

**AUGUST 16, 2016 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 1**

ITEM 041

PURPOSE

To consider a stipulation amendment and site plan amendment for Nicole and Carlos Martinez regarding rezoning application Z-44 of 2002 (Yancey Development Company), for property located on the west side of Lochstone Drive, north of Islington Drive in Land Lot 302 of the 19th District (1363 Lochstone Drive).

BACKGROUND

The subject property was rezoned to R-20 OSC in 2002 for an open space subdivision. The subdivision was built in many phases due to its large size. This Other Business request is being brought forward by one resident who has a backyard that contains a 30' undisturbed buffer in the rear of lot 6. The resident would like the Board of Commissioners to consider amending this buffer to a 10 foot landscape buffer which may include a fence. The applicant's house was built in 2013. The lot was graded up to the rear property line in order to provide proper drainage from the higher properties to the west. There is not any vegetation in the buffer to save, but the applicant is amenable to replanting a 10' landscape buffer along the rear property line. The applicant has received a letter of support from the property owner directly behind them, as well as the two neighbors to the sides. If the buffer area is amended, all other zoning stipulations not in conflict with this amendment would remain in effect.

FUNDING

N/A

RECOMMENDATION

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

ATTACHMENTS

Other Business application and stipulations.

Application for "Other Business"

OB-041-2016

Cobb County, Georgia

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

BOC Hearing Date Requested: 8/16/2016

Applicant: Nicole & Carlos Martinez (applicant's name printed) Phone #: 402-630-8497

Address: 1363 Lochstone Drive 30127 thcdfc03@yahoo.com

Carlos Martinez (representative's name printed) Address: 1363 Lochstone Drive, Powder Springs, GA 30127

[Signature] (representative's signature) Phone #: 402-630-8497 E-Mail: thcdfc03@yahoo.com

Signed, sealed and delivered in presence of:

MYRA BRALY
NOTARY PUBLIC
Paulding County
State of Georgia
My Commission Expires: 9-1-18

[Signature]
Notary Public

Titleholder(s): Nicole Martinez; Arthur Morelli (property owner's name printed) Phone #: 404-441-0700

Address: 1363 Lochstone Drive, Powder Springs, GA 30127 E-Mail: nmartinez5711@gmail.com

[Signature]
(Property owner's signature)

Signed, sealed and delivered in presence of:

MYRA BRALY
NOTARY PUBLIC
Paulding County
State of Georgia
My Comm. Expires Sept. 1, 2018

[Signature]
Notary Public

My commission expires: 9-1-18

Commission District: 1 Zoning Case: Z-44-2002

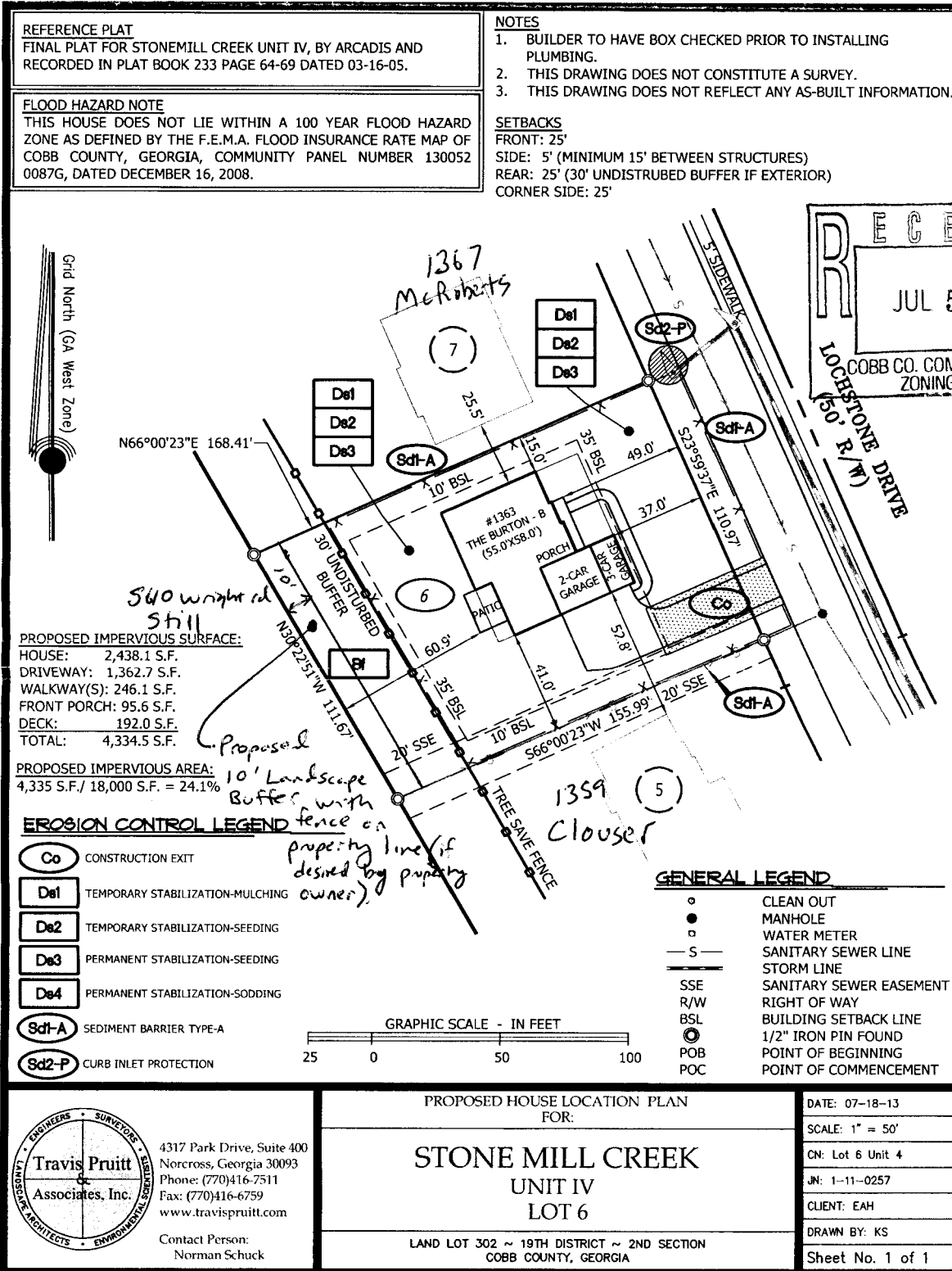
Size of property in acres: .41 Original Date of Hearing: _____

Location: 1363 Lochstone Drive, Powder Springs, GA 30127
(street address, if applicable; nearest intersection, etc.)

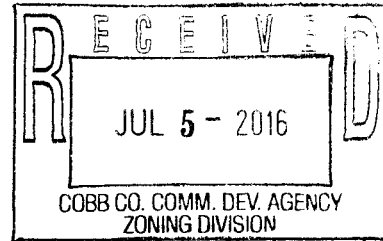
Land Lot(s): 302 District(s): 19

State specifically the need or reason(s) for Other Business: _____
to reduce the 30 foot undisturbed on the back of the
property to a 10 foot landscaped buffer. Please see
attached documents for your review. w/fence.

OB-041-2016
Proposed Plan.



Dear Cobb County Zoning Department;



I, Jeffrey Still am writing you on behalf of my neighbors Carlos and Nicole Martinez of 1363 Lochstone Drive, Powder Springs, GA 30127 (Stone Mill Creek unit IV Lot 6). This letter is to inform you that they have my consent to reduce their 30 foot undisturbed buffer on the back of their property to a 10 foot landscape buffer with a fence.

My contact information is as follows:

Address: 5610 Wright Rd
~~3012~~ Powder Springs 30127

Phone: 770-312 6234

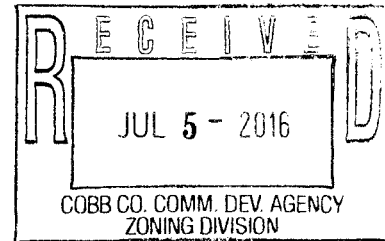
Email: JeffreyStill@gmail.com

Sincerely,

A handwritten signature in black ink, appearing to be "Jeffrey Still", with a long horizontal line extending to the right.

Jeffrey Still

Dear Cobb County Zoning Department;



I, Joseph McRoberts am writing you on behalf of my neighbors Carlos and Nicole Martinez of 1363 Lochstone Drive, Powder Springs, GA 30127 (Stone Mill Creek unit IV Lot 6). This letter is to inform you that they have my consent to reduce their 30 foot undisturbed buffer on the back of their property to a 10 foot landscape buffer with a fence.

My contact information is as follows:

Address: 1367 Lochstone Dr.
Powder Springs 30127

Phone: 678-333-5657

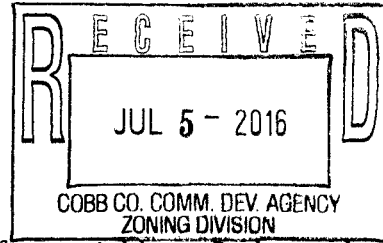
Email: mcroberts.joseph@yahoo.com

Sincerely,

A handwritten signature in cursive script that reads "Joseph McRoberts".

Joseph McRoberts

Dear Cobb County Zoning Department;



I, David Clouser, am writing you on behalf of my neighbors Carlos and Nicole Martinez of 1363 Lochstone Drive, Powder Springs, GA 30127 (Stone Mill Creek unit IV Lot 6). This letter is to inform you that they have my consent to reduce their 30 foot undisturbed buffer on the back of their property to a 10 foot landscape buffer with a fence.

My contact information is as follows:

Address: 1359 Lochstone Dr.
Powder Springs, GA 30127

Phone: 770 262 0092

Email: dcpoolservice@yahoo.com

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Clouser".

Dave Clouser

ORIGINAL DATE OF APPLICATION: 05-21-02APPLICANTS NAME: YANCEY DEVELOPMENT COMPANY, INC.

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE
COBB COUNTY BOARD OF COMMISSIONERS

BOC DECISION OF 10-21-03 ZONING HEARING:

OTHER BUSINESS ITEM #1 - TO CONSIDER A SETTLEMENT OF LITIGATION PROPOSAL REGARDING Z-44 (YANCEY DEVELOPMENT COMPANY, INC.) OF MAY 21, 2002:

To consider a Settlement of Litigation proposal regarding Z-44 (Yancey Development Company, Inc.) of May 21, 2002, for rezoning from R-30 and R-20 OSC to R-30 OSC and R-20 OSC for a subdivision, for property located on the east side of Wright Road, east and south of Poplar Springs Road, south of Pickens Road in Land Lots 227, 291, 292 and 302 of the 19th District.

Mr. Mark Danneman, Zoning Division Manager, provided information regarding the proposal for settlement of litigation. There was no on present in opposition. Following presentation and discussion, the following motion was made:

MOTION: Motion by Goreham, second by Olens, to **approve** the following relative to the settlement proposal regarding Z-44 (Yancey Development Company, Inc.) of May 21, 2002, for rezoning from R-30 and R-20 OSC to R-30 OSC and R-20 OSC for a subdivision, for property located on the east side of Wright Road, east and south of Poplar Springs Road, south of Pickens Road in Land Lots 227, 291, 292 and 302 of the 19th District:

- To **authorize** settlement of litigation regarding Cobb Superior Court, Civil Action File No. 02-1-4877-18
- To **approve** rezoning to the **R-30 OSC** and **R-20 OSC** subject to:
 - **Site plan received in the Zoning Division on September 10, 2003 (copy attached and made a part of these minutes)**
 - **Settlement letter dated September 10, 2003 (copy attached and made a part of these minutes)**
 - **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

Site Data

Total Site Area: 29,226 AC
 Total Lots Shown: 36
 Acres Open Space: 6.54
 (22.7% Of Total Site Area)
 Acres R.W.: 2.55
 Net Density: 1.23 UN/AC
 Proposed Zoning: R-30 O.S.C.
 Median Lot Size: 20,000 SF
 Minimum Lot Size: 10,000 SF
 15' Min. Shall be provided between buildings
 Average Lot Size: 24,244 SF

Notes:

1. Boundary and topographic survey, records, Geography & Water
2. According to Flood Insurance Rate Map (FIRM) #1306220045F, August 18, 1985, no portion of this site contains floodplain.
3. No easements are shown to exist on site.
4. Stream and wetland classifications are to be determined.
5. No archaeological or architectural landmarks are known to exist on site.
6. Detention to be accommodated to meet on plan.

Site Data

Total Site Area: 25,424 AC
 Total Lots Shown: 36
 Acres Open Space: 5.02 AC
 (19.7% Of Total Site Area)
 Acres Floodplain: 1.40 AC
 Acres R.W.: 2.32
 Net Density: 1.42 UN/AC
 Proposed Zoning: R-20 O.S.C.
 Median Lot Size: 13,333 SF
 Minimum Lot Size: 10,000 SF
 15' Min. Shall be provided between buildings.
 Average Lot Size: 21,150.30 SF

Notes:

1. Boundary and topographic survey, Flood Insurance Engineering Associates, Inc.
2. According to Flood Insurance Rate Map (FIRM) #1306220045F, August 18, 1985, and the topographic records, the site contains 8,280 acres of floodplain.
3. No easements are shown to exist on site.
4. Stream and wetland classifications are to be determined.
5. No archaeological or architectural landmarks are known to exist on site.
6. Detention to be accommodated to shown on plan.

RECEIVED

SEP 10 2003

PLANNING DIVISION

LOCATED IN
 LAND LOTS 227, 231, 232 AND 302
 19th DISTRICT, 2nd SECTION
 COBB COUNTY, GEORGIA

ARCADIS G&M

PREPARED FOR:
 TANCY DEVELOPMENT
 COMPANY

REVISION
 SITE PLAN

EXHIBIT A

0844
 Min. Bk. 25 Petition No. 2-4408-5/2/03
 Doc. Type Site Plan
 Meeting Date 10/21/03

MOORE INGRAM JOHNSON & STEELE

A LIMITED LIABILITY PARTNERSHIP

192 ANDERSON STREET

MARIETTA, GEORGIA 30060

WWW.MIJS.COM

MAIN OFFICE
POST OFFICE BOX 3305
MARIETTA, GEORGIA 30061

TELEPHONE (770) 429-1499
TELECOPIER (770) 429-8631

TENNESSEE OFFICE
CEDAR RIDGE OFFICE PARK
SUITE 463
408 N. CEDAR BLUFF ROAD
KNOXVILLE, TENNESSEE 37923

TELEPHONE (865) 692-9039
TELECOPIER (865) 692-9071

JOHN H. MOORE
STEPHEN C. STEELE
WILLIAM R. JOHNSON
ROBERT D. INGRAM
J. BRIAN O'NEIL
G. PHILLIP BEGGS
ELDON L. BASHAM
MATTHEW J. HOWARD
JERE C. SMITH
CLAYTON O. CARMACK
KEVIN B. CARLOCK
ALEXANDER T. GALLOWAY III
J. KEVIN MOORE
RODNEY R. MCCOLLOCH

SUSAN S. STUART
DANIEL A. LANDIS
BRIAN D. SMITH
HARRY R. TEAR III
W. TROY HART
JEFFREY A. DAXE
MELISSA W. GILBERT
TIMOTHY W. BAILEY
JOYCE W. HARPER
PATRICK D. DODSON
JONATHAN H. PETCU
AMY K. WEBER
COURTNEY H. MOORE
KIM A. ROPER

TARA C. RIDDLE
JOSHUA M. BOOTH
KELLI L. CROSS
C. LEE DAVIS
TANYA L. CROSSE
ROBERT W. BROWN II
JASON L. FOSS
VICTOR P. VALMUS
JEFFERY L. DICKERSON
T. SHANE MAYES
DALLAS R. IVEY
SUZY A. LIFE
F. MICHAEL VISCUSE
DANIEL J. LEVY

ALLISON B. FAUST
ANGELA H. SMITH

OF COUNSEL
MICHELLE S. DAVENPORT
JOHN L. SKELTON, JR.
TIMOTHY A. HICKEY, JR.

† ALSO ADMITTED IN TN
* ALSO ADMITTED IN NC
** ALSO ADMITTED IN SC
*** ADMITTED ONLY IN TN
**** ALSO ADMITTED IN IL

WRITER'S DIRECT
DIAL NUMBER

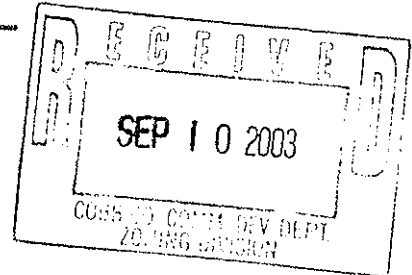
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September 10, 2003

Mr. Mark A. Danneman
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
Suite 300
191 Lawrence Street
Marietta, Georgia 30060-1661

Min. Bk. 25 Petition No. 2-44 of 5/21/02 ^{PB#1}
Doc. Type Settlement Letter Hand Delivered

Meeting Date 10/21/03



RE: Application for Rezoning

Application No.: Z-44 (2002)

Applicant: Yancey Development Company, Inc.

Owners: Foster V. Yancey, Jr., as Trustee of Foster Yancey, Inc. Money Purchase Pension Plan; Ernest Derik Clackum; Ernest Derik Clackum, Jr.; and Sheila Clackum

Property: 54.707 acres located on the easterly side of Wright Road, south of Poplar Springs Road, Land Lots 227 and 302, 19th District, 2nd Section, Cobb County, Georgia

Foster V. Yancey, Jr.; et al., v. Cobb County, Georgia; et al.

Civil Action, File Number: 02-1-4877-18

Superior Court of Cobb County

Dear Mark:

As you know, the undersigned and this firm represent Yancey Development Company, Inc., the Developer and former Applicant

MOORE INGRAM JOHNSON & STEELE

Mr. Mark A. Danneman
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
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(hereinafter sometimes referred to as "Developer" or, alternatively, "Plaintiff"), and Ernest Derik Clackum; Ernest Derik Clackum, Jr.; Sheila Clackum; and Foster V. Yancey, Jr., as Trustee of Foster Yancey, Inc. Money Purchase Pension Plan, the Property Owners (hereinafter collectively referred to as "Owners" or, alternatively, together with Developer referred to as "Plaintiffs"), regarding property totaling 54.707 acres located on the easterly side of Wright Road, south of Poplar Springs Road, Land Lots 227 and 302, 19th District, 2nd Section, Cobb County, Georgia (hereinafter the "Subject Property"). The Application for Rezoning of the Subject Property was originally heard by the Cobb County Board of Commissioners on March 18, 2003, at which time the Board voted to deny the requested R-20 zoning category and allow the property to remain in its current R-30 category. The pending zoning appeal was filed with the Clerk, Superior Court of Cobb County, on April 16, 2003, as a result of the Board's decision.

The settlement, as proposed in this letter of agreeable stipulations and conditions, together with the Rezoning Site Plan submitted herewith, result from efforts by the Developer to resolve the issues presented without the necessity of further litigation.

The Developer agrees to the following stipulations and conditions, subject to approval of the Rezoning Site Plan, which, if approved, as submitted, shall be in complete settlement of the pending zoning appeal and shall be binding upon the Subject Property. The referenced stipulations are as follows:

- (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 on the Subject Property.
- (2) Rezoning of the Subject Property shall be from the R-30 zoning category to the R-30 Open Space Community ("R-

MOORE INGRAM JOHNSON & STEELE

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Zoning Administrator
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30/OSC") and R-20 Open Space Community ("R-20/OSC") zoning categories, site plan specific to that certain Rezoning Site Plan prepared for Yancey Development Company by Arcadis G&M dated June 4, 2003.

- (3) As set forth on the referenced Rezoning Site Plan, the proposed rezoning request consists of two separate parcels as follows:
 - (a) One tract, comprised of approximately 29.226 acres, and located on the northerly side of the existing Stone Mill Creek Subdivision (hereinafter "Tract 1") shall be rezoned to the R-30/OSC category and shall contain a maximum of thirty-six (36) single-family residential lots; and
 - (b) The second tract, comprised of approximately 25.42 acres and located on the southerly side of the existing Stone Mill Creek Subdivision (hereinafter "Tract 2") shall be rezoned to the R-20/OSC zoning category and shall contain a maximum of thirty-six (36) single-family residential lots.
- (4) With respect to Tract 1, there shall be established a minimum of approximately 6.64 acres of open space, said open space shall be donated to Cobb County through a perpetually protected conservation easement; however, the future homeowners association shall reserve the right to passive recreational use and maintenance of the open space.
- (5) With respect to Tract 2, there shall be established a minimum of approximately 5.02 acres of open space, said open space shall be donated to Cobb County through a perpetually protected conservation easement; however, the

MOORE INGRAM JOHNSON & STEELE

Mr. Mark A. Danneman
Zoning Administrator
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future homeowners association shall reserve the right to passive recreational use and maintenance of the open space.

STIPULATIONS APPLICABLE TO BOTH
TRACT 1 AND TRACT 2

- (1) Residences to be constructed shall be traditional in styling with a minimum house size for the proposed residences being 2,000 square feet.
- (2) All front and side yards of residences to be constructed within the proposed shall be sodded.
- (3) The entrances for the proposed residential communities on Tract 1 and Tract 2 shall be professionally landscaped, with signage being ground-based, monument style.
- (4) With respect to the minimum forty (40) foot roadway buffers on both Tract 1 and Tract 2, the Developer shall utilize natural and professional landscaping in order to attain a more rural character along the Wright Road frontage for the Subject Property.
- (5) In accordance with, and consistent with, the rural character of the minimum forty (40) foot roadway buffer, the Developer agrees to utilize "split-rail type" fencing or other similar or consistent type fencing within the minimum forty (40) foot roadway buffer for both Tracts 1 and 2.

MOORE INGRAM JOHNSON & STEELE

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- (6) The Developer agrees to install and plant landscaping materials in the area of the detention pond located on the existing Stone Mill Creek Subdivision, which existing detention pond is located in close proximity to Wright Road. Such landscaping materials shall be planted and installed so as to create additional visual screening of said detention pond from Wright Road.
- (7) Developer agrees to comply with all Cobb County Stormwater Management requirements applicable to the Subject Property.
- (8) Developer agrees to the following road system improvements to mitigate traffic concerns:
 - (a) Construction of a one hundred fifty (150) foot deceleration lane for ingress purposes at each entrance;
 - (b) Installation of sidewalk, curb, and gutter one hundred fifty (150) feet to either side of each proposed entrance for Tract 1 and Tract 2; and
 - (c) Verification that minimum intersection sight distance is available for both entrances; and if not, implement such remedial measures, subject to approval by the Cobb County Department of Transportation, in order to achieve the minimum sight distance requirement of 312.5 feet.

The proposal contained herein is submitted in settlement and compromise of the pending zoning appeal and shall not otherwise be used in any hearing or trial of said appeal. If the settlement, as proposed, is approved by the Board of Commissioners, Plaintiffs

MOORE INGRAM JOHNSON & STEELE

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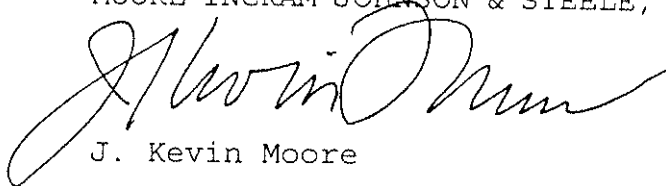
agree to dismiss, with prejudice, the pending litigation case and to pay their own legal expenses and litigation costs.

We would respectfully request the settlement proposal contained herein be submitted to the Board of Commissioners during the next available Executive Session and subsequently be placed upon the "Other Business" agenda before the Board of Commissioners during the next scheduled Zoning Hearing. In order to meet the required time frame for posting and advertising of the Subject Property, we would request your expeditious review and handling of this matter.

We believe the requested zoning, pursuant to the referenced Rezoning Site Plan and the stipulations contained herein, is an appropriate use of the Subject Property while taking into consideration the area and the properties and owners thereof surrounding the proposed development. The proposed rezoning will allow for enhancement and utilization of the Subject Property in a manner suitable with and beneficial to the surrounding area. Thank you for your consideration in this matter.

Very truly yours,

MOORE INGRAM JOHNSON & STEELE, LLP



J. Kevin Moore

JKM:cc
Enclosures

MOORE INGRAM JOHNSON & STEELE

Mr. Mark A. Danneman
Zoning Administrator
Zoning Division
Cobb County Community Development Agency
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September 10, 2003

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- c: Cobb County Board of Commissioners:
Samuel S. Olens, Chairman
George Woody Thompson, Jr.
Helen C. Goreham
Joe L. Thompson
Tim Lee
(With Copy of Enclosure)
- Fred D. Bentley, Jr., Esq.
Bentley, Bentley & Bentley
(With Copy of Enclosure)
- Yancey Development Company, Inc.
(With Copy of Enclosure)