

CITY OF HIGH POINT

AGENDA ITEM



Title: Right-Of-Way Encroachment RE-16-0032
(Keystone Group, INC)

From: Lee Burnette, Planning & Development
Director

Meeting Date: January 17, 2017

Advertising Date: Not Applicable

Advertised By: Not Applicable

Public Hearing: No

Attachments: A. Staff Memo
B. Agreement
C. Location Map
D. Site Plan

PURPOSE:

A right-of-way encroachment request by Keystone Group, Inc. for an existing masonry retaining wall that will encroach 4 feet 6 inches within the Piedmont Crossing Drive right-of-way.

BACKGROUND:

Staff memo and the Technical Review Committee's recommendation is enclosed.

BUDGET IMPACT:

There is no budget impact.

RECOMMENDATION / ACTION REQUESTED:

A. On December 5, 2016 the Technical Review Committee recommended approval of Right-Of-Way Encroachment RE-16-0031.

**CITY OF HIGH POINT
PLANNING AND DEVELOPMENT DEPARTMENT**

RIGHT-OF-WAY ENCROACHMENT

RE-16-0032

January 17, 2017

Request	
Applicant: Keystone Group, Inc.	Proposal: Construct a proposed 4-foot structure that will encroach 4 feet 6 inches within the Piedmont Crossing Drive right-of-way.

Adjacent Streets		
Name:	Classification:	R/W and Pavement Width:
Piedmont Crossing Drive	Local	50 feet and 25 feet 6 inches from curb to curb

Analysis

The applicant is requesting an encroachment agreement for an existing masonry structure, all of which will intrude 4 feet 6 inches into the street right-of-way along Piedmont Crossing Drive.

The existing structure, near 691 Nikyle Circle, was constructed without prior approval and intrudes into the Piedmont Crossing Drive right-of-way 4 feet 6 inches. The applicant has stated that the need for this encroachment is to maintain the character of the existing streetscape and avoid potential engineering issues relating to structural support for the adjacent sidewalk.

The Technical Review Committee reviewed this request on December 5, 2016 and determined that the proposed encroachment would not affect public safety or interfere with street or utility maintenance needs.

The site plan for the existing structure is attached depicting its location and the associated encroachment.

Recommendation

Based upon TRC's review, the existing structure will not affect public safety or interfere with street or utility maintenance. Staff recommends approval of this requested right-of-way encroachment.

Report Preparation

This report was prepared by Planning and Development Department staff member Justin S. Westbrook, CZO and was reviewed by Robert L. Robbins, AICP and G. Lee Burnette, AICP.

DRAWN BY: JoAnne L. Carlyle, City Attorney
RETURN TO: City Attorney, P.O. Box 230, High Point, NC 27261

NORTH CAROLINA

GUILFORD COUNTY

**RIGHT OF WAY
ENCROACHMENT AGREEMENT**

THIS AGREEMENT (Agreement) made this _____ day of _____, 2016, between **THE CITY OF HIGH POINT**, a municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina, 27260, existing under the laws of the State of North Carolina (the “City”) and **KEYSTONE GROUP, INC.**, a North Carolina Corporation located at 3708 Alliance Drive, Greensboro, NC 27407, hereinafter known as the “Company”

W I T N E S S E T H

WHEREAS, the City owns the public right of way that includes Piedmont Crossing Drive;
and

WHEREAS, the Company desires, for its interest and convenience, to construct, maintain and put in place a structure in said public right-of-way as described in Exhibit A (“Structure”) in said public right of way; and

WHEREAS, the City under the terms and conditions herein set forth, is willing to allow the above described improvements to be made, and allow the Company to encroach upon the above-referenced City-owned right of way; and

WHEREAS, the Company has paid to the City the sum of \$150.00, which partially defrays the administrative costs of the City.

NOW, THEREFORE, in consideration of the premises and \$150.00 in hand paid receipt of which is hereby acknowledged and other consideration, the Company hereby covenants and agrees that:

1. The Company is responsible for any and all expenditure of labor or materials required in the installation, erection, repair, maintenance or location of the above-referenced Structure.

2. The Company is responsible for any and all labor or expense which results from any and all future maintenance and repair of such Structure, and the removal or dismantling of the Structure if and when the Structure is removed.

3. The Company is to be fully responsible for any and all property damage or injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance or workmanship created by the Company, its agents, employees, contractors or subcontractors in connection with the Encroachment, or any cause of action arising out of the installation, maintenance, or location of said Structure or any other cause of action arising out of the planting, installation, maintenance, or location of said Structure (collectively, "Claims and Causes of Action").

4. The Company agrees:

- (a) to hold the City, its officers, agents and employees harmless from any and all liability arising out of any such Claims and Causes of Action, and
- (b) to defend the City, its officers, councilors and employees and pay all attorney fees in any and all actions brought as a result of such Claims and Causes of Action; and
- (c) indemnify the City, its officers, agents and employees against any and all loss sustained by reason of such Claims and Causes of Action.

5. The Company, during the life of this agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers, authorized under the laws of the State of North Carolina, insurance in the minimum amounts of One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate, combined single limit for personal injury, property damage, or wrongful death caused by construction, maintenance, location, repair or visual obstruction of said encroachment with the City of High Point being included as additional insured as respects work under this Agreement. Company shall furnish the City upon the City's request, but no more than once in any 12 month period, a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect (or proof of self-insurance as

referenced below). Company shall give the City at least 30 days advanced written notice of any cancellation of any required coverage that is not replaced. Should Company fail to pay premiums upon said insurance, or should Company fail to obtain said insurance, or to perform any of the agreements, terms, or conditions herein contained; the City at its option, by written notice may declare this agreement cancelled and terminated and all rights acquired hereunder by Company shall thereupon terminate, except Owner shall still be responsible for removing the Equipment from the right of way. In lieu of the foregoing, Company may self insure for any or all of the coverages set forth above.

6. The Company, upon completion of the installation of the Structure, shall submit to the City revised drawings in the form of an AutoCad (.dwg) file for retention by the City if the actual installation differs significantly from the installation shown on the Exhibit B (Site Plan) (in such event, the Company shall secure approval of the City prior to the differing installation).

7. The Company agrees to abide by all lawful statutes and ordinances governing construction of the Structure as contemplated herein.

8. This Agreement shall not divest the City of any rights or interest in said right of way.

9. The Company shall contact "NC One Call Center" prior to excavation where and in the manner required by the NC One Call law.

11. This Agreement shall be binding upon and ensure to the benefit of all of the parties hereto and their heirs, personal representatives, grantees, successors, and assigns.

12. All matters relating to this Agreement shall be governed by laws of the State of North Carolina without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Guilford County Superior Court or the United States District Court for the Middle District of North Carolina.

13. All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed as follows:

If to City:

City of High Point
Planning & Development Department
P.O. Box 230
High Point, NC 27261
ATTN: Planning Director

If to Company:

Keystone Group, INC
3708 Alliance Drive
Greensboro, NC 27407

IN WITNESS WHEREOF, the City of High Point has caused this instrument to be signed by its Mayor and attested by its Clerk and its seal to be affixed by the duly-granted authority of its City Council, the day and year first above written.

Keystone Homes, INC.

(Corporate Seal)

By: _____

Print Name: _____

Title: _____

STATE OF _____

_____ COUNTY

I, _____, a Notary Public of the County and State, do hereby certify that _____, personally came before me this day and acknowledged that he/she is _____, and that he/she, as _____ being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the ____ day of _____, 2017.

My commission Expires: _____

Notary Public

CITY OF HIGH POINT

By: _____
Bill Bencini, Mayor

ATTEST:

SEAL

Lisa B. Vierling, City Clerk

NORTH CAROLINA

GUILFORD COUNTY

I, _____, a Notary Public of said county and state do hereby certify that Lisa B. Vierling is known to me as City Clerk of the City of High Point; that she personally appeared before me this date; and, that by authority duly given, and as the act of the said City of High Point, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal, and attested by herself as its clerk.

Witness my hand and official stamp or seal, this the ____ day of _____, 2017.

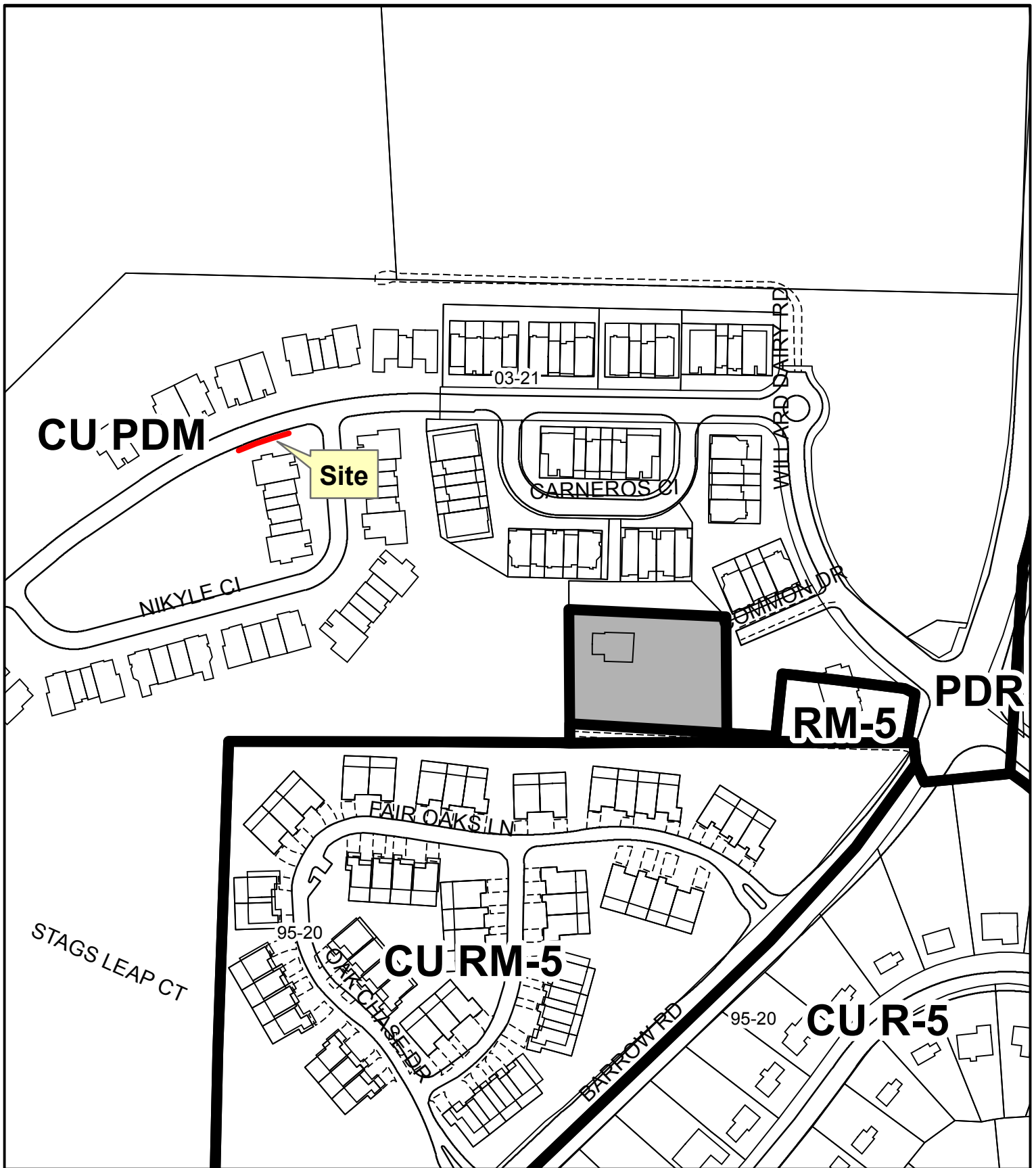
My commission Expires: _____

Notary Public

EXHIBIT A

(Structure)

Beginning at a point located North 28deg.38' 47" West a distance of 19.18' from the Northeast corner of Lot 119 as recorded in Plat Book 191, Page 150 in the Guilford County Register of Deeds. Thence with a new line South 69deg. 52' 12" West with a chord distance of 100.40' and having a radius of 725.0' to a point, thence continuing with a new line North 24deg. 14' 05" West a distance of 4.50' feet to a point, thence continuing with a new line North 69deg. 52' 03" East and having a chord distance of 100.98' and a radius of 729.5' to a point, thence running South 16deg. 48' 58" East a distance of 4.50' feet to the point of beginning. Said area to contain 0.01 Acres (453.46 square feet) as surveyed by Four Points Surveyors, PLLC dated 12-06-2016.



RIGHT-OF-WAY ENCROACHMENT RE-16-0032

Keystone Group, Inc.
691 Nikyle Circle

Existing Zoning Boundary
Subject Property Boundary



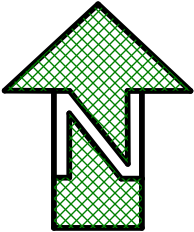
**Planning & Development
 Department**

City of High Point

Date: January 5, 2017



Scale: 1"=300'
 G:\Planning\Secure\ba-pz/
 2016\boa\re16-0032.mxd



PLAT NORTH
P.B.191, PG.150

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DRNG.
MAINT.
UTIL.
ESMT.

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Iron pipe found
Iron pipe set
Right of Way
Pavement
Power Pole
Drainage
Maintenance
Utility
Easement

LEGEND

S.S.
P.S.S.L.&M.E.

S.R.

○

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MBL

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Sanitary Sewer
Private San.Sew. Line Access & Maint. Easement
State Road
Computed Point (Not Set)
Monument
Minimum / Max Building Line
Overhead Power Line
Fence Line

CLINARD FARM RD

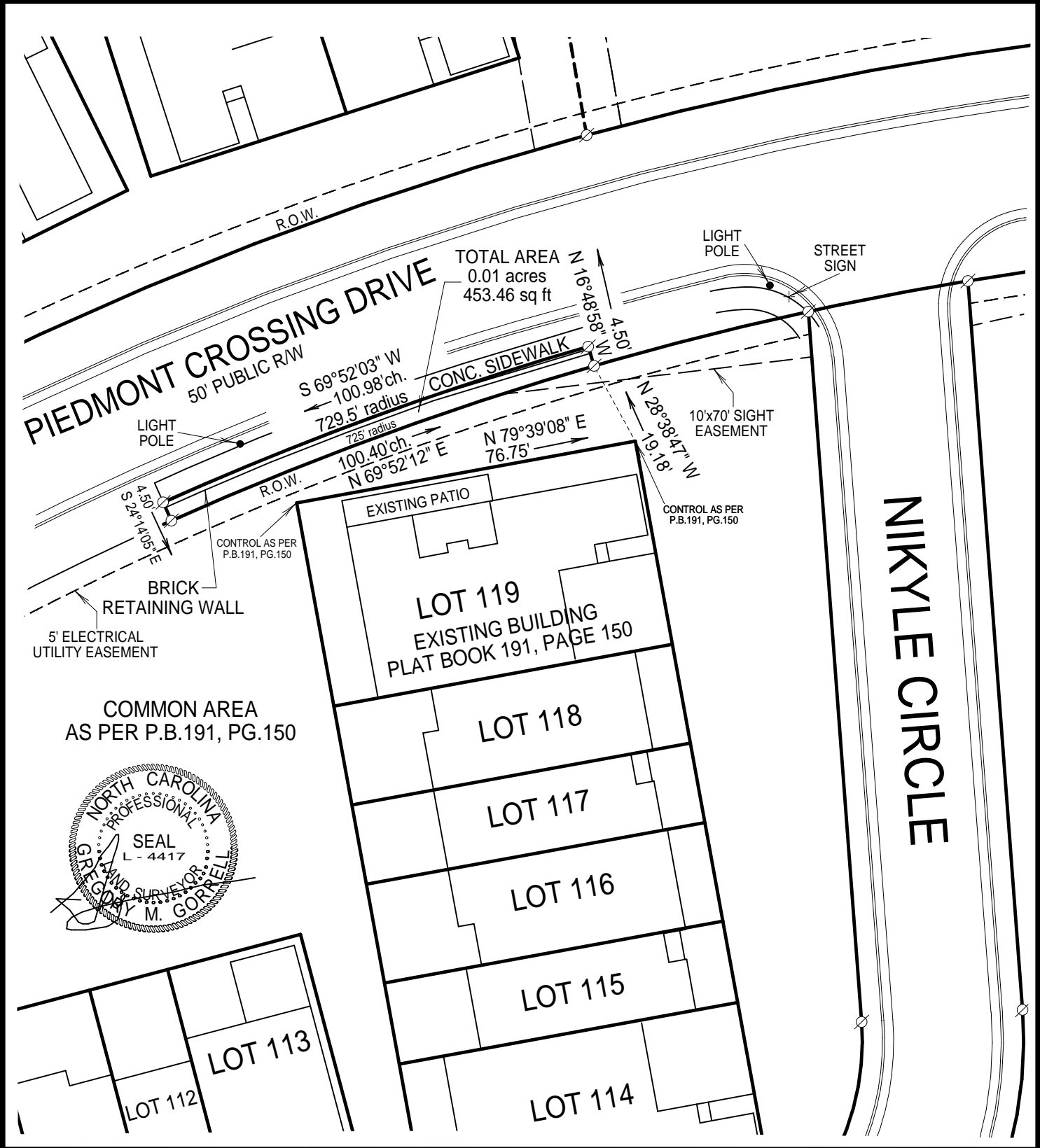
PIEDMONT CROSSING DR

WILLARD DAIRY RD

BARROW RD

SITE

Location Map: Not To Scale



This map does not meet G.S. 47-30 Mapping Requirements of N.C. and is not for recordation.

Drawn by:
File name:

Map of Survey For:

This property is subject to any easements, agreements, or rights-of-ways of record prior to this date and not visible at the time of inspection.

This is to certify that this plot was drawn from a recorded map and field survey: That the property lines and location of all structures are accurately shown hereon: and there are no encroachments either way across property lines, unless noted otherwise.

This property has not been evaluated for special flood hazard area as determined by the Department of Housing and Urban Development. For flood boundaries contact the Federal Emergency Management Agency.

DATE: 11-01-2016

SCALE: 1"= 30'


30

0

30

60

Error of Closure: 1:10,000+



FOUR POINTS SURVEYORS
Gregory Matthew Gorrell, Professional Land Surveyor
office: 227 Cleek Drive, Summerfield, N.C. 27358
mail to: P.O. Box 986, Summerfield, N.C. 27358
Phone 336.349.8840, Fax 336.342.7760, Cell 336.669.0209

Keystone Homes Inc.
Piedmont Crossing Drive
Phase 2B, Section 2
Trellises Subdivision
Plat Book 191, Page 150

EXHIBIT B
(Site Plan)