

**APRIL 19, 2016 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM OB-016

PURPOSE

To consider a stipulation amendment for Medical Development, Corp. regarding rezoning application Z-33 of 2014 (Medical Development, Corp.), for property located on the west side of Bells Ferry Road, south side of Shiloh Path, and on the east and west sides of Bartlett Circle, in Land Lots 148 and 149 of the 16th District.

BACKGROUND

The subject property was rezoned in 2014 for a residential senior living facility comprising of 178 units. This was a decrease from the previous RSL plan that had 300 units. The applicant has finished the final design documents and would like to increase the number of units to 183 units due to a more efficient design. The approved site plan and building heights from 2014 would not be impacted from this small increase in units. If approved, all previous zoning stipulations not in conflict would remain in effect.

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the stipulation amendment.

ATTACHMENTS

Other Business application and current zoning stipulations.

Application for "Other Business" Cobb County, Georgia

OB-016-2016

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

BOC Hearing Date Requested: April 19, 2016

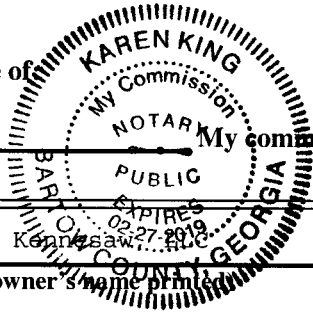
Applicant: Medical Development, Corp. **Phone #:** (770) 399-9988
(applicant's name printed)

Address: 4488 North Shallowford Rd., Ste.103, Dunwoody, GA 30338 **E-Mail:** allen@medicaldevcorp.com
SAMS, LARKIN, HUFF & BALLI, LLP

by: Garvis L. Sams, Jr. **Address:** 376 Powder Springs Street, Suite 100, Marietta, GA 30064
(representative's name, printed)

[Signature] **Phone #:** 770-422-7016 **E-Mail:** gsams@slhb-law.com
(representative's signature)

Signed, sealed and delivered in presence of Karen L. King **My commission expires:** 2-27-19
Notary Public



Titleholder(s): Canterfield of Kennesaw, LLC **Phone #:** _____
(property owner's name printed)

Address: _____ **E-Mail:** _____

See Attached
(Property owner's signature)

Signed, sealed and delivered in presence of: _____ **My commission expires:** _____
Notary Public

Commission District: 3 (Birrell) **Zoning Case:** Z-33 of 2014

Size of property in acres: 10.722 **Original Date of Hearing:** June 17, 2014

Location: On the west side of Bells Ferry Road and south side of Shiloh Pass.
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 148 & 149 **District(s):** 16th

State specifically the need or reason(s) for Other Business: Amendment of stipulation to allow increase in the maximum number of units from 178 to 183 units in this RSL development.

* Applicant specifically reserves the right to amend any information set forth in this Other Business Application or any other portion of the Other Business Application, at any time during the Other Business process. (List or attach additional information if needed)

CERTIFICATE REGARDING CORPORATE AUTHORITY
TO PURSUE APPLICATION FOR OTHER BUSINESS

1.

My name is W Allen Porter. I am the secretary, assistant secretary or other officer to whom the operating agreement or bylaws has delegated the responsibility for authenticating records of the company, **CANTERFIELD OF KENNESAW, LLC** (the "Property Owner Company"). I am of legal age and suffer from no disabilities which would affect my competence to give this Certificate which is being given on my own personal knowledge for use with respect to the Applicant's Other Business Application regarding certain real property owned by the Property Owner Company located in Cobb County, Georgia.

2.

In accordance with the Requirements for Completing a Cobb County Other Business Application, I hereby attest on behalf of the Property Owner Company that I have reviewed the Other Business Application and related documents which are being filed simultaneously therewith by the Applicant Company (collectively, the "Other Business Application") to which this Certificate is attached and hereby certify:

- (a) That signature or facsimile affixed to the Other Business Application is in fact the seal of the Property Owner Company and is a true representation thereof; and
- (b) That the officer or other representative of the Property Owner Company who executed the Other Business Application does in fact occupy the official position indicated, that the position that the signer occupies has the authority to execute the Other Business Application on behalf of the Property Owner Company, and that the signature of said officer or other representative is genuine; and
- (c) That the execution of the Other Business Application and the filing of the Other Business Application by the Applicant is with the express permission of the Property Owner Company.

CANTERFIELD OF KENNESAW, LLC

W.A. Porter
Winston A. Porter, Registered Agent

(SEAL)

Owner
Title

ATTACHMENT TO OTHER BUSINESS APPLICATION

Application No.: OB - 16
BOC Hearing Date: April 19, 2016

Applicant: MEDICAL DEVELOPMENT CORP.

Titleholder: CANTERFIELD OF KENNESAW, LLC

PROPERTY OWNER'S CERTIFICATION

The undersigned(s) below, or as attached, is the owner of the property considered in this application.

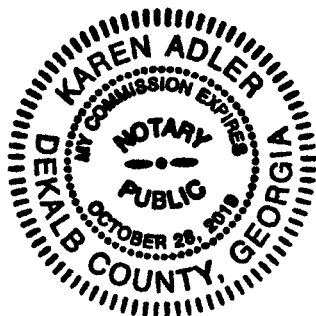
WAP 3/11/16
Winston A. Porter Date

Address: 4488 N Shallowford Rd #103
Dunwoody, GA 30338

Telephone No.: (770) 399-9988

Karen Adler 3/11/16
Signature of Notary Public Date

(Notary Seal)



REGULAR AGENDA

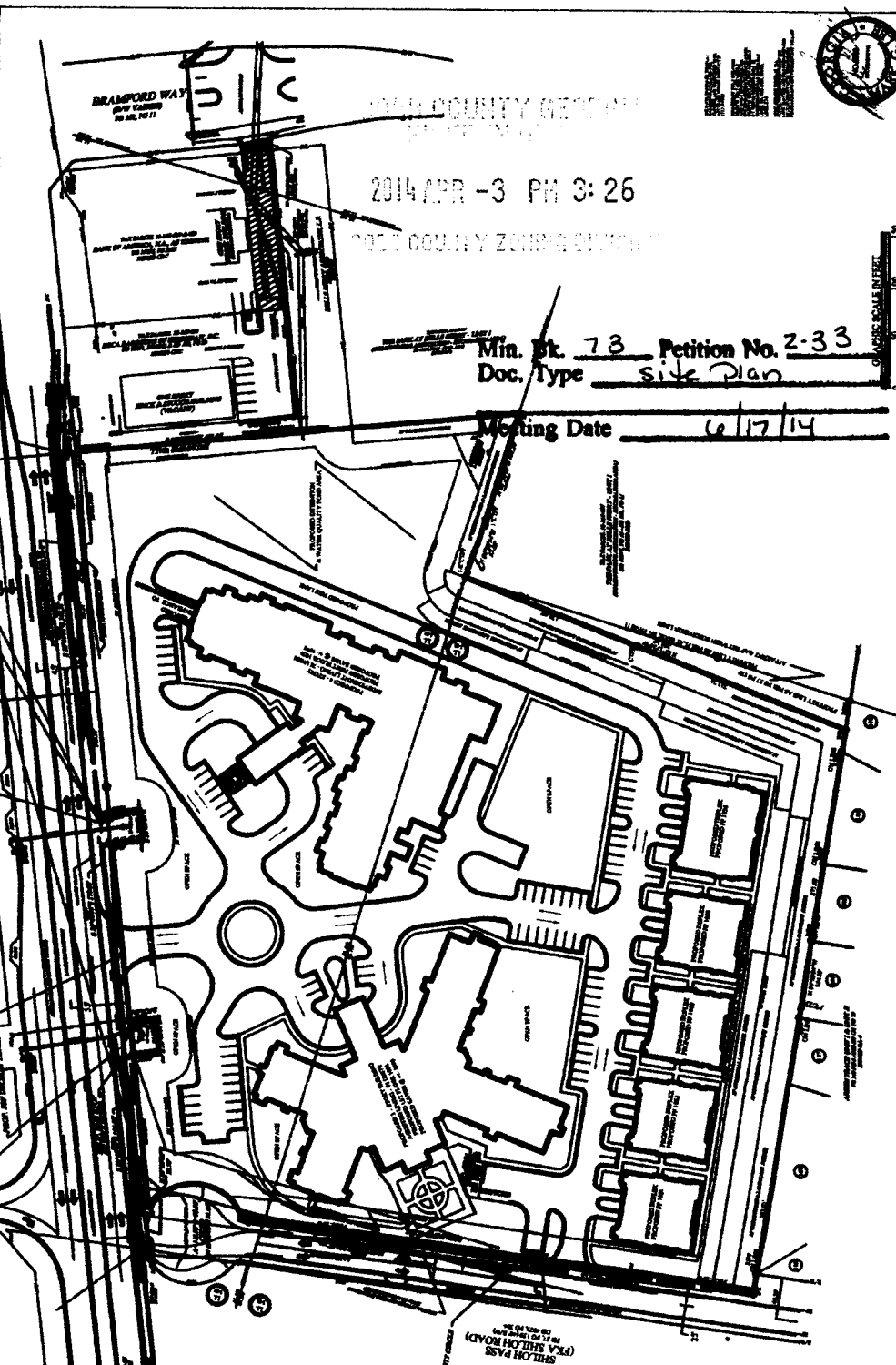
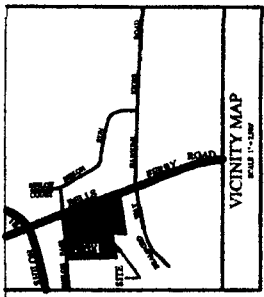
Z-33 **MEDICAL DEVELOPMENT, CORP.** (40-50 Hampton Street, LLC, owner) requesting Rezoning from **RSL With Stipulations** to **RSL With Stipulations** for the purpose of Assisted, Supportive, and Independent Residential Senior Living in Land Lots 148 and 149 of the 16th District. Located on the west side of Bells Ferry Road, south side of Shiloh Path, and on the east and west sides of Bartlett Circle.

The public hearing was opened and Mr. Garvis L. Sams, Jr., Mr. Richard Nyberg, and Mr. Mark Lee addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Ott, to **approve** Rezoning to the **RSL With Stipulations** zoning district **subject to:**

- **Site plan received by the Zoning Division April 3, 2014 (attached and made a part of these minutes)**
- **Final site plan, elevations, fencing, and landscape plan to be approved by District Commissioner**
- **Letter of agreeable conditions from Mr. Garvis L. Sams, Jr. dated April 30, 2014 (attached and made a part of these minutes)**
- **Architectural renderings submitted June 3, 2014 (attached and made a part of these minutes)**
- **Shiloh Pass access shall be gated and key coded for the one story buildings *only***
- **Applicant will make good faith effort to complete build-out of duplexes and triplex within 24 months of this decision**
- **Line of sight for the four story building from Bells Ferry Road be a maximum of two and half stories**
- **Coordinate a plant rescue by Georgia Native Plant Society prior to grading**
- **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 unanimously



2014 APR -3 PM 3:26

Min. St. 78 Petition No. 2-33
 Doc. Type site plan

Working Date 6/17/14

TOTAL TRACT AREA = 10.723 ACRES (467,090.85 S.F.)
 TRACT 1 AREA = 4.19 ACRES (182,516.40 S.F.)
 TRACT 2 AREA = 0.84 ACRES (36,512.40 S.F.)
 TRACT 3 AREA = 1.537 ACRES (66,967.23 S.F.)
 TRACT 4 AREA = 1.375 ACRES (59,913.08 S.F.)
 TRACT 5 AREA = 0.883 ACRES (38,622.81 S.F.)

GENERAL NOTES:
 1) OWNER: MEDICAL DEVELOPMENT CORP
 1592 DEERWOOD VILLAGE PARKWAY
 SUITE 111
 ALLEN PORTER, TX 75015-0443
 ALLEN PORTER, 770-791-0443

2) TRACT AREA: 10.723 ACRES
 3) PROPERTY CURRENTLY ZONED: REL
 PROPOSED ZONING: TO REMAIN

4) SETBACKS:
 FRONT - 30' PARKL/B/W
 REAR - 15'
 SIDE - 10'

5) PROPERTY IS NOT IN AN AREA HAVING FLOOD HAZARD AS PER F.L.E.A. MAP NO. 156703001 DATED 04/20/11.

6) PRIVATE WATERS DO NOT EXIST WITHIN 200 FEET OF SITE.

7) NO CENTERS OR OTHER STRUCTURES OR ARCHAEOLOGICAL FEATURES EXIST ON THIS PROPERTY.

8) EXISTING STRUCTURES AND IMPROVEMENTS TO BE REMOVED.

9) PROPERTY TO BE SERVED BY COBB COUNTY SEWER & WATER.

10) PARKING FOR RESIDENTS IN PARKING GARAGE BENEATH BUILDING IS 62 SPACES PLUS 91 OTHER SPACES. 153 TOTAL SPACES.

11) NO WETLANDS EXIST AS PER THE NATIONAL WETLANDS INVENTORY MAP.

12) VARIANCES REQUIRED:
 1) MAXIMUM HEIGHT TO BE 34 FEET (4-STORIES WITHOUT PARKING GARAGE).
 2) FLOOR AREA RATIO TO BE 5:1.
 3) SETBACK TO ALL CORNERS OF BUILDING SQUARE FOOTAGE WITHIN TOTAL LIMITS.
 4) BUILDING LINE ON THE SIDE OF BELL'S FERRY ROAD NEEDS TO BE SETBACK 10 FEET TO BELL'S FERRY ROAD AS APPROVED.
 5) TOTAL IMPROVEMENTS ALLOWED AT 30%.

ALL BOUNDARY DATA FOR TRACTS 1, 2, 3 & 5 ARE TAKEN FROM PLAT OF DEEDS FOR TRACTS 1, 2, 3 & 5 DATED NOVEMBER 1, 2000. ALL BOUNDARY DATA FOR TRACTS 4, 5, 6 & 7 ARE TAKEN FROM A PLAT OF SURVEY FOR ORANGE DEVELOPMENT, L.L.C. PREPARED BY PAUL LEE CONSULTING ENGINEERING ASSOCIATES, INC., DATED 05/14/14.

THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT. EASEMENT AND ENCUMBRANCES MAY EXIST WHICH BENEFIT AND BURDEN THIS PROPERTY.
 TOTAL OPEN SPACE: 6.72 ACRES - 40% TOTAL IMPROVED SURFACE PROPOSED: 4.00 ACRES - 30%
 TOTAL IMPROVED SURFACE PROPOSED: 4.00 ACRES - 30%
 APPROVED ZONING CASE: 2014-0015 (14-04)

PAUL LEE CONSULTING ENGINEERING ASSOCIATES, INC.
 801 WESTLAKEN AVENUE SUITE 1000 FORT WORTH TEXAS 76102
 PH: (817) 625-5135 FAX: (817) 625-5141

LAND LOTS 148 & 149, 146, 145, DISTRICT 10, SECTION 10, TOWNSHIP 33N, RANGE 12E, COBB COUNTY, GEORGIA

MEDICAL DEVELOPMENT CORP

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

GARVIS L. SAMS, JR.
JOEL L. LARKIN
PARKS F. HUFF
JAMES A. BALLI

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

770-422-7016
TELEPHONE
770-426-6583
FACSIMILE

JUSTIN H. MEEKS

SLHB-LAW.COM

April 30, 2014

VIA EMAIL

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
1150 Powder Springs Road, Suite 400
Marietta, GA 30064

Min. Bk. 73 Petition No. Z-33
Doc. Type letter of
agreeable conditions
Meeting Date 6/17/14

RECEIVED
APR 30 2014
COB. COMM. DEV. AGENCY
ZONING DIVISION

Re: Application of Medical Development Corp. to Rezone a 10.722 Acre Tract from Conditional RSL to Conditional RSL (No. Z-33).

Dear John:

You will recall that this firm represents the Applicant and Property Owner concerning the above-captioned Application for Rezoning. The Application is scheduled to be heard and considered by the Cobb County Planning Commission on June 3, 2014 and, thereafter, is scheduled to be heard and considered for final action by the Cobb County Board of Commissioners on June 17, 2014.

The property at issue consists of a 10.722 acre tract of land which is located on the west side of Bells Ferry Road, north of Hawkins Store Road ("subject property"). The subject property was the subject matter of a previous Application for Rezoning which was approved by the Board of Commissioners on March 20, 2007 (No. Z-174 [2006]) rezoning the subject property to its present Conditional RSL (supportive) zoning classification. The subject property has lain idle and undeveloped since that rezoning; however, the current proposal seeks a downzoning of the property from Conditional RSL to Conditional RSL reducing the number of units from 300 units to 178 units which will consist of a mixture of Assisted, Supportive and Independent units as shown on the site plan filed contemporaneously with the Application for Rezoning.

During the pendency of this Application, we have established a dialogue with Cobb County's professional staff and others. Also, we have commenced a preliminary dialogue with representative of Arden Trace HOA. In that regard, this letter will serve as my clients' expression of agreement with the following stipulations which shall become conditions and a part of the grant of the requested rezoning and which will be binding upon the subject property thereafter. The referenced stipulations/conditions are as follows:

SAMS, LARKIN, HUFF & BALLI
A LIMITED LIABILITY PARTNERSHIP

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VIA EMAIL:

Mr. John P. Pederson, AICP, Manager
Cobb County Zoning Division
Community Development Agency
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1. The stipulations and conditions set forth herein shall replace and supersede 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. Rezoning of the subject property shall be in substantial conformity to that certain site plan prepared for Medical Development Corp. by Paul Lee Consulting Engineering Associates, Inc. which was filed contemporaneously with the Application for Rezoning.
 - 3. The proposed RSL Community shall consist of a maximum number of 178 units and will consist of a mixture of Assisted, Supportive and Independent Units.¹
 4. The architectural style and composition of the RSL Community shall be consistent with those certain photographs and elevation/rendering being submitted contemporaneously herewith. The buildings shall be constructed with the following components: stacked stone, brick, hardiplank and EFIS.

Those buildings located directly adjacent to Arden Trace Subdivision shall consist of four (4) duplex buildings and one (1) triplex building all being a maximum of one story in height.
 5. The RSL Community shall include a centralized kitchen and dining facility which will be sufficient to serve all occupants. However, this stipulation shall not preclude kitchen facilities within individual units.
 6. The RSL Community shall include 62 underbuilding parking spaces and 91 surface parking spaces for a total of 153 parking spaces to accommodate all of the occupants, guests and staff of the RSL Community.
 7. Open Space shall consist of 4.722 acres or 44% of the subject property, with 56% impervious coverage (70% is allowed).

¹ This proposal constitutes a "down-zoning" of the subject property from the original 300 units approved by the Board of Commissioners on March 20, 2007 (No. Z-174 [2006]).

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VIA EMAIL:

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8. The RSL Community is planned to include the following amenities:
 - a) Resident Lounges.
 - b) Business Center.
 - c) Swimming Pool.
 - d) Fitness Center.
 - e) Meaningfully positioned Pedestrian Connectivity.
 - f) Internet Access.
 - g) Open Plaza Areas.
 - h) Passive Open Space.
 9. The RSL Community shall be designed and marketed exclusively for seniors and the occupancy of units therein shall be restricted to persons who have attained the age of 55 years of age or older and shall, in all respects, comply with the Federal Fair Housing Act Requirements.
 10. The Applicant agrees to a Deed Covenant running with the property in perpetuity containing specific recitals that neither the RSL Community nor any of its individual units therein shall be utilized as non-age restricted multi-family apartments. Such Deed Covenant shall run to the benefit of Cobb County, Georgia. No unit within the Community shall be leased for no less than a lease term of one year in duration.
 11. Compliance with the following recommendations from the Cobb County Department of Transportation:
 - a) The voluntary donation and conveyance of right-of-way on the south side of Bells Ferry Road a minimum of fifty-five feet (55') from the roadway centerline.
 - b) The voluntary donation and conveyance of right-of-way on the east side of Shiloh Pass a minimum of twenty-five feet (25') from the roadway centerline.

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VIA EMAIL:

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- c) The construction of a right-in/right-out driveway on Bells Ferry Road with a raised concrete island.
 - d) The construction of a deceleration lane with an appropriate taper at the subject property's point of ingress/egress on Bells Ferry Road.
 - e) The installation of sidewalk, curb and gutter along Shiloh Pass and the replacement of all disturbed sidewalk, curb and gutter along Bells Ferry Road.
 - f) Insuring 560 feet of sight distance on Bells Ferry Road or the implementation of remedial measures in which to mitigate same.
12. Landscaping for the proposed RSL Community shall be consistent with the landscape plan which shall be submitted during the Plan Review Process, subject to staff and the Arborist's review and approval, including, but not necessarily limited to, the following:
- a) An agreement to set up a Landscape Oversight Committee comprised of Medical Development Corp. or its designee, a representative from Arden Trace Homeowners Association and a representative of the Community Development Agency. The Community Development Agency designee shall be the final arbiter with respect to any differences in opinion with a view toward ensuring that the ultimate decisions on landscaping are in substantial compliance with elements of those issues presented during the pendency of the Zoning Application. The review and approval of landscaping issues shall be completed before the issuance of Certificates of Occupancy; however, such review will not impede nor impair the Developer's ability to secure Land Disturbance Permits for the site.
 - b) Landscaped areas, buffers and courtyards shall be well kept with trees, foliage and other vegetation which shall be regularly maintained.
 - c) Grass planted within landscaped areas or otherwise shall be sod.
 - d) Undisturbed and landscaped buffers shall be recognized around those portions of the perimeter of the subject property contiguous to residentially zoned and utilized properties as shown on the site plan filed contemporaneously with the Application for Rezoning.

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VIA EMAIL:

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- e) Undertaking whatever remedial measures are necessary in order to inhibit the migration of wildlife during the period of time that the Land Disturbance Permit is being implemented.
 - f) Unless otherwise instructed by the County Arborist, trees and large plantings within the buffers shall be no greater than ten to twelve feet (10-12') apart.
 - g) All landscaping shall be irrigated and perpetually maintained by the Applicant or its successors. Likewise, any plantings which become diseased or distressed within three (3) years of planting shall be replaced with like vegetation.
 - h) The erection of an eight foot wooden fence with brick and/or stone columns every twenty-five feet (25') which shall be located around those portions of the perimeter of the subject property contiguous to residentially zoned and utilized properties. Brick and/or stone contained within the columns shall be consistent with the brick and/or stone utilized in connection with the buildings to be constructed within the RSL Community.
 - i) Dumpsters shall be incorporated into the landscape plan and shall be screened on at least three (3) sides consistent with the architectural theme and composition of the overall RSL Community or placed on pads in locations with screening by berms or landscaping. All dumpsters shall have rubber lids and bumpers to minimize noise. In lieu of dumpsters, the Applicant may utilize at-grade trash compaction facilities which also must be screened. Refuse pickup shall be limited to the hours of 7:00 a.m. until 9:00 p.m.
 - j) HVAC and mechanical systems shall be incorporated into the landscape plan and shall be substantially shielded from view. Those HVAC and mechanical systems which may be located on the roof of some buildings shall also be shielded from view by means of parapets or similar architectural features.
 - k) The proposed detention & water quality area shall be screened from view and landscaped accordingly.
 - l) An agreement that there shall be no outside storage such as that term is used and defined in the Cobb County Zoning Ordinance.

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13. Compliance with all Stormwater Management requirements and recommendations with respect to stormwater, detention, hydrology and downstream considerations, including the following:
- a) Subject to recommendations concerning the location and configuration of water quality and detention facilities on the site. Presently, the site plan reflects a proposed detention & water quality pond area located on the southern portion of the subject property.²
 - b) Exercising sensitivity with respect to all Erosion and Sediment Control Ordinance requirements and Clean Water Quality Act provisions, including an agreement that stormwater stored on the site shall not be released at a rate exceeding predevelopment stormwater flows.
14. Exterior lighting which shall be located within the interior of the subject property and away from residential areas outside the perimeter of the subject property shall consist of environmentally sensitive lighting in order to prevent outward illumination beyond the RSL Community's boundaries. Security lighting on the building shall be wall packs, hooded, environmentally sensitive and shall be fitted with non-glare lenses and cut-off shields.
15. Signage for the proposed RSL Community shall consist of ground-based, monument style signage which shall be consistent with the architectural theme throughout. There shall be no flashing sign components and no exterior illumination by remote flood lighting.
16. Construction hours shall be limited to the hours of 7:00 a.m. until 7:00 p.m., Monday through Friday and from 8:00 a.m. until 7:00 p.m. on Saturdays. There shall be no on-site construction on Sundays. Construction entrances shall be located on Bells Ferry Road with no access to Shiloh Pass during construction.
17. Compliance with recommendations of the Cobb County Water System with respect to the availability and acquisition of water and sewer to service the subject property.
18. Compliance with recommendations from the Cobb County Fire Department.

² A significant portion of the subject property drains naturally to the south via overland flow. Even though there is an existing drainage conveyance system, it has limited capacity, thus requiring the implementation of a diversion system to be located along the southern property line to eliminate any runoff bypass to the south and in order to convey all site runoff into the proposed Stormwater Management Facility.

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19. The District Commissioner shall have the latitude to make minor modifications to these stipulations and the site plan as the zoning proposal proceeds through the Plan Review Process and thereafter, except those that:

- a) Increase the density on site.
- b) Reduce the size of an approved buffer adjacent to property that is zoned the same or in a more restrictive zoning district.
- c) Relocate a structure closer to the property line of an adjacent property that is zoned the same or in a more restrictive zoning district.
- d) Increase the height of a building that is adjacent to a property that is zoned in the same or more restrictive zoning district.
- e) Change access locations to a different roadway.

Please do not hesitate to contact me should you or your staff require any additional information or documentation prior to the formulation of your Final Zoning Analysis and Staff Recommendations. With kind regards, I am

Very truly yours,

~~SAMS, LARKIN, HUFF & BALLI, LLP~~


Garvis L. Sams, Jr.
gsams@slhb-law.com

GLS/dsj

cc: Members, Cobb County Board of Commissioners (via email)
Members, Cobb County Planning Commission (via email)
Mr. Robert L. Hosack, Jr., AICP Director (via email)
Mr. Dana Johnson, AICP Assistant Director (via email)
Mr. Jason Campbell, Planner III (via email)
Mr. David Breaden, P.E. (via email)

SAMS, LARKIN, HUFF & BALLI

A LIMITED LIABILITY PARTNERSHIP

VIA EMAIL:

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Ms. Jane Stricklin, P.E. (via email)
Ms. Karen King, Assistant County Clerk (via email)
Ms. Lori Barton, Deputy County Clerk (via email)
Mr. Rich Nyberg, Arden Trace Subdivision (via email)
Mr. Mark Lee, P.E. (via email)
Mr. Allen Porter, Medical Development Corp. (via email)