that you will be initiating a Corrective Map Amendment ("CMA") pursuant to Section 59-H-10.1, *et seq.*, of the Montgomery County Code (the "Code") to correct certain technical mapping errors and omissions to the Zoning Map for the Properties, which are located at the intersection of Montrose Road and I-270. As discussed, these mapping errors appear to have been caused by several factors, including errors in the State tax records regarding the ownership of the affected portions of the Properties and previous inaccurate surveys of the Properties that have now been corrected through more advanced computer mapping programs. In particular, we understand the CMA will address the following technical mapping errors and omissions:

1. Portions of the north and south parcel of Fortune Parc along Montrose Road are not shown as zoned I-3.
2. The section of Fortune Parc adjacent to the northern boundary of Lots 40 and 41 is not shown as zoned I-3.
3. A portion of Lot 41 along Montrose Road is not shown as zoned O-M.
4. The western portion of Lot 40, which includes a section of the Montrose Road/I-270 Access Road, is not shown as zoned O-M.

The corrections needed are shown on the enclosed plan prepared by VIKA and labeled "Corrective Zoning Exhibit." Also enclosed for your use is an ALTA survey of Fortune Parc prepared by Loiederman Soltesz Associates and a draft ALTA survey of Lot 40 and Lot 41,

Mr. Callum Murray

January 7, 2003

Page 2

which is being prepared by VIKA for the transfer of Lots 40 and 41 to Foulger-Pratt Companies, Inc. as discussed below.

Fortune Parc Development Partners is the owner of the Fortune Parc property and Lot 40 Limited Partnership is the owner of Lots 40 and 41. Foulger-Pratt is the contract purchaser of Lot 40 and Lot 41. These parties request that the Planning Board undertake the necessary corrections as soon as possible to facilitate the development of Fortune Parc and the transfer of Lots 40 and 41. (As you are aware, we represent Fortune Parc Development Partners and Foulger-Pratt, and Lot 40 Limited Partnership has consented in writing to including Lots 40 and 41 in any action to correct the errors to the zoning map regarding its property.) Further, and as you are also aware, Foulger-Pratt and the owners and developers of Fortune Parc have included Lots 40 and 41 in the proposed Fortune Parc development, for which a Preliminary Plan of Subdivision is currently under review by Planning Board Staff. Accordingly, we hope that the Corrective Map Amendment process can proceed as expeditiously as possible. In that regard, we understand the process for approval of a CMA is as follows:

- An application for a CMA must be filed by the Montgomery County Park and Planning Commission ("M-NCPPC"), or its designee, and must include:
 - (1) A description of each parcel of property proposed for adjustment.
 - (2) A map depicting the existing zoning for each property and the proposed zoning adjustment.
 - (3) A statement describing the rationale in support of the zoning adjustments.
- The M-NCPPC must prepare and submit a report and recommendation to the County Council concerning the CMA.
- The County Council must conduct a public hearing on the CMA and publish notice of the public hearing at least 30 days prior to the date of the hearing.
- The Council must act on the CMA, in open session, within 60 days of the public hearing. We would hope that the M-NCPPC would join us in encouraging Council staff to shorten this time frame as much as possible.

Mr. Callum Murray

January 7, 2003

Page 3

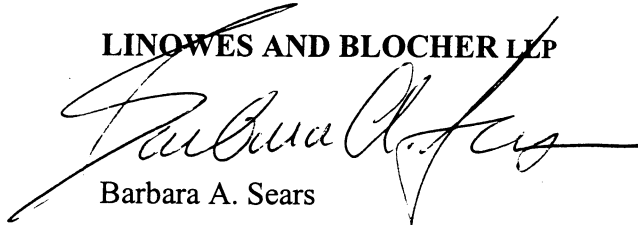
- Following its decision on the CMA, the Council will prepare an opinion setting forth its findings and conclusions in support of its resolution to approve or its denial. A copy of the opinion must be mailed to all property owners included in the CMA and to the M-NCPPC.

It is our understanding that you will be preparing the required CMA application materials upon receipt of this letter and filing the materials with the County Council. Thereafter, it is our understanding that you will schedule a hearing on the CMA before the Planning Board on the earliest possible date (and by the end of the month, if possible). Following the Planning Board's hearing on the CMA, as required by the Code, the Planning Board's recommendation will be transmitted to the County Council. You will then coordinate with Council Staff regarding the scheduling of a public hearing on the CMA before the Council and any subsequent Council worksessions and action.

If it would be of assistance to you, we are willing to prepare any of the required application materials or other requirements for the CMA for your use. We very much appreciate your help and assistance in this matter.

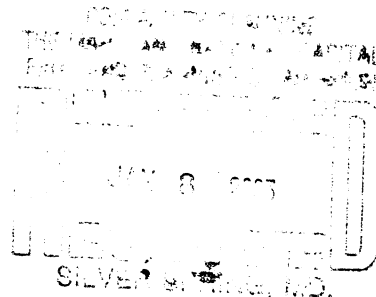
Very truly yours,

LINOWES AND BLOCHER LLP



Barbara A. Sears

cc: Mr. Rob Truland
Mr. Sven Sahkul
Mr. Brent Pratt
Mr. Bryant Foulger
Mr. Terry Eakin
Mr. Wyndham Robertson
Mr. Chuck Irish
Evan Novenstein, Esq.
Stan Abrams, Esq.
Scott C. Wallace, Esq.



ATTACHMENT 2

ABRAMS, WEST & STORM, P.C.

KENNETH R. WEST
STANLEY D. ABRAMS
HARRY C. STORM
CATHY G. BORTEN
JAMES L. PARSONS, JR.

PRACTICING IN MARYLAND AND
THE DISTRICT OF COLUMBIA

ATTORNEYS AT LAW

SUITE 760N

4550 MONTGOMERY AVENUE

BETHESDA, MARYLAND 20814-3304

(301) 951-1550

FAX: (301) 951-1543

M. GREGG DIAMOND
OF COUNSEL

WRITER'S DIRECT DIAL NUMBER
(301) 951-1540
EMAIL "sabrams@awsdlaw.com"

December 30, 2002

Barbara Sears, Esq.
Scott Wallace, Esq.
Linowes & Blocher
1010 Wayne Avenue, Tenth Floor
Silver Spring, MD 20910-5600

**RE: Lots 40 and 41/7801 Montrose Road
Correction to Zoning Map**

Dear Barbara:

In response to the letter of December 23, 2002 and conversation with Scott Wallace of your office regarding the apparent O-M and I-3 zoning designation omissions from the new zoning maps for the above referenced areas, we agree that these errors must be corrected. The areas in question were rezoned under the approvals for applications G-634 & G-669 and site plans were approved at densities which included these areas in supporting the density calculations.

In fact our negotiations and agreement with SHA with respect to the access road from Montrose Road were based upon a dedication rather than a fee conveyance to SHA in order to continue to use that area in our density calculation for the proposed office building. I have enclosed a copy of the first page of the SHA Agreements along with the attachments for each agreement.

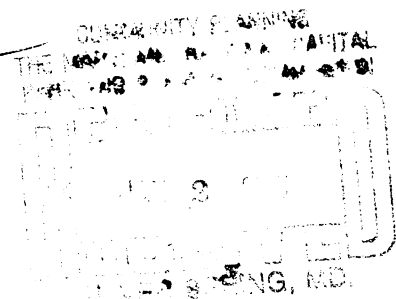
Rather than duplicate our efforts to bring about these corrections we concur and support your efforts with the planning commission to correct the zoning maps. If you require additional assistance please let me know.

Sincerely,


Stanley D. Abrams

SDA:dw

cc: Richard Cohen
Callum Murray



City of Rockville

Tower Oaks

Fortune Parc

I-270

LOT #40

LOT #41

MONTROSE

ROAD

ROAD

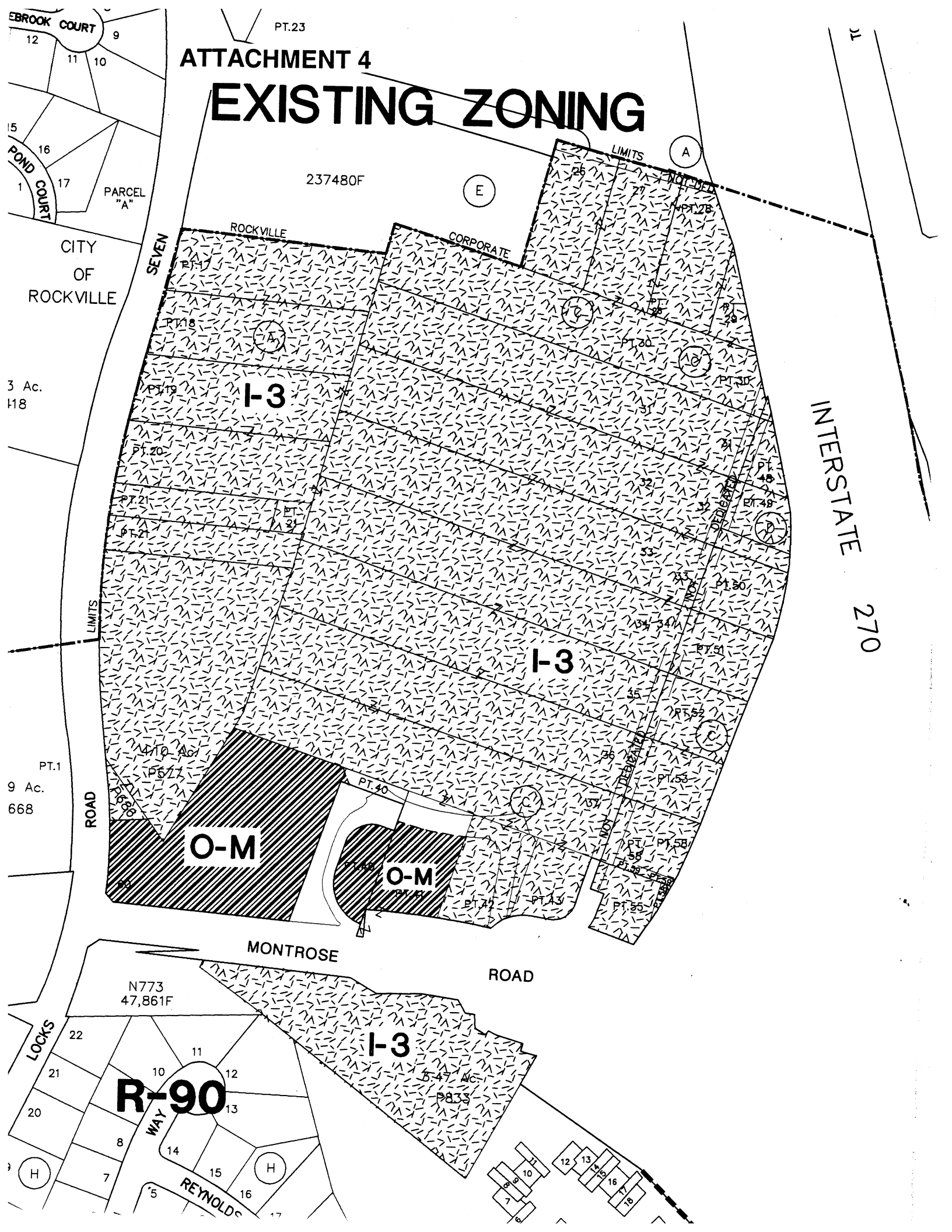
LOCKS

SEVEN

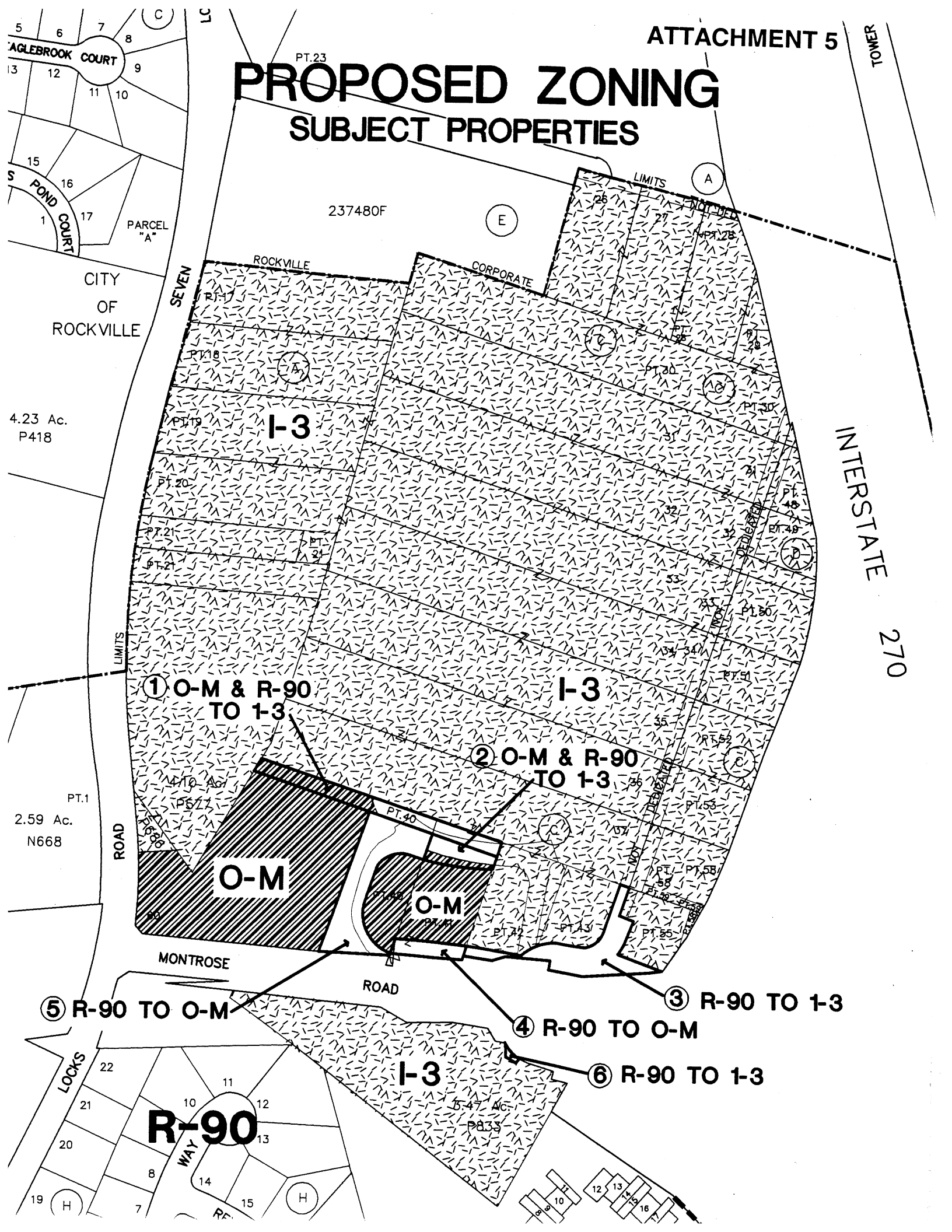


ATTACHMENT 4

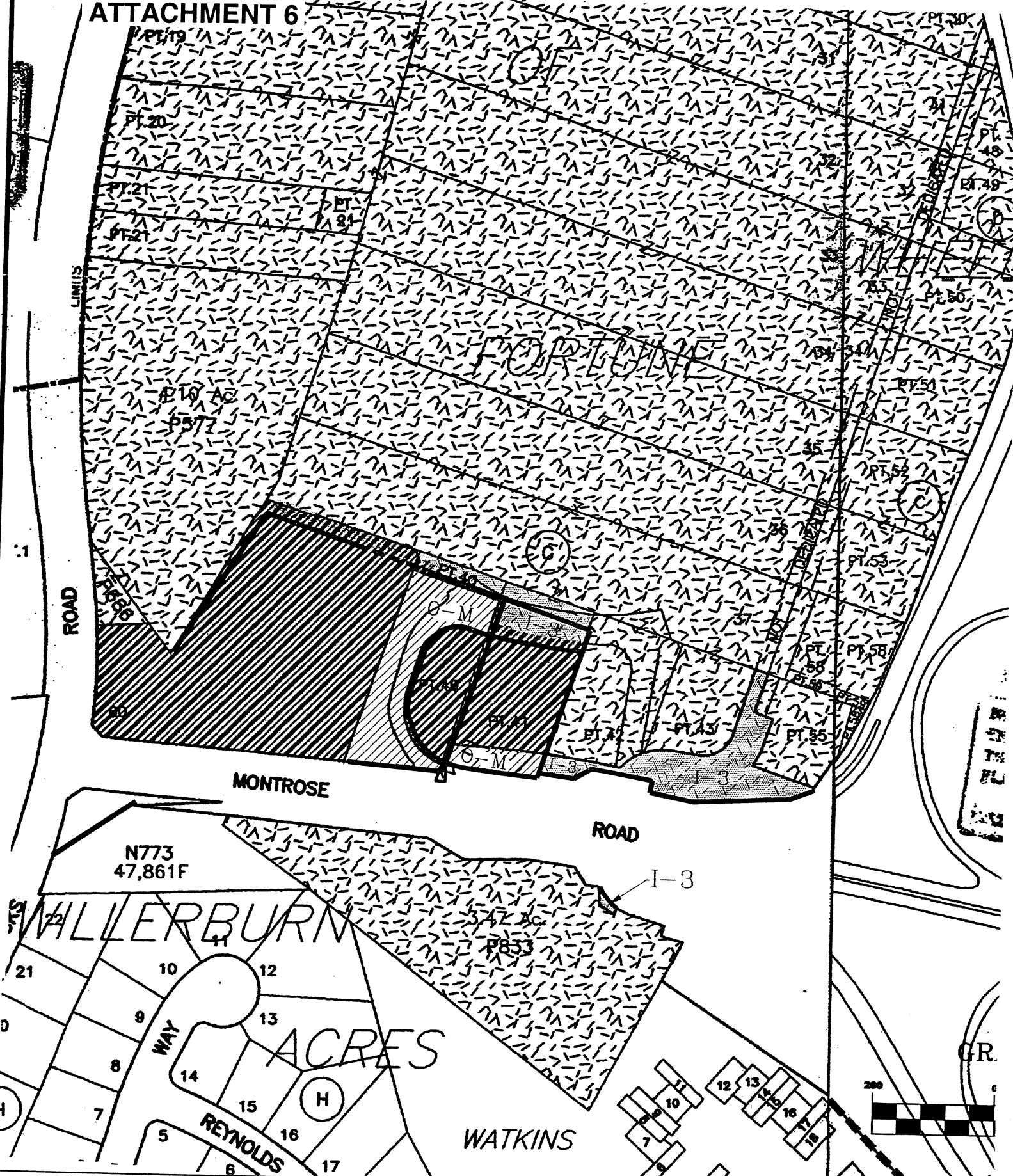
EXISTING ZONING



PROPOSED ZONING SUBJECT PROPERTIES



ATTACHMENT 6



**CORRECTIVE ZONING
EXHIBIT**

WHEEL OF FORTUNE

DATE: DEC 19, 2002
REVISIONS

ENGINEER
8180