

APPLICANT: Casteel Partners, LLC
770-422-7016

REPRESENTATIVE: Sams, Larkin & Huff, LLP
Parks F. Huff 770-422-7016

TITLEHOLDER: Harold Leslie McLendon, Jr., Melissa M.

McLendon, John B. Dierkes, Deborah M. Dierkes and Ann L. Brown

PROPERTY LOCATION: Located at the southwesterly intersection
of Dallas Highway and Casteel Road.

ACCESS TO PROPERTY: Dallas Highway and Casteel Road

PHYSICAL CHARACTERISTICS TO SITE: Partially wooded
and pasture

CONTIGUOUS ZONING/DEVELOPMENT

- NORTH:** R-30, CF/ Single-family house, undeveloped park
- SOUTH:** R-20/ Single-family house
- EAST:** LRO, R-30/ RBC Centura Bank, Hickory Farms subdivision
- WEST:** R-20/ Casteel Park subdivision

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

PLANNING COMMISSION RECOMMENDATION

APPROVED **MOTION BY**

REJECTED **SECONDED**

HELD **CARRIED**

BOARD OF COMMISSIONERS DECISION

APPROVED **MOTION BY**

REJECTED **SECONDED**

HELD **CARRIED**

STIPULATIONS:

PETITION NO: Z-9

HEARING DATE (PC): 03-03-09

HEARING DATE (BOC): 03-17-09

PRESENT ZONING: LRO, R-20

PROPOSED ZONING: CRC

PROPOSED USE: Retail

SIZE OF TRACT: 20.2 acres

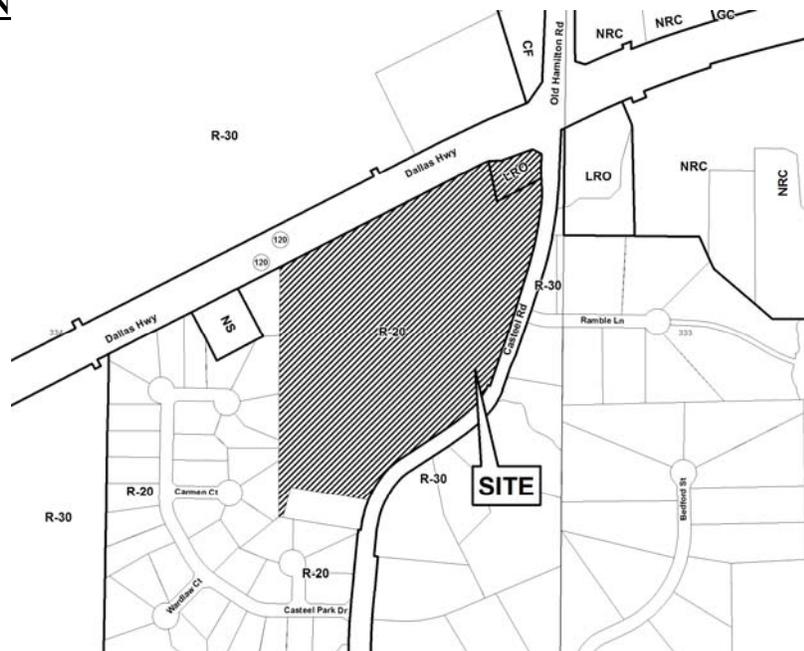
DISTRICT: 20

LAND LOT(S): 334

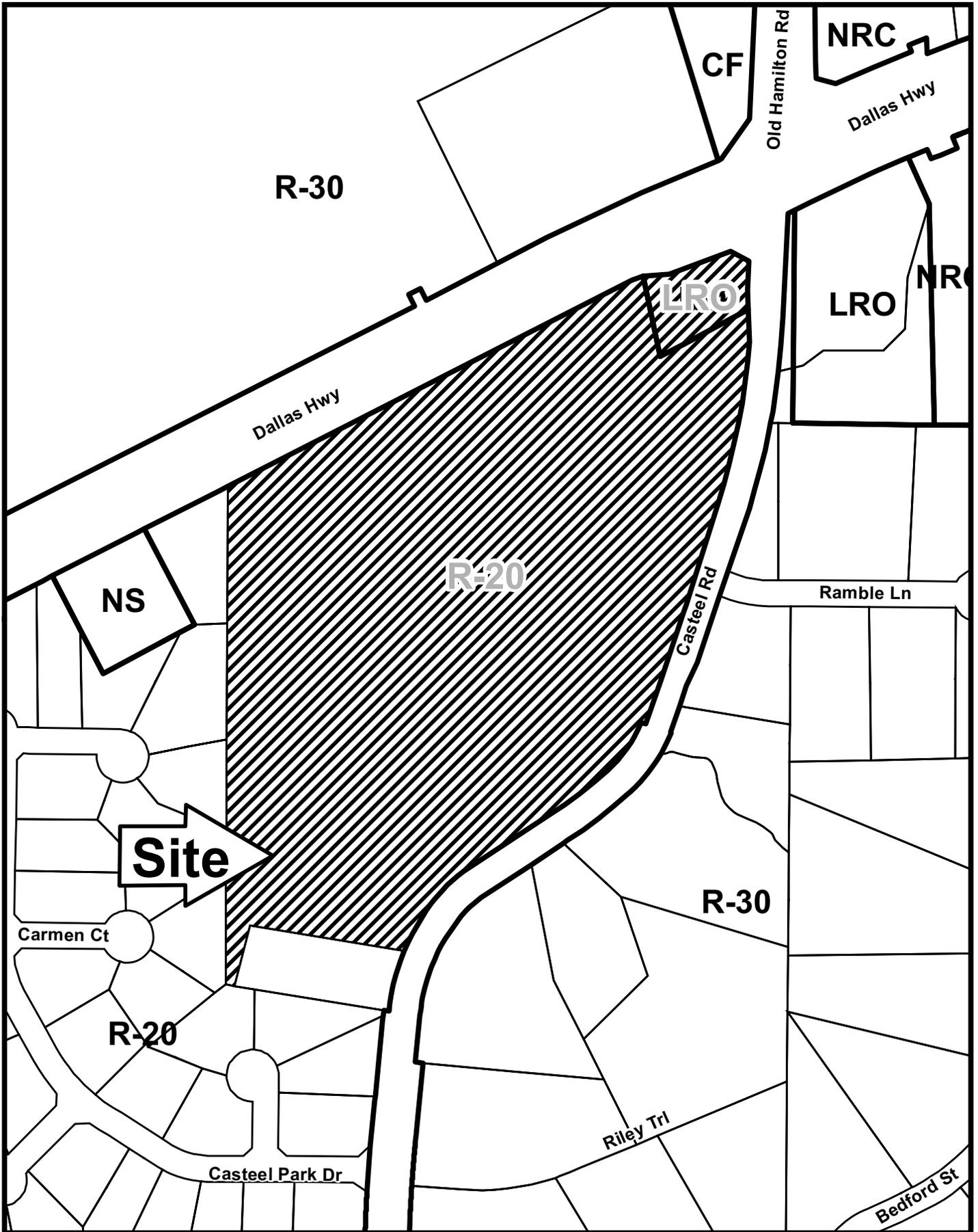
PARCEL(S): 2

TAXES: PAID X **DUE**

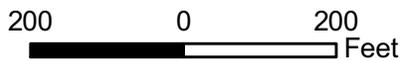
COMMISSION DISTRICT: 1



Z-9



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



 City Boundary
 Zoning Boundary

APPLICANT: Casteel Partners, LLC

PETITION NO.: Z-9

PRESENT ZONING: LRO, R-20

PETITION FOR: CRC

PLANNING COMMENTS: **Staff Member Responsible:** John P. Pederson, AICP

Land Use Plan Recommendation: Low Density Residential & Neighborhood Activity Center

Proposed Number of Buildings: 2 **Total Square Footage of Development:** 169,650

F.A.R.: 0.19 **Square Footage/Acre:** 8,398

Parking Spaces Required: 842 **Parking Spaces Provided:** 743

The applicant is requesting the CRC zoning district to develop a shopping center and a bank. All of the buildings would be one-story in height with brick exteriors and stucco accents. The tenants in the shopping center would range in hours, from 8:00 a.m. to 11:00 p.m., seven days a week. The applicant’s plan shows a 35-foot buffer along Casteel Road and a 50-foot buffer along Dallas Highway. The applicant is also showing a new median break on Dallas Highway. The applicant has submitted a Zoning Impact Analysis, which is attached as Exhibit “A”. The applicant would need a contemporaneous variance to reduce the required number of parking spaces from 842 to 743.

Historic Preservation: After consulting various county historic resources surveys, historic maps, archaeology surveys and Civil War trench location maps, staff finds that no known significant historic resources appear to be affected by this application. No further comment. No action by applicant requested at this time.

Cemetery Preservation: No comment.

FIRE COMMENTS:

No comments.

COBB COUNTY-MARIETTA WATER AUTHORITY COMMENTS (CCMWA):

The project could possibly have a major impact on CCMWA’s 36” PCCP and 36” DIP Transmission Water Lines and/or Permanent Easement. CCMWA requests to review the plans for this project as soon as they are available in order to determine the extent of impact upon our facilities. The owner/developer will be financially responsible for any impacts to CCMWA facilities from the project. Contact Chuck Byrge at (770) 426-8788 to coordinate plan review.

APPLICANT Casteel Partners, LLC

PETITION NO. Z-009

PRESENT ZONING LRO, R-20

PETITION FOR CRC

NOTE: Comments reflect only what facilities appeared of record at the time of this review. Field verification required by developer.

WATER COMMENTS:

- Available at Development? Yes No
- Fire Flow Test Required? Yes No

Size / Location of Existing Water Main(s) 8" DI / W side Casteel Rd

Additional Comments: Master meter to be at entrance

Developer may be required to install/upgrade water mains, based on fire flow test results or Fire Department Code. This will be resolved in the Plan Review Process.

SEWER COMMENTS:

- In Drainage Basin? Yes No
- At Development? Yes No

Approximate Distance to Nearest Sewer: 755' W at Casteel Pk S/D**

Estimated Waste Generation (in G.P.D.): **A D F** 16,545 **Peak** 41,365

Treatment Plant: South Cobb

- Plant Capacity Available? Yes No
- Line Capacity Available? Yes No
- Projected Plant Availability: 0 - 5 year 5 - 10 years over 10 years
- Dry Sewers Required? Yes No
- Off-site Easements Required? Yes* No
- Flow Test Required? Yes No
- Septic Tank Recommended by this Department? Yes No
- Subject to Health Department Approval? Yes No

* If off-site easements are required, Developer must submit easements to CCWS for review / approval as to form and stipulations prior to the execution of easement(s) by the property owner(s). All easement acquisitions are the responsibility of the Developer.

Additional Comments:

**Pumping required to a point on site and from there it must flow by gravity off site. Pump station to be operated by owner or a solitary agent and all site wastewater, and only site wastewater, to be received.

Notes FYI: *Food preparation establishments require pre-installed grease traps and architectural plans approval*

Developer will be responsible for connecting to the existing County water and sewer systems, installing and/or upgrading all outfalls and water mains, obtaining on and/or off site easements, dedication of on and/or off site water and sewer to Cobb County, as may be required. Rezoning does not guarantee water/sewer availability/capacity unless so stated in writing by the Cobb County Water System. Permit issuances subject to continued treatment plant compliance with EPD discharge requirements.

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DRAINAGE COMMENTS

FLOOD HAZARD: YES NO POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Mud Creek FLOOD HAZARD INFO: Zone X

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

WETLANDS: YES NO POSSIBLY, NOT VERIFIED

Location: _____

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

STREAMBANK BUFFER ZONE: YES NO POSSIBLY, NOT VERIFIED

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

DOWNSTREAM CONDITION

- Potential or Known drainage problems exist for developments downstream from this site.
- Stormwater discharges must be controlled not to exceed the capacity available in the downstream storm drainage system.
- Minimize runoff into public roads.
- Minimize the effect of concentrated stormwater discharges onto adjacent properties.
- Developer must secure any R.O.W required to receive concentrated discharges where none exist naturally
- Existing Lake Downstream – **Old Trace Lake ~ 1800'**.
Additional BMP's for erosion sediment controls will be required.
- Lake Study needed to document sediment levels.
- Stormwater discharges through an established residential neighborhoods downstream – **Hickory Farm & Hickory Bend S/D.**
- Project engineer must evaluate and mitigate any significant negative impact of increased volume of runoff generated by the proposed project on the downstream **stormdrainage system including the instream detention facility in Hickory Bend S/D as well as Old Trace Lake and Lake Wilderness.**

DRAINAGE COMMENTS CONTINUED

SPECIAL SITE CONDITIONS

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

ADDITIONAL COMMENTS

1. This site is located upstream of several older established residential subdivisions as well as Old Trace and Wilderness Lakes. Due to the limited stormwater system conveyance typical of older developments as well as the sensitive nature of the Lake Wilderness and Old Trace Lake areas special care must be taken to control stormwater runoff and the escape of sediment from this site.
2. This site plan is significantly more intense than the previous rezoning plan submitted for this parcel. Although the total proposed impervious coverage is roughly 70% and well within the maximum allowable for the proposed CRC zoning category, the proposed commercial retail site plan will be significantly more dense than if developed under the current residential category. To compensate, the First Flush Water Quality Best Management Practice Requirements must be elevated to the 1.5-inch rainfall event and each larger storm discharge controlled not to exceed the allowable discharge of the next lower, more frequent storm event (ie. 5-year storm event released at 2-year rate; 10-year event at 5-year rate; etc. to 100-year event at 50-year rate).
3. The detention pond design should incorporate a permanent pool to provide adequate water quality protection for the downstream receiving system.

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PRESENT ZONING: LRO, R-20

PETITION FOR: CRC

TRANSPORTATION COMMENTS

The following comments and recommendations are based on field investigation and office review of the subject rezoning case:

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Dallas Highway	41100	Arterial	55 mph	GDOT	110'
Casteel Road	4600	Major Collector	35 mph	Cobb County	80'

*Based on 2008 traffic counting data taken by Cobb County DOT (Dallas Hwy)
Based on 2007 traffic counting data taken by Cobb County DOT. (Casteel Rd)*

COMMENTS AND OBSERVATIONS

Dallas Highway is classified as an Arterial and according to the available information, the existing right-of-way does meet the minimum requirements for this classification.

Casteel Road is classified as a Major Collector and according to the available information, the existing right-of-way does not meet the minimum requirements for this classification.

The south side of Dallas Highway is identified in the 2005 SPLOST as a pedestrian improvement project consisting of a 10' wide multi-use trail.

The west side of Casteel Road is identified in the 2005 SPLOST as a pedestrian improvement project consisting of a 5' wide sidewalk.

Install curb and gutter along both road frontages including a 10' wide multi-use path along Dallas Highway and a 5' wide sidewalk along Casteel Road.

The eastern right-in/right-out driveway along Dallas Highway should be converted to a right-in only. The middle full access driveway along Dallas Highway should be converted to a right-in/right-out driveway. The western right-in/ right-out driveway along Dallas Highway should be changed to the full access driveway.

As necessitated by this development for egress from Casteel Road a deceleration lane and left turn lane will be required at the access point.

Median break must be requested through GDOT.

All costs associated with the median cut to be borne by the developer for left turn lanes in both directions and deceleration lanes at each access point along Dallas Highway.

Developer to be responsible for signal when warranted.

GDOT permits will be required for all work that encroaches upon State right-of-way.

Provide inter-parcel access to the lot immediately west of the development.

Cobb County Parks, Recreation, Cultural Affairs Department has a park project located on the north side of Dallas Highway.

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PETITION FOR: CRC

TRANSPORTATION COMMENTS cont.

RECOMMENDATIONS

Recommend applicant consider entering into a development agreement pursuant of O.C.G.A. 36-71-13 for dedication of the following system improvements to mitigate traffic concerns: a) donation of right-of-way on the west side of Casteel Road, a minimum of 40' from the roadway centerline.

Recommend applicant coordinate with Cobb County DOT prior to development plan approval to ensure compatibility with the proposed pedestrian improvement projects along Dallas Highway and Casteel Road.

Recommend constructing a 10' wide sidewalk along the frontage of Dallas Highway and a standard 5' wide sidewalk along the entire frontage of Casteel Road.

Recommend construction curb and gutter along all road frontages.

Recommend changing the eastern right-in/right-out driveway along Dallas Highway to a right-in only.

Recommend changing the middle full access driveway along Dallas Highway to a right-in/ right-out driveway.

Recommend changing the western right-in/ right-out driveway along Dallas Highway to the full access driveway.

Recommend a deceleration lane and left turn lane at access point along Casteel Road.

Recommend deceleration lanes at all access points along Dallas Highway.

Recommend requesting proposed median break along Dallas Highway through GDOT.

Recommend developer provide all improvements associated with median break including westbound and eastbound left turn lanes.

Recommend developer install a traffic signal when warranted.

Recommend GDOT permits for all work that encroaches upon the State right-of-way.

Recommend providing inter-parcel access to the lot along the western property line.

Recommend applicant coordinate with the Cobb County Parks, Recreation, Cultural Affairs Department prior to development plan approval to ensure compatibility with the proposed park project regarding any proposed median break along Dallas Highway.

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

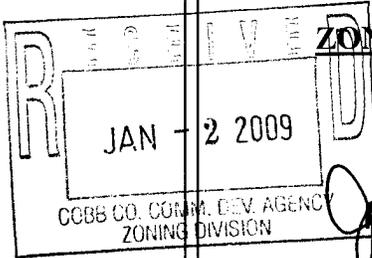
STAFF RECOMMENDATIONS

Z-9 CASTEEL PARTNERS, LLC

- A. It is Staff's opinion that the applicant's rezoning proposal will not permit a use that is suitable in view of the use and development of adjacent and nearby properties. Virtually all the surrounding property is zoned R-20 and R-30. The proposed commercial development would not be compatible with established, adjacent residential uses. The commercial areas along Dallas Highway are limited to the established commercial nodes, which provides an orderly use of land and transition in zoning intensity.
- B. It is Staff's opinion that the applicant's rezoning proposal will have an adverse affect on the usability of adjacent or nearby property. Once outside the commercial node, this area of the county has successfully been developed at R-20 and R-30. The specific commercial nodes along Dallas Highway contain well-defined boundaries that have been consistently formulated through careful planning throughout the years. The applicant's proposal would encourage other requests that are not consistent with the character of the area. Additionally, the applicant does not meet the County Code for required number of parking spaces, and would need a substantial variance just for the proposed retail use; any restaurant use, not contemplated at this time, would further aggravate the lack of required parking spaces.
- C. It is Staff's opinion that the applicant's rezoning proposal will result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis. The proposed median break could reduce the flow of traffic, which already suffers from high peak hour volume. Additionally, lack of required parking spaces can cause problems that can spill out onto neighboring properties and the Right-of-Way.
- D. It is Staff's opinion that the applicant's rezoning proposal is not in conformity with the policy and intent of the *Cobb County Comprehensive Plan* for 90% of the property which is delineated to be within a Low Density Residential Land Use Category. High intensity commercial development is not intended to be placed in the Low Density Residential Land Use Category. The CRC Code states it is intended to be placed in a Community Activity Center or a Regional Activity Center.
- E. It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which gives supporting grounds for denying the applicant's rezoning proposal. Most of the proposal is not in accordance with the *Cobb County Comprehensive Plan*, which delineates this property to be within a Low Density Residential Land Use Category. Once outside the commercial boundaries, the area is well defined and characterized as R-20 and R-30 zoned property. The County has been very consistent, and careful with rezoning actions on Dallas Highway, and has not set any precedents that would support the applicant's proposal. The CRC zoning code requires the CRC zoning district to be within a Community, or Regional Activity Center, of which this proposal does not comply. The proposal shows a substantial lack of required parking. Approval of the request would encourage other rezoning requests that are not consistent with the area, and Future Land Use Map.

Based on the above analysis, Staff recommends DENIAL.

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



**ZONING IMPACT STATEMENT FOR THE REZONING APPLICATION
OF CASTEEL PARTNERS, LLC.**

COMES NOW, CASTEEL PARTNERS, LLC, and pursuant to Section 134-121(a)(7) of the Cobb County Zoning Ordinance, files this its Zoning Impact Statement, as follows:

- A. The development proposal will permit a use of the property that is suitable in relation to the development of this Activity Center node along State Route 120. The subject property is located at the signalized intersection across Casteel Road from The Avenue West Cobb. The Avenue anchors the retail development in this Neighborhood Activity Center (NAC) node. Although The Avenue is zoned as if it were a Neighborhood Retail Commercial (NRC) development, it does not comply with the NRC requirements and it actually complies with a Community Retail Commercial (CRC) development. The proposed development will be an extension of The Avenue and is intended to draw and serve the surrounding community and the shoppers that come to The Avenue for the higher-end specialty retail shops located therein.

- B. The development proposal is consistent with the intensity of the development known as The Avenue West Cobb, located just east of the subject property. The entire activity center that includes The Avenue West Cobb and a Kroger development that includes a Belk's on the north side of Dallas Highway is developed consistent with a Community Activity Center even if the Land Use

designation is a Neighborhood Activity Center (NAC). This activity center is anchored by its proximity to the signalized intersections of Dallas Highway and Casteel Road on the west and Dallas Highway and Due West Road on the east. The intensity of the proposed retail center is consistent with these already existing retail centers and it is appropriate to place the access at the signalized intersection of Dallas Highway and Casteel Road. The proposal incorporates appropriate buffers adjacent to the existing residential developments.

C. The subject property has no reasonable economic use as currently zoned based upon the fact that the fair market value of the property falls below the range of values of similarly situated and similarly zoned properties within the West Cobb market. The LRO portion of the property is too small and oddly configured to be adequately developed as Low Rise Office (LRO). The remaining portion of the property that is zoned R-20 is also not economically viable given the property's location at a signalized intersection adjacent to State Route 120 and Casteel Road. The cost to develop the property for residential purposes would yield lots with values that wouldn't even equal the cost to develop the lots.

D. The Applicant will implement the measures required by the Cobb County Department of Transportation and Georgia Department of Transportation to ameliorate any impact the development will have on either Casteel Road or Dallas Highway. This retail center is designed to serve the surrounding residential communities and to pick up the shoppers at The Avenue West Cobb.

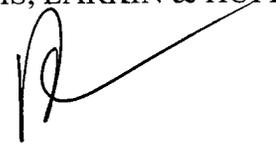
As such, the center is not designed to significantly increase traffic in the area but to serve shoppers who are already coming to The Avenue. The developer will install appropriate turn lanes and deceleration lanes at its entrances so that ingress and egress is consistent with traffic engineering principles.

- E. The two (2) acre pinned corner of the subject property is designated in the Cobb County Land Use Plan as a Neighborhood Activity Center (NAC). The remaining 18 acres is designated for Very Low Density Residential (VLDR) development (there is a pending Land Use Plan proposal to change the VLDR designation to Low Density Residential). As such, the proposal is inconsistent with the Land Use Plan. However, the overriding principle of the Land Use Plan in this area is to create and maintain a commercial node on Dallas Highway to serve the surrounding community and to not allow this node to spread unrestricted along Dallas Highway. The proposed development can accommodate this goal by encapsulating the proposed retail center with the existing residential development to the south and the west and the recently acquired Bullard Park to the north. With the County's purchase of the property across Dallas Highway for a park, there is no argument for the extension of the commercial node west of the subject property since it will now be hemmed in totally by a residential subdivision to the west and a park to the north and west. Essentially, the Applicant is asking the Activity Center to be increased from its existing two (2) acres to twenty (20) acres.

F. There is no substantial relationship between the existing zoning classifications of LRO and R-20 and the public health, safety and general welfare. To maintain an unusable LRO portion of the subject property creates an unconstitutional taking of the property owners' rights to utilize their property. Additionally, to maintain the R-20 zoning on the remainder of the property creates an unconstitutional taking because the fair market value of said property falls below the range of values of similarly zoned and situated properties with equivalent utility.

Respectfully submitted, this 2nd day of January, 2009.

SAMS, LARKIN & HUFF, LLP

By: 

PARKS F. HUFF
Attorney for Applicant
Ga. Bar No. 375010