

APPLICANT: Foxtell, a Georgia General Partnership

770-402-3300

REPRESENTATIVE: Parks F. Huff 770- 422-7016

Sams, Larkin & Huff, LLP

TITLEHOLDER: Foxtell, a Georgia General Partnership

PROPERTY LOCATION: Located at the northeast intersection of
Austell Road and Mulkey Road.

ACCESS TO PROPERTY: Austell Road and Mulkey Road

PHYSICAL CHARACTERISTICS TO SITE: One story masonry
building.

CONTIGUOUS ZONING/DEVELOPMENT

NORTH: GC/ Golden Corral

SOUTH: GC/ Chick Fil-A

EAST: OI/ Atlanta West Dermatology

WEST: GC, NS/ Taco Bell, Hair Creations, Captain D's

PETITION NO: Z-35

HEARING DATE (PC): 11-02-10

HEARING DATE (BOC): 11-16-10

PRESENT ZONING: PSC

PROPOSED ZONING: CRC

PROPOSED USE: Medical Offices,
Pharmacy And Retail

SIZE OF TRACT: 2.036 acres

DISTRICT: 19

LAND LOT(S): 856, 921

PARCEL(S): 61

TAXES: PAID X **DUE** _____

COMMISSION DISTRICT: 4

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

PLANNING COMMISSION RECOMMENDATION

APPROVED _____ **MOTION BY** _____

REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

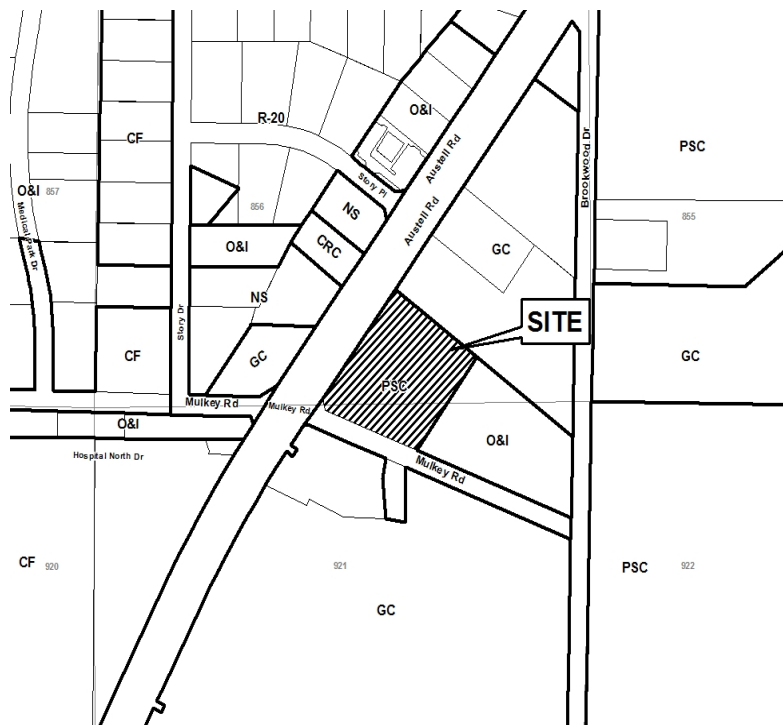
BOARD OF COMMISSIONERS DECISION

APPROVED _____ **MOTION BY** _____

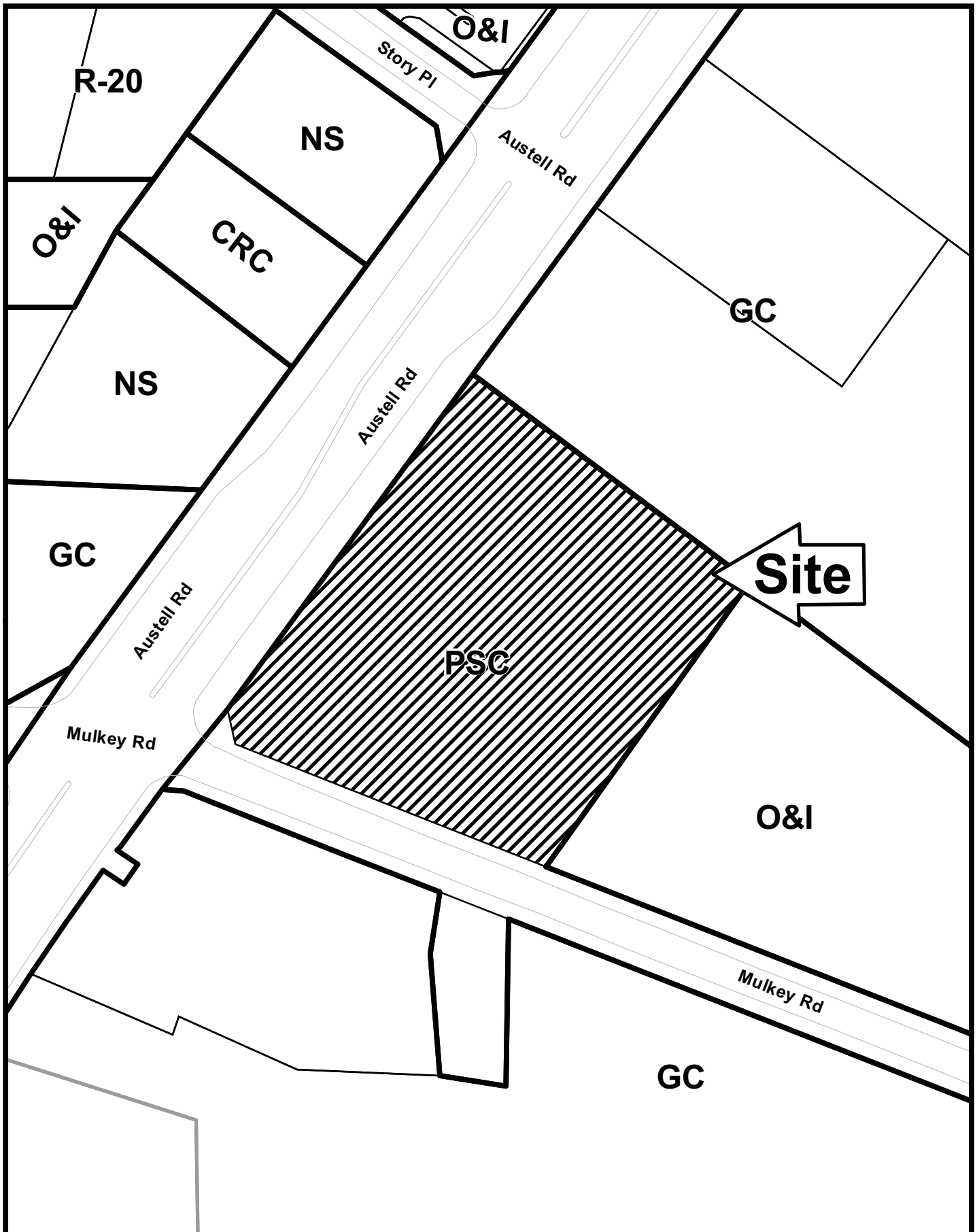
REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

STIPULATIONS:



Z-35



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

100 0 100 Feet



City Boundary
Zoning Boundary

APPLICANT: Foxtell, a Georgia General Partnership PETITION NO.: Z-35

PRESENT ZONING: PSC PETITION FOR: CRC

ZONING COMMENTS: Staff Member Responsible: Terry Martin, MPA

Land Use Plan Recommendation: Community Activity Center

Proposed Number of Buildings: 1 Total Square Footage of Development: 22,691

F.A.R.: .25 Square Footage/Acre: 11,194.38

Parking Spaces Required: 80 Parking Spaces Provided: 146

The applicant is requesting a rezoning to the CRC Community Retail Commercial District for this developed parcel which is home to existing medical offices and retail uses. Currently zoned PSC Planned Shopping Center District, this parcel is nonconforming as that category requires a site of no less than 5 acres and this site measures 2.027 acres in size. Therefore, the request for rezoning will bring to site into compliance with the *County Code* and *Cobb County Comprehensive Plan*. In this same request, the applicant is requesting setback variances and impervious surface waiver to account for the site as built as well as parking standards variances as existing parking spaces and drive aisles on site are short of the *Code*-required length. Therefore, the application should be approved site plan specific to account for these variances. The applicant has submitted a Zoning Impact Analysis, which is attached for review (see Exhibit A).

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 (3875 Austell Rd).

STORMWATER MANAGEMENT COMMENTS:

No site improvements are proposed. Upon redevelopment, site will be required to meet current stormwater management design standards.

APPLICANT Foxtell, a Georgia General Partnership

PETITION NO. Z-035

PRESENT ZONING PSC

PETITION FOR CRC

WATER COMMENTS:

NOTE: Comments reflect only what facilities were in existence at the time of this review.

Available at Development: ☒ Yes ☐ No

Fire Flow Test Required: ☐ Yes ☒ No

Size / Location of Existing Water Main(s): ***8" DI / E side Austell Rd***

Additional Comments: Records show 10 water meters serving site

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:

NOTE: Comments reflect only what facilities were in existence at the time of this review.

In Drainage Basin: ☒ Yes ☐ No

At Development: ☒ Yes ☐ No

Approximate Distance to Nearest Sewer: ***At site in both Mulkey Rd and Austell Rd***

Estimated Waste Generation (in G.P.D.): **A D F** 0 new **Peak=** 0 new

Treatment Plant: **S Cobb**

Plant Capacity: ☒ Available ☐ Not Available

Line Capacity: ☒ Available ☐ Not Available

Projected Plant Availability: ☒ 0 - 5 years ☐ 5 - 10 years ☐ over 10 years

Drw Sewers Required: ☐ Yes ☒ No

Off-site Easements Required: ☐ Yes* ☒ No *If off-site easements are required, Developer must submit easements to CCWS for review/approval as to form ans stipulations prior to the execution of easements by the property owners. All easement acquisitions are the responsibility of the Developer

Flow Test Required: ☐ Yes ☒ No

Letter of Allocation issued: ☐ Yes ☒ No

Septic Tank Recommended by this Department: ☐ Yes ☒ No

Subject to Health Department Approval: ☐ Yes ☒ No

Additional Records show site as connected to sewer
Comments:

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 offsite easements, dedication of on and/or offsite 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.

APPLICANT: Foxtell, a Georgia General Partnership

PETITION NO.: Z-35

PRESENT ZONING: PSC

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
Austell Road	39000	Arterial	45 mph	Georgia DOT	100'
Mulkey Road	4400	Major Collector	25 mph	Cobb County	80'

Based on 2005 traffic counting data taken by Cobb County DOT (Austell Road)
Based on 2008 traffic counting data taken by Cobb County DOT (Mulkey Road)

COMMENTS AND OBSERVATIONS

Austell Road is classified as an arterial and according to the available information the existing right-of-way does meet the minimum requirements for this classification.

Mulkey 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.

Install sidewalk along Mulkey Road frontage.

Convert the west access on Mulkey Road to a right-in/ right-out driveway.

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 north side of Mulkey Road, a minimum of 40' from the roadway centerline.

Recommend installing sidewalk along the Mulkey Road frontage.

Recommend converting the western access on Mulkey Road to a right-in/ right-out driveway.

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

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

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STAFF RECOMMENDATIONS

Z-35 FOXTELL, A GEORGIA GENERAL PARTNERSHIP

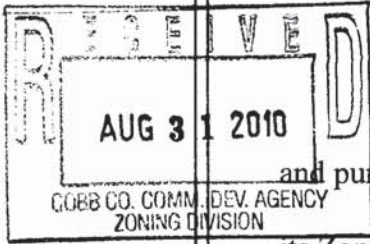
- A. It is Staff's opinion that the applicant's rezoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The request will account for the site as it is currently developed and support those existing medial and retail tenants which, in turn, support nearby Wellstar Cobb Hospital.
- B. It is Staff's opinion that the applicant's rezoning proposal will not have an adverse affect on the usability of adjacent or nearby property. As mentioned, the existing development and its predominately medical tenants support nearby hospitals and other medical/ healthcare related businesses.
- C. It is Staff's opinion that the applicant's rezoning proposal will not 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.
- D. It is Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the *Cobb County Comprehensive Plan*. Located within a Community Activity Center, the requested Community Retail Commercial District is in conformity with the *Comprehensive Plan*.
- E. It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give supporting grounds for APPROVAL the applicant's rezoning proposal. The applicant's request will bring the property into compliance with the intent of the *Cobb County Comprehensive Plan* and account for the site as currently developed and used.

Based on the above analysis, Staff recommends APPROVAL subject to the following conditions:

- Site plan received by Zoning Division on August 31, 2010 with the District Commissioner approving minor modifications;
- Stormwater management comments and recommendations;
- Water and Sewer comments and recommendations;
- DOT comments and recommendations;
- Owner/developer to enter into a Development Agreement pursuant to O.C.G.A. § 36-71-13 for dedication of system improvements to mitigate traffic concerns.

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 FOXTELL, A GEORGIA GENERAL PARTNERSHIP



COMES NOW, FOXTELL, A GEORGIA GENERAL PARTNERSHIP,

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

- A. The zoning proposal will permit a use of the property that is suitable in the context of the existing zonings and uses along this section of Austell Road. The subject property is located at the intersection of Austell Road and Mulkey Road and this area has a significant amount of medical uses that support Wellstar Cobb Hospital.
- B. The zoning proposal will have no adverse effect or impact upon the exiting uses or usability of adjacent or nearby properties. The proposal is to rezone a non-conforming PSC property with existing retail and medical office uses to a conforming CRC zoning category. The surrounding properties are predominantly GC or other commercial zoning categories with intensive commercial uses.
- C. The subject property to be affected by the zoning proposal has no reasonable economic use as currently zoned in that the fair market value of same falls below the range of values of similarly zoned and situated properties with equivalent utility. The existing PSC zoning category is non-conforming and should be rezoned to the conforming CRC category.

- D. The zoning proposal will have no adverse impact upon the existing County infrastructure including, but not limited to, existing streets, transportation facilities, utilities or schools. The proposed zoning will not increase traffic or negatively affect any County infrastructure because it is only rezoning an existing building to a conforming category and is not increasing the intensity of the use of that building.
- E. The zoning proposal is consistent with the County's Future Land Use Map designation for this property as a Community Activity Center.
- F. There is no substantial relationship between the existing zoning classifications of PSC and the public health, safety and general welfare. The PSC zoning category is non-conforming and the property has been traditionally used for medical uses that support the nearby hospital.

Respectfully submitted, this 31 day of August, 2010.

SAMS, LARKIN & HUFF, LLP

By: 

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