

**SEPTEMBER 20, 2011 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM # 3

PURPOSE

To consider a stipulation amendment for Enclave at Cripple Creek, LLC regarding rezoning application Z-132 of 2006 (Ovation Homes, LLC), for property located at the southwesterly intersection of North Booth Road and Cripple Creek Drive in Land Lots 217 and 288 of the 16th District.

BACKGROUND

The subject property was zoned RA-5 with stipulations in 2006. Stipulations from the applicant's stipulations letter detailed a number of conditions regarding the detached single-family houses. Price points were added in a footnote to further describe the house product. This was done by way of common practice to describe the proposed subdivision, not to stipulate a house price, which the County does not practice. The applicant's request would be to remove footnote #1 on page 2 of the stipulation letter dated September 13, 2006. If approved, all other zoning stipulations would remain in effect. The Board of Commissioners' decision is attached (see Exhibit A).

FUNDING

N/A

RECOMMENDATION

The Board of Commissioners consider the proposed stipulation amendment to remove footnote #1, on page 2 of the letter of stipulations dated September 13, 2006.

ATTACHMENTS

Exhibit A (zoning stipulations)
Exhibit B (Other Business application)

**MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 19, 2006**

Z-132

OVATION HOMES, LLC (Gregory J. and Karen R. Hulsey and Ruby D. Hamby, owners) requesting Rezoning from **R-20** to **RA-5** for the purpose of a Subdivision in Land Lot 217 of the 16th District. Located at the southwesterly intersection of Shiloh Road and North Booth Road and on the westerly side of Cripple Creek Drive, south of North Booth Road.

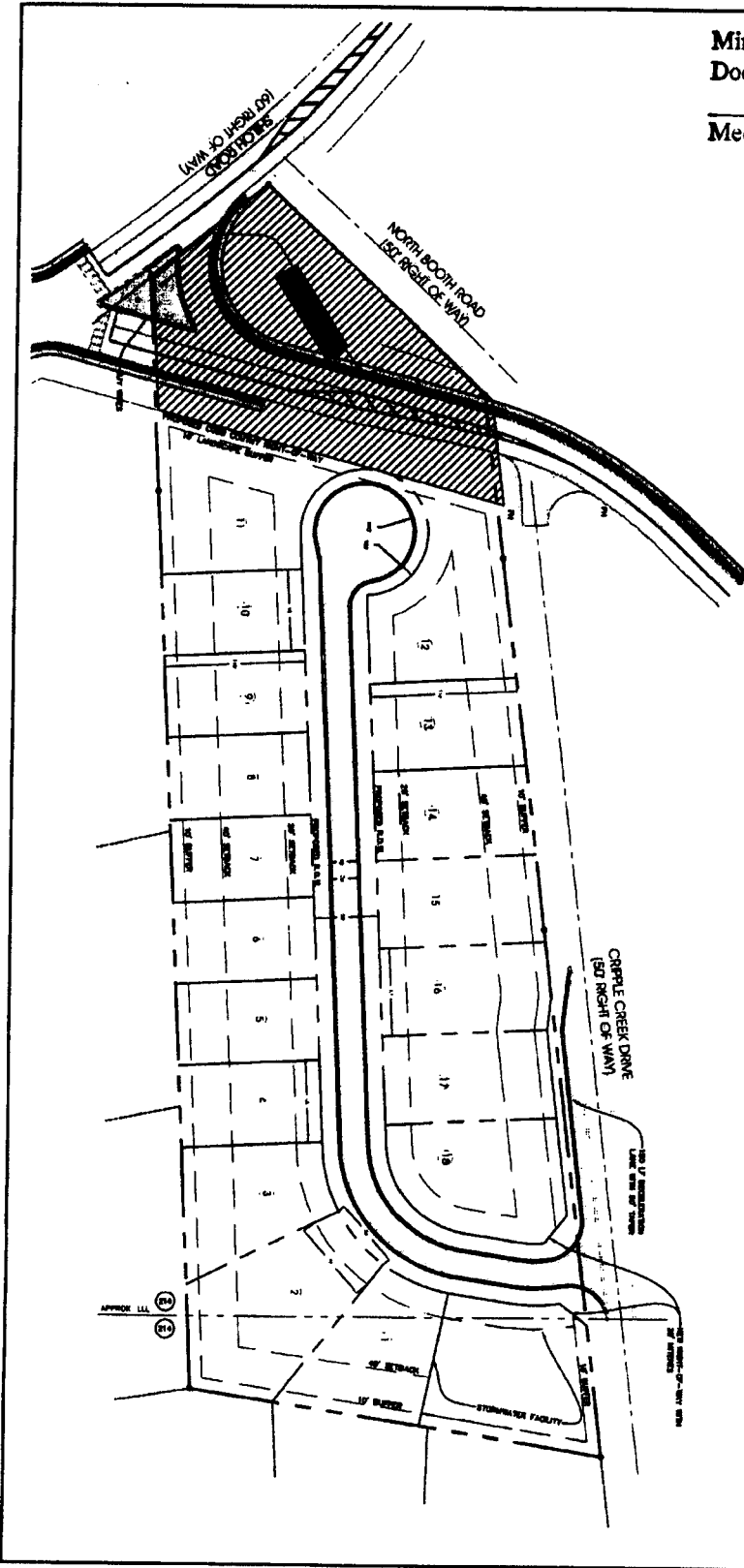
The public hearing was opened and Mr. James Balli and Mr. Michael Stein addressed the Board. Following presentations and discussion, the following motion was made:

MOTION: Motion by Lee, second by Kesting, to approve rezoning to the **RA-5** zoning district subject to:

- site plan dated September 7, 2006, with District Commissioner to approve final site plan (copy attached and made a part of these minutes)
- letter of agreeable stipulations from Mr. James Balli dated September 13, 2006 (copy attached and made a part of these minutes)
- mandatory homeowners association
- maximum ten percent (10%) rental clause to be included in covenants
- Bells Ferry Civic Organization representative(s) to be at available at Plan Review
- engineering to be completed prior to issuance of Land Disturbance Permits
- potential homeowners to be informed of the changes recommended by DOT staff
- Fire Department comments and recommendations
- Water and Sewer Division comments and recommendations
- Stormwater Management Division comments and recommendations
- Cobb 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

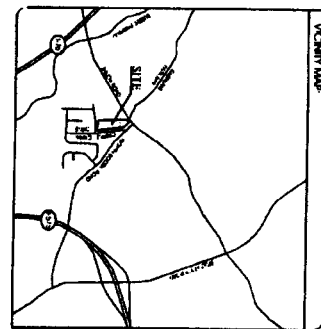
VOTE: **ADOPTED 4-1**, Olens opposed

Min. Bk. 45 Petition No. 2-132
Doc. Type Site plan
Meeting Date Sept. 19, 2006



LOT	AREA	AREA AT RISK	LOSS
1	1.125	1.125	1.125
2	1.125	1.125	1.125
3	1.125	1.125	1.125
4	1.125	1.125	1.125
5	1.125	1.125	1.125
6	1.125	1.125	1.125
7	1.125	1.125	1.125
8	1.125	1.125	1.125
9	1.125	1.125	1.125
10	1.125	1.125	1.125
11	1.125	1.125	1.125
12	1.125	1.125	1.125
13	1.125	1.125	1.125
14	1.125	1.125	1.125
15	1.125	1.125	1.125
16	1.125	1.125	1.125
17	1.125	1.125	1.125
18	1.125	1.125	1.125

LOT	AREA	AREA AT RISK	LOSS
1	1.125	1.125	1.125
2	1.125	1.125	1.125
3	1.125	1.125	1.125
4	1.125	1.125	1.125
5	1.125	1.125	1.125
6	1.125	1.125	1.125
7	1.125	1.125	1.125
8	1.125	1.125	1.125
9	1.125	1.125	1.125
10	1.125	1.125	1.125
11	1.125	1.125	1.125
12	1.125	1.125	1.125
13	1.125	1.125	1.125
14	1.125	1.125	1.125
15	1.125	1.125	1.125
16	1.125	1.125	1.125
17	1.125	1.125	1.125
18	1.125	1.125	1.125



Engineering

Professional Engineer
No. 12345
State of North Dakota

ENGINEERING

1234 Main Street
Bismarck, ND 58101
701-555-1234

THE ENCLAVE AT CRIPPLE CREEK

A Single-Family Residential Development

Project Location: 701 Main Street, Bismarck

Project No. 06-01234

Prepared By: [Name]

Checked By: [Name]

Date: September 1, 2006

Scale: As Shown

Sheet No. 1

SITE PLAN

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP

ATTORNEYS AT LAW
SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF
JAMES A. BALLI*
MELISSA P. HAISTEN

OF COUNSEL
DAVID P. HARTIN

*ALSO LICENSED TO PRACTICE
IN ALABAMA

Min. Bk
Doc. fy
a

September 20, 2011
Exhibit "A"
Other Business Item 03

September 13, 2006

770-422-7016

TELEPHONE

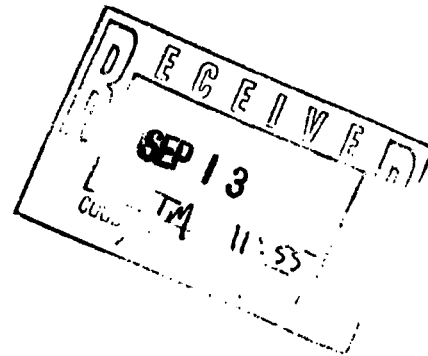
770-426-6583

FACSIMILE

WWW.SAMSLARKINHUFF.COM

VIA HAND DELIVERY

Mr. John Pederson, Planner III
Cobb County Zoning Department
Suite 300
191 Lawrence Street
Marietta, Georgia 30060-1661



Re: Application of Ovation Homes, LLC to Rezone a 6.07 Acre Tract from R-20 to RA-5 (No. Z-132).

Dear John:

This firm represents the Applicant concerning the above-captioned application for Rezoning. The application was heard and considered by the Cobb County Planning Commission on September 6, 2006 and unanimously recommended for approval at a density of eighteen (18) single family homes. The Application is now scheduled to be heard and considered for final action by the Cobb County Board of Commissioners on September 19, 2006.

After discussing the Plan with the Applicant, I am attaching five (5) large and one (1) reduced size Site Plan. The Site Plan has been amended to lower the density to eighteen (18) homes as recommended by the Planning Commission. The revised stipulations keep the DOT provisions intact and further define the landscape buffer between the Site and any adjoining residential property.

The balance of this letter will serve as my client's expression of agreement with the following stipulations which, upon the rezoning application being approved, as amended and modified hereby, shall become conditions and a part of rezoning binding upon the subject property thereafter:

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP

Petition No. 6-152
Meeting Date Sept 19, 2006
Continued

VIA HAND DELIVERY

Mr. John Pederson, Planner III
Cobb County Zoning Department
Page 2
September 13, 2006

1. The stipulations and conditions set forth herein shall replace and supercede in full any and all prior stipulations and conditions in whatsoever form which are currently in place concerning the property which constitutes the subject matter of the above-captioned application for rezoning.
2. The subject property shall be developed for 18 single-family detached homes specific to the Site Plan attached hereto.
3. The Applicant shall utilize a variety of techniques to avoid the monotonous appearance of identical homes. Such techniques may employ, among others, the use of differing front elevations, architectural styles, building exteriors, setbacks or other similar techniques to provide a more pleasing appearance to the subdivision. The architectural style of the homes will be two-story traditional and the facades must be brick, stone or a cementitious material such as, but not limited to, "hardy-plank." The architectural style and composition shall be consistent with the photographs previously submitted.¹
4. All single-family homes shall be 2000 to 2500 square feet and up.
5. Submission of a landscape plan during the Plan Review process, subject to staff review and approval. The landscape buffer between any residential property shall be no less than ten (10) feet and shall consist of (a) a mix of evergreen trees and shrubs with a minimum height of five (5) feet for trees and two (2) feet for shrubs, (b) all plantings will be ecologically compatible to the Site and appropriate for the design situation, (c) any fencing within the buffer shall be a minimum of six (6) feet in height as approved by County staff.
6. Entrance signage will be monument-style compliant with the Cobb County Sign Ordinance.
7. Any minor modifications to the Site Plan shall be approved by the District Commissioner at Plan Review.
8. An agreement to set up a mandatory homeowners' association that shall be responsible for the upkeep and maintenance of all common areas, landscaped areas, amenity areas, fences, lighting and streets within the proposed residential community.

¹ Price points of the single-family homes will be \$300,000 and up.

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP

VIA HAND DELIVERY

Petition No. Z-132
Meeting Date Sept. 19, 2006
Continued

Mr. John Pederson, Planner III
Cobb County Zoning Department
Page 3
September 13, 2006

9. A third-party management company shall be hired to manage the day-to-day operations of the homeowners' association, including the management of all association monies.
10. An agreement to record all covenants, rules and regulations applicable to the proposed residential community.
11. Subject to appropriate and applicable Staff comments and recommendations.
12. A stipulation that the rezoning of the property from R-20 to RA-5 shall not be utilized by the current owner, their successors or assigns to value any portion of said property purchased, acquired or condemned by Cobb County. A further stipulation that any portion of the property purchased, acquired or condemned by Cobb County shall be valued as property zoned R-20. This stipulation shall be binding upon the current owners, their successors and assigns in any court of law or in any applicable special master proceeding initiated by Cobb County under the power of eminent domain. (See attached authorization).

Please do not hesitate to contact me should you or the staff require any further information or documentation prior to the formulation of your analysis and recommendation to the Board of Commissioners and Planning Commission.

Very truly yours,

SAMS, LARKIN & HUFF, LLP


James A. Balli
jballi@samlarkinhuff.com

cc: Cobb County Board of Commissioners
Ms. Gail K. Huff, Assistant County Clerk – VIA Hand Delivery
Ms. Karen King, Deputy County Clerk – VIA Hand Delivery
Mr. Kevin Olson
Ms. Hilda Towery

Petition No. Z-132
Meeting Date Sept. 19, 2006
Continued

AUTHORIZATION FOR REZONING STIPULATION

Application No. Z-132

Hearing Dates:
Planning Commission: 09/06/06
Board of Commissioners: 09/19/06

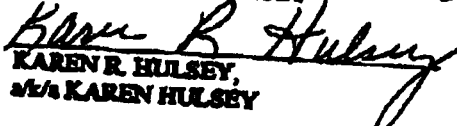
Applicant: Ovation Homes, LLC

Titleholder: GREGORY JOEL HULSEY and KAREN R. HULSEY

We are the titleholders of record for that certain tract of land currently part of a tract under consideration for rezoning from R-20 to RA-5 identified as Z-132 by Cobb County DOT. We are aware that Cobb DOT is going to acquire, purchase or condemn a portion of our property to facilitate the realignment of North Booth Road. We authorize the Applicant and its attorneys to stipulate that the re-zoning of the property from R-20 to RA-5 shall not be utilized by us, or our successors or assigns, to affect the valuation of the portion of property acquired, purchased or condemned by Cobb DOT. We further agree that the portion of our property acquired, purchased or condemned by Cobb DOT shall be valued as property zoned R-20.

Signature: 

GREGORY JOEL HULSEY,
a/k/a GREGORY HULSEY


KAREN R. HULSEY,
a/k/a KAREN HULSEY

Address: 797 N. Booth Road

Kennesaw, GA 30144

Telephone No.: (770) 591 9322



September 20, 2011
Exhibit "A"
Other Business Item 03



September 20, 2011
Exhibit "A"
Other Business Item 03



September 20, 2011
Exhibit "A"
Other Business Item 03



September 20, 2011
Exhibit "A"
Other Business Item 03



September 20, 2011
Exhibit "A"
Other Business Item 03



September 20, 2011
Exhibit "A"
Other Business Item 03



September 20, 2011
Exhibit "A"
Other Business Item 03

Application for "Other Business"

Cobb County, Georgia

(Cobb County Zoning Division - 770-528-2035)

BOC Hearing Date Requested: 09/20/2011

Applicant: Enclave at Cripple Creek, LLC Phone #: (678) 553-9423
(applicant's name printed)

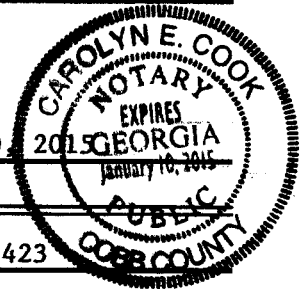
Address: 2281 Clairmont Road, Atlanta, GA 30329 E-Mail: _____
Moore Ingram Johnson & Steele, LLP Emerson Overlook, 326 Roswell Street
John H. Moore Address: Marietta, GA 30060

(representative's name, printed)

BY: [Signature] Phone #: (770) 429-1499 E-Mail: jmoore@mijs.com
(representative's signature) Georgia Bar No. 519800 w7@mijs.com

Signed, sealed and delivered in presence of:

Carolyn E. Cook
Notary Public

My commission expires: January 10, 2015

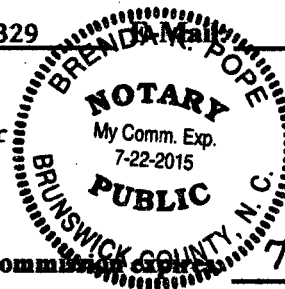
Titleholder(s): Enclave at Cripple Creek, LLC Phone #: (678) 553-9423
(property owner's name printed)

Address: 2281 Clairmont Road, Atlanta, GA 30329

BY: [Signature]
(Property owner's signature) Charles K. Yorke, Manager

Signed, sealed and delivered in presence of:

Brenda K. Pope
Notary Public

My commission expires: 7-22-2015

Commission District: 3 (Birrell) Zoning Case: Z-132 (2006)

Date of Zoning Decision: 09/19/2006 Original Date of Hearing: 09/19/2006

Location: Southwesterly intersection of Shiloh Road and North Booth Road and on the westerly side of Cripple Creek Drive, south of North Booth Road
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 217 District(s): 16th

State specifically the need or reason(s) for Other Business: _____

See Exhibit "A" attached hereto and incorporated herein by reference.

(List or attach additional information if needed)

**EXHIBIT "A" - ATTACHMENT TO APPLICATION FOR OTHER BUSINESS
(STIPULATION AMENDMENT)**

Application No.: Z-132 (2006)
Original Hearing Date: September 19, 2006
Date of Zoning Decision: September 19, 2006
Current Hearing Date: September 20, 2011

BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant/Property Owner: Enclave at Cripple Creek, LLC

On September 19, 2006, the Cobb County Board of Commissioners approved the rezoning of property located at the southwesterly intersection of Shiloh Road and North Booth Road and on the westerly side of Cripple Creek Drive, south of North Booth Road, Land Lot 217, 16th District, 2nd Section, Cobb County, Georgia. The rezoning would allow for the development of a residential subdivision within Cobb County's RA-5 zoning classification. The current Applicant/Property Owner in this Application for "Other Business" requests an amendment as to one of the stipulations approved by the Board of Commissioners through the rezoning process. The proposed amendment is as follows:

- (1) The last sentence of paragraph 3, including footnote 1, of the letter of agreeable stipulations and conditions dated September 13, 2006, attached and made a part of the final, official minutes of the Board of Commissioners Zoning Hearing held on September 19, 2006, reads as follows:

3. . . . The architectural style and composition shall be consistent with the photographs previously submitted.¹

¹Price points of the single-family homes will be \$300,000 and up.

By this amendment, Applicant/Property Owner proposes the deletion of footnote 1 from the stipulation. If the amendment is approved, as submitted, the last sentence of paragraph 3 shall be as follows:

3. . . . The architectural style and composition shall be consistent with the photographs previously submitted.

Unless otherwise specifically set forth herein, the balance and remainder of the stipulations and conditions enumerated in the official minutes, and attachments thereto, of the Board of Commissioners Zoning Hearing held on September 19, 2006, in Application No. Z-132 (2006), are unaltered or unchanged by this request for stipulation amendment.

The proposed amendment presented herein in no way adversely impacts or affects the quality of the overall development approved in the original rezoning of the Subject Property. If the requested amendment is approved, as submitted, it shall become an additional part of the final rezoning and shall be binding upon the proposed development.