



**City of Tucker, GA**  
PLANNING COMMISSION

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JUNE 22, 2017

PLANNING COMMISSION

7:00 PM

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**AGENDA**

City Hall Annex  
4228 1<sup>st</sup> Avenue, Suite 2-4  
Tucker, GA 30084

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- A) Roll Call
- B) Pledge of Allegiance
- C) Approval of Minutes:
  - 1. Planning Commission Meeting Minutes – May 25, 2017
- D) Old Business: (None)
- E) New Business:
  - 1. **RECOMMENDATION TO CITY COUNCIL** regarding **CA-17-001, RZ-17-002, SLUP-17-003**  
**PETITIONER:** Macauley Investments, LLC  
**LOCATION:** 4650 Hugh Howell Road & 4750 Hugh Howell Road  
**CURRENT ZONING:** M and RE  
**PROPOSED ZONING:** MU-3  
**PROPOSED DEVELOPMENT:** Comprehensive plan amendment from LIND (Light Industrial) to TC (Town Center); Rezoning to MU-3 for a master planned mixed-use development on 88.62 acres; SLUP for a personal care home (community, 7 or more). **Note: applicant has requested a deferral.**
- F) City Business Items:
  - 1. Previous Land Use Petition Updates
- G) Comments by Staff and Planning Commissioners
- H) Adjournment



**CITY OF TUCKER  
PLANNING COMMISSION MEETING MINUTES  
May 25, 2017 at 7:00 PM**

The Planning Commission of the City of Tucker held a meeting at City Hall Annex, 4228 1<sup>st</sup> Ave, Suites 2-4, Tucker, GA 30084. The following were in attendance:

Planning Commissioner Chair	George Wellborn
Planning Commissioner Vice Chair	Damyon Claar-Pressley
	– Absent
Planning Commissioner	Katherine Atteberry
Planning Commissioner	Ann Coppage
Planning Commissioner	Mike Williams
Community & Economic Development Director	John McHenry
Deputy Director of Community Development	Courtney Lankford
Administrative Assistant	Katie Coleman

**CALL TO ORDER:** Chair George Wellborn called the meeting to order at 7:02 pm.

**MINUTES:**

**MOTION TO APPROVE THE MINUTES FROM THE APRIL 27, 2017 PLANNING COMMISSION MEETING.**

**By: Ann Coppage**  
**Seconded by: George Wellborn**  
**Vote: (4-0) (Coppage, Wellborn, Atteberry, Williams)**

**MOTION TO APPROVE THE REPORT FROM THE APRIL 27, 2017, PLANNING COMMISSION MEETING**

**By: George Wellborn**  
**Seconded by: Ann Coppage**  
**Vote: (4-0) (Wellborn, Coppage, Atteberry, Williams)**

**OLD BUSINESS:** None

**Public hearing procedures were read into the record by Chair George Wellborn.**

**NEW BUSINESS:**

1. Planning Commission reviewed **RZ-17-001**, a proposed rezoning for the development of 19-single family detached homes. John McHenry, Community & Economic Development Director,

gave an overview of the proposed development and staff analysis.

Planning Commission comments included, among other things, concern about the floodplain and the need for a hydraulic study, proximity of the homes to the train tracks, sound buffers for the trains, construction hours, negative impact the development could have on the existing streets, and traffic. Shannon Mullinax of STS Development Group, LLC, and Jerry Johnson of Perspective Engineering gave a brief presentation on the development, showing comparable housing designs and styles, the price point for the homes, explained that if the development stays zoned as R-85 then only about half of the proposed 19 homes could be built, and addressed some traffic and floodplain concerns, stating that they would be open to doing a hydraulic study as part of the conditions of approval.

George Wellborn opened the floor to public comment in favor or in opposition. No public spoke in favor. Christina Kramer, 2177 Saren Ct, and Phyllis Heyburn, 2125 Aldah Dr, both stated that they are opposed to the re-zoning as there appears to be no benefit to changing to R-60 from R-85, and that all other surrounding areas are zoned R-85. Carolyn Hahn Swanson, 2146 Saren Ct, expressed concern about the possibility of the property being sold and re-developed into something totally different after it is re-zoned to R-60, as well as her concern about the train noise and flooding potential. Christina Kramer, 2177 Saren Ct, Phyllis Heyburn, 2125 Aldah Dr, and Carolyn Hahn Swanson, 2146 Saren Ct, all expressed concern about the green space that currently exists in the location of the proposed development. Christina Kramer, 2177 Saren Ct, Carolyn Hahn Swanson, 2146 Saren Ct, both expressed concern about the roads, as they are already in need of several repairs and the extra traffic as well as heavy machinery for the construction will only worsen the problem. Public comment closed.

**MOTION TO APPROVE RZ-17-001 WITH EDITS TO STAFF CONDITIONS 1, 4, AND 6, AND ADDITIONAL CONDITIONS:**

- 1. Modification to condition 1: Use of the subject property shall be limited to an 18-unit single family detached development (2.81 units per acre). If the hydraulic study shows an expansion of the floodplain, the unit count shall be decreased to prevent homes from being built in the floodplain.**
- 2. Modification to condition 4: A 20' planted buffer shall be recorded along the southern property line on the final plat. A minimum six-foot-high solid wood fence shall be constructed along the property line along the buffer.**
- 3. Modification to condition 6: Unit 1 shall be limited to 1 1/2 story in height and compatible materials to the adjacent homes on Saren Court.**
- 4. Owner/developer shall conduct a hydraulic analysis to determine a base flood elevation prior to issuance of a land disturbance permit.**
- 5. Hours of construction shall be limited to 7am to 6pm Monday through Friday and 8am to 5pm Saturday, with no construction on Sundays or holidays.**
- 6. Architectural elevations indicative of actual construction shall be submitted to City Council for review.**
- 7. The area shown as Lot # 1 on the April 27, 2017 site plan shall be recorded as open space on the plat.**

**By: George Wellborn**

**Seconded by: Katherine Atteberry**

**Vote: (3-1) (Wellborn, Atteberry, Coppage) (Williams)**

2. Planning Commission reviewed **SLUP-17-002, VS-17-002-01, VS-17-002-02, VS-17-002-03**, a proposed multi-warehouse self-storage facility, with concurrent variances to reduce the public space requirement, waive the transparency requirement on the front façade, and to allow the use of exterior insulation and finish system (EIFS) as a façade material. John McHenry, Community & Economic Development Director, gave an overview of the proposed development and staff analysis.

Romel Cadet, attorney with Battle Law Firm, gave an overview of the application and the proposed project, and explained the SLUP and the included concurrent variances. Romel also showed similar projects to demonstrate the aesthetics of the buildings and explained what EIFS is and why it is being requested to be used for this development. Michelle Battle of Battle Law Firm also spoke and went over the history of the property.

Planning Commission comments included, among other things, concern about green space, the number of units, security of the complex, regulation of units, and the possibility of inter-parcel access with the Fidelity Bank property.

George Wellborn opened the floor to public comment in favor or in opposition. Janet Curtis, 1887 Robinhill Ct, spoke in favor of the overall development but expressed concern about the number of parking spaces and the amount of parking spaces for those with disabilities and a concern about the sloped part of the property and whether it might need to be filled with dirt. No one spoke in opposition. Public comment closed.

**MOTION TO APPROVE SLUP-17-002 WITH STAFF CONDITIONS.**

**By: George Wellborn**

**Seconded by: Ann Coppage**

**Vote: (4-0) (Wellborn, Coppage, Atteberry, Williams)**

**MOTION TO DENY V-17-002-01.**

**By: George Wellborn**

**Seconded by: Mike Williams**

**Vote: (3-1) (Wellborn, Williams, Coppage) (Atteberry)**

**MOTION TO DENY V-17-002-02.**

**By: George Wellborn**

**Seconded by: Mike Williams**

**Vote: (4-0) (Wellborn, Williams, Atteberry, Coppage)**

**MOTION TO DENY V-17-002-03.**

**By: George Wellborn**

**Seconded by: Mike Williams**

**Vote: (4-0) (Wellborn, Williams, Atteberry, Coppage)**

3. Planning Commission reviewed a **consideration of amendments to Article 3 of the City of**

**Tucker Zoning Ordinance**, including but not limited to regulations in the Northlake Overlay District. John McHenry, Community & Economic Development Director gave a presentation on Article 3 and discussed the changes that have been made to it, highlighting the work to create consistency between the overlays.

Planning Commission comments included, but were not limited to, discussion of the wording in section 3.35.13.B and changing “encouraged” to “where feasible,” requiring a special land use permit for health spa and massage establishments, whether outdoor dining and other types of outdoor amenities can apply to the open space requirement, and clarification on streetscaping and parking lot landscaping counting towards the open space requirement. George Wellborn opened the floor to public comment in favor or in opposition. Janet Curtis, 1887 Robinhill Ct, spoke in favor, specifically stating that she greatly appreciated the need to obtain a special land use permit for health spas. No one spoke in opposition. Public comment closed.

**MOTION TO APPROVE AMENDMENTS TO ARTICLE 3 OF THE CITY OF TUCKER ZONING ORDINANCE WITH AMENDMENTS:**

- 1. AT 3.35.13.B, CHANGE FIRST SENTENCE TO “WHERE FEASIBLE, OPEN SPACE SHALL...”**
- 2. AT 3.35.13.C, INSERT “OUTDOOR DINING FOR RESTAURANTS, OUTDOOR AMENITIES.”**
- 3. AT 3.35.13.D, CHANGE TO READ: “PARKING LOTS AND PARKING LOT LANDSCAPING REQUIRED BY 3.35.16.K AND 3.35.18.F, AND SIDEWALKS AND STREETSCAPING ON THE RIGHT-OF-WAY REQUIRED BY 3.35.10 SHALL NOT BE COUNTED TOWARD THE OPEN SPACE REQUIREMENT.”**
- 4. AT 3.35.16.M, CHANGE REFERENCE OF 27-730.2.18(F) TO 3.35.18.F.**

**By: George Wellborn**

**Seconded by: Ann Coppage**

**Vote: (4-0) (Wellborn, Coppage, Atteberry, Williams)**

4. Planning Commission reviewed a **consideration of adoption of a revised sign ordinance (Chapter 21 of City Code)**.

John McHenry, Community & Economic Development Director went over the sign ordinance and discussed the updates and changes that been made to it, primarily focusing on the feather and teardrop-style signs.

George Wellborn opened the floor to public comment in favor or in opposition. No one spoke in favor or in opposition. Public comment closed.

Planning Commission comments included the discussion of the use of feather signs as special event signage.

**MOTION TO RECOMMEND TO CITY COUNCIL THE ADOPTION OF A REVISED SIGN ORDINANCE (CHAPTER 21) OF CITY CODE.**

**By: Katherine Atteberry**

**Seconded by: George Wellborn**  
**Vote: (4-0) (Atteberry, Wellborn, Coppage, Williams)**

**Mike Williams excused himself before City Business Items.**

**CITY BUSINESS ITEMS:** John McHenry went over updates to previous land use petitions and discussed the definition of family.

**STAFF AND PLANNING COMMISSION COMMENTS:** Upcoming Planning Commission meeting on June 22, 2017.

**ADJOURNMENT:** The Planning Commission adjourned at approximately 11:30 pm.

Approved,

Attest:

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George Wellborn, Chair

\_\_\_\_\_  
Katie Coleman, Administrative Assistant

(Seal)



# City of Tucker

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## MEMORANDUM

TO: Planning Commission

FROM: John McHenry, AICP, Community Development Director

DATE: June 19, 2017

RE: Staff Recommendation for CA-17-001, RZ-17-002, SLUP-17-003 (The Rise)

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On Thursday, June 15, 2017, staff received a written request for a 30-day deferral of the above-referenced applications. Staff recommends approval of the requested deferral. If approved, the applications will go before the Planning Commission on July 27, 2017.

The applicant also intends to request a deferral from the July City Council meetings. If approved, the applications would be slated to go before City Council on August 14, 2017 and August 28, 2017.

JUN 15 2017

Building and Permitting  
Department

[ddillard@pftlegal.com](mailto:ddillard@pftlegal.com)

CA-17-001  
RZ-17-002  
SLUP-17-003



G. Douglas Dillard  
404-665-1241

June 15, 2017

Via Email and Hand Delivery

Mayor Auman and Members of the Tucker City Council  
c/o John McHenry, Director of Community Development  
City of Tucker  
4119 Adrian Street  
Tucker, Georgia 30084

Re: 30-Day Deferral Request; CA-17-001, RZ-17-002, & SLUP-17-003; 4650 &  
4750 Hugh Howell Road; The Rise

Dear Mayor Auman and Members of the Tucker City Council:

Please be advised that our firm represents Macauley Investments, LLC. Macauley Investments, LLC respectfully requests a 30-day deferral of the above-referenced applications to the July 27, 2017 Planning Commission meeting and the August 14 and 28, 2017 Mayor and City Council meetings. This matter is currently scheduled to go before the Planning Commission on June 22 and the Mayor and City Council on July 10 and July 24, 2017.

Please also find enclosed at **Exhibit "1"** the Applicant's Reservation of Constitutional Rights and Ante Litem Notice for inclusion in the record of each of the above-captioned applications. Georgia law and the procedures of the City of Tucker require us to raise federal and state constitutional objections during the zoning process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time.

Thank you and please do not hesitate to contact me should you have any questions.

Sincerely,

PURSLEY FRIESE TORGRIMSON

G. Douglas Dillard, Esq.  
Jillian S. Arnold, Esq.

Enclosure

cc: Members of the Tucker Planning Commission  
Brian Anderson, Esq.  
Courtney Lankford  
Stephen Macauley

00053272;1



## **RESERVATION OF CONSTITUTIONAL RIGHTS AND ANTE LITEM NOTICE**

**For the Following Cases: CA-17-001; RZ-17-002; SLUP-17-003**

**Macauley Investments, LLC**

Georgia law and the procedures of the City of Tucker require us to raise Federal and State constitutional objections during the zoning process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time:

The portions of the City of Tucker Zoning Ordinance, facially and as applied to the Property, which restrict the Property to any zoning classifications, conditions, uses, or to any development other than that proposed by the Applicant are unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and are illegal, null and void, constituting a taking of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A refusal by the City Council to approve the requested applications for the Property in accordance with the criteria requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any zoning of the Property subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

The current zoning on the subject property is unconstitutional. This notice is being given to comply with the provisions of O.C.G.A. § 36-33-5 to afford the City of Tucker an opportunity to grant the requested applications. If the City Council denies the requested applications, a claim

will be filed in the Superior Court of DeKalb County demanding just and adequate compensation under Georgia law for the taking of property, diminution of value of adjacent and surrounding properties, attorney's fees and no less than \$11,000,000.00 in other damages arising out of the unlawful deprivation of the Applicant constitutionally-protected property rights.

For all the foregoing reasons, it is submitted on behalf of the Applicant that the above-captioned applications meet the requirements of the City of Tucker Zoning Ordinance.