

## APPLICATION

APPLICANT INFORMATION	OWNER INFORMATION
NAME: <u>The Ardent Companies</u>	NAME: <u>See Attachment A</u>
ADDRESS: <u>2100 Powers Ferry Road, Ste. 300</u>	ADDRESS: _____
CITY: <u>Atlanta</u>	CITY: _____
STATE: <u>GA</u> ZIP: <u>30339</u>	STATE: _____ ZIP: _____
PHONE: <u>770-450-8796</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:		
<input type="checkbox"/> OWNER'S AGENT	<input type="checkbox"/> PROPERTY OWNER	<input checked="" type="checkbox"/> CONTRACT PURCHASER
PRESENT ZONING DISTRICTS(S): <u>R-75</u> REQUESTED ZONING DISTRICT: <u>RSM</u>		
PRESENT LAND USE CATEGORY: <u>SUB</u> REQUESTED LAND USE CATEGORY: <u>SUB</u>		
LAND DISTRICT(S): <u>18</u> LAND LOT(S): <u>165 and 166</u> ACREAGE: <u>9.367</u>		
ADDRESS OF PROPERTY: <u>3193, 3207, 3217, 3227, 3259 Lawrenceville Hwy. and 3563 Bishop Drive</u>		
PROPOSED DEVELOPMENT: <u>64 Unit townhomes</u>		
CONCURRENT VARIANCES: <u>None</u>		

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units <u>64 units</u>	No. of Buildings/Lots: _____
Dwelling Unit Size (Sq. Ft.): <u>3,600</u>	Total Building Sq. Ft. _____
Density: <u>6.83 u/ac</u>	Density: _____

CITY OF TUCKER

OCT 23 2017

RECEIVED

R2-17-005

**Exhibit A  
To  
The Ardent Companies  
Rezone Application  
For  
3193, 32067, 3217, 3227, 3259 Lawrenceville Hwy.  
And  
3563 Bishop Drive**

Huy Hoang Tran  
3193 Lawrenceville Hwy.  
Tucker, GA 30084

Cecil L. Strickland Family Trust  
2672 Brickell Square  
Atlanta, GA 30341

Robert A. McDonald  
3563 Bishop Drive  
Tucker, GA 30084

Donald W. McDonald, Executor  
3259 Lawrenceville Hwy.  
Tucker GA 30084

**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.

  
Signature of Applicant

9-21-17  
Date

Neville Allison, Managing Director, The Ardent Companies

Type or Print Name and Title

  
Signature of Notary Public

9/21/17  
Date

Notary Seal



**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.

*"Cecil L. Strickland Family Trust"*

I, Emily Strickland & Lana Sachsenmaier, authorize, The Ardent Companies,  
(Property Owner) (Applicant)

to file for RZ 3259, 3193, 3207, 3217, 3227 Lawrenceville Hwy. and  
(RZ, CA, SLUP, CV) 3563 Bishop Dr. (Address)

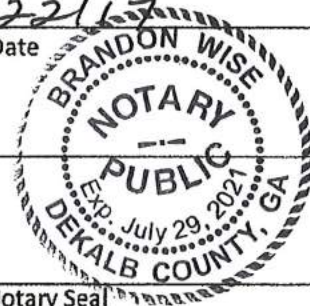
on this date Sept 22, 2017  
(Month) (Day)

- 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.

*Lana Sachsenmaier*  
Signature of Property Owner

9/22/17  
Date

Lana Sachsenmaier  
Type or Print Name and Title



*Brandon Wisem* 9/20/17  
Signature of Notary Public Date

Notary Seal

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I, Trinh Le Hoang & Huy H. Tran authorize, The Ardent Companies  
(Property Owner) (Applicant)

to file for RZ 3259, 3193, 3207, 3217, 3227 Lawrenceville Hwy. and  
(RZ, CA, SLUP, CV) at 3563 Bishop Dr. (Address)

on this date September 22, 2017  
(Month) (Day)

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[Signature] 09.22.17  
Signature of Property Owner Date

Huy Hoang Tran  
Type or Print Name and Title  
[Signature] 09/22/17 Symone Davis  
Signature of Notary Public Date Notary Seal  
NOTARY PUBLIC  
DeKalb County, GEORGIA  
My Comm. Expires 06/12/2021

**PROPERTY OWNER'S CERTIFICATION**

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I, Donald W. McDonald, Executor, authorize, The Ardent Companies,  
(Property Owner) (Applicant)

to file for RZ at 3259 Lawrenceville Hwy.  
(RZ, CA, SLUP, CV) (Address)

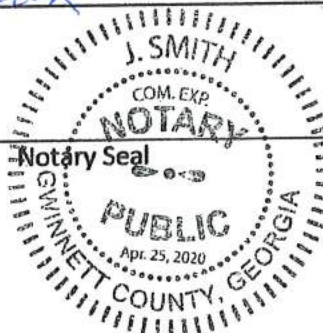
on this date October, 27, 2016  
(Month) (Day)

- 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.
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Donald W. McDonald, Executor Oct 27, 2016  
Signature of Property Owner Date

Donald W. McDonald, Executor  
Type or Print Name and Title

[Signature] 10/27/2016  
Signature of Notary Public Date



**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, Robert A McDonald, authorize, The Ardent Companies  
(Property Owner) (Applicant)

to file for RZ, at 3563 Bishop Dr.  
(RZ, CA, SLUP, CV) (Address)

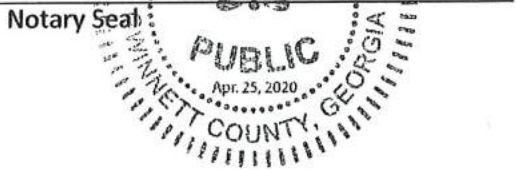
on this date October 27, 2016  
(Month) (Day)

- 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.
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- 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.

Robert A McDonald 10/27/16  
Signature of Property Owner Date

Robert A. McDonald owner  
Type or Print Name and Title

[Signature] 10/27/2016  
Signature of Notary Public Date



## Allison, Neville

---

**From:** kristymcdonald <kristymcdonald@bellsouth.net>  
**Sent:** Friday, October 20, 2017 5:20 PM  
**To:** Allison, Neville  
**Subject:** Re: Tucker

Yes, you can use the owner's authorization from October 2016.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Allison, Neville" <nallison@theardentcompanies.com>  
Date: 10/20/17 5:13 PM (GMT-05:00)  
To: kristymcdonald <kristymcdonald@bellsouth.net>  
Subject: Re: Tucker

Thanks Kristy, could also just please respond confirming your permission to use the owners authorization form from October 2016?

Neville Allison  
Managing Director  
The Ardent Companies  
2100 Powers Ferry Road, Suite 350  
Atlanta, Ga 30339  
O: 770-450-8796  
C: 678-223-8978

On Oct 20, 2017, at 5:10 PM, kristymcdonald <kristymcdonald@bellsouth.net> wrote:

I will get my uncle to sign that and scan it over to you this weekend. Bryan also wanted me just to send an email confirming we are working with Ardent.

Kristy McDonald

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Allison, Neville" <nallison@theardentcompanies.com>  
Date: 10/19/17 11:02 AM (GMT-05:00)  
To: Bryan Flint <bflint067@gmail.com>  
Cc: 'Kristy McDonald' <kristymcdonald@bellsouth.net>  
Subject: RE: Tucker

Kristy,



## 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:

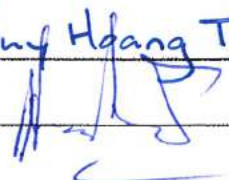
- |                          |    |
|--------------------------|----|
| 1. <u>Trinh Le Hoang</u> | 5. |
| 2. <u>Huy Hoang Tran</u> | 6. |
| 3.                       | 7. |
| 4.                       | 8. |

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) Huy Hoang Tran

Signature:  Date: 09.22.17

## 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.

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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. Emily Strickland	5.
2. Lana Sachsenmaier	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) Lana Sachsenmaier

Signature: *Lana Sachsenmaier* Date: 9/22/17

### DISCLOSURE REPORT FORM

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

1.	5.
2.	6.
3.	7.
4.	8.

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Name (print) Robert A. McDonald  
Signature: Robert A. McDonald Date: 10/25/17

## DISCLOSURE REPORT FORM

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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. <u>The Ardant Companies</u> | 5. _____ |
| 2. _____                       | 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

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Name (print) Neville Allison

Signature:                       Date: \_\_\_\_\_

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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. The Ardent Companies             | 5. |
| 2. Cecil L. Strickland Family Trust | 6. |
| 3. Huy Hoang Tran                   | 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

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Name (print) J. Alexander Brock

Signature:

Date: 09/25/17

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- |                                     |    |
|-------------------------------------|----|
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| 4.                                  | 8. |

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Name (print) Kathryn M. Zickert

Signature:  Date: 09/25/17

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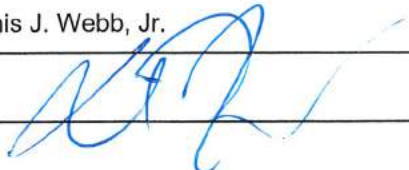
- |                                     |    |
|-------------------------------------|----|
| 1. The Ardent Companies             | 5. |
| 2. Cecil L. Strickland Family Trust | 6. |
| 3. Huy Hoang Tran                   | 7. |
| 4.                                  | 8. |

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Name (print) Dennis J. Webb, Jr.

Signature:  Date: 09/25/17



## PRE-APPLICATION FORM

### REZONING, COMPREHENSIVE PLAN AMENDMENT, SPECIAL LAND USE PERMIT, AND CONCURRENT VARIANCE

#### Purpose & Process

A Pre-Application Meeting provides you the opportunity to present a conceptual plan and letter of intent to a representative of the Community Development Department. This meeting benefits you, the applicant, by receiving general comments on the feasibility of the plan, the process(es)/procedure(s) and fees required to process and review the application(s). Please contact Courtney Lankford at [clankford@tuckerga.gov](mailto:clankford@tuckerga.gov) to schedule an appointment. This form will be completed during the pre-application meeting. After completing the pre-application meeting, the applicant may file the Land Use Petition.

Applicant: The Ardent Companies

Site Address: 3193, 3207, 3217, 3227 Parcel Size: 5.31  
Law. Hwy

Proposal Description: \_\_\_\_\_  
38 units, townhomes (7.16 u/a)

Existing Zoning Designation and Case Number: R-75

Proposed Zoning Designation: RSM

Comprehensive Land Use Map Designation: SUB

Overlay District: NA

Staff: cutler Date: May 11, 2017



RZ-17-005  
CITY OF TUCKER

OCT 23 2017

RECEIVED

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 165 and 166, 18th District, DeKalb County, Georgia and being more particularly described as follows:

To find the True Point of Beginning, COMMENCE at point located at the intersection of the southerly right of way of Lawrenceville Highway (aka US Hwy 29) (aka GA Hwy 8) (variable right of way) and the southwesterly right of way of Morning Star Lane (55 foot right of way), said point being the POINT OF COMMENCEMENT;

THENCE along said southerly right of way of Lawrenceville Highway (aka US Hwy 29) (aka GA Hwy 8) (variable right of way) the following courses and distances: South 52 degrees 33 minutes 21 seconds West, a distance of 73.78 feet to a point; South 38 degrees 10 minutes 27 seconds East, a distance of 3.50 feet to a point; South 51 degrees 58 minutes 03 seconds West, a distance of 8.59 feet to a point; South 52 degrees 09 minutes 06 seconds, a distance of 21.34 feet to a point; North 38 degrees 03 minutes 45 seconds West, a distance of 3.40 feet to a point; South 51 degrees 52 minutes 58 seconds West, a distance of 12.56 feet to a point; South 67 degrees 11 minutes 43 seconds West, a distance of 24.10 feet to a point; South 51 degrees 45 minutes 23 seconds West, a distance of 15.94 feet to a point; South 52 degrees 12 minutes 32 seconds West, a distance of 23.14 feet to a point; South 50 degrees 36 minutes 41 seconds West, a distance of 16.29 feet to a point, said point being the TRUE POINT OF BEGINNING;

With the TRUE POINT OF BEGINNING thus established, thence leaving said southerly right of way of Lawrenceville Highway South 18 degrees 48 minutes 57 seconds East, a distance of 691.44 feet a 1 inch open top pipe found; thence North 89 degrees 59 minutes 53 seconds West, a distance of 198.48 feet to a point; thence North 89 degrees 59 minutes 53 seconds West, a distance of 198.48 feet to a 1 inch crimp top pipe found; ; thence South 00 degrees 41 minutes 38 seconds East, a distance of 99.45 feet and iron pin found; thence South 00 degrees 18 minutes 39 seconds West, a distance of 100.10 feet to a 1 inch crimp top pipe found; thence South 00 degrees 12 minutes 10 seconds West, a distance of 99.56 feet an iron pin found; thence South 00 degrees 20 minutes 25 seconds West, a distance of 102.05 feet a 1 inch open top pipe found; thence North 47 degrees 58 minutes 27 seconds West, a distance of 438.77 feet to a point; thence North 47 degrees 56 minutes 56 seconds West, a distance of 224.32 feet to a 1/2 inch rebar with cap set on the southerly right of way of Lawrenceville Highway (aka US Hwy 29) (aka GA Hwy 8) (variable right of way); thence along said right of way of Lawrenceville Highway North 44 degrees 15 minutes 38 seconds East, a distance of 125.46 feet to a point; North 44 degrees 06 minutes 21 seconds East, a distance of 145.60 feet to a point; North 45 degrees 16 minutes 40 seconds East, a distance of 82.90 feet to a point; 247.03 feet along an arc of a curve to the right, said curve having a radius of 4692.58 feet

and a chord bearing of North 46 degrees 44 minutes 00 seconds East, a distance of 247.00 feet to a point; South 42 degrees 36 minutes 51 seconds East, a distance of 4.00 feet to a point; North 47 degrees 23 minutes 09 seconds East, a distance of 4.00 feet to a point; North 42 degrees 36 minutes 51 seconds West, a distance of 4.00 feet to a point; North 49 degrees 14 minutes 49 seconds East, a distance of 80.90 feet to a point; North 48 degrees 57 minutes 33 seconds East, a distance of 113.50 feet to a point; North 50 degrees 43 minutes 00 seconds East, a distance of 110.70 feet to a 1/2 inch rebar with cap set; South 18 degrees 48 minutes 57 seconds East, a distance of 11.12 feet to a point, said point being the TRUE POINT OF BEGINNING.

Contains 9.367 acres.





CITY OF TUCKER  
OCT 23 2017  
RECEIVED  
RZ-17-005

**STATEMENT OF INTENT**

and

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

of

**THE ARDENT COMPANIES, LLC**

for

±9.367 Acres of Land  
located in  
Land Lot 165 and 166, 18<sup>th</sup> District, DeKalb County

Address:

3193, 3207, 3217, 3227 and 3259 Lawrenceville Highway and 3563 Bishop Drive

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 seeks to rezone ± 9.367 acres of land located in Land Lot 165 and 166, 18<sup>th</sup> District of DeKalb County (the “Subject Property”) from Residential Medium Lot (R-75) to Small Lot Residential Mix (RSM). The Subject Property is located on the south-east side of Lawrenceville Highway, approximately 190 feet north of its intersection with St. Lawrence Cove. More particularly, the Subject Property is comprised of six (6) parcels located at 3193 Lawrenceville Highway (Parcel ID: 18-165-03-022); 3207 Lawrenceville Highway (Parcel ID: 18-165-03-002); 3217 Lawrenceville Highway (Parcel ID: 18-165-03-021); 3227 Lawrenceville Highway (Parcel ID: 18-165-03-001); 3259 Lawrenceville Highway (Parcel ID: 18-166-02-014); and 3563 Bishop Drive (Parcel ID: 18-166-02-015). All six parcels of the Subject Property are currently zoned R-75.

At present, the Subject Property is occupied by four single-family structures, a commercial real estate office, and undeveloped land. The Applicant intends to redevelop the Subject Property for sixty-four (64) townhomes and appurtenant site improvements (the “Proposed Development”). The City of Tucker’s Comprehensive Land Use Plan designates the Subject Property as Suburban (SUB) which fully allows the proposed RSM 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.

## **II. HISTORY**

To the Applicant's knowledge, no other rezoning applications have been filed concerning the Subject Property. All parcels that comprise the Subject Property were formerly within unincorporated DeKalb County and zoned R-75. 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 R-75 zoning and Suburban land use designation.

## **III. IMPACT ANALYSIS**

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

The City of Tucker has adopted the DeKalb County 2025 Comprehensive Plan (the "Plan") and its associated land use designations pending the development and adoption of its own Comprehensive Plan. The Plan consists of a text and series of maps. The Plan is accompanied by a procedure to link changes in zoning with corresponding changes in the 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 Suburban land use designation, which is fully consistent and commensurate with the proposed use.

The proposed development of the Subject Property fosters a number of general policies and strategies of the County's Comprehensive Plan, including:

**HP3:** Enhance the County's existing supply of housing.

**SPP2:** Create pedestrian scale communities that focus on the relationship between the street, buildings, and people.

**SPS2:** Create neighborhood focal points through the use of existing pockets parks and squares for community activities.

**SPS5:** Develop and consider corridors and gateways that promote sense of place.

TP14: Improve the use and accessibility mass transit.

TS1: Encourage the construction of sidewalks in new developments.

LUP6: Ensure that new development and redevelopment is compatible with existing residential areas.

LUP8: Improve the aesthetic appearance of developments along major corridors.

SCAP1: Protect stable neighborhoods from incompatible development that could alter established residential development patterns and density.

SCAP9: Density increases shall be evaluated for their impact on county facilities and shall not degrade the overall quality of service delivery and quality of life for the surrounding established neighborhood.

SCAS17: Create neighborhood focal points through the use of existing pockets parks and squares for community activities.

SCAS25: Provide an appropriate mix of housing styles and choices, allowing citizens of different economic levels to reside together.

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 proposed RSM zoning will allow a use that is complementary to the adjacent uses and the areas as a whole. The site abuts residential properties to the east, south and west, and the right-of-way of Lawrenceville Highway to the north. To the east of the Subject Property



along Lawrenceville Highway is the Avery Hills townhomes, zoned RSM, as well as several single-family residential lots on Bishop Drive, zoned R-75. To the south and west of the Subject Property are single-family residential lots on Saint Lawrence Cove, zoned R-75. To the north, across the right-of-way of Lawrenceville Highway is property zoned R-75 and the Loring Byers Funeral Home property (d/b/a Floral Hills Funeral Home), zoned Office Institutional (OI). The RSM zoning will allow a medium density attached townhome development that will complement and enhance the surrounding uses.

In addition, the proposed townhomes will be in line with the other recent higher-density development in the area. Abutting the Subject Property to the east are the Avery Hills Townhomes which are of a similar nature and similar zoning (RSM) as the Proposed Development. The Avery Hills development contains approximately 57 attached townhomes and replaced older single-family residences that were situated directly on Lawrenceville Highway. The Avery Hills property was rezoned from R-75 and C-1 to R-A8 (i.e. RSM)<sup>1</sup> under DeKalb County zoning case CZ-02047 to support the development of higher-density townhomes. The current application is analogous to the Avery Hills development in that the nature of the development is substantially similar and the rezoning is the exact same as the Applicant now requests. The Applicant, parallel to the Avery Hills development, seeks to rezone R-75 property to RSM to remove the under developed and impractical single-family parcels that are situated directly on Lawrenceville Highway, to create higher-density, upscale townhomes that are in accord with the trending development in the area. The requested zoning district is therefore entirely consistent with and suitable in light of the current and future development plans and patterns.

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<sup>1</sup> The rezoning was from R-75 and C-1 to RA-8. However, the R-A8 designation was changed to RSM when DeKalb County adopted its updated Zoning Ordinance in August 2015.

Additionally, the intended final appearance of this development will include appropriate attention to scale, buffering, setbacks, and landscaping so that this development will blend harmoniously with its surroundings. The proposed townhomes will provide an elegant and attractive design that will provide much needed upscale housing stock to the surrounding area.

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

No. The current economic conditions and the development trends in the immediate area necessitate higher-density residential development, making it highly unlikely that the Subject Property can be redeveloped at the current density. Moreover, the Subject Property's location on the heavily-traveled Lawrenceville Highway severely limits the ability to develop it under the current R-75 zoning, which primarily allows detached single-family residences. The site abuts the right-of-way of Lawrenceville Highway which is designated as a major arterial per the DeKalb County 2014 Transportation Plan. The development of detached single-family residences on a highly traveled, five-lane highway is not practical and it is doubtful that the property will be used as single-family residences in the future. In fact, at several of the Subject Property's parcels are currently being used for commercial purposes. As an example, the Strickland Realty Co. is located at 3217 Lawrenceville Highway and 3193 Lawrenceville Highway houses construction equipment for a general contractor.

The recent residential development in the area consists of higher-density uses, such as the neighboring Avery Hills Townhome development, zoned RSM with a density of  $\pm 7.92$  units per acre, and the Weston development at 3423 Lawrenceville Highway, which is also zoned RSM with a density of  $\pm 5.34$  units per acre. The Proposed Development and its corresponding RSM zoning fall directly in line with these other recent residential developments.

**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. The development will include twenty (20) foot transitional buffers along the sides that abut the R-75 properties to the south, east and west. This transitional buffer will include appropriate landscaping to help mitigate any impacts from the Proposed Development. Accordingly, rezoning the Subject Property to RSM 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.**

Its location on a major roadway, coupled with the actual development that has occurred in the area, make the Subject Property an ideal location for this type of redevelopment. The current zoning limits development to low-density single-family residential, but the trend in the surrounding area has been toward higher-density residential and commercial development. The existing single-family structures on the Subject Property are some of the last remaining vestiges of a time when Lawrenceville Highway was less heavily traveled and the surrounding area was closer to a semi-rural environment. In fact, the structures on the Subject Property were constructed 60 to 80 years ago when low-density single-family residential parcels and farms lined a much smaller Lawrenceville Highway. Today, however, scarcely any single-family residences remain directly on the 5-lane major arterial and many that do are used for commercial purposes.<sup>2</sup> Indeed, one of the structures on the Subject Property has been converted to commercial use (e.g. Strickland Realty, Co.), evidence that low-density single-family residences make little sense on a road that has evolved into a major highway. As a result, development of the Subject Property under its current R-75 zoning is not practical and it is highly unlikely that it will continue to be a low-density residential use in the future.

Indeed, Lawrenceville Highway's existence as a major roadway in the area has helped facilitate the growth of commercial and higher-density residential development in the area. This can be seen in the highly commercial area to the north of the Subject Property near Lawrenceville Highway's intersection with Northlake Parkway. Moreover, the recent residential

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<sup>2</sup>The majority of the detached single family residences are found neighborhood developments off of Lawrenceville Highway, unlike the Subject Property which has individual single family residential parcels directly on Lawrenceville Highway.

construction in the area has been higher-density uses found under the RSM zoning. The Avery Hills Townhomes, zoned RSM, are located immediately east of the Subject Property and were developed in 2005. In addition, the Weston development is also zoned RSM and is currently under construction for 45 small lot single-family residences. As evidenced by the recent residential construction in the area, the RSM zoning is fitting with the trend toward higher-density residential developments. Hence, the zoning requested here conforms to the ideals and spirit of the City of Tucker's Zoning Ordinance, 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.

**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 sixty-four (64) residential townhomes (ITE category 230) will generate 371.84 total trips on a weekday, 28.16 trips during the A.M. peak hour, and 33.28 trips during the P.M. peak hour. This will be a net increase of 343.28 weekday trips, 25.85 A.M. peak trips, and 30.22 P.M. peak trips above the existing use. The Subject Property is located on Lawrenceville Highway, 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. Further, the project is served by mass transit with excellent access to two MARTA bus routes (Bus Route 75 and 125), which will help mitigate any impacts from the Proposed Development. Additionally, the proposed design calls for the addition of a covered MARTA bus stop directly in front of the Subject Property, making access to MARTA very convenient.

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 Brockett Elementary School, Tucker Middle School, and Tucker High School service area, all of which are listed as below capacity according to DeKalb County Schools' FTE Enrolment Report, dated October 2016. As a result, the proposed development is 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.

**IV. DENSITY BONUS**

Pursuant to § 2.12.5, the maximum base density may be increased through the special application of density bonuses as indicated by Table 2.6. The maximum base density under the RSM zoning is four (4) units per acre, which may be increased up to eight (8) units per acre with density bonuses. See City of Tucker Zoning Ordinance, Table 2.4. Through a combination of several qualifying density bonus categories, the Applicant is proposing a density of 5.6 units per acre.

For instance, the proposed development will qualify for a density bonus through the installation of a bus shelter at the frontage of Lawrenceville Highway (through coordination and design requirements established by MARTA) as well as a public art display (locally produced) within the tree save/park space area at the front of the site as indicated on the plan. The alternatives could be incorporated into one final design considerations to be approved by Staff.

The bus stop currently exists as an unenclosed location and the Applicant proposes to add a covered shelter in accordance with the City of Tucker's Zoning Ordinance §2.12.7.A.1 and MARTA standards. Concurrent with the rezoning application for the Subject Property, the Applicant will engage in discussions with MARTA to begin the design and permitting requirements for the proposed bus shelter.

Additionally, the site provides an additional enhanced open space above and beyond the requirements of Article 2. The City of Tucker's Zoning Ordinance Table 2.6 allows a bonus for enhanced open space that comprises at least 20% of the overall site. The proposed design incorporates a total enhanced open space area of 1.882 acres or 20.1% of the overall Subject Property area. These areas include pocket parks and greenways located throughout the Proposed Development and will provide connectivity, staying activity, and passive recreation.

In total, these design features provide individual bonuses that achieve the density required to produce (64) townhomes on the Subject Property.

## **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 23<sup>th</sup> day of October, 2017.

Respectfully submitted,



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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

CITY OF TUCKER

OCT 23 2017

RECEIVED

RZ-17-605

## MEMORANDUM

TO: City of Tucker, Department of Community Development

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

DATE: October 23, 2017

RE: Environmental Site Analysis - 3193, 3207, 3217, 3227 and 3259 Lawrenceville Highway and 3563 Bishop Drive

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### 1) CONFORMANCE WITH THE COMPREHENSIVE PLAN.

The Subject Property is located on the south-east side of Lawrenceville Highway, approximately 190 feet north of its intersection with St. Lawrence Cove. More particularly, the Subject Property is comprised of six (6) parcels located at 3193 Lawrenceville Highway (Parcel ID: 18-165-03-022); 3207 Lawrenceville Highway (Parcel ID: 18-165-03-002); 3217 Lawrenceville Highway (Parcel ID: 18-165-03-021); 3227 Lawrenceville Highway (Parcel ID: 18-165-03-001); 3259 Lawrenceville Highway (Parcel ID: 18-166-02-014); and 3563 Bishop Drive (Parcel ID: 18-166-02-015). All six parcels of the Subject Property are currently zoned R-75.

At present, the Subject Property is occupied by four single family residences, a commercial real estate office, and undeveloped land. The Applicant seeks to rezone the Subject Property to Small Lot Residential Mix (RSM) to develop sixty-four (64) townhomes and appurtenant site improvements. The City of Tucker's Comprehensive Land Use Plan designates the Subject Property as Suburban (SUB) which fully allows the proposed RSM zoning and townhome use.

The City of Tucker has adopted the DeKalb County 2025 Comprehensive Plan (the "Plan") and its associated land use designations pending the development and adoption of its own Comprehensive Plan. The Plan identifies the Suburban character area as:

"The Suburban (SUB) Character Areas include those areas that have developed in traditional suburban land use patterns and are developed (built out) and those under development pressures. These areas are characterized by low pedestrian orientation, limited transit access, scattered civic buildings and curvilinear street patterns.

The primary Land uses include: Single Family Detached Residential, **Townhomes**, Apartments, Assisted Living Facilities, Neighborhood retail, Schools, Libraries, Health Care Facilities, Parks and Recreational Facilities, Public and Civic Facilities, and Religious Institutions with a **density of 0 to 8 dwelling units per acre.**" (emphasis added)

The proposed development meets the intent of the Suburban character area by providing 64 townhomes on 9.367 acres, which equates to a density of 6.83 units per acre. 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.

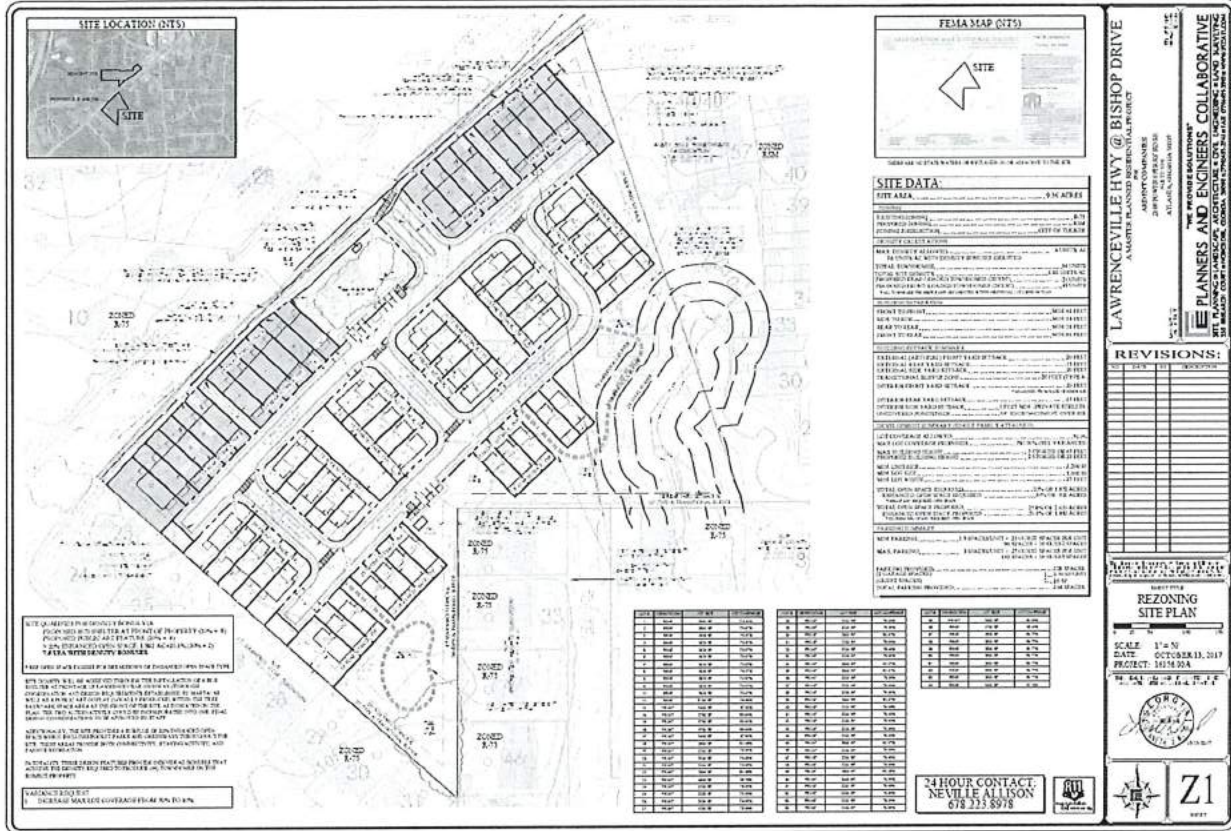


Figure 1. Site Plan

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.

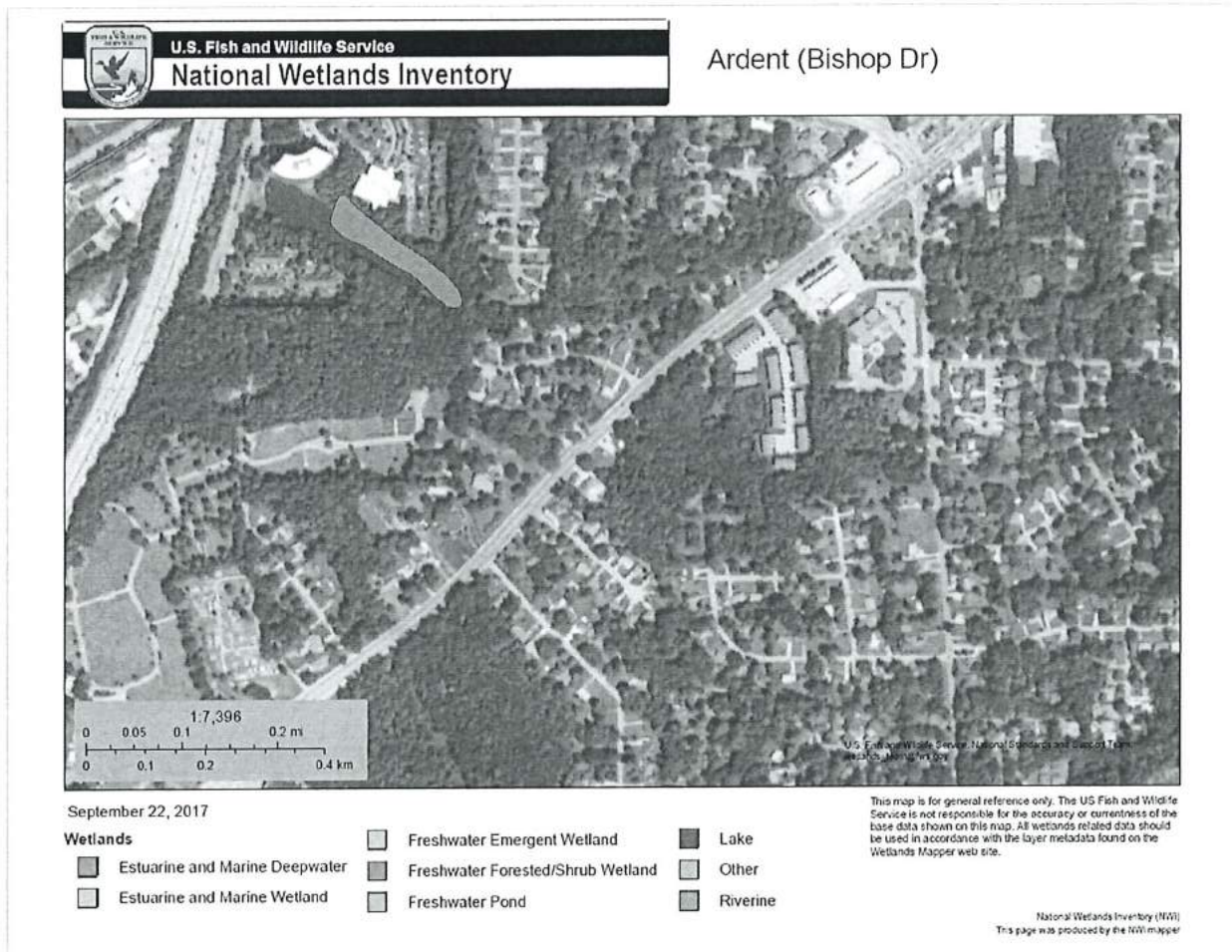


Figure 2. National Wetlands Inventory Map

**b) Floodplain**

No portion of the site is located in the Special Flood Hazard Area according to FEMA FIRM Map, Panel number 13089C0078J, revised May 16, 2013.



Figure 3. FEMA FIRM Panel

**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 September 29, 2016. The stream enters the site from an existing 42-inch headwall due east of the Subject Property and flows south through the easternmost tract of the Subject Property before discharging onto the adjacent parcel located at 3568 Bishop Lane.

**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 of parcels with existing single family homes with typical residential landscaping. The existing vegetation on the undeveloped portions of the 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 September 23, 2017.

**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 several existing single family homes constructed between 1930's and 1950's.

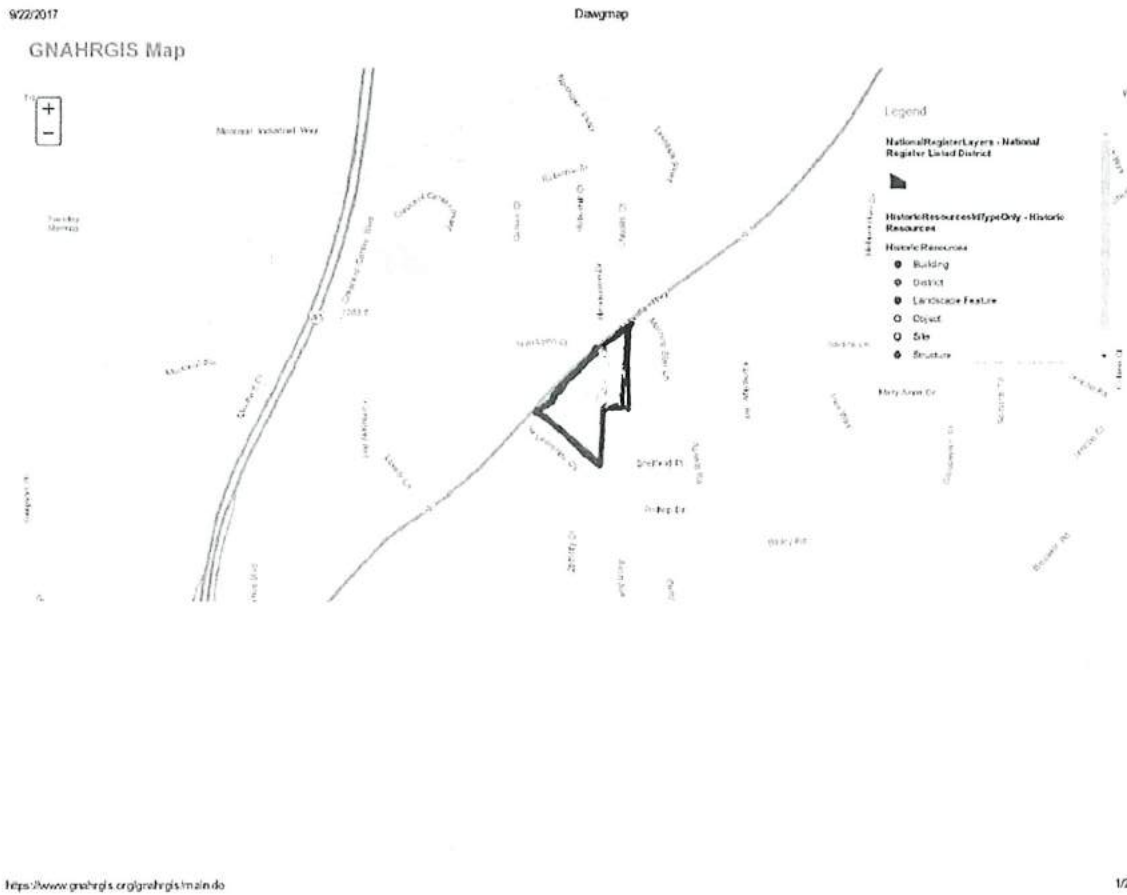


Figure 4. GNAHRGIS Map



### 3) PROJECT IMPLEMENTATION MEASURES.

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

The project is a redevelopment of several individual parcels containing single family homes. 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 October 13, 2017 (the "site plan") shows the appropriate City and State buffers. The site plan shows the proposed development and land disturbing activities will remain out of the environmentally sensitive state waters buffers.

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-1900's.

#### 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.**

No environmentally stressed areas exist in the immediate vicinity (waste treatment facilities, airports, railroads, landfills, etc.).

#### f) **Creation and preservation of green space and open space**

The proposed development will incorporate 25.8% (2.42 acres) of the overall site for open space areas.

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

A 20' transitional buffer will separate the proposed development for the adjacent single-family homes. The buffer will include landscaping designed to minimize noise and lighting impacts to nearby properties.

**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 September 23, 2017 site visit and as a result no impacts are anticipated.