

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: JULY 28, 2014 AGENDA ITEM NUMBER: 10


**SUBJECT: RESOLUTION APPROVING THE AMOUNT TO BE SPENT BY THE WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION TO ACQUIRE REAL PROPERTY TO BE USED FOR FUTURE IMPROVEMENTS AT THE SOUTHWEST ELEMENTARY SCHOOL SITE
(TAX BLOCK 4404, LOT 026D (PIN 5894-06-6339.00))
(1632 SOUTHWEST SCHOOL RD, CLEMMONS, N.C.)**

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION:

See attached

ATTACHMENTS: YES NO

SIGNATURE:  DATE: July 23, 2014
COUNTY MANAGER

**RESOLUTION APPROVING THE AMOUNT TO BE SPENT
BY THE WINSTON-SALEM/FORSYTH COUNTY
BOARD OF EDUCATION TO ACQUIRE REAL PROPERTY
TO BE USED FOR FUTURE IMPROVEMENTS AT THE
SOUTHWEST ELEMENTARY SCHOOL SITE
(TAX BLOCK 4404, LOT 026D (PIN 5894-06-6339.00))
(1632 SOUTHWEST SCHOOL RD, CLEMMONS, N.C.)**

WHEREAS, the provisions of N.C.G.S. 115C-426(f) require the approval by the Board of County Commissioners as to the amount to be spent by the Board of Education for school sites prior to the execution of a contract by the Board of Education for the purchase of a site or the expenditure of funds therefor; and

WHEREAS, on June 24, 2014, the Winston-Salem/Forsyth County Board of Education adopted a Resolution to exercise an Option to Purchase Real Estate relating to real property consisting of approximately 1.38 acres owned by James R. Malton and Alice A. Malton, to be used for future improvements at the Southwest Elementary School site, which property is located at 1632 Southwest School Rd, Clemmons, N.C. and is further described as Tax Block 4404, Lot 026D (PIN 5894-06-6339.00), on the Forsyth County Registry, subject to approval by the Forsyth County Board of Commissioners of the amount to be spent on the site as required by law; and

WHEREAS, the Winston-Salem/Forsyth County Board of Education requests that the Forsyth County Board of Commissioners approve One Hundred Eight Thousand and 00/100 Dollars (\$108,000.00) as the amount to be spent to purchase the above-described real property.

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby approves the total amount of One Hundred Eight Thousand and 00/100 Dollars (\$108,000.00) to be spent by the Winston-Salem/Forsyth County Board of Education for the purchase of approximately 1.38 acres owned by James R. Malton and Alice A. Malton, which property is located at 1632 Southwest School Rd, Clemmons, N.C. and is further described as Tax Block 4404, Lot 026D (PIN 5894-06-6339.00), on the Forsyth County Registry and to be used for future improvements at the Southwest Elementary School site.

Adopted this 28th day of July 2014.



Winston-Salem/Forsyth County Schools
 P.O. Box 2513
 Winston-Salem, NC 27102-2513
 (336) 727-2816 Fax (336) 727-2008
 website: wsfcs.k12.nc.us

RECEIVED

JUN 30 2014

COUNTY MANAGER'S/
 COMMISSIONERS' OFFICE

June 26, 2014

Mr. J. Dudley Watts, Jr.
 Forsyth County Manager
 Forsyth County Government Center
 201 North Chestnut Street
 Winston Salem, North Carolina 27101

Re: **Acquisition of Property-Southwest Elementary School
 Winston-Salem/Forsyth County Board of Education**

Dear Mr. Watts:

At its meeting on June 24, 2014, the Winston-Salem/Forsyth County Board of Education approved, subject to approval of the purchase price by the Forsyth County Board of Commissioners pursuant to N.C.G.S. § 115C-426, the purchase of real property owned by James R. Malton and Alice A. Malton, such property known as a portion of Lot 026D, Tax Block 4404 (PIN 5894-06-6339.00), Forsyth County Registry, for a purchase price of \$108,000.00;

The Board of Education requires such property for future improvement of the Southwest Elementary School site;

Pursuant to N.C.G.S. § 115C-426, the Winston-Salem/Forsyth County Board of Education respectfully requests the approval by the Forsyth County Board of County Commissioners of the purchase price of this property. A copy of the Winston-Salem/Forsyth County Board of Education Resolution authorizing purchase of this property subject to approval by the Board of County Commissioners is enclosed herewith.

Should you have any questions or wish to discuss this matter, please do not hesitate to contact me.

Sincerely yours,
 Winston-Salem/Forsyth County Board of Education

Dionne T. Jenkins
 Staff Attorney

Enclosure

cc: Beverly Emory, Superintendent
 Allison Tomberlin, General Counsel
 Darrell Walker, Assistant Superintendent Operations
 Chick Plunkett, Chief Financial Officer

P:\Law3\Real Estate\Southwest ES\Watts.Dudley 6-26-14 (Malton).doc

Board of Education

- A. L. (Buddy) Collins
- John Davenport, Jr.
- Jane D. Goins (Chair)
- Victor Johnson, Jr.
- Irene May
- Jeannie A. Metcalf
- Elisabeth Motsinger
- Marilyn A. Parker
- Jill A. Tackabery

**Dr. Beverly R. Emory
 Superintendent**

**RESOLUTION OF THE
WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION
EXERCISING OPTION TO PURCHASE REAL ESTATE
OWNED BY JAMES R. MALTON AND ALICE A. MALTON**

WHEREAS, on or about June 17, 2014, the Winston-Salem/Forsyth County Board of Education executed an Option to Purchase Real Estate owned by James R. Malton and Alice A. Malton, such property known as a portion of Lot 026D, Tax Block 4404 (PIN 5894-06-6339.00) Forsyth County Registry;

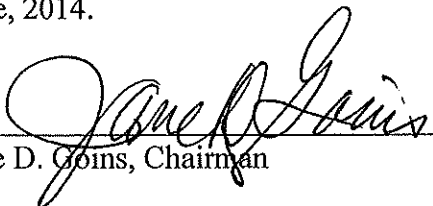
WHEREAS, the Board of Education believes the tract or parcel of land owned by James R. Malton and Alice A. Malton is proper, necessary and suitable for future improvements at the Southwest Elementary School site;

WHEREAS, the purchase price for the real property described hereinabove is One Hundred Eight Thousand and No/100 Dollars (\$108,000.00);

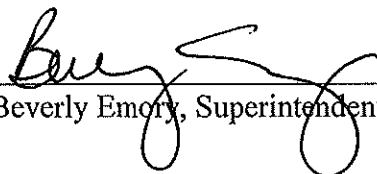
WHEREAS, pursuant to Paragraph 4 of the Option to Purchase Real Estate, the WS/FCS hereby exercises the option to purchase real estate as described in such Option, subject to approval by the Board of County Commissioners of Forsyth County pursuant to N.C.G.S. § 115C-426.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Winston-Salem/Forsyth County Board of Education that it hereby exercises the Option to Purchase Real Estate for real property owned by James R. Malton and Alice A. Malton, such property known as a portion of Lot 026D Tax Block 4404 (PIN 5894-06-6339.00), Forsyth County Registry, subject to approval of such purchase by the Board of County Commissioners of Forsyth County pursuant to N.C.G.S. § 115C-426.

ADOPTED by the Winston-Salem/Forsyth County Board of Education, this, the 24th day of June, 2014.



Jane D. Goins, Chairman



Beverly Emory, Superintendent

STATE OF NORTH CAROLINA

OPTION TO PURCHASE REAL ESTATE

COUNTY OF FORSYTH

THIS OPTION TO PURCHASE REAL ESTATE is made and entered into this 17 day of June, 2014 by and between James R. Malton and Alice A. Malton (hereinafter referred to as "Sellers"), and the WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION (hereinafter referred to as "Purchaser").

STATEMENT OF PURPOSE

The Seller desires to grant to the Purchaser or its assignee an option to purchase land hereinafter described and the purpose of this Agreement is to state the terms and conditions of such option.

NOW, THEREFORE, for and in consideration of the sum of Two Thousand and No/100 Dollars (\$2,000.00) paid to Sellers, the receipt of which is hereby acknowledged, Sellers hereby give, grant and continue unto the Purchaser, its successors and assigns, the exclusive right and option to purchase from Sellers upon the terms and conditions hereinafter set forth, all or a portion of Lot 026D, Tax Block 4404, Office of the Tax Supervisor of Forsyth County, and/or as more particularly described on the attached Forsyth County, NC GIS printout, Exhibit A, and all right, title and interest which the Sellers may have in all creeks, streams, lakes, rights-of-way, roads, streets and ways bounding said property. The tract(s) of land herein optioned are hereinafter referred to as "the Property."

The terms and conditions of this Option to Purchase Real Estate (referred to herein as "this Agreement") are as follows:

1. **CONSIDERATION.** The consideration of Two Thousand and No/100 Dollars (\$2,000.00) paid Sellers for this Agreement is to be part of the purchase price and is to be credited toward the down payment of the Property, if the Purchaser or its assignee should elect to exercise the right to purchase as set forth in this Agreement. However, should the Purchaser fail to exercise the option to purchase granted hereunder, then the consideration mentioned above shall become the property of Sellers and this Agreement shall become null and void and of no further legal effect, except under those circumstances where failure to exercise the option is due to noncompliance by the Sellers with one or more of the conditions set forth in Paragraph 14 hereof.
2. **DURATION.** The option herein shall exist and continue to and including the 120th calendar day from the date hereof.
3. **SURVEY.** The parties recognize that the property description in the "Statement of Purpose" was derived from the Forsyth County tax records and not from a survey. Prior to closing, Purchaser, its successor or assigns may cause any existing survey to be updated and recertified, or if there is no existing survey, the Purchaser may cause the Property to be surveyed by a registered land surveyor or a registered land engineer. Such survey shall locate

the boundaries of the Property, identify all corners and shall certify to the nearest one/hundredth of an acre the number of acres included in the Property. The expense of such survey work shall be borne by the Purchaser, and said survey shall be used to draft the description required for the documents called for in Paragraph 15 hereof.

4. **EXERCISE OF OPTION TO PURCHASE.** Purchaser may exercise the option granted hereunder by giving Seller written notice of such exercise at any time within the period set out in Paragraph 2 of this Agreement. Said notice of the exercise of the option shall be effective if given by certified mail, return receipt requested, to Sellers, James R. Malton and Alice A. Malton, at 106 Emerald Point Lane, Mooresville, North Carolina, 28117. In addition, upon exercise by the Purchaser or its assignee of the Option, this Agreement shall become a contract to purchase the Property, and the Purchaser or its assignee shall have sixty (60) calendar days from the date of notification of exercise of the Option in which to close the purchase of the Property, the details of said closing being set forth in Paragraph 6 hereof, or, in the event the zoning classification of the subject property must be changed or modified, sixty (60) calendar days from final decision of the appropriate governmental or public entities which may affect or alter the Property's zoning classification, whichever is later.
5. **PURCHASE PRICE.** The purchase price for the said tracts shall be One Hundred Eight Thousand and No/100 Dollars (\$108,000.00), payable at closing.
6. **CLOSING.** Closing shall be held within sixty (60) calendar days after the exercise of the option granted hereunder or, in the event the zoning classification of the subject property must be changed or modified, sixty (60) calendar days from final decision of the appropriate governmental or public entities which may affect or alter the Property's zoning classification, whichever is later. Closing shall be held on a date selected by Purchaser or its assignee at a mutually agreed upon location. At closing, Sellers shall execute a deed, prepared by Purchaser at Purchaser's expense, with full warranties subject only to permitted exceptions referred to below and with documentary stamps affixed at Purchaser's expense, conveying to Purchaser or its assignee an indefeasible fee simple title, marketable and insurable at regular rates, without exception. The Property shall be conveyed to Purchaser or its assignee free and clear of all liens and encumbrances, claims, easements, leases, restrictions or restrictive covenants, except that the Property may be conveyed subject to:
 - (a) The rights-of-way of streets, roads and access roads;
 - (b) Utility easements in customary forms;
 - (c) Forsyth County ad valorem taxes for the year in which the Purchase is closed; and,
 - (d) Zoning regulations for Forsyth County.

Should Purchaser's or its assignee's attorney not approve the title to the property, Purchaser's or its assignee's attorney shall advise Sellers in writing of the objections to said title, and Sellers shall have a period of thirty (30) days from the date of notice of said objections within which to remedy such objections to the satisfaction of Purchaser's or its assignee's attorney.

In the event said objections are not cured or remedied within thirty (30) days, then this Agreement shall at Purchaser's or assignee's election be null and void and of no further legal effect, except that Sellers shall immediately refund to Purchaser or its assignee all monies paid; provided, that Sellers shall not have the right to terminate under this provision if Purchaser or its assignee will accept the property without said objections being cured.

7. **POSSESSION.** Exclusive possession of the Property free and clear of occupancy by all persons, firms or corporations, whether or not under claim of right or color of title, shall be delivered to Purchaser or its assignee at closing.
8. **TAXES.** It is agreed that all real property taxes levied against the Property shall be prorated to the date of closing on a calendar year basis.
9. **RIGHT OF ENTRY.** Purchaser, its agents, assignee, employees or other representatives, shall have the right during the term of this Agreement and at any time from and after the exercise of the option to go upon the property for the purpose of making such surveys and topographical measurements as Purchaser or its assignee deems necessary or advisable without cost to the Sellers. Purchaser or its assignee shall pay for any damages to the Property caused while such surveys or tests are being made, and shall indemnify Sellers against any claims or losses occasioned by the exercise of the right of entry granted under the provisions hereof.

10. **CONSTRUCTION OF AGREEMENT.**

- (a) The parties hereto agree that this Agreement constitutes the entire agreement between the parties; that no representations, stipulations, agreement or understanding verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this Agreement. This agreement may not be added to or modified except by written agreement signed by each of the parties.
- (b) No waiver of any term or condition of this Agreement shall be deemed a waiver of such term or condition in the future unless such waiver shall be in writing and signed by each of the parties.
- (c) If the option granted hereunder is exercised so that this Agreement becomes a contract to purchase, as set forth in Paragraph 4 hereof, nevertheless, Purchaser's obligation to purchase is contingent upon compliance by the Sellers with the conditions of Paragraph 11 hereof.
- (d) It is understood and recognized that this Agreement is the joint undertaking of the parties hereto and results from their common negotiations.

11. **ZONING.**

- (a) Seller represents that the Property is now zoned RS9 under the zoning classifications of any applicable governmental entity or entities.

- (b) In the event the above stated zoning classification allows construction of a school building by Purchaser or its designee, this Agreement is expressly contingent upon the same zoning being in existence at the time of closing and there being no restrictions in the chain of title that would prohibit the property from being developed to the maximum degree permissible under the applicable zoning classifications.
- (c) In the event the above stated zoning classification does not allow construction of a school building by Purchaser or its designee, this Agreement is expressly contingent upon the revision or alteration of the such zoning classification by Purchaser or its designee to a classification allowing construction of a school building by Purchaser or its designee by the appropriate governmental or public entities which may affect or alter the Property's zoning classification. Such alteration or revision of the zoning classification must be in existence at the time of closing and no restrictions in the chain of title prohibiting the property from being developed to the maximum degree permissible under such zoning classification may exist. In the event the rezoning of the Property to a classification allowing construction of a school building by Purchaser or its designee is denied by the appropriate governmental or public entities, the parties hereby understand and agree this Option shall be null and void and Sellers shall refund to Purchaser any consideration paid to Sellers by or on behalf of Purchaser.

12. **SELLERS' REPRESENTATIONS AND WARRANTIES.** Sellers hereby make the following representations and warranties to Purchaser.

- (a) Sellers have good and marketable, fee simple title to the Property, free and clear of any and all liens, security interests, encumbrances or other restrictions, whether existing of record or otherwise, except those permitted under Paragraphs 6 and 11 hereof.
- (b) Sellers have the right, power and authority to enter into this contract and to sell and convey the Property in accordance with the terms and conditions herein contained.
- (c) Sellers have no knowledge of any condemnation proceedings, or proposed proceedings, against the whole or any part of the Property and no such proceedings or proposed proceedings have commenced.
- (d) The Property is free from any special taxes or assessments, except those generally applicable to other real property in the tax district in which the Property is located.
- (e) No options have been granted to others to purchase or to rent any interest in the Property or any part thereof, and Sellers have the exclusive right of possession of the Property.
- (f) There are no restrictions in the chain of title which would prohibit the Property from being used and developed to the maximum degree possible under the zoning classifications applicable to the Property as set forth in paragraph 11.

- (g) All ad valorem taxes through 2012 have been paid. As of the date of this Agreement, there is a balance of \$12.93 due and owing in ad valorem taxes for the year 2013. Sellers warrant that, prior to closing, all ad valorem taxes through 2013 will be paid.
 - (h) The foregoing representations and warranties are made by the Sellers with the knowledge and expectation that Purchaser is placing complete reliance thereon.
 - (i) Sellers will not cause or permit any action to be taken which will cause any of the foregoing representations or warranties to be untrue on the closing date and all representations and warranties contained in this Agreement shall be true at the closing date as though such representations or warranties were made at such time.
13. **SURVIVAL.** It is understood and agreed that whether or not it is specifically so provided herein, any provision of this Agreement, which by its nature is required to be kept, observed and performed after the exercise of the option granted hereunder or closing of the purchase of the Property, shall survive the exercise and closing of title and the delivery of the deed hereunder, and shall not be merged there, but shall be and remain binding upon and for the benefit of the parties hereto until fully observed, kept and performed.
14. **TERMINATION.** Purchaser or its assignee has the election of declaring this Agreement to be null and void and of no further legal effect (which election may be exercised by Purchaser or its assignee by mailing notice to Sellers, by certified mail, return receipt requested) if:
- (a) Sellers cannot convey good, indefeasible, fee simple, marketable and insurable title, free and clear of all claims, liens, easements, leases, encumbrances, restrictions or restrictive covenants, except the permitted exceptions referred to in Paragraph 6 above;
 - (b) Sellers cannot deliver exclusive possession of all the property to the Purchaser at time of closing;
 - (c) The provisions of Paragraph 11 herein are not true at closing; or,
 - (d) The provisions of Paragraph 12 herein containing representations and warranties of Sellers are not true at closing.
15. **DOCUMENTS AT CLOSING.** At closing, the Sellers shall:
- (a) Execute, acknowledge and deliver to Purchaser or its assignee a deed conveying a good, fee simple and marketable title to the Property with full warranties, free and clear of all liens and encumbrances except as herein provided;
 - (b) Deliver to Purchaser all surveys (boundary topographical) in the possession of Sellers having to do with the Property; and,
 - (c) Execute and deliver any and all documents and papers (including these documents specified above) that may be necessary in connection with the consummation of the


transaction contemplated by this Agreement including the transfer of Sellers' interest in the Property, the assignment of various other interests relating to the Property and the improvements thereon, if any, and the certification of compliance with the terms and conditions hereof.

16. **NO WASTE.** During the existence of this Agreement, Sellers shall not commit, nor allow to be committed, waste upon the Property, including but not limited to, no cutting of trees, and no removal of any improvements without the consent of Purchaser, and Sellers shall maintain the Property in as good condition as it is now, usual wear and tear excepted.
17. **LIQUIDATED DAMAGES.** The monies paid to Sellers for the option granted hereunder shall be and represent liquidated damages for any default on the part of the Purchaser or its assignee, which liquidated damages shall be the extent of the liability of the Purchaser with respect to any default hereunder, regardless of whether such default shall arise before or after exercise of the option granted hereunder, and Sellers shall have no other right, claim or cause of action against Purchaser or its assignee. Should the Sellers default under any of the provisions of this Agreement, Purchaser may either demand specific performance of this Agreement, but only to the extent of conveyance of the Property free and clear of all liens and encumbrances except those permitted in Paragraph 6 and 11 above, or Purchaser may consider the Agreement terminated, in which event the extent of the responsibility of the Sellers shall be to refund to Purchaser any monies paid to Sellers hereunder.
18. **MEMORANDUM OF OPTION.** The parties agree that this instrument shall not be recorded; provided, however, that Sellers agree, at the request of Purchaser, to execute a Memorandum of Option in recordable form, stating that the Property is under option to Purchaser and the duration of such option.
19. **BINDING EFFECT.** The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

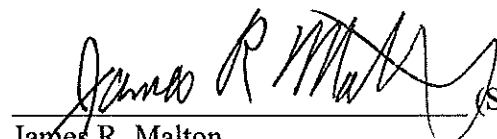
WINSTON-SALEM/FORSYTH COUNTY
BOARD OF EDUCATION

SELLERS:




Darrell Walker
Assistant Superintendent for Operations

(SEAL)



James R. Malton

(SEAL)



Alice A. Malton

(SEAL)

EXHIBIT A

Forsyth County, NC



<i>PIN</i>	5894-06-6339.00	<i>Current Deed Stamps</i>	\$120
<i>Property Address</i>	1632 Southwest School RD	<i>Map Number</i>	588846
<i>Block Lot</i>	4404 026D	<i>Assessment Method</i>	Cost
<i>Additional Lots</i>		<i>WIP</i>	No
<i>Tax Jurisdiction</i>	Clemmons / Lewisville FD	<i>Land Value</i>	\$46,663
<i>Anx</i>	N	<i>Dwelling Value</i>	\$44,463
<i>Taxable Owner Name1</i>	Mallon, James R	<i>Commercial Value</i>	
<i>Taxable Owner Name2</i>	Mallon, Alice A	<i>Industrial Value</i>	
<i>Taxable Owner Address</i>	106 Emerald Point LN	<i>Misc Imp Value</i>	
<i>Taxable Owner City St Zip</i>	Mooreville, NC 28117	<i>Total Value</i>	\$91,100
<i>Taxable Deed Bk-Pg</i>	2189-1864	<i>Acreage</i>	1.38
<i>Taxable Deed Date</i>	7/24/2001	<i>Sq Ft Living Area (Res)</i>	1092
<i>Taxable Deed Stamps</i>	\$120	<i>Gross Sq Ft (Com)</i>	
<i>Current Owner Name1</i>	Mallon, James R	<i>Year Built (Res)</i>	1958
<i>Current Owner Name2</i>	Mallon, Alice A	<i>Year Built (Com)</i>	
<i>Current Owner Address</i>	106 Emerald Point LN	<i>Census Tract</i>	40.06
<i>Current Owner City St Zip</i>	Mooreville, NC 28117	<i>Zoning</i>	RS9
<i>Current Deed Bk-Pg</i>	2189-1864	<i>Last Qualified Sale Price</i>	\$60,000

<i>Current Deed Date</i>	7/24/2001		
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Disclaimer: Forsyth County cannot guarantee the accuracy of this information, and the County hereby disclaims all warranties, including warranties as to the accuracy of this information.

Map Scale
1 Inch = 127 feet

Results 1- 1 of 1



PIN Tax Records

Similar Properties


5894-06-6339.00 - Malton, James R & Malton, Alice A
 1632 Southwest School RD

PIN	5894-06-6339.00
View	Zoom To Parcel Record Card Sales History Tax Billing Information
Property Address	1632 Southwest School RD
Block Lot	4404 028D
Additional Lots	
Tax Jurisdiction	Clemmons / Lewisville FD
Taxable Owner Name1	Malton, James R
Taxable Owner Name2	Malton, Alice A
Taxable Owner List	View All Owners
Taxable Owner Address	106 Emerald Point LN
Taxable Owner City St Zip	Mooresville, NC 28117
Taxable Deed Bk-Pg	2189-1864
Taxable Deed Date	7/24/2001
Taxable Deed Stamps	\$120
Current Owner Name1	Malton, James R
Current Owner Name2	Malton, Alice A
Current Owner Address	106 Emerald Point LN
Current Owner City St Zip	Mooresville, NC 28117
Current Deed Bk-Pg	2189-1864
Current Deed Date	7/24/2001
Current Deed Stamps	\$120
Map Number	588846
Assessment Method	Cost
Land Value	\$46,663
Dwelling Value	\$44,463
Commercial Value	
Industrial Value	
Misc Imp Value	
Total Value	\$91,100
Acreage	1.38
Sq Ft Living Area (Res)	1092
Gross Sq Ft (Com)	
Year Built (Res)	1958
Year Built (Com)	
Census Tract	40.06
Zoning	RS9

Last Qualified Sale Price	\$60,000
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