

APPLICATION

APPLICANT INFORMATION	OWNER INFORMATION
NAME: <u>The Ardent Companies c/o Dennis J. Webb, Jr</u> ADDRESS: <u>1230 Peachtree St., NE, Ste. 3100</u> CITY: <u>Atlanta</u> STATE: <u>GA</u> ZIP: <u>30309</u> PHONE: <u>404-815-3500</u>	NAME: <u>Delk Road Development Co.</u> ADDRESS: <u>3890 Saint Elisabeth Sq.</u> CITY: <u>Duluth</u> STATE: <u>GA</u> ZIP: <u>30096</u> PHONE: _____
CONTACT PERSON: <u>Dennis J. Webb, jr.</u> PHONE: <u>404-815-3620</u> CONTACT'S E-MAIL: <u>djwebb@sgrlaw.com</u>	

APPLICANT IS THE:

OWNER'S AGENT
 PROPERTY OWNER
 CONTRACT PURCHASER

PRESENT ZONING DISTRICT(S): C-1 REQUESTED ZONING DISTRICT: MR-2
 PRESENT LAND USE CATEGORY: IND REQUESTED LAND USE CATEGORY: Downtown
 LAND DISTRICT(S): 18 LAND LOT(S): 214 ACREAGE: 3.53 +/-
 ADDRESS OF PROPERTY: 2301 Fuller Way, Tucker, GA 30084
 PROPOSED DEVELOPMENT: Townhome development
 CONCURRENT VARIANCES: _____


RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units <u>34 units</u> Dwelling Unit Size (Sq. Ft.): <u>+/- 2,500 sf.</u> Density: <u>9.6 units/acre</u>	No. of Buildings/Lots: _____ Total Building Sq. Ft. _____ Density: _____

RECEIVED
City of Tucker
AUG 27 2018

CA-18-002
MR-18-004

APPLICANT'S CERTIFICATION

THE UNDERSIGNED BELOW STATES UNDER OATH THAT THEY ARE AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 24 MONTHS FROM THE DATE OF LAST ACTION BY THE MAYOR AND CITY COUNCIL.

 8/24/18

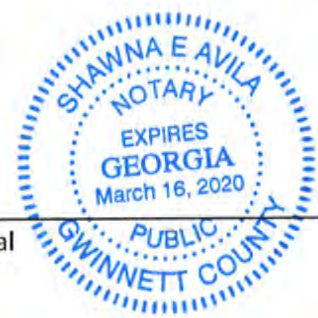
Signature of Applicant Date

Dennis J. Webb, Jr., Smith, Gambrell & Russell, LLP

Type or Print Name and Title

 8/24/18

Signature of Notary Public Date Notary Seal



RECEIVED
City of Tucker

AUG 27 2018

**Community Development
Department**

CA-18-002

RZ-18-004

PROPERTY OWNER'S CERTIFICATION

I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of DeKalb County, Georgia, of the property identified below, which is the subject of the attached Land Use Petition before the City of Tucker, Georgia. As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Rezoning (RZ), Comprehensive Plan Amendment (CA), Special Land Use Permit (SLUP), & Concurrent Variance (CV) in request of the items indicated below.

I, Delk Road Development Company, authorize, The Ardent Companies c/o Dennis J. Webb, Jr.,
(Property Owner) (Applicant)

to file for RZ and CV, at 2301 Fuller Way, Tucker, GA 30084
(RZ, CA, SLUP, CV) (Address)

on this date _____, 20 18
(Month) (Day)

- I understand that if a rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the mayor and city councils' final decision.
- I understand that if an application for a special land use permit affecting all or a portion of the same property for which an application for the same special land use was denied shall not be submitted before twenty-four (24) months have passed from the date of final decision by the mayor and city council on the previous special land use permit.
- I understand that failure to supply all required information (per the relevant Applicant Checklists and requirements of the Tucker Zoning Ordinance) will result in REJECTION OF THE APPLICATION.
- I understand that preliminary approval of my design plan does not authorize final approval of my zoning or signage request. I agree to arrange additional permitting separately, after approval is obtained.
- I understand that representation associated with this application on behalf of the property owner, project coordinator, potential property owner, agent or such other representative shall be binding.

[Handwritten Signature] August 21, 2018
Signature of Property Owner Date

Glenn E. Hicks II, Partner
Type or Print Name and Title

[Handwritten Signature] 8/21/2018
Signature of Notary Public Date Notary Seal



RECEIVED
City of Tucker

AUG 27 2018

CA-18-002
RZ-18-004

AUG 27 2018

DISCLOSURE REPORT FORM

**Community Development
 Department**

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4); NO (if NO, complete only point 4)

1. **CIRCLE ONE:** Party to Petition (If party to petition, complete sections 2, 3 and 4 below)

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

- | | |
|----------------------------------|----|
| 1. Delk Road Development Company | 5. |
| 2. The Ardent Companies | 6. |
| 3. | 7. |
| 4. | 8. |

3. CAMPAIGN CONTRIBUTIONS:

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) Glenn E. Hicks III. (Partner)
 Signature: Date: August 21, 2018

AUG 27 2018

Community Development
 Department

DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4); NO (if NO, complete only point 4)

1. CIRCLE ONE: Party to Petition (if party to petition, complete sections 2, 3 and 4 below)

In Opposition to Petition (if in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

- | | |
|----------------------------------|----|
| 1. Delk Road Development Company | 5. |
| 2. The Ardent Companies | 6. |
| 3. | 7. |
| 4. | 8. |

3. CAMPAIGN CONTRIBUTIONS:

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) The Ardent Companies
 Signature: [Signature] Date: 8-22-18

AUG 27 2018

DISCLOSURE REPORT FORM

**Community Development
 Department**

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4); **NO** (if NO, complete only point 4)

1. **CIRCLE ONE:** **Party to Petition** (if party to petition, complete sections 2, 3 and 4 below)

In Opposition to Petition (if in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

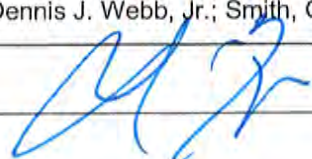
- | | |
|----------------------------------|----|
| 1. Delk Road Development Company | 5. |
| 2. The Ardent Companies | 6. |
| 3. | 7. |
| 4. | 8. |

3. **CAMPAIGN CONTRIBUTIONS:**

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) Dennis J. Webb, Jr.; Smith, Gambrell & Russell, LLP

Signature:  Date: 8/24/18

AUG 27 2018

Community Development
 Department

DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4); NO (if NO, complete only point 4)

1. CIRCLE ONE: Party to Petition (If party to petition, complete sections 2, 3 and 4 below)

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

- | | |
|----------------------------------|----|
| 1. Delk Road Development Company | 5. |
| 2. The Ardent Companies | 6. |
| 3. | 7. |
| 4. | 8. |

3. CAMPAIGN CONTRIBUTIONS:

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) Kathryn M. Zickert

Signature: *Kathryn M. Zickert*

Date: 8-24-18

AUG 27 2018

Community Development
Department

DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4);

NO (if NO, complete only point 4)

1. CIRCLE ONE: Party to Petition (If party to petition, complete sections 2, 3 and 4 below)

In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

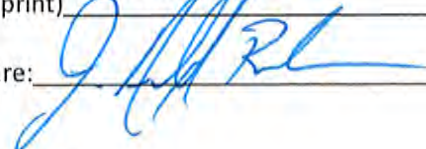
- | | |
|----------------------------------|----|
| 1. Delk Road Development Company | 5. |
| 2. The Ardent Companies | 6. |
| 3. | 7. |
| 4. | 8. |

3. CAMPAIGN CONTRIBUTIONS:

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) J. Alexander Brock

Signature: 

Date: 8/24/2018

Avila, Shawna E.

Subject: FW: Fuller Way Rezoning plans

From: Courtney Smith [mailto:CSmith@Tuckerga.gov]
Sent: Friday, August 17, 2018 2:42 PM
To: Webb, Dennis (Den); John McHenry
Cc: Brock, Alex; Ken Hildebrandt
Subject: RE: Fuller Way Rezoning plans

CAUTION: This email is from an external source. Do not click links or attachments unless it's from a verified sender.

Den,

Good to hear from you! I've reached out to Ken Hildebrandt to confirm the that concerns with the proposed road were resolved, but other than that, you should be good to proceed. The application will need a comp plan amendment and a rezoning. Which character area do you intend to request? The Tucker Tomorrow Comp Plan was approved in April and the character areas did change from the former DeKalb plan. We're happy to meet to discuss possible options.

Our land use petition process has been extended to 4 months to give more time between PC, MCC 1st Read, and MCC 2nd Read. We only have 1 meeting in December so we will have to determine when your 2nd read will be.

Deadline	Community Council	Planning Commission	1 st Read	2 nd Read
8/27/2018	9/12/2018	10/25/2018	11/26/2018	TBD, If Needed
9/24/2018	10/10/2018	11/29/2018	TBD, If Needed	1/28/19
10/22/18	11/14/18	12/27/18	1/28/19	2/25/19
11/26/18	12/12/18	1/24/19	2/25/19	3/25/19

Let us know if you would like to meet again.

Best,

Courtney Smith
Deputy Community Development Director
T: 470.273.3091 | M: 678.209.9794
E: csmith@tuckerga.gov | W: tuckerga.gov

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004

From: Webb, Dennis (Den) <DWEBB@sgrlaw.com>
Sent: Friday, August 17, 2018 11:33 AM
To: Courtney Smith <CSmith@Tuckerga.gov>; John McHenry <jmchenry@tuckerga.gov>

Cc: Brock, Alex <jabrock@sgrlaw.com>

Subject: Fuller Way Rezoning plans

Hi Courtney and John,

Hope all is well.

Fuller Way is back. Ardent got the EPD variance that we discussed a while back.

Attached is the site plan. It is unchanged. Ardent would like to file on the 27th. I think we have already met the pre-app requirements but wanted to check with you.

Thanks,

Den

Dennis (Den) J. Webb, Jr.
Attorney at Law

p | 404-815-3620
f | 404-685-6920
e | dwebb@sgrlaw.com
Promenade, Suite 3100 | 1230 Peachtree St. N.E. | Atlanta, GA 30309
www.sgrlaw.com | My Bio | vCard



Confidentiality Notice

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004

STATEMENT OF INTENT

and

Other Material Required by
City of Tucker Zoning Ordinance
for the
Comprehensive Plan Amendment

of

THE ARDENT COMPANIES, LLC

for

±3.53 Acres of Land
located in
Land Lot 214, 18th District, DeKalb County

Address:
2301 Fuller Way

Submitted for Applicant by:

Kathryn M. Zickert
Dennis J. Webb, Jr.
J. Alexander Brock
Smith, Gambrell & Russell, LLP
Promenade II Suite 3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404-815-3500

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004

I. INTRODUCTION

This application concerns approximately 3.53 acres of land located between the City of Tucker's highly commercial downtown area and the light industrial area along Mountain Industrial Boulevard. The property does not squarely fit within either, however. The property was once a part of the overall tract developed as the Hugh Howell Shopping District, however its separation from the main roadways has rendered it unusable as a commercial property.

In addition, the property has no access to Mountain Industrial Boulevard or Tucker Industrial Drive, alienating it from the industrial uses to the east. These factors have left the property in a limbo state and it has remained undeveloped for the last twenty-five (25) years while the area around it has grown and prospered. This rezoning request attempts to rectify this misstep to allow a development that fits within the constraints of the property and is compatible with the area as a whole.

II. PROPERTY ANALYSIS

This Application concerns \pm 3.53 acres of land located in Land Lot 214, 18th District of DeKalb County (the "Subject Property"). The Applicant seeks an amendment to the City of Tucker's Tucker Tomorrow Comprehensive Plan to change the character area from Light Industrial to Downtown.

The Subject Property is located on the east side of Fuller Way, approximately 600 feet north of its intersection with Hugh Howell Road. More particularly, the Subject Property is located at 2301 Fuller Way (Parcel ID: 18-214-08-013). The site abuts the right-of-way of Fuller Way to the west, the H.B. Fuller property to the north and east, zoned Light Industrial (M) and within the Light Industrial character area; and the Heritage Place commercial office park to the south, zoned M and within the Light Industrial character area. To the west, across the right-

of-way of Fuller Way is the Hugh Howell Shopping District shopping center, zoned C-1 and within the Downtown character area; and to the northwest across Fuller Way is the Arium Station 29 apartments, zoned Medium Density Residential-2 (MR-2) and within the Downtown character area.

At present, the Subject Property is undeveloped land consisting mainly of small caliper trees and underbrush. The Applicant intends to redevelop the Subject Property for thirty-four (34) townhomes and appurtenant site improvements (the "Proposed Development"). The City of Tucker's Comprehensive Land Use Plan designates the Subject Property as Light Industrial (LIND) and will require an amendment to the Comprehensive Plan to allow the proposed MR-2 zoning and townhome use.

In April 2018 the Mayor and City Council adopted the Tucker Tomorrow Comprehensive Plan, Tucker's first Comprehensive Plan to specifically address the future development of the city.¹ The Comp Plan's Proposed Future Land Use Map identifies the Subject Property as being within the Light Industrial character area.

The Comp Plan establishes five major community goals to help guide future development as well as major recommended policies and actions. These goals include: Enhance Downtown Tucker; Improve Transportation Connections; Preserve and Improve Neighborhoods; Strengthen Recreational and Community Resources; and Bolster Economic Base. The Proposed Development fosters a number of these major community goals including:

- Enhance Downtown Tucker: To be truly healthy, downtowns should offer a range of housing choices.

¹ The City of Tucker previously adopted the DeKalb County 2025 Comprehensive Plan and its associated land use designations pending the development and adoption of its own Comprehensive Plan.

- Preserve and Improve Neighborhoods: Because Tucker has little remaining vacant land and the public largely wants existing residential subdivisions to remain stable, new housing development should be directed to the major activity areas including downtown.
- Preserve and Improve Neighborhoods: Continued focus should be on ensuring Tucker provides a range of quality housing choices at a variety of price points.
- Preserve and Improve Neighborhoods: Townhome construction is viewed as being a desirable multi-unit product type and a good choice for infill housing along the city's major transportation corridors.
- Preserve and Improve Neighborhoods: To provide for Tucker's diverse population, downtown Tucker and the Northlake area should be developed with a mix of housing types. Product types should include townhomes, detached homes on smaller lots, and multi-unit dwellings.

In addition to meeting the general goals of the Comprehensive Plan, the Proposed Development meets the stated development strategy of the Downtown character area. The Downtown character area seeks, among other things, to facilitate the development of higher density residential and specifically townhomes, which are listed among the primary land uses.

The current Light Industrial character area, however, leaves little option for practical development and is one of the reasons it has remained undeveloped while the surrounding properties have prospered. Indeed, the history of the property reveals that it is neither suited to industrial or its current commercial zoning allowed by the Light Industrial character area.

The Subject Property was a portion of an overall 16.81 acre tract that was rezoned from Light Industrial (M) to Local Commercial (C-1) under DeKalb County Rezoning Application CZ-93051, approved on July 27, 1993. The 3.53 acre Subject Property, however, was

subdivided out from the overall tract subsequent to the rezoning and remained undeveloped. The reason for its subdivision may be its unsuitability for commercial development. This is evidenced by the fact that the Subject Property has remained undeveloped for almost 25 years, while the other properties around it have been developed and have flourished.

Furthermore, the Subject Property is separated from the remainder of the Light Industrial character area, located along Mountain Industrial Boulevard. The property has no access to Mountain Industrial Boulevard or Tucker Industrial Drive, separating it from the industrial uses to the east. The Subject Property's access point is on Fuller Way, which aligns its development in accordance with other developments that access Fuller Way (i.e. commercial and higher-density residential) rather than the industrial nature of the properties to the east. As a result, the Proposed Development represents the best use for the property given its location and its unsuitability for either industrial or commercial uses.

The Applicant submits this document as a Statement of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and a written justification for the Application as required by the City of Tucker Zoning Ordinance, § 7.3.4. This Application is submitted in conjunction with a concurrent an Application to rezone the property from Local Commercial (C-1) to Medium Density Residential-2 (MR-2). A Site Plan has been filed with the original Application, along with the other required materials.

III. IMPACT ANALYSIS

A. WHETHER THE PROPOSED LAND USE CHANGE WILL PERMIT USES THAT ARE SUITABLE IN CONSIDERATION OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY OR PROPERTIES.

Yes. The proposed land use change to the Downtown character area will allow a development more in-line with the characteristics of the property and other nearby development.

B. WHETHER THE PROPOSED LAND USE CHANGE WILL ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY OR PROPERTIES.

No. The proposed land use change to Downtown will not adversely affect the existing use or usability of the surrounding properties. The proposed Downtown character is consistent with the land use designation of the properties on the western side of Fuller Way. Moreover, the proposed townhomes will present a housing opportunity for employees of the nearby industrial developments.

C. WHETHER THE PROPOSED LAND USE CHANGE WILL RESULT IN USES WHICH WILL OR COULD CAUSE EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS.

No. The proposed development will not overly burden existing streets or transportation facilities. According to the ITE Trip Generation Manual, the thirty-four (34) residential townhomes (ITE category 230) will generate 323.68 total trips on a weekday, 26.18 trips during the A.M. peak hour, and 34.68 trips during the P.M. peak hour. The Subject Property is located on Fuller Way, classified as a Local Street, and short distance from the signaled intersection with Hugh Howell Road. Hugh Howell is a five-lane state highway classified as a major arterial, which indicates that the road is intended to carry large volumes of traffic. This major roadway is more than adequate to accommodate the minor number of additional trips the proposed development will generate. Additionally, there are essential retail uses immediately across

Fuller Way, such as a grocery store and restaurants, which are within easy walking distance from the Subject Property. This close proximity to needed retail services will help reduce the number of trips made by the residents. Further, the project is served by mass transit with excellent access to a MARTA bus routes (Bus Route 120), which will help mitigate impacts from the Proposed Development.

As for utilities, the Subject Property has access to water and sewer. Finally, the proposed development will not create an excessive or burdensome use of the community's schools. The Subject Property is served by Smoke Rise Elementary School, Tucker Middle School, and Tucker High School service area. Smoke Rise Elementary is listed as under capacity (64% capacity), and both Tucker Middle School and Tucker High School are listed as at capacity (103% and 100%, respectively) according to DeKalb County Schools' FTE Enrolment Report, dated October 3, 2017. The thirty-four (34) proposed townhomes are not anticipated to have a significant impact on local schools.

D. WHETHER THE AMENDMENT IS CONSISTENT WITH THE WRITTEN POLICIES IN THE COMPREHENSIVE PLAN TEXT AND ANY APPLICABLE SMALL AREAS STUDIES.

Yes. As noted in the preceding paragraphs, the proposed amendment aligns well with the stated goals of the Comprehensive Plan as well as the specific goals of the Downtown character area.

E. WHETHER THERE ARE POTENTIAL IMPACTS ON PROPERTY OR PROPERTIES IN AN ADJOINING GOVERNMENTAL JURISDICTION, IN CASES OF PROPOSED CHANGES NEAR COUNTY OR MUNICIPAL BOUNDARY LINES.

Not Applicable. The Subject Property is entirely within and surrounded by the City of Tucker and is not adjacent to any other jurisdictional boundary.

F. WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE AFFECTED LAND AREAS WHICH SUPPORT EITHER APPROVAL OR DENIAL OF THE PROPOSED LAND USE CHANGE.

Yes. As stated in previous paragraphs, the history of the Subject Property demonstrates that it is not viable for light industrial or commercial uses. As a result the property has not been developed for at least 25 years and will likely remain undeveloped, absent the rezoning to a favorable district and a change in the Future Land Use character area. Its location on a minor, dead-end street, coupled with the actual development that has occurred in the area, make the Subject Property an ideal location for the Proposed Development. The current Light Industrial character area limits the Subject Property's development to certain industrial and commercial uses, but the trend in the surrounding area, coupled with the location of the Subject Property, leads any proposed development of the property towards a medium-density residential use.

Hence, the zoning requested here conforms to the ideals and spirit of the City of Tucker's Comprehensive Plan, as well as fitting with the recent progress of the area, while developing a practical, useful and marketable development that will redevelop an underutilized property into an asset for the immediate area and the city as a whole.

G. WHETHER THERE WILL BE AN IMPACT ON HISTORIC BUILDINGS, SITES, DISTRICTS OR ARCHAEOLOGICAL RESOURCES RESULTING FROM THE PROPOSED CHANGE.

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that would suffer adverse impacts from the rezoning requested.

V. NOTICE OF CONSTITUTIONAL CHALLENGES AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that the existing Future Land Use Map designation is unconstitutional and a refusal to approve the proposed Comprehensive Plan amendment, or any

attempt to change the Future Land Use Map designation of the Subject Property to an intervening classification, would be unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion; all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed Comprehensive Plan amendment, or any attempt to change the designation of the Subject Property to an intervening classification, would discriminate unfairly between the owner of the Subject Property and other property owners similarly situated, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph II of the Constitution of the State of Georgia.

A refusal to approve the proposed Comprehensive Plan amendment, or any attempt to change the designation of the Subject Property to an intervening classification, would amount to a taking of property, in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia.

A refusal to approve the proposed Comprehensive Plan amendment, or any attempt to change the designation of the Subject Property to an intervening classification, would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Constitution of the State of Georgia.

A refusal to approve the proposed Comprehensive Plan amendment, or any attempt to change the designation of the Subject Property to an intervening classification, would be invalid

inasmuch as the Zoning Ordinance of the City of Tucker is unlawful, null and void because its adoption and map adoption/maintenance did not and does not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*

The City of Tucker's Zoning Ordinance lacks adequate standards for the City Council to exercise its power to review this Application. Specifically, the "standards" set out in Section 7.3.8 are not sufficient to contain the discretion of the Mayor and City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance, the Zoning Ordinance is unlawful and violates, among other things, the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States and Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia.

Any limitation on the time for presentation of the issues before the Mayor and City Council, which has the power to amend the City's Future Land Use Map, is a violation of the guarantees of free speech under the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph V of the Constitution of the State of Georgia. Further, said limitations are in violation of the right to petition and assemble, in violation of the First Amendment of the Constitution of the United States and Article I, Section I, Paragraph IX of the Constitution of Georgia, as well as the due process clauses of the United States and Georgia Constitutions.

VI. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the Comprehensive Plan Amendment Application at issue be approved. The Applicant also invites and welcomes

any comments from Staff or other officials of the City of Tucker so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 27th day of August, 2018.

Respectfully submitted,



Kathryn M. Zickert
Dennis J. Webb, Jr.
J. Alexander Brock
Attorneys For Applicant

Smith, Gambrell & Russell, LLP
Promenade II, suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500

RECEIVED
City of Tucker

AUG 27 2018

**Community Development
Department**

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004

STATEMENT OF INTENT

and

Other Material Required by
City of Tucker Zoning Ordinance
for the
Rezoning Application

of

THE ARDENT COMPANIES, LLC

for

±3.53 Acres of Land
located in
Land Lot 214, 18th District, DeKalb County

Address:
2301 Fuller Way

Submitted for Applicant by:

Kathryn M. Zickert
Dennis J. Webb, Jr.
J. Alexander Brock
Smith, Gambrell & Russell, LLP
Promenade II Suite 3100
1230 Peachtree Street, NE
Atlanta, Georgia 30309
404-815-3500

I. INTRODUCTION

This application concerns approximately 3.53 acres of land located between the City of Tucker's highly commercial downtown area and the light industrial area along Mountain Industrial Boulevard. The property does not squarely fit within either, however. The property was once a part of the overall tract developed as the Hugh Howell Shopping District, but its separation from the main roadways has rendered it unusable as a commercial property.

In addition, the property has no access to Mountain Industrial Boulevard or Tucker Industrial Drive, alienating it from the industrial uses to the east. These factors have left the property in a limbo state and it has remained undeveloped for the last twenty-five (25) years while the area around it has grown and prospered. This rezoning request attempts to rectify this misstep to allow a development that fits within the constraints of the property and is compatible with the area as a whole.

II. PROPERTY ANALYSIS

This Application seeks to rezone \pm 3.53 acres of land located in Land Lot 214, 18th District of DeKalb County (the "Subject Property") from Local Commercial (C-1) to Medium Density Residential-2 (MR-2). The Subject Property is located on the east side of Fuller Way, approximately 600 feet north of its intersection with Hugh Howell Road. More particularly, the Subject Property is located at 2301 Fuller Way (Parcel ID: 18-214-08-013). The site abuts the right-of-way of Fuller Way to the west, the H.B. Fuller property to the north and east, zoned Light Industrial (M); and the Heritage Place commercial office park to the south, zoned M. To the west, across the right-of-way of Fuller Way is the Hugh Howell Shopping District shopping center, zoned C-1; and to the northwest across Fuller Way is the Arium Station 29 apartments, zoned Medium Density Residential-2 (MR-2)

At present, the Subject Property is undeveloped land consisting mainly of small caliper trees and underbrush; the site was cleared and graded several decades ago and any vegetation on the property has grown up since. The Applicant intends to redevelop the Subject Property for thirty-four (34) townhomes and appurtenant site improvements (the "Proposed Development"). The City of Tucker's Comprehensive Land Use Plan designates the Subject Property as Light Industrial (LIND) and will require an amendment to the Comprehensive Plan to allow the proposed MR-2 zoning and townhome use.

The Applicant submits this document as a Statement of Intent with regard to this Application, a preservation of the Applicant's constitutional rights, and a written justification for the Application as required by the City of Tucker Zoning Ordinance, § 7.3.5. A Site Plan has been filed with the original Application, along with the other required materials.

III. ZONING HISTORY

The Subject Property was formerly within unincorporated DeKalb County and zoned C-1. In 2016, when the City of Tucker was incorporated, the Subject Property fell within the newly formed city boundaries and was made subject to Tucker's C-1 zoning and Light Industrial land use designation.

The Subject Property was a portion of an overall 16.81 acre tract that was rezoned from Light Industrial (M) to Local Commercial (C-1) under DeKalb County Rezoning Application CZ-93051, approved on July 27, 1993. The 16.81 acre property subject to the 1993 rezoning was formerly developed as an industrial facility fronting Hugh Howell Road. The 1993 rezoning allowed the redevelopment of the overall property into the current Hugh Howell Shopping District shopping center and Fuller Way. The Subject Property, however, was not developed with the remainder of the property and subsequent to the rezoning, the 3.53 acre Subject Property

was subdivided out from the overall tract. The reason for its subdivision may be its unsuitability for commercial development. This is evidenced by the fact that the C-1 zoned Subject Property has remained undeveloped for almost 25 years, while the other properties around it have been developed and have flourished.

There are certain essential elements needed for the viability of a property as a commercial use, including ease of access from the major roadways and visibility from a large number of passing vehicles. The Subject Property has neither. Fuller Way is a dead-end street with very little street traffic and the nearest major roadway is Hugh Howell. However, the Subject Property is approximately 600 linear feet from the intersection of Hugh Howell Road and Fuller Way and has practically no visibility from Hugh Howell Road. Anyone traveling along Hugh Howell Road will have no knowledge that the property or that development on that property exists. The only vehicular and foot traffic that will pass by the Subject Property will come from the residents of the nearby multifamily development. The result is that the same multifamily residents will pass the property month after month and no new customers will be generated through passing traffic. Moreover, there is no direct access onto Hugh Howell Road. A potential customer must already know that they have to travel down Fuller Way, a dead-end street, to reach the Subject Property. As a result, there will be few, if any, new customers generated by vehicular or foot traffic on Fuller Way. In fact, the current property owner has attempted to sell the Subject Property to commercial developers for a number of years with no success, likely due to the reasons outlined above. Consequently, the Subject Property is not viable for commercial development under its current C-1 zoning.

In addition, the Subject Property is unlikely to support any industrial development. The property fronts onto Fuller Way, which includes commercial uses near Hugh Howell Road and a

multifamily residential development at its dead-end to the northwest of the Subject Property. There is one remaining industrial use to the north of the Subject Property, H.B. Fuller, however this property is also accessed by Tucker Industrial Way. Tucker Industrial Way, unlike Fuller Way, is a road that is characterized by industrial uses. The Subject Property has no connection to the right-of-way of Tucker Industrial and as a result has no association with the industrial uses. In fact, the property's connection to Fuller Way makes it much more compatible with the adjacent commercial and high-density residential uses. Accordingly, it is highly unlikely that the property will ever be developed for an industrial use.

The Subject Property, however, is ideally suited for residential development, such as the one proposed. The property is in close proximity to supporting commercial uses, such as grocery, restaurants and other retail. Moreover, its location away from the major arterial traffic makes it more conducive to residential development. Residential development, the inverse of commercial, is much more suitable for areas removed from major traffic corridors and away from the noise and bustle that such roadways generate. The location's suitability for residential zoning is also supported by the nearby Arium Station 29 apartments, zoned Medium Density Residential-2 (MR-2). The Arium Station 29 property was rezoned in 1999 to MR-2 under DeKalb County Ordinance CZ-99064. The rezoning of the Arium property follows a trend in the area to rezone vacant industrial properties to more practical and fitting commercial and residential uses. Similar to the Proposed Development, the Arium Station 29 apartments are located on Fuller Way, removed from the major arterial traffic on Hugh Howell Road, and in proximity to the supporting commercial uses.

IV. IMPACT ANALYSIS

A. WHETHER THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICY AND INTENT OF THE COMPREHENSIVE PLAN.

In April 2018 the Mayor and City Council adopted the Tucker Tomorrow Comprehensive Plan (the “Comprehensive Plan”), Tucker’s first Comprehensive Plan to specifically address the future development of the city.¹ The Comprehensive Plan consists of a text and series of maps. The Comprehensive Plan is accompanied by a procedure to link changes in zoning with corresponding changes in the Comprehensive Plan to avoid repeating the situation in which a static land use plan and an evolving zoning map become increasingly out of step with each other. The Subject Property falls entirely within the Light Industrial land use designation and will require an amendment to the Comprehensive Plan and Future Land Use map to an appropriate character area. Concurrent with the instant Application, the Applicant has submitted a request to amend the Comprehensive Plan to allow change the Subject property from the LIND character area to the Downtown character area.

The Applicant’s proposed amendment to the Downtown character area is in line with the developments on the west side of Fuller Way and allows a development that is more compatible and commensurate with the surrounding uses. Moreover, the Proposed Development of the Subject Property fosters a number of general policies and strategies of the City’s Comprehensive Plan, including:

- Enhance Downtown Tucker: To be truly healthy, downtowns should offer a range of housing choices.

¹ The City of Tucker previously adopted the DeKalb County 2025 Comprehensive Plan and its associated land use designations pending the development and adoption of its own Comprehensive Plan.

- Preserve and Improve Neighborhoods: Because Tucker has little remaining vacant land and the public largely wants existing residential subdivisions to remain stable, new housing development should be directed to the major activity areas including downtown.
- Preserve and Improve Neighborhoods: Continued focus should be on ensuring Tucker provides a range of quality housing choices at a variety of price points.
- Preserve and Improve Neighborhoods: Townhome construction is viewed as being a desirable multi-unit product type and a good choice for infill housing along the city's major transportation corridors.
- Preserve and Improve Neighborhoods: To provide for Tucker's diverse population, downtown Tucker and the Northlake area should be developed with a mix of housing types. Product types should include townhomes, detached homes on smaller lots, and multi-unit dwellings.

In summary, the Proposed Development serves to implement specific goals, objectives and policies of the City's Comprehensive Plan. The project at issue represents a consistent use commensurate with other existing uses on adjacent and nearby properties, in an area which is convenient to shopping and office uses, transportation and recreational facilities. The proposed use, therefore, is suitable *vis-a-vis* the policies of the Comprehensive Plan.

B. WHETHER THE ZONING PROPOSAL WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY OR PROPERTIES.

Yes. The adjacent and nearby properties are a mix of commercial and residential uses, as well as some industrial to the east, and the proposed MR-2 zoning is complementary and suitable to these uses. The proposed residential will be complementary to the nearby commercial uses and add to its continued growth.

C. WHETHER THE PROPERTY TO BE AFFECTED BY THE ZONING PROPOSAL HAS A REASONABLE ECONOMIC USE AS CURRENTLY ZONED.

No. It is highly unlikely that the Subject Property will ever be developed under the current C-1 zoning. In fact the current owner has attempted to sell the Subject Property for commercial development under the current zoning for years with no interest. A property needs several critical factors to make it viable for commercial development, including easy access from major thoroughfares and high visibility. The Subject Property has neither. The Subject Property is removed from Hugh Howell Road with no direct access for customers and no visibility corridor.

D. WHETHER THE ZONING PROPOSAL WILL ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY OR PROPERTIES.

No. The primary goal of land use planning is to eliminate or minimize the potential adverse effect of the dissimilar uses of adjacent tracts of land by establishing a harmonious transition between them. The traditional method of achieving this goal is through both "off-site" and "on-site" transition. Off-site transition consists of avoiding the placement of dissimilar uses next to each other by placing uses of intermediate density between them. On-site transition, which might either supplement or replace off-site transition, consists of measures imposed on or adjacent to the more intensive use to protect neighborhoods from adverse effects. Thus, this method of land use planning includes measures such as maintenance of buffers; walls, fences or berms; lighting control; noise control; aesthetic control; limitations on building location and orientation; location of or restrictions upon accessory uses; and prohibition of certain uses or

hours of use normally permitted for that district. Many of these devices have been or will be utilized in this application.

The Proposed Development will pay careful attention to scale, buffering, setbacks, and landscaping so that it will blend and complement the adjacent developments. Accordingly, rezoning the Subject Property to MR-2 will not adversely affect the nearby existing uses and will enhance the adjacent properties.

E. WHETHER THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR EITHER APPROVAL OR DISAPPROVAL OF THE ZONING PROPOSAL.

As stated in previous paragraphs, the history of the Subject Property demonstrates that it is not viable for light industrial or commercial uses. As a result, the property has remained undeveloped for at last 25 years and will likely remain undeveloped, absent the rezoning to a favorable district. Its location on a minor, dead-end street, coupled with the actual development that has occurred in the area, make the Subject Property an ideal location for the Proposed Development. The current zoning limits the Subject Property's development to certain commercial uses, but the trend in the surrounding area, coupled with the location of the Subject Property, leads any proposed development of the property towards a medium density residential use.

Hence, the zoning requested here conforms to the ideals and spirit of the City of Tucker's Zoning Ordinance and complements the existing uses in the area, while developing a practical, useful and marketable development that will redevelop an underutilized property into an asset for the immediate area and the city as a whole.

F. WHETHER THE ZONING PROPOSAL WILL ADVERSELY AFFECT HISTORIC BUILDINGS, SITES, DISTRICTS, OR ARCHAEOLOGICAL RESOURCES.

The Applicant is not aware of any historic buildings, sites, districts, or archaeological resources either on the Subject Property or located in the immediate vicinity that would suffer adverse impacts from the rezoning requested.

G. WHETHER THE REQUESTED REZONING WILL NOT RESULT IN A USE WHICH WILL OR COULD CAUSE EXCESSIVE OR BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS.

No. The proposed development will not overly burden existing streets or transportation facilities. According to the ITE Trip Generation Manual, the thirty-four (34) residential townhomes (ITE category 230) will generate 323.68 total trips on a weekday, 26.18 trips during the A.M. peak hour, and 34.68 trips during the P.M. peak hour. The Subject Property is located on Fuller Way, classified as a Local Street, and short distance from the signaled intersection with Hugh Howell Road. Hugh Howell is a five-lane state highway classified as a major arterial, which indicates that the road is intended to carry large volumes of traffic. This major roadway is more than adequate to accommodate the minor number of additional trips the proposed development will generate. Additionally, there are essential retail uses immediately across Fuller Way, such as a grocery store and restaurants, which are within easy walking distance from the Subject Property. This close proximity to needed retail services will help reduce the number of trips made by the residents. Further, the project is served by mass transit with excellent access to a MARTA bus routes (Bus Route 120), which will help mitigate impacts from the Proposed Development.

As for utilities, the Subject Property has access to water and sewer. Finally, the proposed development will not create an excessive or burdensome use of the community's schools. The

Subject Property is served by Smoke Rise Elementary School, Tucker Middle School, and Tucker High School service area. Smoke Rise Elementary is listed as under capacity (64% capacity), and both Tucker Middle School and Tucker High School are listed as at capacity (103% and 100%, respectively) according to DeKalb County Schools' FTE Enrolment Report, dated October 3, 2017. The thirty-four (34) proposed townhomes are not anticipated to have a significant impact on local schools.

H. WHETHER THE ZONING PROPOSAL ADVERSELY IMPACTS THE ENVIRONMENT OR SURROUNDING NATURAL RESOURCES.

The Applicant will comply with all federal, state, and City regulations relating to environmental protection to ensure that the proposed development will not adversely affect the environment.

V. NOTICE OF CONSTITUTIONAL CHALLENGES AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The zoning on the Subject Property (and any intervening zoning district other than that requested) is unconstitutional. Further, the Zoning Ordinance of the City of Tucker, Georgia lacks adequate standards for the Mayor and City Council to exercise their power to zone and rezone. In essence, the standards are not sufficient to contain the discretion of the Mayor and City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance to the Mayor and City Council, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the Constitution of the United States in matters of zoning. The Zoning Ordinance also violates Article I, Section III, Paragraph 1; and Article I, Paragraphs 1 and 2 of the Constitution of State of Georgia, 1983.

The Board of County Commissioners is granted the power to zone pursuant to Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983. It is a power which

must be fairly exercised. Based on this element of fairness, the Zoning Ordinance of the City of Tucker, Georgia violates Article IX, Section II, Paragraph 4 of the Constitution of the State of Georgia, 1983.

The Zoning Ordinance presently in effect is contrary to the best interest of the health and welfare of the citizens of the City of Tucker, Georgia, and constitutes an arbitrary and capricious act. As a result, the Zoning Ordinance is in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, the Zoning Ordinance violates the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

In addition, the Zoning Ordinance presently in effect is unconstitutional in that it renders this property unusable and destroys its marketability. Therefore, the Zoning Ordinance constitutes a taking of applicant's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitutional and in violation of Article I, Section I, Paragraph 1 and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

The failure to rezone the subject property as requested, would constitute the taking of property without due process and without the payment of adequate compensation in violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and the Fifth and Fourteenth Amendments of the Constitution of the United States.

Failure to grant the application for rezoning or to zone the property to any other classification including other intervening classifications, would be contrary to the best interest of

the health and welfare of the citizens of the City of Tucker, Georgia, and would further constitute an arbitrary and capricious act. As such, failure to grant the application would constitute a Violation of Article I, Section I, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983, together with the due process clause and equal protection clauses of Fifth and Fourteenth Amendments to the Constitution of the United States of America.

Any limitation on the time for presentation of the issues before the Mayor and City Council who have the power to zone and rezone is a violation of the guarantees of free speech under Article I, Section I, Paragraph 5 of the Constitution of the State of Georgia, 1983 and the First Amendment of the Constitution of the United States of America. Further, said limitations are in violation of the right to petition and assemble, in violation of Article I, Section I, Paragraph IX of the Constitution of Georgia, 1983 and the First Amendment of the Constitution of the United States of America as well as the due process clauses of the Constitution of Georgia, 1983 and the Constitution of the United States of America.

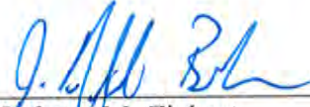
The Zoning Ordinance of the City of Tucker is unlawful, null and void in that its adoption and map adoption/maintenance did not comply with the requirements of its predecessor ordinance and/or the Zoning Procedures Law, O.C.G.A. § 36-66-1, et seq.

VI. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the Rezoning Application at issue be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City of Tucker so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 27th day of August, 2018.

Respectfully submitted,



Kathryn M. Zickert
Dennis J. Webb, Jr.
J. Alexander Brock
Attorneys For Applicant

Smith, Gambrell & Russell, LLP
Promenade II, suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309
404-815-3500

RECEIVED
City of Tucker

AUG 27 2018

**Community Development
Department**

**CA-18-002
RZ-18-004**

MEMORANDUM

TO: City of Tucker, Department of Community Development

FROM: J. Alexander Brock, P.E. Smith, Gambrell & Russell, LLP (GA P.E. 031209) *JAR*
Kathryn M. Zickert, Smith, Gambrell & Russell, LLP
Dennis J. Webb, Jr., Smith, Gambrell & Russell, LLP

DATE: August 27, 2018

RE: Environmental Site Analysis - 2301 Fuller Way (Parcel ID: 18-214-08-013)

1) CONFORMANCE WITH THE COMPREHENSIVE PLAN.

The Subject Property is located on the east side of Fuller Way, approximately 600 feet north of its intersection with Hugh Howell Road. More particularly, the Subject Property is located at 2301 Fuller Way (Parcel ID: 18-214-08-013). The Subject Property is currently zoned Local Commercial (C-1) and is undeveloped.

The Applicant seeks to rezone the Subject Property to Medium Density Residential-2 (MR-2) to allow the development of thirty-four (34) townhomes and appurtenant site improvements. The City of Tucker's Comprehensive Land Use Plan designates the Subject Property as Light Industrial which will require a Comprehensive Plan Amendment to the Downtown character area to allow the proposed MR-2 zoning and townhome use.

The City of Tucker approved the Tucker Tomorrow Comprehensive Plan (the "Plan") on April 23, 2018. The Plan identifies the Downtown character area as:

"The salmon color in the center of the map shows downtown with its mix of shops and stores, small office buildings, single family homes and **denser housing**, churches, and civic buildings... Primary Land Uses: Single family residential, **Townhomes...**" (emphasis added)

The proposed development meets the development strategy of the Downtown character area by "[l]ocating higher density housing options adjacent to the center, targeted to a broad range of income levels, including multifamily townhomes and housing no more than three stories high." The project at issue represents a consistent use commensurate with other existing uses on adjacent and nearby properties, in an area which is convenient to shopping and office uses, and transportation. The proposed use and proposed Comprehensive Plan Amendment, therefore, is suitable *vis-a-vis* the policies of the Comprehensive Plan.

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004
SGR/19148744.1

2) ENVIRONMENTAL IMPACTS OF THE PROPOSED PROJECT.

a) Wetlands

There are no wetlands on the property as indicated by the U. S. Fish and Wildlife Service, National Wetlands Inventory Maps.



Figure 2. National Wetlands Inventory Map

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004

b) Floodplain

No portion of the site is located in the Special Flood Hazard Area according to FEMA FIRM Map, Panel number 13089C0077K, revised December 8, 2016.

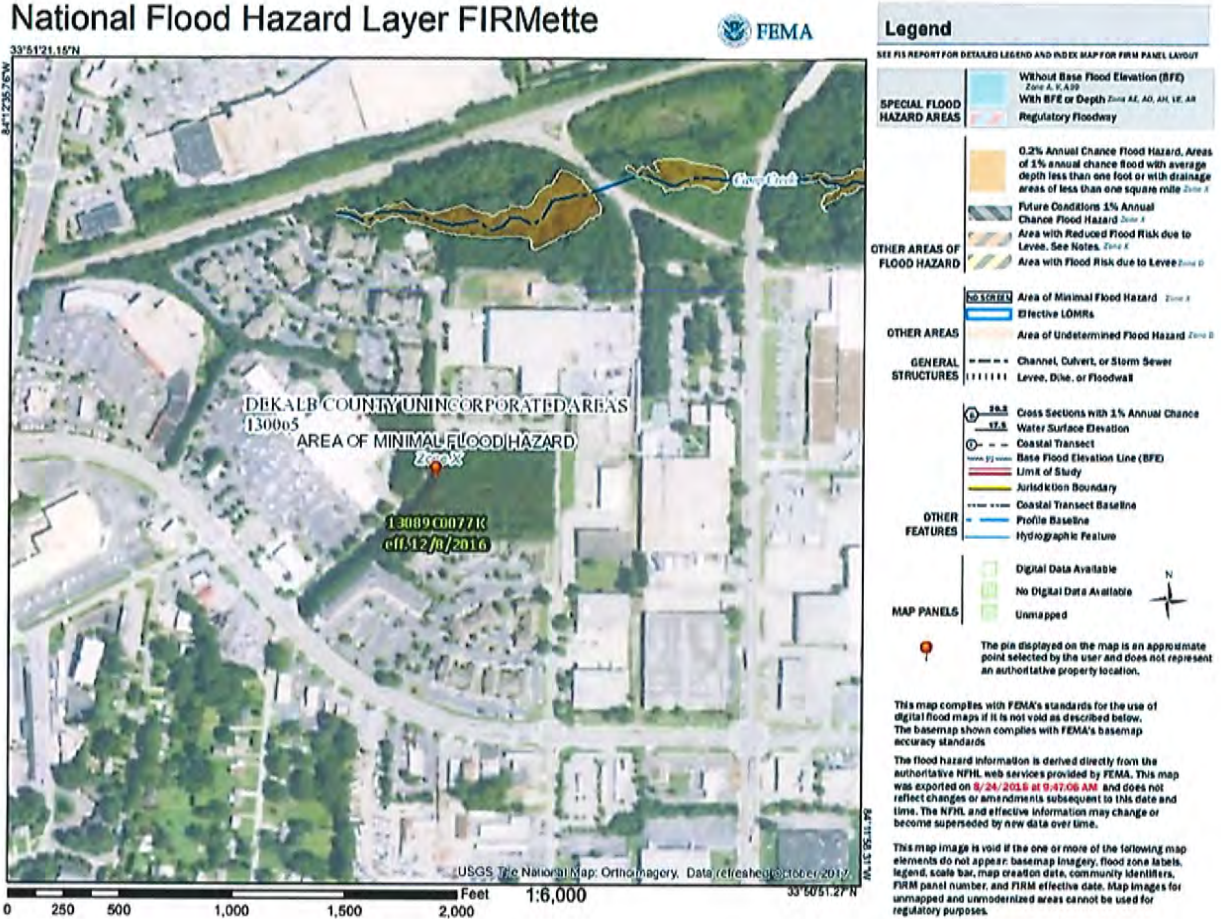


Figure 3. FEMA FIRM Panel

RECEIVED
 City of Tucker

AUG 27 2018

Community Development
 Department

CA-18-002
 RZ-18-004

c) Streams/stream buffers

There are state waters present on the Subject Property based on site observations and as indicated by the boundary survey performed by Planners and Engineers Collaborative, dated January 7, 2014. The stream enters the site from an existing double-barrel headwall (48-inch corrugated metal pipe and a 30-inch corrugated metal pipe) at the southwest corner of the Subject Property and flows north through the eastern portion of the Subject Property before entering into a 60-inch corrugated metal pipe which conveys the flows to the north where it leaves the property.

d) Slopes exceeding 25 percent over a 10-foot rise in elevation

Based on topographic survey and site observation there are no slopes in excess of 25% over a 10-feet in rise on the Subject Property.

e) Vegetation

The project site consists primarily of trees and low lying brush. An IPaC Trust Resource Report was generated from the U.S. Fish and Wildlife Service. The report revealed that there is one plant native to the region (Michaux's Sumac) that is endangered. This species was not found onsite.

f) Wildlife Species (including fish)

An IPaC Trust Resource Report was generated from the U.S. Fish and Wildlife Service, which did not indicate any endangered species in the area. The report did reveal that there are several species of migratory birds in the region. None were found to be present or nesting at the project location during the site visit on August 26, 2018.

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004

g) Archeological/Historical Sites

According Georgia's Natural, Archaeological and Historic Resources GIS (GNAHRGIS) maps, the project site is not on a historic or archaeological registry. The site consists of undeveloped land with no visible signs of any previous structures or other development.



Figure 4. GNAHRGIS Map

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004

AUG 27 2018

Community Development
Department

CA-18-002; RZ-18-004

3) **PROJECT IMPLEMENTATION MEASURES.**

- a) **Protection of environmentally sensitive areas, i.e., floodplain, slopes exceeding 25 percent, river corridors.**

The Subject Property contains an environmentally sensitive stream corridor in a portion of the site. The proposed site design by Planners and Engineers Collaborative, dated August 23, 2018 (the "site plan") shows an encroachment into a portions of the City and State buffers. The Applicant has applied for and has been granted a variance from the Georgia Environmental Protection Division for an authorized encroachment into the 25-foot state buffer and the Applicant will be submitting a variance request to allow an encroachment into the City of Tucker's buffers. The streambanks and the stream channel will be protected from the proposed development.

There are no other environmentally sensitive areas such as wetlands, steep slopes or floodplain. The surrounding areas have been developed since the early to mid-twentieth century.

- b) **Protection of water quality**

The proposed project will treat stormwater for pollutants and release runoff at a 'wooded' condition flow rate. The overall impact to the downstream stormwater infrastructure will be positive, as no stormwater treatment currently exists.

- c) **Minimization of negative impacts on existing infrastructure**

The proposed development has access to existing utilities with sufficient capacity to support the proposed development. The proposed development is not anticipated to overly burden existing utilities.

- d) **Minimization on archeological/historically significant areas**

No archeological/historically significant areas were identified on or adjacent to the site and as a result no impacts are anticipated.

- e) **Minimization of negative impacts on environmentally stressed communities where environmentally stressed communities are defined as communities exposed to a minimum of two environmentally adverse conditions resulting from public and private municipal (e.g., solid waste and wastewater treatment facilities, utilities, airports, and railroads) and industrial (e.g., landfills, quarries and manufacturing facilities) uses.**

The area is in proximity to industrial manufacturing facilities to the north and east, however there are no other environmentally adverse conditions (waste treatment facilities, airports, railroads, landfills, etc.) and therefore, the Subject Property is not in an environmentally stressed area.

f) Creation and preservation of green space and open space

The proposed development will incorporate 37% (0.95 acres) of the overall site for open space areas.

g) Protection of citizens from the negative impacts of noise and lighting

The proposed residential development will not have negative impacts on the surrounding uses. The proposed design, however, is incorporating the use of certain setbacks and buffers along the property lines. The setback areas will retain the existing undeveloped vegetation along the southern property line and will include landscaping designed to minimize noise and lighting impacts to/from nearby properties along the other property lines.

h) Protection of parks and recreational green space

No existing parks will be impacted.

i) Minimization of impacts to wildlife habitats

No sensitive wildlife areas were observed during the August 26, 2018 site visit and as a result no impacts are anticipated.

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004



RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004



LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 214 of the 18th District, DeKalb County, Georgia and being more particularly described as follows:

To find the TRUE POINT OF BEGINNING, commence from the Land Lot corner common to Land Lots 214 , 215, 224 & 225; thence along the Land Lot line common to Land Lots 214 and 215 the following courses and distances: South 00 degrees 19 minutes 42 seconds West a distance of 205.13 feet to an iron pin found; thence South 00 degrees 19 minutes 45 seconds West a distance of 756.39 feet to an iron pin found and the TRUE POINT OF BEGINNING; from the TRUE POINT OF BEGINNING as thus established, thence South 00 degrees 05 minutes 30 seconds East a distance of 335.59 feet to an iron pin found (0.25" open top pipe); thence leaving said Land Lot line North 89 degrees 08 minutes 49 seconds West a distance of 594.21 feet to an iron pin set on the southeasterly right-of-way line of Fuller Way (60' R/W); thence along said right-of-way line North 48 degrees 28 minutes 23 seconds East a distance of 115.00 feet to a point; thence 283.31 feet along an arc of a curve to the left, said curve having a radius of 320.00 feet and a chord bearing and distance of North 22 degrees 25 minutes 16 seconds East 274.14 feet to an iron pin set; thence leaving said right-of-way line South 89 degrees 35 minutes 07 seconds East a distance of 402.97 feet to an iron pin found and the TRUE POINT OF BEGINNING.

Said tract containing 3.530 acres.

RECEIVED
City of Tucker

AUG 27 2018

Community Development
Department

CA-18-002
RZ-18-004