

**COBB COUNTY BOARD OF COMMISSIONERS’
ZONING HEARING “OTHER BUSINESS”
DECEMBER 15, 2009**

ITEM #1

To consider a Settlement of Litigation proposal regarding LUP-26 (Miles Seymour) of August 17, 2004, for property located at the northeast intersection of Sandy Plains Road and Bryant Lane, south of Priscilla Drive in Land Lot 483 of the 16th District.

ITEM #2

To consider amending the site plan and stipulations for Mayes Ward-Dobbins Funeral Home regarding Z-52 (LOST MOUNTAIN ENTERPRISES, INC.) of April 20, 2004, for property located in Land Lot 428 of the 19th District on the north side of Macland Road, west of Villa Rica Road.

ITEM #3

To consider amending the stipulations for Kolter Land Partners regarding Z-33 (DAVID PEARSON) of March 16, 2004, for property located in Land Lot 55 of the 16th District on the north side of Jamerson Road, east of Willow Creek Drive.

ITEM #4

To consider granting a Special Exception for reducing the required lot size as recommended by the Board of Zoning Appeals from their December 9, 2009 Variance Hearing regarding Variance Application:

V-69 Virginia A. Brown

ITEM #5

To consider adopting the written decision as required by the Federal Telecommunications Act regarding SLUP-14 (T-Mobile South, LLC) of November 17, 2009.

**DECEMBER 15, 2009 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 3**

ITEM #1

PURPOSE

To consider a Settlement of Litigation proposal regarding LUP-26 (Miles Seymour) of August 17, 2004, for property located at the northeast intersection of Sandy Plains Road and Bryant Lane, south of Priscilla Drive in Land Lot 483 of the 16th District.

BACKGROUND

This application for a Land Use Permit was denied by the Board of Commissioners. The Board of Commissioners decision is attached. The applicant filed a law suit challenging the Board of Commissioners decision. Prior to this case going to court, mediation was conducted and as a result of that mediation a Consensual Settlement of Litigation was formulated which is attached. The Zoning Analysis prepared for the original application is also attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the Settlement of Litigation proposal.

ATTACHMENTS

Board of Commissioners Decision
Settlement of Litigation Proposal
Original Zoning Analysis

ORIGINAL DATE OF APPLICATION: 08-17-04

APPLICANTS NAME: MILES SEYMOUR

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE
COBB COUNTY BOARD OF COMMISSIONERS

BOC DECISION OF 10-19-04 ZONING HEARING:

MILES SEYMOUR for a **Land Use Permit (renewal)** for the purpose of Custom Frame and Furniture Repair in Land Lot 483 of the 16th District. Located at the northeast intersection of Sandy Plains Road and Bryant Lane, south of Priscilla Drive (3003 Sandy Plains Road).

The public hearing was opened and Mr. George Butler addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Lee, second by Goreham, to **reject** Land Use Permit.

VOTE: **ADOPTED** unanimously

Following the motion and vote on LUP-26 additional discussion ensued, and the following amended motion was made:

AMENDED MOTION: Motion by Lee, second by Goreham, to **reject** Land Use Permit, and to **direct** Applicant to cease business operation at this location no later than thirty (30) days from the date of this hearing.

VOTE: **ADOPTED** unanimously

(1) No later than December 22, 2009, plaintiff shall dismiss this suit with prejudice, subject to the continuing terms of this Consent Order, by filing the requisite pleading with the clerk of court.

(2) As of December 16, 2009, plaintiff shall cease parking any vehicle which carries a sign or advertisement for any business at a location where the sign or advertisement is easily visible from the streets surrounding 3003 Sandy Plains Road. However, plaintiff shall be allowed to park such vehicle near his house, such that it is partially obscured by the structure of the house and carport. By January 15, 2010, plaintiff shall relocate the wooden fence which is currently parallel to and northeast of the carport, such that the fence will be located directly under the edge of the ceiling/roof of that portion of the carport which faces in a northeasterly direction. The parties' intent is that the fence align with the edge of the roof and ceiling of the carport similar to what would occur if the carport were to be enclosed. Also, by January 15, 2010, the entire fence at or near the carport shall be painted the same color as the trim of the house which shall be a solid color which is cream, beige, or white.

(3) No later than February 28, 2010, plaintiff shall notify the Zoning Division of Cobb County in writing that he has made one of two elections which are described below, which he shall then be free and obligated to pursue:

(a) retain the previously referenced fence until April 30, 2010 at which time the fence shall be removed in its entirety and no further business activity of any kind shall thereafter be conducted or fencing

allowed at the property unless and until proper permits therefor are first obtained; or

(b) immediately remove the previously referenced wooden fence in its entirety, but be allowed to continue to operate his furniture refinishing and picture frame business at the property until July 31, 2010, at which time all business activity at the property shall cease unless and until proper permits therefor are first obtained, subject to the provisions of Section (4) below.

(4) Plaintiff agrees that he shall not again apply for another temporary land use permit on the property—and that he will not conduct any other business at the property, other than that temporarily contemplated in this consent order, unless and until proper permits therefor are first obtained. Plaintiff further agrees to otherwise comply with all applicable Cobb County Ordinances relevant to the property.

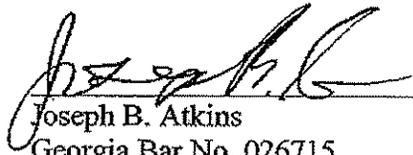
SO ORDERED this 12 day of NOVEMBER, 2009.



ROBERT E. FLOURNOY, III, JUDGE
SUPERIOR COURT OF COBB COUNTY

[ADDITIONAL SIGNATURES ON NEXT PAGE]

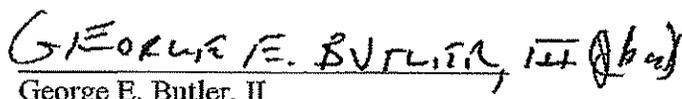
CONSENTED TO BY:



Joseph B. Atkins
Georgia Bar No. 026715

Cobb County Attorney's Office
100 Cherokee Street, Suite 350
Marietta, Georgia 30090-7003
Telephone (770) 528-4000
Facsimile (770)528-4010

Attorneys for Defendants



George E. Butler, II
Georgia Bar No. 099575
(By Joseph B. Atkins with express permission)

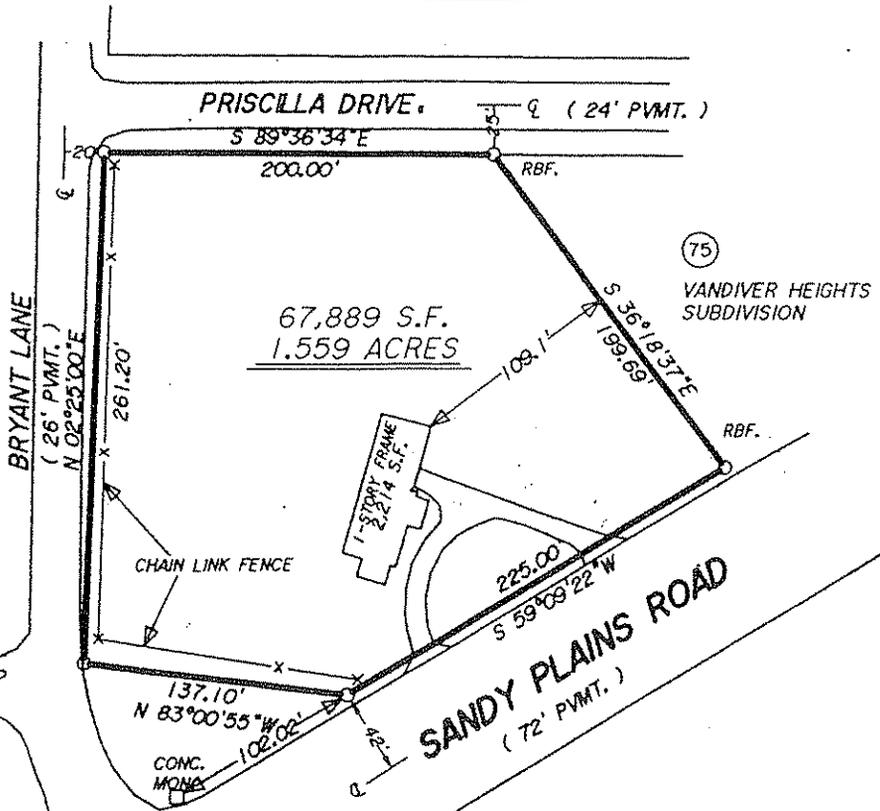
132 Hawkins Street
Dahlonega, GA 30533
Telephone (404) 873-2544
Facsimile (404) 875-5130

Attorney for Plaintiff

LUP-26

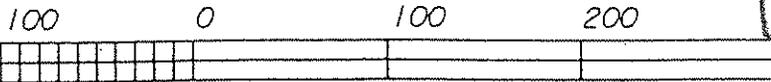
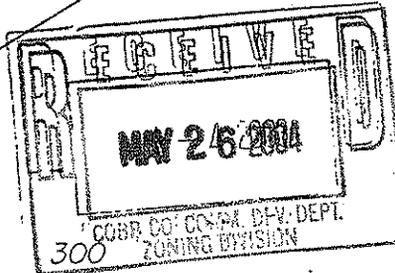
THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 22540 FEET, AND AN ANGULAR ERROR OF 0.2" SECONDS PER ANGLE POINT. AND WAS ADJUSTED USING CRANDALL RULE. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS ACCURATE WITHIN ONE FOOT IN 199286 FEET.

- LEGEND**
- I.P.F. • IRON PIN FOUND
 - I.P.S. • IRON PIN SET
 - R.B.F. • RE-BAR FOUND
 - R.B.S. • RE-BAR SET
 - O.T. • OPEN TOP
 - C.T. • CRIMPED TOP
 - R/W. • RIGHT OF WAY
 - P.L. • PROPERTY LINE
 - C.L. • CENTER LINE
 - B.L. • BUILDING LINE
 - L.L. • LAND LOT
 - L.L.L. • LAND LOT LINE
 - G.M.D. • GEORGIA MILITIA DISTRICT
 - P.P. • POWER POLE
 - P- • POWER LINE
 - X- • FENCE LINE
 - R. • RADIUS
 - CH. • CHORD
 - TAN. • TANGENT
 - N/F. • NOW OR FORMERLY
 - D.B. • DEED BOOK
 - P.B. • PLAT BOOK
 - PG. • PAGE
 - D.E. • DRAINAGE EASEMENT
 - S.E. • SEWER EASEMENT
 - F.H. • FIRE HYDRANT
 - M.H. • MANHOLE
 - C.B. • CATCH BASIN
 - 999.0 E. • EXISTING SPOT ELEVATION
 - 999.0 F. • FINISHED SPOT ELEVATION
 - 999.0 P. • PROPOSED SPOT ELEVATION
 - F.F.E. • FINISHED FLOOR ELEVATION
 - DIRECTION OF SURFACE DRAINAGE



IN MY OPINION, THIS IS A CORRECT REPRESENTATION OF THE LAND PLATTED.

Rufus Gerald Sadler



GRAPHIC SCALE - FEET

SURVEY FOR:			
MILES SEYMOUR			
LAND LOT	483	16TH	DISTRICT
2ND SECTION	COUNTY OF COBB	GEORGIA	
SCALE: 1" = 100'	DATE: 05-16-2003		
LOT -			
JOB No. 75VANDY	SADLER AND ASSOCIATES LAND SURVEYING / ENGINEERING MARIETTA - ALPHARETTA, GEORGIA (770) 514-9792 FAX. (770) 514-7372		

REF: PB. 24 PG. 112
 COBB COUNTY RECORDS

EQUIPMENT USED :
 TOPCON GTS-213
 TOTAL STATION

THE FLOOD INFORMATION ON THIS PLAT HAS BEEN DETERMINED AFTER REVIEW OF MAPS WHICH ONLY APPROXIMATE THE LOCATION OF THE APPLICABLE FLOOD HAZARD AREA. A COMPREHENSIVE FLOOD EVALUATION STUDY IS SUGGESTED FOR MORE ACCURATE INFORMATION.

I HAVE THIS DATE, EXAMINED THE " FIA OFFICIAL FLOOD HAZARD MAP " AND THE REFERENCED PARCEL DOES NOT APPEAR TO BE IN AN AREA HAVING SPECIAL FLOOD HAZARDS.

APPLICANT: Miles Seymour
770-656-0552

REPRESENTATIVE: Miles Seymour
770-656-0552

TITLEHOLDER: Miles Seymour

PROPERTY LOCATION: Located at the northeast intersection of
Sandy Plains Road and Bryant Lane, south of Priscilla Drive
(3003 Sandy Plains Road).

ACCESS TO PROPERTY: Sandy Plains Road

PHYSICAL CHARACTERISTICS TO SITE: Existing house

PETITION NO: LUP-26

HEARING DATE (PC): 8-03-04

HEARING DATE (BOC): 8-17-04

PRESENT ZONING: R-20

PROPOSED ZONING: Land Use Permit
(renewal)

PROPOSED USE: Custom Frame and
Furniture Repair

SIZE OF TRACT: 1,559 acres

DISTRICT: 16

LAND LOT(S): 483

PARCEL(S): 16

TAXES: PAID X DUE _____

COMMISSION DISTRICT: 3

CONTIGUOUS ZONING/DEVELOPMENT

- NORTH: R-20/Vandiver Heights subdivision
- SOUTH: RA-5/Harper Woods subdivision
- EAST: R-20/Single-family house
- WEST: R-20/Single-family houses

OPPOSITION: NO. OPPOSED _____ PETITION NO: _____ SPOKESMAN _____

PLANNING COMMISSION RECOMMENDATION

APPROVED _____ MOTION BY _____

REJECTED _____ SECONDED _____

HELD _____ CARRIED _____

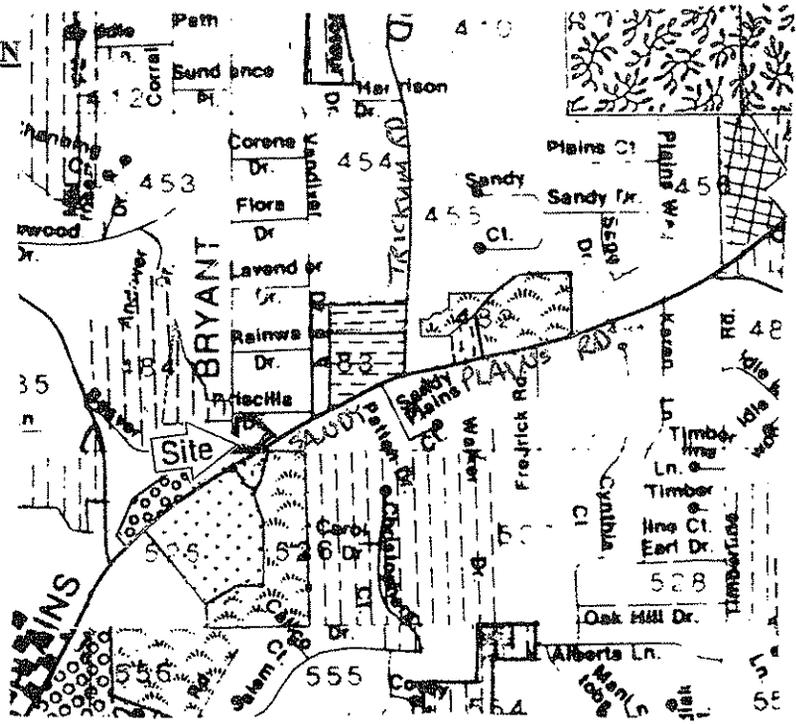
BOARD OF COMMISSIONERS DECISION

APPROVED _____ MOTION BY _____

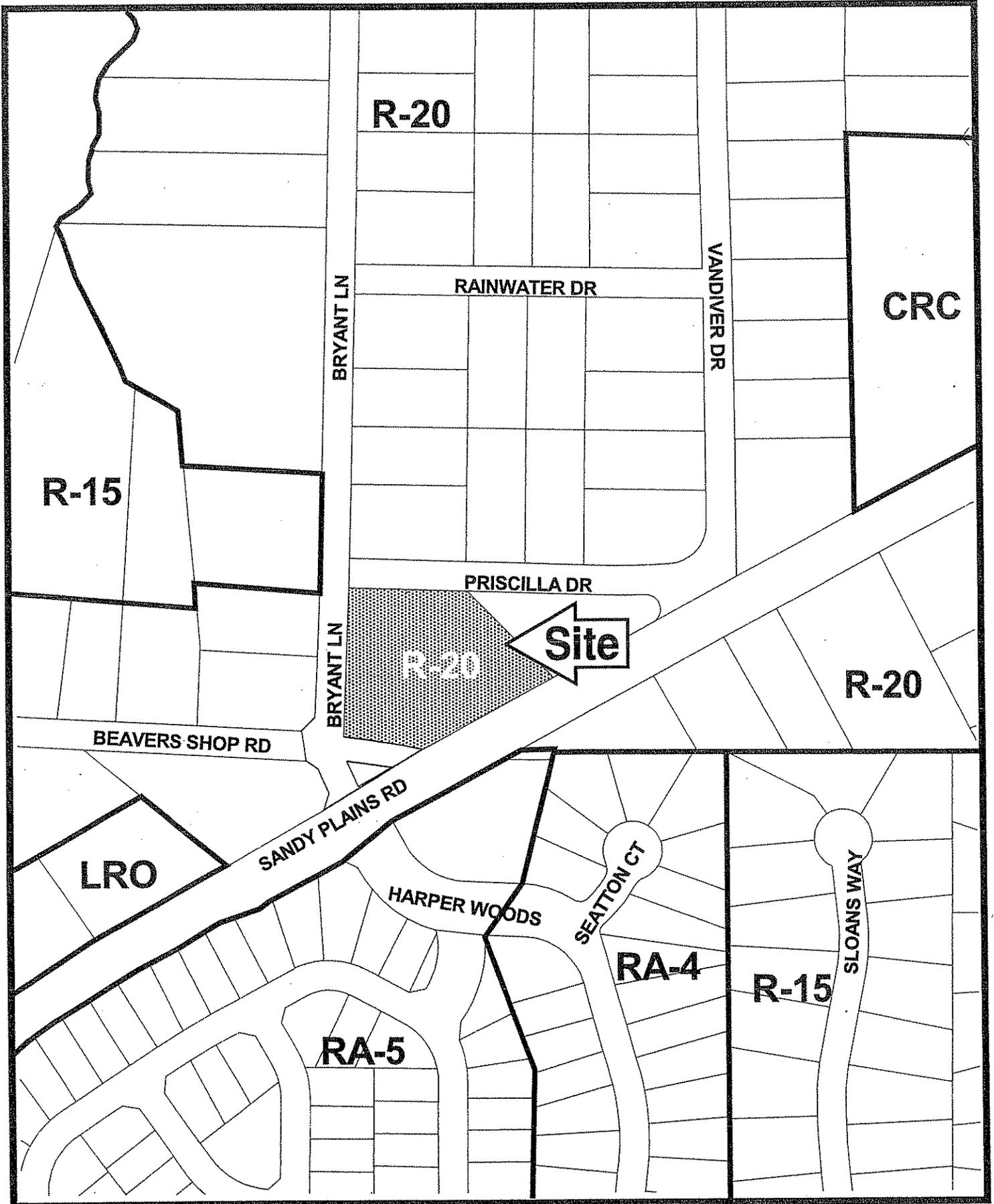
REJECTED _____ SECONDED _____

HELD _____ CARRIED _____

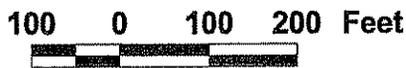
STIPULATIONS:



LUP-26



This map is provided for display and planning purposes only. It is not meant to be a legal description.



-  Approximate Zoning Boundaries
-  Draft Parcel Boundaries

APPLICANT: Miles Seymour

PETITION NO.: LUP-26

PRESENT ZONING: R-20

PETITION FOR: LUP

PLANNING COMMENTS: Staff Member Responsible: John P. Pederson

Applicant is requesting a renewal for a Temporary Land Use Permit for the purpose of operating a custom frame and furniture repair shop from this residential property. Applicant has indicated he will be working five or six days per week from 10 a.m. until 6 p.m. Mr. Seymour has also indicated he anticipates one customer per day and possibly eight per week. Applicant will have inventory and has also requested to have a 6 square-foot sign in his front yard. See Exhibit "A" for previously approved application. Based on a field check, it appears the applicant has intensified activity at the house, by expanding the business activity to the front exterior of the house.

Historic Preservation: According to the Cobb County Inventory of Potentially Historic Homes and the Cobb County Civil War Earthworks Map, there appears to be no known historic resources located on this property.

Cemetery Preservation: No comment.

WATER & SEWER COMMENTS:

Water and sewer available. Health Department requires use of public sewer.

TRAFFIC COMMENTS:

Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.

FIRE COMMENTS:

APPLICANT: Miles Seymour

PETITION NO.: LUP-26

PRESENT ZONING: R-20

PETITION FOR: LUP (R)

DRAINAGE COMMENTS

FLOOD HAZARD: YES NO POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Rubes Creek FLOOD HAZARD INFO: None

- FEMA Designated 100 year Floodplain Flood.
- Flood Damage Prevention Ordinance DESIGNATED FLOOD HAZARD.
- Project subject to the Cobb County Flood Damage Prevention Ordinance Requirements.
- Dam Breach zone from (upstream) (onsite) lake - need to keep residential buildings out of hazard.

WETLANDS: YES NO POSSIBLY, NOT VERIFIED

Location: _____

- The Owner/Developer is responsible for obtaining any required wetland permits from the U.S. Army Corps of Engineer.

STREAMBANK BUFFER ZONE: YES NO POSSIBLY, NOT VERIFIED

- Metropolitan River Protection Area (within 2000' of Chattahoochee River) ARC (review 35' undisturbed buffer each side of waterway).
- Chattahoochee River Corridor Tributary Area - County review (_____ undisturbed buffer each side).
- Georgia Erosion-Sediment Control Law and County Ordinance - County Review/State Review.
- Georgia DNR Variance may be required to work in 25 foot streambank buffers.
- County Buffer Ordinance: 50', 75', 100' or 200' each side of creek channel.

DOWNSTREAM CONDITION

- Potential or Known drainage problems exist for developments downstream from this site.
- Stormwater discharges must be controlled not to exceed the capacity available in the downstream storm drainage system. (New work)
- Minimize runoff into public roads.
- Minimize the effect of concentrated stormwater discharges onto adjacent properties.
- Developer must secure any R.O.W required to receive concentrated discharges where none exist naturally
- Existing Lake Downstream _____
Additional BMP's for erosion sediment controls will be required.
- Lake Study needed to document sediment levels.
- Stormwater discharges through an established residential neighborhood downstream.
- Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on downstream stormdrainage system.

APPLICANT: Miles Seymour

PETITION NO.: LUP-26

PRESENT ZONING: R-20

PETITION FOR: LUP (R)

DRAINAGE COMMENTS CONTINUED

SPECIAL SITE CONDITIONS

- Provide comprehensive hydrology/stormwater controls to include development of out parcels.
- Submit all proposed site improvements to Plan Review. **(New work)**
- Any **spring activity** uncovered must be addressed by a qualified geotechnical engineer (PE).
- Structural fill _____ must be placed under the direction of a qualified registered Georgia geotechnical engineer (PE).
- Existing facility.
- Project must comply with the Water Quality requirements of the CWA-NPDES-NPS Permit and County Water Quality Ordinance. **(New work)**
- Water Quality/Quantity contributions of the existing lake/pond on site must be continued as baseline conditions into proposed project.
- Calculate and provide % impervious of project site.
- Revisit design, reduce pavement area to reduce runoff and pollution.

INSUFFICIENT INFORMATION

- No Stormwater controls shown _____.
- Copy of survey is not current - Additional comments may be forthcoming when current site conditions are exposed.
- No site improvements showing on exhibit.

ADDITIONAL COMMENTS/SUGGESTIONS

- 1) Tract drains down to northwest corner. Along the west property line is a band of trees approximately 75 feet wide, which serve to filter runoff and breakup energy of low.
- 2) Recommend the tree band along west property line be established as a protected buffer to continue its current flow mitigation and Water Quality service.
- 3) Recommend character of property and house be maintained as residential and that additions and changes be routed through Plan Review.
- 4) According to new Environmental Protection Division Directives, all stream crossings, which involve culvert backfill will be required to obtain buffer variances from Environmental Protection Division, if the stream has an ordinary high water mark (i.e.: vegetation wasted from channel by normal water flow) regardless of amount of water flow if any,
- 5) All detention ponds constructed on streams with ordinary high water mark, which include excavation of the stream bank buffer or embankment fill will be required to obtain buffer variances from Georgia-Environmental Protection Division.

STAFF RECOMMENDATIONS

LUP-26 MILES SEYMOUR

The applicant's proposal is located in an area designated as Low Density Residential on the *Cobb County Comprehensive Plan*. The applicant's proposal is in an area dominated by single-family residential houses. Staff believes the applicant's proposal, as summarized in the Planning Comments, is too intense for this residential part of Sandy Plains Road. Staff is also concerned that the applicant's business would intensify in the future (it's already proposed to be a full-time operation, with a sign), and possibly encourage additional requests along Sandy Plains Road. Additionally, since the Temporary Land Use Permit was approved, the applicant has erected a fence in front of the houses where work is done outside, and an accessory structure has been erected in front of the house without a variance or building permit. Based on the above analysis, Staff recommends DENIAL of this application.

The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.

ORIGINAL DATE OF APPLICATION: 08-19-03APPLICANTS NAME: MILES SEYMOUR

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE
COBB COUNTY BOARD OF COMMISSIONERS

BOC DECISION OF 08-19-03 ZONING HEARING:

MILES SEYMOUR for a **Land Use Permit** for the purpose of Custom Frame and Furniture Repair in Land Lot 483 of the 16th District. Located at the northeast intersection of Sandy Plains Road and Bryant Lane, south of Priscilla Drive (3003 Sandy Plains Road).

The public hearing was opened and Mr. Miles Seymour, Mr. Craig Harfoot, Mr. Don Brundage, and Mr. Bob Ott addressed the Board. Following presentations and discussion, the following motion was made:

MOTION: Motion by Olens, second by W. Thompson, to **approve Land Use Permit** for twelve (12) months subject to:

- no employees
- no commercial deliveries above and beyond customary residential deliveries
- all work to be done within the existing structures
- any noise related to the business to occur between 7:00 a.m. and 7:00 p.m.
- no commercial signage allowed

VOTE: ADOPTED 4-1; Lee opposed

**DECEMBER 15, 2009 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 1**

ITEM #2

PURPOSE

To consider amending the site plan and stipulations for Mayes Ward-Dobbins Funeral Home regarding Z-52 (LOST MOUNTAIN ENTERPRISES, INC.) of April 20, 2004, for property located in Land Lot 428 of the 19th District on the north side of Macland Road, west of Villa Rica Road.

BACKGROUND

The subject property is zoned LRO subject to numerous conditions/stipulations which are attached. This request seeks to amend the previously approved site plan and stipulations to allow the site to be developed for a one-story 18,900 square foot funeral home. The proposed site plan is attached. This proposal is a reduction in the number of buildings and the total square footage from the approved site plan which allowed 24 office buildings which encompassed 54,000 square feet. There are two existing frame structures on the property. It is the desire to refurbish the structure located toward the rear of the property for a maintenance building depending on the final determination of its condition. The farmhouse structure located closer to the front of the property will be demolished due to its poor condition. The applicants have agreed to comply with the recommendations of the consultant (R. S. Webb & Associates) and the County's Historic Preservation Planner who were asked as part of the original rezoning to evaluate the farmhouse structure due to its age and significance. The evaluation has been completed and documented as indicated in the report filed with this request. The applicants have submitted a letter of stipulations in addition to the Other Business application which are both attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners consider the request and if approved, should be subject to Plan Review comments and all other previously approved conditions/stipulations not in conflict should remain in effect.

ATTACHMENTS

Board of Commissioners Decision
Proposed Site Plan
Stipulation Letter
Other Business Application

ORIGINAL DATE OF APPLICATION: 04-20-04APPLICANTS NAME: LOST MOUNTAIN ENTERPRISES, INC.THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE
COBB COUNTY BOARD OF COMMISSIONERS**BOC DECISION OF 05-18-04 ZONING HEARING:**

LOST MOUNTAIN ENTERPRISES, INC. (Elizabeth Williams, owner) for Rezoning from **R-80** to **LRO** for the purpose of Offices in Land Lot 428 of the 19th District. Located on the north side of Macland Road, west of Villa Rica Road.

The public hearing was opened and Mr. Carl Wynne addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Goreham, second by Olens, to **approve** rezoning to the **LRO** zoning district **subject to:**

- site plan received in the Zoning Division on May 14, 2004, with the District Commissioner approving minor modifications to the site layout (copy attached and made a part of these minutes)
- letter of agreeable stipulations from Mr. Carl Wynne dated May 17, 2004, *which shall control in the event of conflict with the other stipulations, with the following changes:* (copy attached and made a part of these minutes)
 - Paragraph 25: "Prior to obtaining a *land disturbance permit*, the Developer shall post a Letter of Credit in the amount of \$100,000 bound unto Cobb County. A copy of the Letter of Credit is attached and will be subject to the review and approval of the County Attorney."
 - Paragraph 32: "The Developer wishes to make known their use of a general contingency fund provided for in the duration of the primary development loan. Said funds shall be used to correct any deficiencies within the project or damages as result of the project until the *project receives a Final Certificate of Occupancy from Cobb County*. Any damages that occur during the construction process through to the *Final Certificate of Occupancy* should be the sole financial responsibility of the developer, and should be paid for out of the developer's contingency funds."
 - Letter of Credit, Paragraph 5: "A further condition of this Agreement is that the irrevocable Letter of Credit shall remain in effect a period not to exceed 12 months from the Final Inspection of the site *and receipt of Final Certificate of Occupancy* by a representative of the Community Development Agency Director, provided that the Property Owners Association to be formed by the Developer can demonstrate cash reserves of no less than \$100,000.00."

Z-52 continued on next page

ORIGINAL DATE OF APPLICATION: 04-20-04APPLICANTS NAME: LOST MOUNTAIN ENTERPRISES, INC.

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE
COBB COUNTY BOARD OF COMMISSIONERS

BOC DECISION OF 05-18-04 ZONING HEARING (Continued):

- signage to have backlighting, if any, with no electronic reader board or flashing lights
- maintained natural buffer areas to be enhanced and fully planted in sparsely vegetated areas with living trees, bushes and other plantings ecologically compatible to the area, not to be clear cut or mowed, to be maintained by the Property Owner Association; landscape buffer to be approved by the County Arborist who will have final approval as to plantings; only dead, dying, diseased or invasive vines or plants such as kudzu and poison ivy may be removed from the buffer; no storage or structures, including swing sets, signs, (with the exception of signs recommended by the Cemetery comments) tree houses, trailers, storage buildings and/or other non-growing items to be placed in the buffer; invisible electronic underground fencing, for containment of animals is acceptable
- issue of oil runoff from driveways, etc., to be resolved in Plan Review
- all future structures along the north or east property lines to be one story and have gabled roofs
- fencing between the Applicant's property and neighboring residences to be resolved between the applicant and the neighbors, District Commissioner to decide if necessary
- Applicant to make initial application for historical register with help of Staff
- installation of a scavenge box system
- Historic Preservation comments and recommendations
- Cemetery Preservation comments and recommendations, *to include a fifty (50) foot maintained natural buffer between the cemetery and the project, and a 10-foot building line setback from the buffer, for a total buffer and setback of sixty feet on the west side*
- Water and Sewer Division comments and recommendations
- Stormwater Management Division comments and recommendations
- Cobb DOT comments and recommendations
- owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns

VOTE: **ADOPTED** unanimously

Lost Mountain Enterprises, Inc. PAGE 7 OF

Land Acquisition and Development

May 17, 2004

FILED WITH COUNTY CLERK THIS 18th DAY
OF May 2004 BY Carol W. Wilson
RE Z-52
Chail K. Duff
COUNTY CLERK/ASST. COUNTY CLERK/DEPUTY COUNTY CLERK
COBB COUNTY, GEORGIA

Min. Bk. 27 Petition No. Z-52
Doc. Type Letter of
Agreeable Stipulations
Meeting Date 6/18/04

Mr. John Pederson
Zoning Division
Cobb County Community Development Agency
Suite 300
191 Lawrence Street
Marietta, GA 30060-1661

Via: Hand Delivered

RE: Application for Rezoning

Application #: Z-52
Applicant: Lost Mountain Enterprises, Inc.
Property: 7.54 Acres in Land Lot 428
19th District, 2nd Section
Cobb County, Georgia

ORIGINAL

Dear John,

After meeting with members of the surrounding communities, planning and zoning staff, various departmental representatives, and reviewing the staff comments and recommendations, we the Applicant having been authorized by the owners submit this letter of agreeable stipulations and conditions which, if the Application for rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the property. This letter shall supercede and replace the Letter of Agreeable Stipulations submitted to Cobb County dated April 16, 2004. The referenced stipulations are as follows:

- (1) Rezoning of the subject property shall be from the R-80 zoning category to the LRO zoning category as referenced by that certain site plan dated May 14, 2004, by Krewson and Vickrey Engineers & Surveyors. (Site Plan attached). Any minor modifications of said site plan shall be subject to the review and approval of the District Commissioner.
- (2) By this letter of agreeable stipulations, the Applicant amends its application for rezoning to include the site plan herein set forth, which shall supercede all previously submitted plans and stipulations.
- (3) The Buildings to be constructed within the proposed development shall be Traditional in styling and complimentary to the existing McEachern

Continued

Houses' architecture. Roofs shall be steep pitched with architectural style shingles. The front facades of the Buildings shall be comprised of lap board siding with brick and stone accents. All exterior elevations shall be subject to the approval of an Architectural Review Committee (ARC) to be established by the Developer. The initial committee shall consist of three voting members for a period of 2 years from the zoning approval. One member shall be appointed by the Developer, one member shall be Janice Dobbs or her appointed designee, and one member shall be the area District Commissioner of Cobb County or their designee. A exoficio member to the board shall be appointed by the Board of Trustees of McEachern Memorial United Methodist Church. After the initial 2 year period, the members of the (ARC) shall be appointed in accordance with the covenants of the development. The covenants shall provide that one member of the (ARC) shall be a Dobbs Family Designee.

- (4) The Entrance to the proposed community shall be professionally landscaped with permanent signage being on a ground-based monument. The entrance landscaping plan shall be subject to the review and approval of the Architectural Review Committee (ARC).
- (5) Exterior lighting within the project shall be determined by the development of a photometric plan coordinated with Cobb County staff as designated by the Area District Commissioner. The Developer shall work with Staff and a representative of adjacent properties to develop a lighting plan to minimize the spillage of excess light onto adjacent residential properties. The lighting plan shall include the use of the following devices as necessary: Timers on nonessential security lights to turn off at 10:00 P.M. and baffles on security lights. No flood lights shall be installed on the rear of the buildings and all exterior lights on the side and rear of the buildings shall be on timers.
- (6) Applicant agrees to provide a 50 foot Maintained Enhanced Buffer along the property line adjacent to the cemetery. The Maintained Enhanced Buffer shall have the existing drive and cross fencing removed, existing shrubs and trees tended, and additional plantings in sparsely vegetated areas. The Developer shall install along the most northern property line an 80 foot Maintained Buffer and a 30 foot Maintained Buffer along the northeastern and eastern property lines. In addition to the Maintained Buffer, the Developer agrees to install for additional screening, a 20 foot Landscaped Buffer along the northern, northeastern, and eastern property lines, for a total Buffer area of 50 feet along the northeastern and eastern lines, and 100 feet along the most northern line. The Landscaped buffer shall contain a solid line of Leyland cypress not to exclude additional plantings nor removal of existing bamboo. The Maintained Buffer shall have the existing trees and shrubs tended and allow for the maintenance of the current vegetation. The Bamboo located within this Buffer area shall not be removed as well. No buildings will be allowed in the Buffer Area's.

Continued

- (7) All Buffers within the project shall be controlled, maintained and protected by recorded covenants enforced by a mandatory Property Owners Association (POA) to be established by the Developer.

- (8) A vinyl coated chain link fence consistent with the fencing on the Cemetery property and Dobbs property shall enclose the Project sides and rear with access restricted to the entrance located on Macland Road. The property frontage along Macland Road (excluding the area directly in front of the McEachern House) shall include a fence consistent with the existing pickett fence with additional landscaping. The Developer may incorporate Brick or Stone columns in the pickett fence. The fence bordering the Dobbs property shall be 8' in height and located at either the property's edge or separating the Landscaped and Maintained buffers with the exception of a tie-in at the cemetery fence (Location of fence to be determined by Janice Dobbs or designee within 30 days). The existing cemetery fence shall remain in place.

- (9) Applicant agrees to a mandatory Property Owners Association with recorded covenants prepared by the law firm Sams, Larkin and Huff LLP to provide for the maintenance of the building exteriors, landscaping, private sewage lift station, detention and common areas, consistent with upscale professional offices within the county. The articles of organization for said Property Owners Association shall require that the POA keep no less than \$100,000.00 in cash reserves for a period of 60 months from the final Inspection of the site by Cobb County.

- (10) All grassed areas within the proposed development shall be sodded.

- (11) The detention facilities shall be designed and placed to obtain the lowest impact to the buffers areas. Further, the developer agrees to exceed county minimum standards for water quality and detention by 50%. Developer may grade a pooling area if necessary to reduce the size and impact of the pond on surrounding buffers. The developer agrees to work with the Storm Water Management Division of Cobb County to include a scavenge box system to separate pollutants from the storm water entering the detention area.

- (12) In order to dissipate the storm water flow from the ponds, the Developer shall use level spreaders in the control of storm water discharge.

- (13) The Applicant agrees to provide a 50 foot Maintained Enhanced Buffer along the property line adjacent to the cemetery. The Maintained Enhanced Buffer shall have the existing drive and cross fencing removed, existing shrubs and trees tended, and additional plantings in sparsely vegetated areas. No disruption of the Cemetery Buffer beyond the above stated activities shall be allowed. Orange protective fencing shall be installed on the outer perimeter of the Buffer area and maintained until final landscaping. No development, building or construction activity shall

be allowed within the Cemetery Buffer. The ~~Cemetery~~ ^{Building} Setbacks shall be 50' adjacent to the cemetery. The existing cemetery boundary fence shall not be disturbed and no other fencing installed. Any changes to the Cemetery Buffer shall be approved by the Cemetery Association. The Cemetery Buffer shall be controlled, maintained and protected by recorded covenants enforced by a mandatory POA to be established by the Developer. Covenants shall clearly dictate that the Buffer area shall not be used for any activities by the tenants and owners of the offices. Signs shall be posted in 100 foot intervals not less than 20 feet from the property line adjacent to the cemetery stating Cemetery Preservation Buffer -Do Not Disturb. Additionally, the recorded covenants shall grant a third party right of enforcement to the Cobb County Cemetery Preservation Commission and the Macland Cemetery Association. The provisions of this section shall control if in conflict with Cemetery Preservation comments.

- (14) The applicant agrees to incorporate the existing McEachern Farmhouse into the development. The historical integrity of the house and surrounding area shall be maintained. The exterior of the existing structure shall be renovated. All work shall be coordinated with the Planning Division to include new roofing, paint and deferred maintenance. The interior renovation shall include the development of an adaptive reuse design for an art studio or office and meeting use. Applicant agrees to the installation of a historical marker referencing the history of the farm. The Applicant agrees to make application for the house to be included in the Historical Registry.
- (15) The Applicant agrees the site shall be designed to minimize grading as much as possible.
- (16) The Parking area shall not exceed the minimum required by Cobb County.
- (17) The site shall be developed using a phased construction plan. Prior to beginning construction on buildings within any phase, the pavement areas shall be in place with no less than 6" of stone over geotex fabric, and landscaping finalized or temporary landscaping control measures in place.
- (18) Developer agrees to a predevelopment and post-development lake study on the lake located down stream from the project. Evaluation shall be performed by a licensed Professional Engineer, including a bottom and powder level analysis, and a water quality test to check for pollutants. The applicant agrees to submit all engineering, including but not limited to, Construction Plans, Lake Study, Hydrology, Dam and Spillway analysis, NPDES Erosion Control Plans and Notice of Intent, to Mr. Craig Zeller or another Professional Engineer designated by lake owners, no less than 30 days prior to Applicant's initial submission of plans for plan review by Cobb County. Any comments by the lake owner's engineers will be submitted to Cobb County at applicant's initial submission of plans for review. Said studies shall be coordinated with the Storm Water

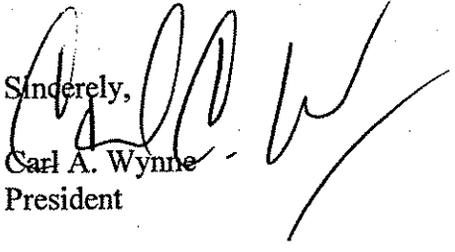
Management Division of Cobb County and paid for by the Developer. The lake owners shall be responsible for all cost associated with the review by their independent engineer. Developer will submit all weekly and monthly inspections under developers NPDES permit, monthly to said engineer until such time as Developer notifies the Issuing Authority for Erosion and Sedimentation Control permits that construction activities have been completed.

- (19) Applicant agrees to the use of flocculates in the erosion control plan to reduce the discharge of sediment from the site.
- (20) The Applicant agrees to the development of a temporary sediment control plan to be developed in conjunction with the Storm Water Management Division utilizing additional sediment control devices to retain all sedimentation on site during the construction process.
- (21) The Applicant agrees to the oversight and monitoring of all Stormwater by a licensed Geotechnical Engineer during the construction process.
- (22) The Applicant agrees to do a spillway study on the downstream lake. Said study shall be coordinated with The Storm Water Management Division of Cobb County and paid for by the Developer. Copies of the spillway study shall be provided to the County and Lake Owners. The Developer shall provide a letter of indemnification to the Lake Owners prior to the start of construction. Said letter shall indemnify the owners from cost of making any changes to the dam or dam structures, necessitated, as a direct result of the upstream development by the Applicant. A copy of the Indemnification Letter is attached and will be subject to the review and approval of the County Attorney.
- (23) Developer shall if requested, by the owners of the Dobb's property downstream, clean out the 18" storm drain running under the driveway.
- (24) Prior to beginning construction the Developer shall post an Erosion and Sedimentation Control Performance Bond in the amount of \$10,000 bound unto Cobb County.
- (25) Prior to beginning construction the Developer shall post a Letter of Credit in the amount of \$100,000 bound unto Cobb County. A copy of the Letter of Credit is attached and will be subject to the review and approval of the County Attorney
- (26) The Applicant agrees that all trash shall be kept in storage facilities within each individual building or unit and a residential type garbage service used, with pickups between the hours of 8:00 A.M. and 7:00 P.M. Monday through Friday.
- (27) The Applicant agrees to the following Staff Comments: Historic Preservation, Water and Sewer, and DOT. In addition the Applicant agrees

to Stormwater Management comments in keeping with the Developer's overall effort to increase water quality and detention on the site.

- (28) The Owner/ Developer shall enter into a Development Agreement pursuant to O.C.G.A. Section 36-71-13 for the dedication of system improvements and the mitigation of traffic concerns.
- (29) The Applicant agrees to exclude, the following uses from the property: Recycling Collections; Golf Courses; Group Homes; In-Home Day Care; Fishing lakes; Child Care; Nursery Schools; and Communication Towers and Antennas.
- (30) The Applicant agrees that No commercial deliveries will take place between the hours of 9P.M. and 7A.M.
- (31) The Applicant agrees to amend the POA covenants to include maintaining a long-term Larvacide program for the purpose of lowering the mosquito populations contained within the detention areas.
- (32) The Developer wishes to make known their use of a general contingency fund provided for in the duration of the primary development loan. Said funds shall be used to correct any deficiencies within the project or damages as a result of the project until the final inspection of the site by Cobb County. Any damages that occur during the construction process through to the final inspection should be the sole financial responsibility of the developer, and should be paid for out of the developer's contingency funds

We believe the requested zoning pursuant to the referenced site plan, the stipulations contained herein and staff comments and recommendations is an appropriate use when considering the owners and properties surrounding the proposed development. This development shall be of high caliber and will be an enhancement to the community.

Sincerely,

Carl A. Wynne
President

LETTER OF CREDIT
PREFORMANCE AGREEMENT

Petition No. Z-52
Meeting Date 5-18-04
Continued

For _____
Account # _____

THIS AGREEMENT, entered into this _____ day of _____, 20____,
Between _____ (hereinafter
called as "Developer"), with its principal place of business at _____
_____ and the
County of Cobb, a political subdivision of the State of Georgia, (hereinafter called
"County"), and _____ (hereinafter called "Issuer"), with its principal
place of business at _____.

Whereas, the Developer intends to cause the development of the tract of land
consisting of 7.54 acres, located in Land Lot 428, 19th District, 2nd Section, Cobb County,
Georgia and which is the subject of rezoning application No. Z-52 (2004).

Whereas, approximately Four Hundred feet downstream an approximately 12
acre lake, known as Dobbs Lake, is located on Land Lots 387 and 428 , Cobb County,
Georgia; and

Whereas, the Developer intends to provide and make sufficient funds available
for repairs, in the event repairs to the dam or dam structures situated on said lake are
necessitated by increased sediment deposits or increased water runoff directly caused by
the development of the subject property after such time as the developer has received a
final inspection from the Director of the Community Development Agency of Cobb
County.

Whereas, as a condition precedent to the rezoning of the above described
property the Developer has agreed to the submittal of a letter of indemnification to Vita
and Nikola Galinac, Patrick and Sue Hilton, and Janice B. Dobbs and an accompanying
Letter of Credit in favor of Cobb County; and

Whereas, the Developer has received approval of the construction plans in
accordance with the plans and specifications on file with the Community Development
Agency for the improvement of said property; and

Whereas, the Developer certifies that any and all persons, firms, or corporations
providing labor and/or materials required for the repair of said dam or structures situated
on said lake will be paid in full; and

Whereas, the parties have agreed that the Issuer is acceptable to all parties to act
in such capacity;

Petition No. 2:52
Meeting Date 5-18-14
Continued

NOW, THEREFORE, in consideration of the foregoing promises, it is hereby agreed:

1. The Developer has attached the unconditional irrevocable Letter of Credit in The sum of One Hundred Thousand Dollars (\$100,000.00) with the issuer, to guarantee that repairs if necessitated will be constructed as required by the Community Development Agency and in accordance with the construction plans and specifications for the development.
2. The Issuer agrees to disburse funds to the full amount of the Letter of Credit only upon receipt of "Proper Authorization" as hereinafter defined. "Proper Authorization" shall mean the authority in written form from Cobb County Community Development Agency Director stating that a disbursement is authorized:
 - (a) To the Developer, or to any party designated to the Developer, upon delivery of "Proper Authorization" from the Community Development Agency Director; the County through the Community Agency Director, shall issue such "Proper Authorization" when the repairs have progressed satisfactory to the state of development for which payment is made and upon receipt of the County of a certificate to that effect signed by the Developer and the registered Engineer for the Development and upon proof satisfactory to the County that all bills therefore have been paid to date, including but not limited to bills for surveying, engineering, land clearing, construction of improvements, and materials which are included in the repairs.
 - (b) To the County upon delivery of "Proper Authorization" from the Community Development Agency Director, upon his determination that any portion or all of the said improvements have not been constructed by the Developer in accordance with the approved construction plans or agreed to plan for repairs to said lake.
3. The Issuer hereby acknowledges that it has extended an unconditional irrevocable Letter of Credit, referred to in Item 1 above, and represents that it has no obligation whatsoever to any of the parties hereto except to release said funds within 10 days upon delivery of "Proper Authorization" from the Community Development Agency Director. The Developer does hereby release and hold the Issuer harmless from any and all claims whatsoever by it against the Issuer for releasing such funds to the County in accordance with the terms thereof. This Agreement shall not be terminated or otherwise allowed to expire without at least written notice to that effect from the Issuer to both the County and Developer.
4. If the funds are inadequate to pay for any cost covered by this Agreement, the Developer shall pay any and all cost beyond coverage.

5. A further condition of this Agreement is that the irrevocable letter of credit shall remain in effect a period not to exceed 12 months from the Final Inspection of the site by a representative of the Community Development Agency Director, provided that the Property Owners Association to be formed by the Developer can demonstrate cash reserves of no less than \$100,000.00.

WITNESS The hands and official seals of the parties hereto on the day and year first above written.

COBB COUNTY, GEORGIA

By: _____
Community Development Agency Director

(Corporate Seal)

Developer: _____

By: _____

Title: _____

(Corporate Seal)

ISSUER: _____

By: _____

Title: _____

Approved as to form:

By: _____
Office of the County Attorney

INDEMNIFICATION AGREEMENT continued

This Agreement of Indemnification is made this _____ day of _____
2004 by _____

(Indemnitor) and is made in to induce Cobb County to issue a Land Disturbance Permit for the development of 7.54 acres, located in Land Lot 428, 19th District, 2nd Section, Cobb County, Georgia and which is the subject of rezoning application No. Z-52 (2004) by Lost Mountain Enterprises, Inc. This Indemnity Agreement relates to and concerns an approximately 12 acre lake, known as Dobbs Lake, located on Land Lots 387 and 428, Cobb County, Georgia, including the dam and dam structures located on said Lake.

Indemnitor hereby undertakes to indemnify Vita and Nikola Galinac, Patrick and Sue Hilton and Jance B. Dobbs, owners of said Lake, and their successors in interest (Indemnitees) from any and all damages, losses or injury to said Dobbs Lake, the dam and dam structures situated on said lake, which damages, losses or injury are directly caused by the development of the tract of land consisting of 7.54 acres, located in Land Lot 428, 19th District, 2nd Section, Cobb County, Georgia and which is the subject of rezoning application No. Z-52. This Agreement shall include the indemnification of the indemnities for all cost and expenses of making any necessary repairs to the dam or dam structures situated on said lake necessitated by increased sediment deposits or increased water runoff directly caused by the development of the subject property including excavation, site development and the construction of the buildings and common areas to be situated on the subject property.

Indemnitor agrees to this indemnification agreement until such time as Indemnitor no longer owns any portion of the subject property. At such time, the Property Owners

Continued

Association to be formed by the Indemnitor as part of the rezoning of the subject property shall be bound by this Indemnity Agreement and this shall so be provided for in the documents of organization for said Property Owners Association.

Indemnitor shall be given written notice by certified or registered mail at _____, or any other address requested by Indemnitor in writing, of any act or occurrence involving a claim or demand under this agreement within 5 days after such act or occurrence comes to the knowledge of the Indemnitees.

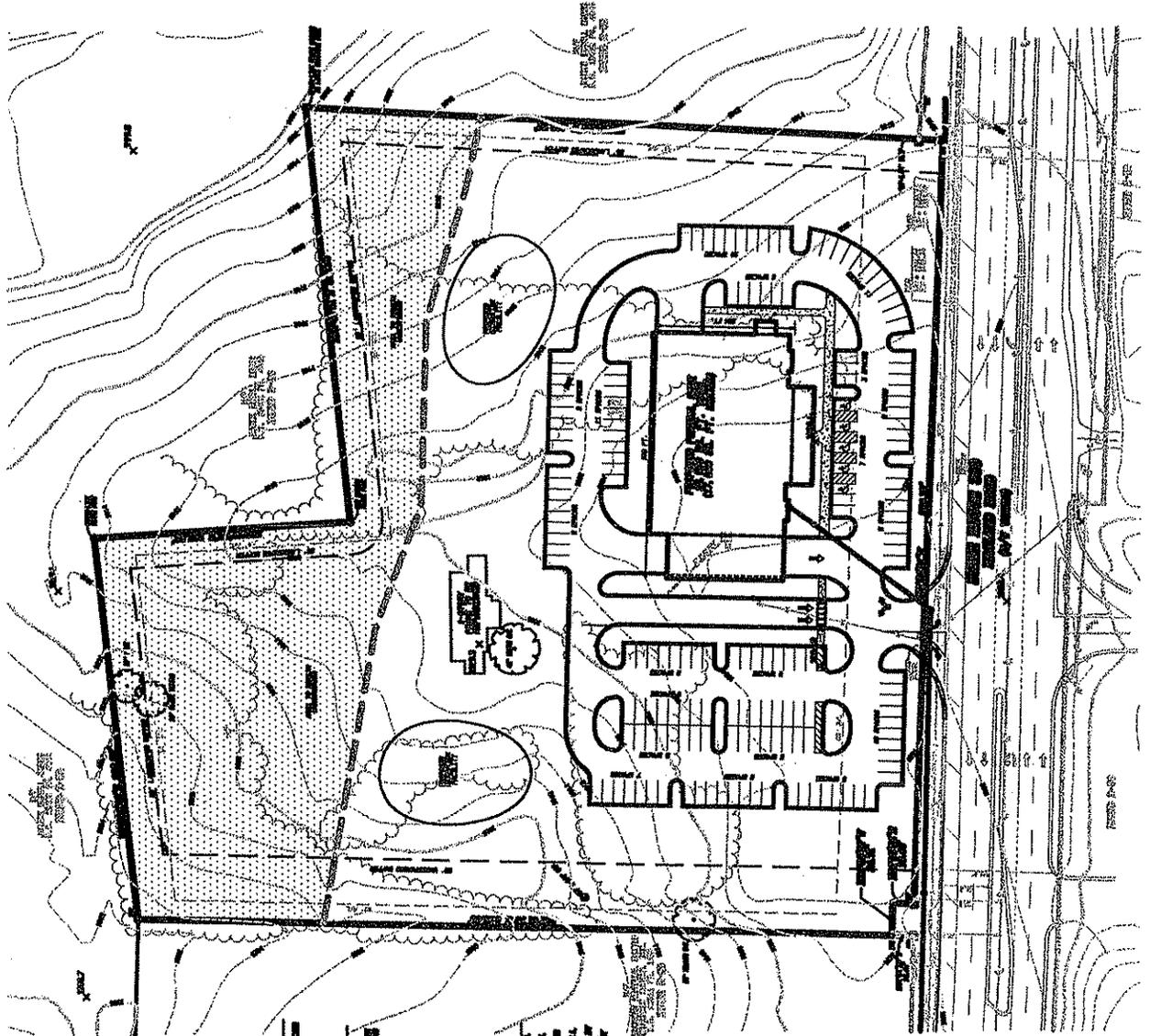
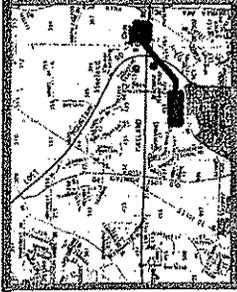
(Indemnitor)

By Its:

**THE STATE OF
NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BIRMINGHAM**



ANTENNA AREA



PROPOSED ANTENNA SITE
 THE PROPOSED ANTENNA SITE IS LOCATED ON THE EASTERN SHORE OF LONG ISLAND SOUND, NEAR THE VILLAGE OF GREAT NECK, NASSAU COUNTY, NEW YORK. THE SITE IS A PARCEL OF LAND OWNED BY THE STATE OF NEW YORK, DEPARTMENT OF ENVIRONMENTAL CONSERVATION. THE PROPOSED ANTENNA FACILITY WILL BE CONSTRUCTED ON A PORTION OF THIS PARCEL. THE FACILITY WILL CONSIST OF A MAIN RECEPTION BUILDING AND A SMALLER OFFICE BUILDING. THE ANTENNAE WILL BE LOCATED IN TWO CIRCULAR AREAS SHOWN ON THE PLAN. THE PROPOSED ANTENNA FACILITY IS SHOWN ON THE ATTACHED SITE PLAN AND FLOOR PLAN. THE PROPOSED ANTENNA FACILITY IS SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS CONDUCTED A VISUAL QUALITY ASSESSMENT OF THE PROPOSED ANTENNA FACILITY. THE RESULTS OF THIS ASSESSMENT ARE SET FORTH IN THE ATTACHED VISUAL QUALITY ASSESSMENT REPORT. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS DETERMINED THAT THE PROPOSED ANTENNA FACILITY IS NOT LIKELY TO CAUSE VISUAL QUALITY IMPACTS THAT WOULD BE SIGNIFICANT TO THE VISUAL QUALITY OF THE SURROUNDING AREA. THEREFORE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS GRANTED A VISUAL QUALITY CERTIFICATE FOR THE PROPOSED ANTENNA FACILITY. THIS VISUAL QUALITY CERTIFICATE IS VALID FOR A PERIOD OF FIVE YEARS FROM THE DATE OF ISSUANCE. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION RESERVES THE RIGHT TO RE-EVALUATE THE VISUAL QUALITY OF THE PROPOSED ANTENNA FACILITY AT ANY TIME. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS ALSO CONDUCTED A VISUAL QUALITY ASSESSMENT OF THE PROPOSED ANTENNA FACILITY FROM THE VIEWPOINT OF THE VILLAGE OF GREAT NECK. THE RESULTS OF THIS ASSESSMENT ARE SET FORTH IN THE ATTACHED VISUAL QUALITY ASSESSMENT REPORT. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS DETERMINED THAT THE PROPOSED ANTENNA FACILITY IS NOT LIKELY TO CAUSE VISUAL QUALITY IMPACTS THAT WOULD BE SIGNIFICANT TO THE VISUAL QUALITY OF THE VILLAGE OF GREAT NECK. THEREFORE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS GRANTED A VISUAL QUALITY CERTIFICATE FOR THE PROPOSED ANTENNA FACILITY FROM THE VIEWPOINT OF THE VILLAGE OF GREAT NECK. THIS VISUAL QUALITY CERTIFICATE IS VALID FOR A PERIOD OF FIVE YEARS FROM THE DATE OF ISSUANCE. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION RESERVES THE RIGHT TO RE-EVALUATE THE VISUAL QUALITY OF THE PROPOSED ANTENNA FACILITY AT ANY TIME.

PROPOSED ANTENNA FACILITY
 THE PROPOSED ANTENNA FACILITY WILL CONSIST OF A MAIN RECEPTION BUILDING AND A SMALLER OFFICE BUILDING. THE ANTENNAE WILL BE LOCATED IN TWO CIRCULAR AREAS SHOWN ON THE PLAN. THE PROPOSED ANTENNA FACILITY IS SHOWN ON THE ATTACHED SITE PLAN AND FLOOR PLAN. THE PROPOSED ANTENNA FACILITY IS SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS CONDUCTED A VISUAL QUALITY ASSESSMENT OF THE PROPOSED ANTENNA FACILITY. THE RESULTS OF THIS ASSESSMENT ARE SET FORTH IN THE ATTACHED VISUAL QUALITY ASSESSMENT REPORT. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS DETERMINED THAT THE PROPOSED ANTENNA FACILITY IS NOT LIKELY TO CAUSE VISUAL QUALITY IMPACTS THAT WOULD BE SIGNIFICANT TO THE VISUAL QUALITY OF THE SURROUNDING AREA. THEREFORE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS GRANTED A VISUAL QUALITY CERTIFICATE FOR THE PROPOSED ANTENNA FACILITY. THIS VISUAL QUALITY CERTIFICATE IS VALID FOR A PERIOD OF FIVE YEARS FROM THE DATE OF ISSUANCE. THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION RESERVES THE RIGHT TO RE-EVALUATE THE VISUAL QUALITY OF THE PROPOSED ANTENNA FACILITY AT ANY TIME.

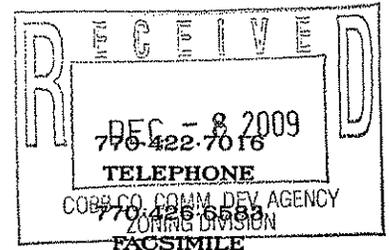
STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION, LLC
 625 WEST STREET, SUITE 2000
 ALBANY, NEW YORK 12242-1000
 TEL: 518-474-2000
 FAX: 518-474-2001

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP

SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF
JAMES A. BALLI

MELISSA P. HAISTEN
JUSTIN H. MEEKS



SAMSLARKINHUFF.COM

December 8, 2009

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
191 Lawrence Street
Suite 300
Marietta, Georgia 30060-1661

Re: Other Business Agenda Application to Amend Previously Approved Site Plan and Stipulations regarding Application of Lost Mountain Enterprises, Inc. (No. Z-52 [2004])

Dear Mark:

As you know, this firm represents Mayes Ward-Dobbins Funeral Home ("Mayes Ward-Dobbins") concerning the above-captioned application. The application was continued by the Board of Commissioners at the behest of the applicant and neighboring property owners and is now scheduled to be heard and considered by the Cobb County Board of Commissioners, immediately following its regularly scheduled zoning hearings, on December 15, 2009.

The application seeks approval from the Cobb County Board of Commissioners regarding Mayes Ward-Dobbins' proposal to build and develop and funeral home on property which was the subject matter of a previous rezoning application (No. Z-52 [2004]) wherein the subject property was rezoned to the Low Rise Office ("LRO") district.

Previously, on behalf of Mayes Ward-Dobbins, I submitted a letter of agreeable stipulations/conditions, dated October 28, 2009. However, in accordance with the dialogue which we have continued with the County's professional staff, the District Commissioner and adjacent property and business owners, I am submitting this revised letter of agreeable stipulations, which includes the stipulations/conditions negotiated between the 2004 applicant and adjacent property owners. If the application is approved, these stipulations/ conditions shall become conditions and a part of the approval and binding upon the subject property thereafter. The referenced stipulations are as follows, to-wit:

1. The subject property shall be utilized exclusively for Mayes Ward-Dobbins Funeral Home to the exclusion of all other permitted uses under the LRO district.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
Page 2
December 8, 2009

2. Development of the subject property shall be in substantial conformity to the site plan prepared by Betterton Surveying & Design, Inc. which was filed contemporaneously with the application and the building footprint shall be limited to the square footage reflected thereon.
3. The architectural style, composition and treatment of the building shall be residential in appearance, with a pitched roof and architectural shingles, and constructed of brick on all four (4) sides. All exterior elevations shall be subject to approval of an Architectural Review Committee (ARC) which shall be established by Mayes Ward-Dobbins and which shall consist of three (3) voting members for a period of two (2) years from the zoning approval. One member shall be appointed by Mayes Ward-Dobbins, one member shall be Janice Dobbs or her appointed designee and one member shall be the District Commissioner of Cobb County or that Commissioner's designee. An ex officio member to the ARC shall be appointed by the Board of Trustees of McEachern Memorial United Methodist Church. After the initial two (2) year period, the members of the ARC shall be appointed in accordance with the covenants of the development. The covenants shall provide that one member of the ARC shall be a Dobbs family designee.
4. The entrance to the Mayes Ward-Dobbins Funeral Home shall be professionally landscaped with ground-based, monument style signage. The entrance landscaping plan shall be subject to review and approval of the ARC.
5. Exterior lighting within the project shall be determined by the development of a photometric plan coordinated with Cobb County staff as designated by the District Commissioner. Mayes Ward-Dobbins shall work with staff and a representative of adjacent properties to develop a lighting plan to minimize the spillage of excess light onto adjacent residential properties. The lighting plan shall include the use of the following devices, as necessary: Timers on non-essential security lights to turn off at 10:00 p.m. and baffles on security lights. No flood lights shall be installed on the rear of the building and all exterior lights on the side and rear of the building shall be on timers.
6. The submission of a landscape plan during the Plan Review process, subject to final review and approval by the Community Development Agency, including the following:
 - a. The installation of an 80' maintained buffer along the most northern property line and the installation of a 30' maintained buffer along the northeastern and eastern properties lines. In addition to the maintained buffer, an agreement to install for

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
Page 3
December 8, 2009

additional screening, a 20' landscaped buffer along the northern, northeastern and eastern property lines, for a total buffer area of 50' along the northeastern and eastern lines and 100' along the most northern line. The landscape buffer shall contain a solid line of Leyland Cypress trees, not to exclude additional plantings nor the removal of existing bamboo. The maintained buffer shall have the existing trees and shrubs tended and allow for the maintenance of the current vegetation. The bamboo located within the buffer area shall not be removed as well. No buildings shall be allowed within the buffer area.

- b. All buffers within the project shall be controlled, maintained and protected by recorded covenants and enforced by the ARC as established above.
- c. Those areas between sections of the subject property reserved for required parking, as well as public rights-of-way, shall be included in the final landscape plan.
- d. All landscaping shall be professionally designed, maintained and irrigated (where not disallowed by State or County water restrictions). Additionally, said landscaped areas shall be perpetually maintained and any dead or irrevocably diseased vegetation shall be replaced as necessary.
- e. All grassed areas within the proposed development shall be sodded and irrigated as appropriate.
- f. All landscaped and buffered areas may be penetrated for purposes of access, utilities and stormwater management.
- g. Detention/water quality ponds shall be visually screened with attendant landscaping and/or fencing. Any chain-link fence utilized shall be green or black vinyl coated.
- h. All HVAC and/or mechanical systems shall be screened from area residences and public rights-of-way.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
Page 4
December 8, 2009

7. Compliance with recommendations from the Cobb County Department of Transportation and compliance with the following recommendations from the Georgia Department of Transportation (“GDOT”):¹
 - a. Ensuring that the subject property’s drainage does not adversely impact the existing and proposed drainage along Macland Road (S.R. 360) and the submission of those drainage plans to GDOT for review and approval.
 - b. The proposed driveway shall utilize channelization for driveway traffic to avoid through traffic conflicts.
 - c. The taper for the west-bound right turn lane is close to the proposed driveway; however, same has been approved by GDOT.
 - d. Ensuring that the existing shoulder on Macland Road (S.R. 360) is adequate for a deceleration lane with an appropriate taper.
 - e. Mayes Ward-Dobbins shall enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for the dedication of system improvements and the mitigation of traffic concerns.
8. Compliance with the recommendations from Cobb County’s Historic Preservation Planner and the recommendations and conclusions of Cultural Resource Management Consultants R. S. Webb & Associates with respect to the existing farmhouse on the subject property.²
9. Compliance with the following recommendations from the Cobb County Cemetery Preservation Commission (“CCCPC”):
 - a. Maintaining a 50’ undisturbed, natural buffer along the common boundary between the subject property and the Macland Cemetery (McEachern Memorial United Methodist Church).

¹ The development proposal has been reviewed by GDOT Project Manager Chandria L. Brown, P.E. (GDOT No. P.I. 0006049).

² Archival documentation of Gladstone Farm Property and the Turner-McEachern-Garner house, prepared by R. S. Webb & Associates was submitted under separate cover on November 17, 2009.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
Page 5
December 8, 2009

- b. Any development adjacent to the 50' undisturbed, natural buffer shall have required setbacks in addition to the buffer.
 - c. The 50' undisturbed, natural buffer shall be recorded as a Conservation Easement with the CCCPC having a third-party right of enforcement.
 - d. The erection of a 6' high chain link, vinyl coated or wrought iron fence to be installed on the outer perimeter of the 50' undisturbed, natural buffer. Said chain link fence shall be 9 gauge with top and bottom rails with fence posts set in concrete.
 - e. The installation of an orange protective fence on the outer perimeter of the 50' undisturbed, natural buffer prior to the commencement of construction, with said fence being maintained until a Certificate of Occupancy is issued with respect to the subject property. Additionally, the installation of an orange protective fence along the outer perimeter of the other buffers outlined hereinabove (paragraph 6.a.).
 - f. Permanent signs stating "Cemetery Preservation Buffer – Do Not Disturb" shall be erected at 50' intervals along the outer perimeter of the 50' undisturbed, natural buffer.
 - g. Compliance with all state and local laws and ordinances related to cemeteries in addition to those in the existing Covenant.
 - h. All cemetery preservation requirements shall be site plan specific.
10. Compliance with the recommendations from Cobb County Stormwater Management Division with respect to the location, configuration and methodology of on site detention and water quality.
- a. Detention and water quality facilities shall be designed and placed to obtain the lowest impact to buffer areas and areas that are designated to remain undisturbed.
 - b. Compliance with Cobb County parking ratio requirements.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
Page 6
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- c. The site shall be developed using a phased construction plan. Prior to beginning construction on the building, the pavement area shall be in place with no less than six (6) inches of stone over geotex fabric and landscaping finalized or temporary landscaping control measures in place.
- d. Utilization of a scavenge box system to separate pollutants from the stormwater entering detention and water quality areas.
- e. In order to dissipate the stormwater flow from the ponds, the utilization of level spreaders in the control of stormwater discharge.
- f. An agreement that the site shall be designed to minimize grading as much as possible.³
- g. Mayes Ward-Dobbins agrees to a pre-development and a post-development lake study on the lake located downstream from the project. Evaluation shall be performed by a licensed professional engineer, including a bottom and powder level analysis, and a water quality test to check for pollutants. Mayes Ward-Dobbins agrees to submit all engineering, including but not limited to, construction plans, lake study, hydrology, dam and spillway analyses, NPDES Erosion Control Plans and Notice of Intent to the engineering firm of Walden & Ashworth or any other professional engineer designated by the lake owners no less than thirty (30) days prior to Mayes Ward-Dobbins' initial submission of plans for Plan Review to Cobb County. Mayes Ward-Dobbins agrees to pay for all costs associated with the lake owners' engineers' services to review the pre-development and post-development lake studies. Any comments by the lake owners' engineers will be submitted to Cobb County at Mayes Ward-Dobbins' initial submission of plans for review. Said studies shall be coordinated with the Stormwater Management Division of Cobb County and paid for by Mayes Ward-Dobbins. Mayes Ward-Dobbins will submit all weekly and monthly inspections under Mayes Ward-Dobbins' NPDES permit, monthly to said engineer, until such

³ The original rezoning in 2004 (Z-52) allowed for a development consisting of a total of 57,000 square feet; whereas, the Mayes Ward-Dobbins proposal contemplates the development of a building footprint comprising approximately 17,000 square feet.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
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time as Mayes Ward-Dobbins notifies the issuing authority for Erosion and Sedimentation Control Permits that construction activities have been completed.

- h. An agreement to the use of flocculates in the erosion control plan to reduce the discharge of sediment from the subject property.
- i. An agreement to develop a temporary sediment control plan to be developed in conjunction with the Stormwater Management Division utilizing additional sediment control devices to retain all sedimentation on site during the construction process.
- j. All stormwater issues shall be monitored by the applicant's licensed geotechnical engineer during the construction process.
- k. Mayes Ward-Dobbins agrees to do a spillway study on the downstream lake. Said study shall be coordinated with the Stormwater Management Division of Cobb County and paid for by Mayes Ward-Dobbins. Copies of the spillway study shall be provided to the County and the lake owners.
- l. Mayes Ward-Dobbins shall provide a letter of indemnification to the lake owners prior to the start of construction. Said letter shall indemnify the owners from the costs of making any changes to the dam or dam structures necessitated as a direct result of the up-stream development by Mayes Ward-Dobbins. A copy of the indemnification letter is attached hereto and will be subject to review and approval by the County Attorney.
- m. The applicant shall, if requested, clean out the 18" storm drain running under the Dobbs property driveway.
- n. Prior to beginning construction, Mayes Ward-Dobbins shall post an erosion and sediment control performance bond in the amount of \$10,000.00 bound unto Cobb County.
- o. Prior to beginning construction, Mayes Ward-Dobbins shall post a letter of credit in the amount of \$100,000.00 bound unto Cobb County. A copy of the letter of credit is attached hereto and will be subject to review and approval of the County Attorney.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
Page 8
December 8, 2009

- p. Any damages which may occur during the construction process which directly and adversely affect property belonging to the lake owners shall be the sole financial responsibility of Mayes Ward-Dobbins.
11. An agreement that all trash shall be kept in storage facilities which shall be enclosed and screened from view. A residential-type garbage service will be utilized with pick ups occurring between the hours of 8:00 a.m. and 7:00 p.m., Monday through Friday.
12. An agreement to staff comments and recommendations from Historic Preservation, the Water System, Cobb DOT and Georgia DOT. In addition, an agreement to all Stormwater Management comments in keeping with the overall effort to increase water quality and detention on the site.
13. An agreement that there be no commercial deliveries taking place between the hours of 9:00 p.m. and 7:00 a.m.
14. An agreement to include a long term larvicide program for the purposes of lowering the mosquito populations contained within the detention areas.
15. If the subject property is determined to be undevelopable for the purposes sought by Mayes Ward-Dobbins or, if for any reason, the development of the subject property does not commence within eighteen (18) months from the date of approval, then, and in such an event(s), the zoning classification of the subject property shall revert to the original rezoning with stipulations/conditions approved in 2004 (No. Z-52).
16. Minor modifications to the site plan, landscape plan and the stipulations/conditions contained within this letter may be reviewed and approved by the District Commissioner.

The subject property is zoned LRO and is located within the confines of a Neighborhood Activity Center ("NAC") as shown on Cobb County's Future Land Use Map and as designated under Cobb County's Comprehensive Land Use Plan. Mayes Ward-Dobbins' proposal to develop the subject property for the sole and exclusive purpose of a funeral home is a lessening of intensity in terms of development and is appropriate in the context of existing development and uses adjacent to the subject property.

VIA HAND DELIVERY

Mr. Mark A. Danneman, Manager
Cobb County Zoning Department
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December 8, 2009

Please let me know if you need additional information or documentation prior to the formulation of your analysis and staff recommendations. With regards, I am

Very truly yours,

SAMS, LARKIN & HUFF, LLP



Garvis L. Sams, Jr.
gsams@samslarkinhuff.com

GLSjr/jbmc
Enclosures

- cc: Members, Cobb County Board of Commissioners – VIA Hand Delivery – w/enclosures
Mr. Robert L. Hosack, Jr., AICP, Director – VIA E-Mail - w/attachments
Mr. Dana Johnson, AICP, Manager of Planning Division – VIA E-Mail – w/attachments
Mr. John P. Pederson, AICP, Planner III – VIA E-Mail – w/attachments
Mr. David Breaden, P.E., Cobb County Stormwater Management – VIA E-Mail
– w/attachments
Ms. Jane Stricklin, P.E., Cobb County Department of Transportation – VIA E-Mail
- w/attachments
Ms. Karen King, Assistant County Clerk – VIA Hand Delivery – w/enclosures
Ms. Lori Presnell, Deputy County Clerk – VIA Hand Delivery – w/enclosures
Ms. Mandy Elliott, Cobb Historic Preservation Planner – VIA E-Mail – w/attachments
Ms. Helga Hong, Cobb County Cemetery Preservation Commission – VIA E-Mail
- w/attachments
Ms. Janice B. Dobbs – w/enclosures
Mr. & Mrs. Nikola Galinac – w/enclosures
Mr. & Mrs. Patrick L. Hilton – w/enclosures
Mr. Robert S. (Steve) Webb, R. S. Webb & Associates – VIA E-Mail – w/attachments
Mr. Robert B. Betterton – VIA E-Mail – w/attachments
Mr. Terry Pendley, Mayes Ward-Dobbins Funeral Home – VIA E-Mail – w/attachments

INDEMNIFICATION AGREEMENT

This Agreement of Indemnification is made this _____ day of _____, 2009, by _____ (Indemnitor) and is made to induce Cobb County to issue a Land Disturbance Permit for the development of 7.671 acres, located in Land Lot 428, 19th District, 2nd Section, Cobb County, Georgia and which is the subject of an Other Business Agenda application by Mayes Ward-Dobbins Funeral Home. This Indemnity Agreement relates to and concerns an approximately 12 acre lake, known as Dobbs Lake, located on Land Lot 387 and 428, Cobb County, Georgia, including the dam and dam structures located on said lake.

Indemnitor hereby undertakes to indemnify Vita and Nikola Galinac, Patrick and Sue Hilton and Janice B. Dobbs, owners of said lake, and their successors in interest (Indemnitees) from any and all damages, losses or injury to said Dobbs Lake, the dam and dam structures situated on said lake, which damages, losses or injury are directly caused by the development of the tract of land consisting of 7.671 acres, located in Land Lot 428, 19th District, 2nd Section, Cobb County, Georgia and which is the subject of an Other Business Agenda application. This Agreement shall include the indemnification of the indemnities for all cost and expenses of making any necessary repairs to the dam or dam structures situated on said lake necessitated by increased sediment deposits or increased water runoff directly caused by the development of the subject property including excavation, site development and the construction of the building and common areas to be situated on the subject property.

Indemnitor agrees to this indemnification agreement until such time as Indemnitor no longer owns any portion of the subject property. At such time, the Indemnitor's successor in title

shall be bound by this Indemnity Agreement and this shall so be provided for in the documents conveying title to Indemnitor's successor in title.

Indemnitor shall be given written notice by certified or registered mail at _____, or any other address requested by Indemnitor in writing, or any act or occurrence involving a claim or demand under this agreement within five (5) days after such act or occurrence comes to the knowledge of the Indemnitees.

(Indemnitor)

By its: _____

**LETTER OF CREDIT
PERFORMANCE AGREEMENT**

For: _____
Account #: _____

THIS AGREEMENT entered into this ____ day of _____, 2009, between Mayes Ward-Dobbins Funeral Home (hereinafter called "Developer"), with its principal place of business at 180 Church Street, Marietta, Georgia 30060, and the County of Cobb, a political subdivision of the State of Georgia (hereinafter called "County"), and _____ (hereinafter called "Issuer"), with its principal place of business at _____.

WHEREAS, the Developer intends to cause the development of the tract of land consisting of 7.671 acres, located in Land Lot 428, 19th District, 2nd Section, Cobb County, Georgia and which is the subject matter of an Other Business Agenda application; and

WHEREAS, approximately four hundred feet downstream an approximately 12 acre lake, known as Dobbs Lake, is located on Land Lots 387 and 428, Cobb County, Georgia; and

WHEREAS, the Developer intends to provide and make sufficient funds available for repairs, in the event repairs to the dam or dam structures situated on said lake are necessitated by increased sediment deposits or increased water runoff directly caused by the development of the subject property after such time as the Developer has received a final inspection from the Director of the Community Development Agency of Cobb County; and

WHEREAS, as a condition precedent to the rezoning of the above described property, the Developer has agreed to the submittal of a letter of indemnification to Vita and Nikola Galinac, Patrick and Sue Hilton, and Janice B. Dobbs and an accompanying Letter of Credit in favor of Cobb County; and

WHEREAS, the Developer has received approval of the construction plans in accordance with the plans and specifications on file with the Community Development Agency for the improvement of said property; and

WHEREAS, the Developer certifies that any and all persons, firms, or corporations providing labor and/or materials required for the repair of said dam or structures situated on said land will be paid in full; and

WHEREAS, the parties have agreed that the Issuer is acceptable to all parties to act in such capacity.

NOW, THEREFORE, in consideration of the foregoing promises, it is hereby agreed:

1. The Developer has attached the unconditional irrevocable Letter of Credit in the sum of One Hundred Thousand Dollars (\$100,000.00) with the issuer, to guarantee that repairs if necessitated will be constructed as required by the Community Development Agency and in accordance with the construction plans and specifications for the development.
2. The Issuer agrees to disburse funds to the full amount of the Letter of Credit only upon receipt of "Proper Authorization" as hereinafter defined. "Proper Authorization" shall mean the authority in written form from Cobb County Community Development Agency Director stating that a disbursement is authorized:
 - (a) To the Developer, or to any party designated by the Developer, upon delivery of "Proper Authorization" from the Community Development Agency Director; the County through the Community Agency Director, shall issue such "Proper Authorization" when the repairs have progressed satisfactory to the state of development for which payment is made and upon receipt of the County of a certificate to that effect signed by the Developer and the registered Engineer for the Development and upon proof satisfactory to the County that all bills therefore have been paid to date, including but not limited to bills for surveying, engineering, land clearing, construction of improvements, and materials which are included in the repairs.
 - (b) To the County upon delivery of "Proper Authorization" from the Community Development Agency Director, upon his determination that any portion or all of the said improvements have not been constructed by the Developer in accordance with the approved construction plans or agreed to plan for repairs to said lake.
3. The Issuer hereby acknowledges that it has extended an unconditional irrevocable Letter of Credit, referred to in Item 1 above, and represents that it has no obligation whatsoever to any of the parties hereto except to release said funds within 10 days upon delivery of "Proper Authorization" from the Community Development Agency Director. The Developer does hereby release and hold the Issuer harmless from any and all claims whatsoever by it against the Issuer for releasing such funds to the County in accordance with the terms thereof. This Agreement shall not be terminated or otherwise allowed to expire without at least written notice to that effect from the Issuer to by the County and Developer.
4. If the funds are inadequate to pay for any cost covered by this Agreement, the Developer shall pay any and all cost beyond coverage.
5. A further condition of this Agreement is that the irrevocable Letter of Credit shall remain in effect a period not to exceed 12 months from the Final Inspection of the site by a representative of the Community Development Agency Director, provided that the Developer can demonstrate cash reserves of no less than \$100,000.00.

WITNESS the hands and official seals of the parties hereto on the day and year first above written.

COBB COUNTY, GEORGIA

By: _____
Community Development Agency Director

(Corporate Seal)

Developer: Mayes Ward-Dobbins Funeral Home

By: _____

Title: _____

(Corporate Seal)

Issuer: _____

By: _____

Title: _____

Approved as to form:

By: _____
Office of the County Attorney

Application for "Other Business"

Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2045)

BOC Hearing Date Requested: 12-15-09
~~11/17/09~~ *WJR*

Applicant: Mayes Ward-Dobbins Funeral Home Phone #: (770) 428-1511
(applicant's name printed)

Address: 180 Church Street, NE, Marietta, GA 30060 E-Mail: terry@mayeswarddobbins.com

SAMS, LARKIN & HUFF, LLP 376 Powder Springs Street, Suite 100

Garvis L. Sams, Jr. Address: Marietta, GA 30064

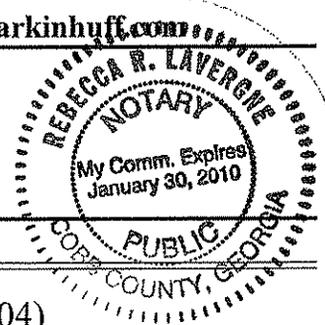
(representative's name, printed)

[Signature] Phone #: (770) 422-7016 E-Mail: gsams@samslarkinbuff.com
(representative's signature)

Signed, sealed and delivered in presence of:

[Signature] My commission expires: _____

Notary Public



Commission District: Goreham (1) **Zoning Case:** No. Z-52 (2004)

Date of Zoning Decision: 5/18/04 **Original Date of Hearing:** 5/18/04

Location: North side of Macland Road west of Villa Rica Road
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 428 **District(s):** 19th

State specifically the need or reason(s) for Other Business: To amend a previously approved site plan and stipulations reducing the total number of buildings from ten (10) to one (1) and reducing the total square footage of the proposed development from 57,000 square feet to 17,000 square feet.

(List or attach additional information if needed)

**DECEMBER 15, 2009 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM # 3

PURPOSE

To consider amending the stipulations for Kolter Land Partners regarding Z-33 (DAVID PEARSON) of March 16, 2004, for property located in Land Lot 55 of the 16th District on the north side of Jamerson Road, east of Willow Creek Drive.

BACKGROUND

The subject property is zoned R-15 subject to numerous conditions/stipulations which are attached. This request seeks to amend two of the conditions within the letter of stipulations from Mr. David Pearson dated March 5, 2004. The first request seeks to reduce the minimum square footage of each house from 3,000 square feet to 2,500 square feet. The second request seeks removal of the average home price to be no less than \$450,000.00. A copy of the approved site plan is attached for your review. The Other Business application is also attached.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners first determine if the request is minor. If it is determined to be minor, consider the request to amend the stipulations. If approved all other previously approved conditions/stipulations should remain in effect.

ATTACHMENTS

Board of Commissioners Decision
Site Plan
Other Business Application

ORIGINAL DATE OF APPLICATION: 03-16-04APPLICANTS NAME: DAVID PEARSONTHE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE
COBB COUNTY BOARD OF COMMISSIONERS**BOC DECISION OF 03-16-04 ZONING HEARING:**

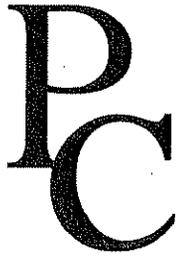
DAVID PEARSON (Sanford S. and Hilda L. Wyrick, owners) for Rezoning from **R-30** to **R-15** for the purpose of a Subdivision in Land Lot 55 of the 16th District. Located on the north side of Jamerson Road, east of Willow Creek Drive.

The public hearing was opened and Mr. David Pearson, Mr. Ron Spier, Ms. Linda Hoyal and Ms. Donna Randall addressed the Board. Following presentations and discussion, the following motion was made:

MOTION: Motion by Lee, second by W. Thompson, to **approve** rezoning to the **R-15** zoning district **subject to:**

- maximum 21 lots
- site plan to be approved by the District Commissioner
- letter from Mr. David Pearson dated March 5, 2004 *not otherwise in conflict* (copy attached and made a part of these minutes)
- contemporaneous variances as follows:
 - reduced front setbacks from 35 feet to 20 feet, with the rear setbacks increased by an amount equal to the front setback reduction
 - reduced side setbacks from 10 feet to 5 feet (with 15 feet between houses)
 - reduced major side setback from 25 feet to 10 feet
- Water and Sewer Division comments and recommendations
- Stormwater Management Division comments and recommendations
- Cobb DOT comments and recommendations

VOTE: **ADOPTED** unanimously

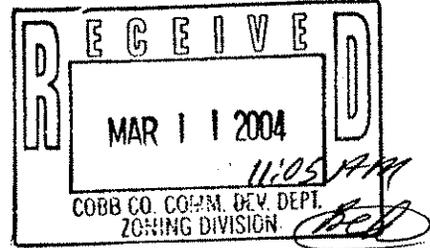


PEARSON COMMUNITIES, INC.

1955 First Drive • Marietta, GA 30062 • 770.321.5032 • 770.321.4528

March 5, 2004

Cobb County Planning and Zoning
Mr. John Pederson
191 Lawrence Street
Suite #300
Marietta, GA 30060



RE: Z33 Approximately 11.39 Acres Jamerson Road

Min. Blk. 27 Petition No. Z-33
Doc. Type letter dated
March 5, 2004
Meeting Date 3/11/2004

Dear Mr. Pederson,

The applicant (David Pearson) stipulates the following:

- 1) The minimum square footage of each house will be at least 3000 feet.
- 2) The average home price to be no less than \$450,000.00
- 3) The applicant agrees to meet the current (in place) Cobb County DOT ordinances and regulations during the construction plan process.
- 4) The applicant agrees to meet the current (in place) Storm Water Management ordinances and regulations during the construction plan process. Applicant Does not agree to Storm Water Management's overly broad comments at time of zoning.
- 5) The applicant agrees to meet the current (in place) Cobb County Water ordinances and regulations during the construction plan process.
- 6) The applicant request that front yard set-back requirements be reduced to 20 feet; side yard set-back to 5 feet with a minimum of 15 feet between houses and a major side-set backs to 10 feet.

Applicant: David Pearson

Application for "Other Business" Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2045)

BOC Hearing Date Requested: 12-15-09

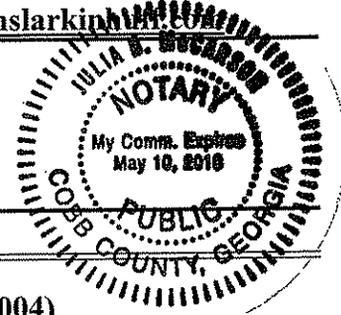
Applicant: Kolter Land Partners Phone #: 770/480-4940
(applicant's name printed)

Address: 8875 Hidden River Parkway, Suite 150, Tampa, FL 33637 E-Mail: scheck@kolter.com

SAMS, LARKIN & HUFF, LLP 376 Powder Springs Street, Suite 100
Garvis L. Sams, Jr. Address: Marietta, GA 30064

(representative's name, printed)

By: [Signature] Phone #: 770/422-7016 E-Mail: gsams@samslarkin.com
Garvis L. Sams, Jr., Attorney for Applicant



Signed, sealed and delivered in presence of:

Julia B. McCarson My commission expires: _____
Notary Public

Commission District: Tim Lee (3) **Zoning Case:** No. Z-33 (2004)

Date of Zoning Decision: 3/16/04 **Original Date of Hearing:** 3/16/04

Location: North side of Jamerson Road, east of Willow Creek Drive (1663 Jamerson Road)
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 55 **District(s):** 16th

State specifically the need or reason(s) for Other Business: _____
To amend a previously approved rezoning by reducing the minimum square footage of each house from 3,000 square feet to 2,500 square feet and by deleting the stipulation which requires the average home price to be no less than \$450,000.

(List or attach additional information if needed)

**DECEMBER 15, 2009 ZONING HEARING
"OTHER BUSINESS"
COMMISSION DISTRICT 1**

ITEM #4

PURPOSE

To consider granting a Special Exception for reducing the required lot size as recommended by the Board of Zoning Appeals from their December 9, 2009 Variance Hearing regarding Variance Application:

V-69 Virginia A. Brown

BACKGROUND

In accordance with a Zoning Ordinance Amendment adopted by the Board of Commissioners on September 13, 2000, and amended on July 8, 2003, Section 134-271 (8), any use proposed for a parcel or tract of land which does not have the minimum lot size required, approval of a Special Exception by the Board of Commissioners is required after approval by the Board of Zoning Appeals. Attached is the Variance Analysis and recommendation of the Board of Zoning Appeals for the case that was considered at the December 9, 2009 Variance Hearing that required a Special Exception.

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners consider granting a Special Exception for reduction in the required minimum lot size as recommended by the Board of Zoning Appeals for V-69 Virginia A. Brown

ATTACHMENTS

Variance Analysis
Board of Zoning Appeals Recommendations

APPLICANT: Virginia A. Brown **PETITION NO.:** V-69
PHONE: 404-372-5605 **DATE OF HEARING:** 09-10-09
REPRESENTATIVE: Tim S. Aycock **PRESENT ZONING:** R-20
PHONE: 770-428-2873 **LAND LOT(S):** 131
PROPERTY LOCATION: Located off of a private **DISTRICT:** 20
easement on the north side of Ben King Road **SIZE OF TRACT:** 1.997 acres
(1540 Ben King Road). **COMMISSION DISTRICT:** 1

TYPE OF VARIANCE: 1) Waive the public road frontage to allow two homes off of a private easement; and 2) waive the lot size on tract 1 from the required 80,000 square feet to 46,739 square feet.

COMMENTS

TRAFFIC: Recommend no additional driveway access to Ben King Road.

DEVELOPMENT & INSPECTIONS: This subdivision must be reviewed and approved through the Cobb County Plan Review process prior to permitting. It must also be submitted for plat review prior to plat recording.

STORMWATER MANAGEMENT: No objection to the creation of estate-sized lot. However, a private drainage easement must be recorded to provide for the existing pipe conveyance through this lot. No fill may be placed within the 100 year floodplain and an elevation certificate will be required for any proposed structure.

HISTORIC PRESERVATION: After examining Civil War trench maps, Cobb County historic property surveys, county maps, and various other resources, staff has no comments regarding the impact or treatment of historic and/or archaeological resources.

CEMETERY PRESERVATION: No comment.

WATER: Meter must be set on Ben King Road right-of-way.

SEWER: Available at east property line. Easement may be necessary for connection depending upon house siting.

OPPOSITION: NO. OPPOSED **PETITION NO.** **SPOKESMAN**

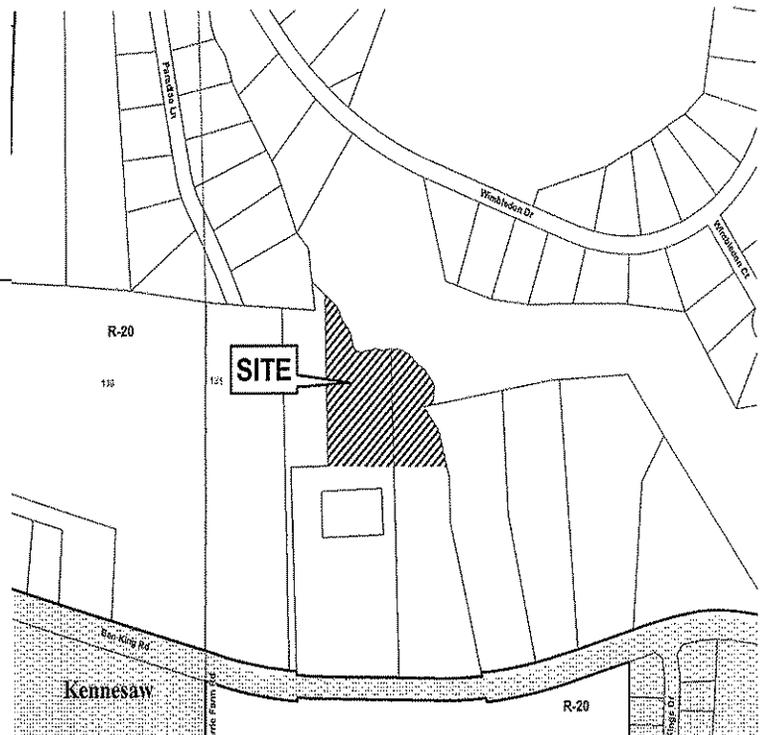
BOARD OF APPEALS DECISION

APPROVED X **MOTION BY** B. Hovey

REJECTED **SECONDED** K. Swanson

HELD **CARRIED** **5 - 0**

STIPULATIONS: (See draft minutes attached)



**MINUTES OF VARIANCE HEARING
COBB COUNTY BOARD OF ZONING APPEALS
NOVEMBER 11, 2009**

V-69 **VIRGINIA A. BROWN** (Virginia A. Brown, Jerry W. Cofield and Paula A. Cofield, owners) requesting a variance to: 1) waive the public road frontage to allow two homes off of a private easement; and 2) waive the lot size on tract 1 from the required 80,000 square feet to 46,739 square feet in Land Lot 131 of the 20th District. Located off of a private easement on the north side of Ben King Road (1540 Ben King Road).

MOTION: Motion by Hovey, second by Swanson, as part of the Consent Agenda, to **approve** variance request **subject to:**

- **Development and Inspections Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Water and Sewer Division comments and recommendations**
- **Cobb DOT comments and recommendations**
- **final ratification of lot size reduction by the Board of Commissioners at the zoning hearing on December 15, 2009**

VOTE: **ADOPTED** unanimously

DRAFT

**DECEMBER 15, 2009 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM #5

PURPOSE

To consider adopting the written decision as required by the Federal Telecommunications Act regarding SLUP-14 (T-Mobile South, LLC) of November 17, 2009.

BACKGROUND

This case was considered on November 17, 2009 and denied by the Board of Commissioners with direction to the County Attorney to prepare in writing the denial of the application as required by the Federal Telecommunications Act. The written decision is attached.

FUNDING

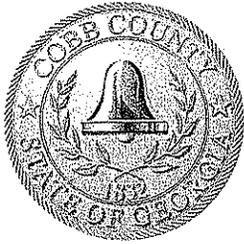
N/A

RECOMMENDATION

The Board of Commissioners consider the written decision and if found to be correct, adopt the written decision.

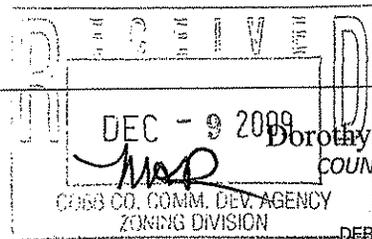
ATTACHMENTS

Written Decision



COUNTY ATTORNEY'S OFFICE

100 Cherokee Street, Suite 350
Marietta, Georgia 30090-7003
(770) 528-4000 • fax: (770) 528-4010



Dorothy H. Bishop
COUNTY ATTORNEY

KATE R. BERRY
DEBORAH L. DANCE
ROBERT L. BEARD
H. WILLIAM ROWLING, JR.
MARK A. ADELMAN
JOSEPH B. ATKINS
ELIZABETH B. TAYLOR
PATRICK RILEY

MEMORANDUM

TO: Chairman Sam Olens
Commissioner Helen Goreham
Commissioner Bob Ott
Commissioner Tim Lee
Commissioner G. Woody Thompson, Jr.

FROM: Joseph B. Atkins, Senior Associate County Attorney 

RE: Other Business Items; Board of Commissioners Zoning Hearing
for December 15, 2009 (SLUP 14)

DATE: December 9, 2009

As you recall, at last month's zoning hearing, you voted to deny the above-referenced cell tower application. As a part of that denial, you instructed our office to prepare a written decision memorializing these denials as required by the Federal Telecommunications Act. Therefore, I have attached a copy of the proposed written decision for your consideration during your December 15, 2009 hearing.

Please do not hesitate to contact me if you have any questions or concerns regarding this proposed decision.

cc: Dotty Bishop, County Attorney
Mark Danneman, Zoning Manager

**BEFORE THE BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA**

In the Matter of	:	SLUP-14
APPLICATION FOR SPECIAL	:	(2009)
LAND USE PERMIT BY	:	
T-MOBILE SOUTH, LLC,	:	
Applicant,	:	
	:	
EPISCOPAL DIOCESE OF	:	
ATLANTA, INC.	:	
Titleholder.	:	

DECISION

This matter came before the Board of Commissioners on November 17, 2009, upon application by T-Mobile South, LLC (“T-Mobile”) for a special land use permit (“SLUP”) which would allow T-Mobile to construct a telecommunications tower on property owned by the Episcopal Diocese of Atlanta and located in Cobb County.

FINDINGS OF FACT

In the fall of 2009, T-Mobile filed an application with Cobb County seeking a SLUP (which county staff designated “SLUP-14”) for the purpose of constructing a 135 foot tall telecommunications tower to be located on the north side of Jamerson Road, west of Jett Road. This location is parcel seven of land lot 55 in the 16th district of Cobb County. In its application, T-Mobile referred to the proposed structure as a “bell tower” and proposed to locate it near the entrance to the property occupied by the Church of the Annunciation (Episcopal). The

church, and therefore the proposed tower, is located in an area which is zoned "R-30" which restricts development to single family homes on lots of at least 30,000 square feet and does not allow industrial or commercial uses. This zoning category also generally restricts structures to no more than thirty-five feet in height. T-Mobile plans to place the tower near the edge of the church's property away from the church building. Thus the tower would actually be much closer to the neighboring property and Jamerson Road than to the church building itself.

This is the second time T-Mobile has sought a SLUP for a tower on this property. In 2008, the Board of Commissioners denied T-Mobile's application for an almost identical tower. The main difference between the current application and the previous one is that the previous one always called for a simulated bell tower, where, as discussed below, the current one now seeks the construction of a monopine.

The Planning Commission heard the case at its meeting of November 3, 2009. Considerable information was presented by both sides at the Planning Commission hearing, and much of the same information was presented again at the subsequent hearing before the Board of Commissioners. Nevertheless all of the information presented before the Planning Commission is contained in the record and was considered by the Board of Commissioners. One topic presented by T-Mobile which it did not specifically address at the subsequent Board of Commissioners' hearing involved the effect the proposed cell tower would have upon property values. At the Planning Commission hearing, Mr. Moore stated

that the tower would not adversely affect property values and pointed to two subdivisions in other parts of Cobb County which were adjacent to cell towers and where the homes sold for up to \$500,000. However, he failed to present sufficient data to support this assertion, failed to explain how these values of homes miles away and in a different part of the county with different conditions are relevant, and noted that these subdivisions had been built *after* the towers were in place. After hearing evidence from both the applicant and those opposed, the Planning Commission voted to recommend rejection of the application.

Thereafter, on November 17, 2009, the Board of Commissioners conducted a public hearing on this matter. At that hearing, John Moore appeared on behalf of T-Mobile. Mr. Moore presented a rendering of the proposed tower which showed that T-Mobile had changed its mind and decided to construct a "monopine tower" instead of the previously requested "bell tower." Still, the monopine would be 135 feet tall, over thirteen stories high, or almost four times taller than what is normally allowed in this residential district. The tower compound would also include equipment which services the tower placed upon the ground at the base of the proposed tower.

Mr. Moore stated that it was T-Mobile's preference to collocate on an existing tower. However, he stated that there were no existing towers within this area upon which collocation was feasible. He presented pictures of balloon test photosimulations which he argued showed that the tower would either not be visible at all or minimally visible to most residents. These tests were conducted

when the trees in the area had full or nearly full leaf cover. Further, at least some of the tests were conducted in windy conditions. This caused the balloon to be blown "down horizon" which would make the photosimulations inaccurate. T-Mobile admitted that the photosimulations do not depict the view from the backyards of the closest homes, nor do they depict the view after the deciduous trees lose their leaves.

Mr. Moore stated that there was a need for this tower in order for T-Mobile customers to have wireless service inside buildings in the area. He also showed a "coverage" map which he contended demonstrated areas near the proposed tower which did not enjoy wireless service which was satisfactory to T-Mobile. One of T-Mobile's engineers, a Ms. Lewis, stated that although the coverage map was a computer estimate of coverage, it had been verified by an actual drive test wherein the actual coverage was tested by a T-Mobile employee. Although T-Mobile claimed the drive test confirmed the data depicted on the computer generated coverage map, even T-Mobile admitted that this "confirmation" only related to coverage from a vehicle and was not performed inside the neighbors' homes. This is particularly important in light of the testimony of neighbors as to the adequacy of their current T-Mobile service as described below. T-Mobile failed to present any testimony regarding the existence of dropped calls in the area of the proposed tower.

David Levetro lives in and spoke on behalf of the nearby Willow Creek subdivision against the proposed tower. He presented exhaustive data in support

of his opposition. He showed that T-Mobile's own web site shows that it has adequate wireless coverage in the area. He also testified that many of his subdivision's residents are T-Mobile customers and have adequate wireless service. He presented a survey conducted in the area which showed that ninety-two percent of the residents had adequate wireless service. Twenty-one percent of those surveyed are T-Mobile customers and indicated they have adequate wireless service with T-Mobile. He also conducted a drive test with a T-Mobile phone and never dropped a call or failed to receive service. Mr. Levetro noted that public records indicate that there are already over forty towers within a four mile radius of the proposed site and questioned why T-Mobile could not collocate on one or more of these. He also placed into the record letters from area realtors familiar with this specific area and its property values. These letters expressed the realtors' professional opinions that the tower would lower property values.

Linda Hoyle also spoke against the proposed tower. She lives near the tower and would be able to see it outside of her home. She felt that the tower was an incompatible land use for the area.

Janice Owens spoke against the tower. She lives in the nearby Falcon Woods subdivision. She discontinued her land line telephone service and now relies exclusively upon her T-Mobile wireless phone for all of her needs. She has had no coverage issues.

Allison Pisani also spoke against the tower, but her concerns primarily revolved around the perceived adverse health effects of wireless towers. The

Board of Commissioners did not take any such health concerns into account in reaching this decision.

As the representative of the East Cobb Civic Association, Jill Flamm spoke against the proposed tower. She contended that it should not be placed in this residential area.

Commissioner Lee, the District Commissioner, stated it was inappropriate to locate the tower in this heavily residential area and that it would be an incompatible land use. He noted that the applicant had not shown that it had adequately investigated using other potential sites, and that this tower would adversely impact the residential character of the area.

Commissioner Lee then moved to deny SLUP-14. His motion carried by a vote of 5-0. After the vote, the County Attorney was directed to prepare a written decision memorializing the denial of SLUP-14 for adoption by the Board of Commissioners.

RATIONALE FOR DENIAL

The Board of Commissioners is aware of the sometimes competing interests of a national telecommunications policy and its own local land use laws and decisions. It is also aware of the ability it has to govern the siting of wireless facilities, understanding the method by which its decisions are made shall be subject to judicial oversight. Upon due and proper consideration having been given to the matter as presented by all interested parties, including recommendations of professional zoning staff and the Planning Commission, and

Applicant's application and presentation, and applying general and non-discriminatory standards derived from Cobb County's Zoning Ordinance, it is the decision of this Board that:

- The proposed tower will have a significant adverse effect on the neighborhood and area surrounding it. Evidence showed the tower would be an incompatible commercial use in a residential area. The County Zoning Ordinance specifically discourages towers being located in residential areas. It is important to protect the quality of life and aesthetics of residential neighborhoods. Any concerns related to health hazards from radio waves or electromagnetic fields cannot and were not considered by the Board, as mandated by federal law.
- The proposed tower is not compatible with the neighborhood, as the neighborhood is comprised of residential uses and is designated for low density residential uses by the Future Land Use Map.
- There are no unique or special conditions that overcome the Board's general presumption that residential neighborhoods should not allow noncompatible business uses. Additionally, testimony revealed that T-Mobile customers in the area enjoyed satisfactory wireless service. It is the opinion of the Board that the testimony from various residents combined with the evidence submitted and the individual commissioners' experience and interpretation of the evidence and

testimony, constitute substantial evidence that is competent, relevant, and adequate to support denial of the SLUP Application.

- Allowing this commercial use on this property would be inappropriate. Although the Board of Commissioners has sometimes permitted cell towers at churches in residential areas, this site is not similar to those. This is a very small church which has a structure similar to that of a small house. It is not located on a major road. The nearest commercial zoning is at least one mile away, and most are considerably further than that. Over the years the Board of Commissioners, county staff, and nearby residents have expended considerable effort and expense in trying to improve the Canton Road corridor and eliminate commercial intrusion into this residential area. Allowing a cell tower at this location would undermine those longstanding efforts.

Wherefore, the Board denies application SLUP- 14.

This written denial is entered upon the record of the County Clerk this _____ day of _____, 2009

Samuel S. Olens, Chairman
Cobb County Board of Commissioners