

JULY 18, 2017 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3

ITEM 016

PURPOSE

To consider amending the site plan for Lidl US Operations, LLC regarding rezoning application Z-223 (Evelyn J. Gordy-Rankin) of 1988 and Z-95 (Evelyn J. Gordy-Rankin) of 1990, for property located at the northwest intersection of Shallowford Road and Gordy Parkway in Land Lots 335 and 386 of the 16th District. *(Continued by Staff from the May 16, 2017 and June 20, 2017 Board of Commissioners hearing)*

BACKGROUND

The subject property was rezoned in 1988 to General Commercial as part of a larger mixed use rezoning case. It was developed as a movie theater and has been used as such for the past 25 years. The applicant would like to demolish the movie theater and replace it with a Lidl grocery store. The proposed grocery store would be one story with 35,962 square feet with 170 parking spaces. By way of comparison, the existing movie theatre is approximately 34,000 square feet with 381 parking spaces. The applicant’s use is a permitted use and common use in the GC zoning district. The site plan submitted meets all zoning criteria for the GC zoning district. The applicant has been working with the Architectural Control Committee that has overseen this area of the county since the 1988 rezoning action. If the site plan amendment is approved, all previous stipulations would remain in effect.

STAFF COMMENTS

Cobb County Stormwater Management: This site is served by an existing master stormwater management facility. The proposed site plan will result in a reduction in impervious coverage from the existing theater use.

Cobb DOT: Recommend closing the existing southernmost entrance on Gordy Parkway, as reflected on the site plan dated April 11, 2017. Recommend removing existing parking spaces that encroach into the right-of-way, as reflected on the site plan dated April 11, 2017. Recommend northernmost entrance on Gordy Parkway be restricted to right-in/ right-out. Recommend realigning entrance on Shallowford Road to improve curvature; design to be determined in plan review. Recommend a large turn radius for each entrance on Gordy Parkway; design to be determined in plan review. Recommend applicant consider entering into a development agreement pursuant to 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 Gordy Parkway, a minimum of 40’ from the roadway centerline.

RECOMMENDATION

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

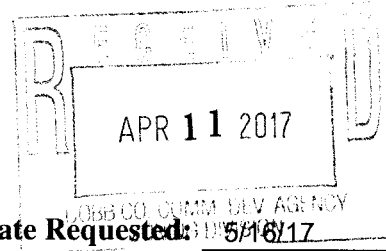
ATTACHMENTS

Other Business application and stipulations.

Application for "Other Business" Cobb County, Georgia

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

BOC Hearing Date Requested: 5/16/17



OB-016-2017

Applicant: Lidl US Operations, LLC **Phone #:** 703-399-6201
(applicant's name printed)

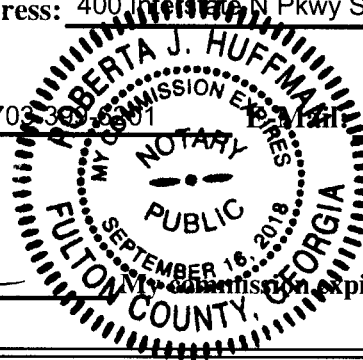
Address: 400 Interstate N Pkwy SE, Ste 320, Atlanta GA 30339 **E-Mail:** eric.astrin@lidl.us

Eric Astrin **Address:** 400 Interstate N Pkwy SE, Suite 320, Atlanta GA 30339
(representative's name, printed)

[Signature] **Phone #:** 703-399-6201 **E-Mail:** eric.astrin@lidl.us
(representative's signature)

Signed, sealed and delivered in presence of:

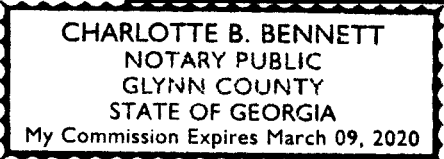
[Signature] **My commission expires:** 9/16/2018
Notary Public



Titleholder(s) : Georgia Theatre Company II **Phone #:** 912-634-5192
(property owner's name printed)

Address: 50 Cinema Lane; St. Simons Island, GA 31522 **E-Mail:** Bo@gtcmovies.com

[Signature]
(Property owner's signature)



Signed, sealed and delivered in presence of:

[Signature] **My commission expires:** 3/9/2020
Notary Public

Commission District: 3 **Zoning Case:** Rezoning #223

Size of property in acres: 5.814 acres **Original Date of Hearing:** 11-15-88

Location: Park 12 Cobb Theatre, 2925 Gordy Parkway, Marietta, GA 30066
(street address, if applicable; nearest intersection, etc.)

Land Lot(s): 385 & 386 **District(s):** 16

State specifically the need or reason(s) for Other Business: The purpose of this request is to change the use of the subject property (shown as Parcel 15 of the Sandy Plains and Shallowford Road Property Master Plan) from a movie theatre to a grocery store.

COBB COUNTY BOARD OF COMMISSIONERS OF ROADS AND REVENUES

COBB COUNTY PLANNING COMMISSION

Date of Application _____ Date of Hearing 11/15/88

Applicant's Name Evelyn J. Gordy-Rankin

Address 4387 Papermill Road, Marietta, GA 30067

Recommendation of Planning Commission (Cont. from Page 1)

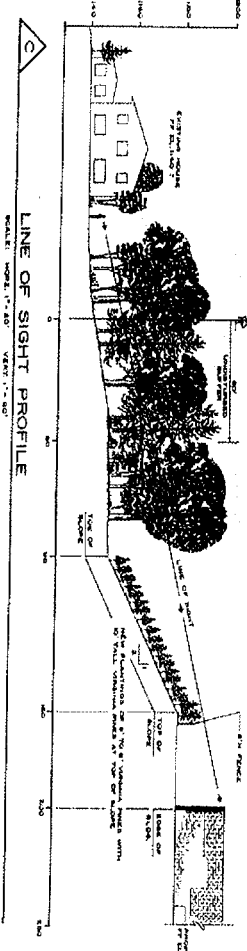
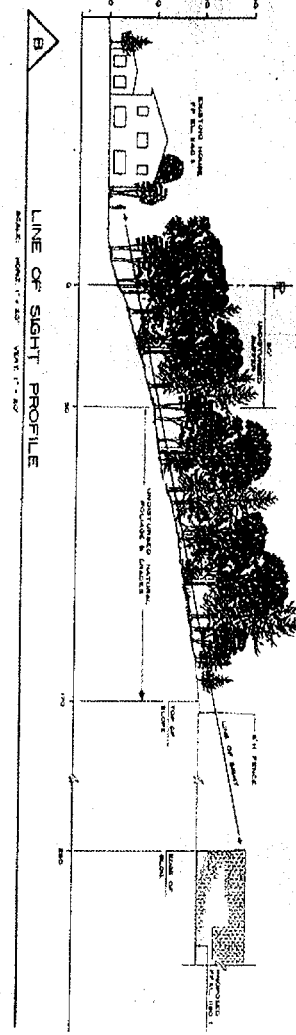
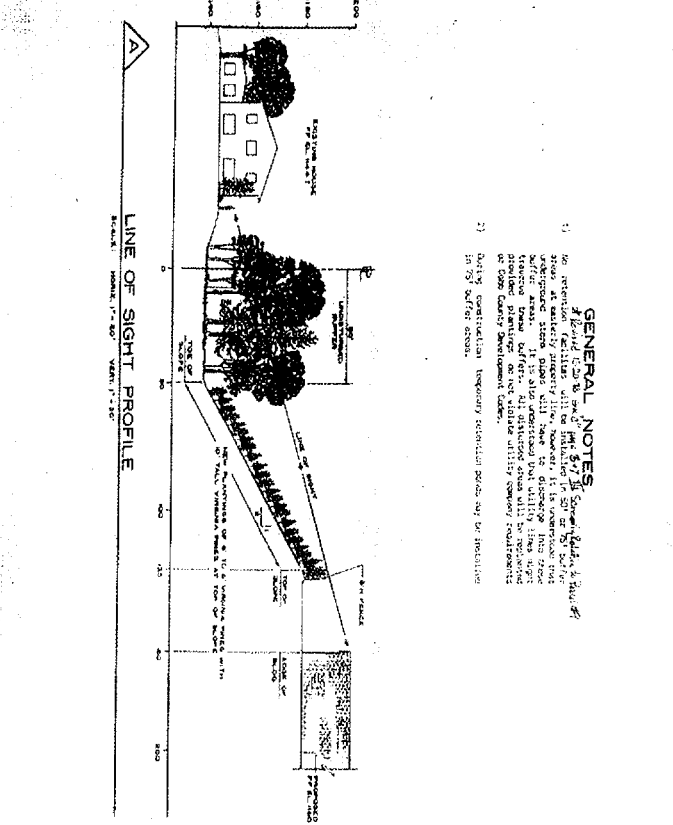
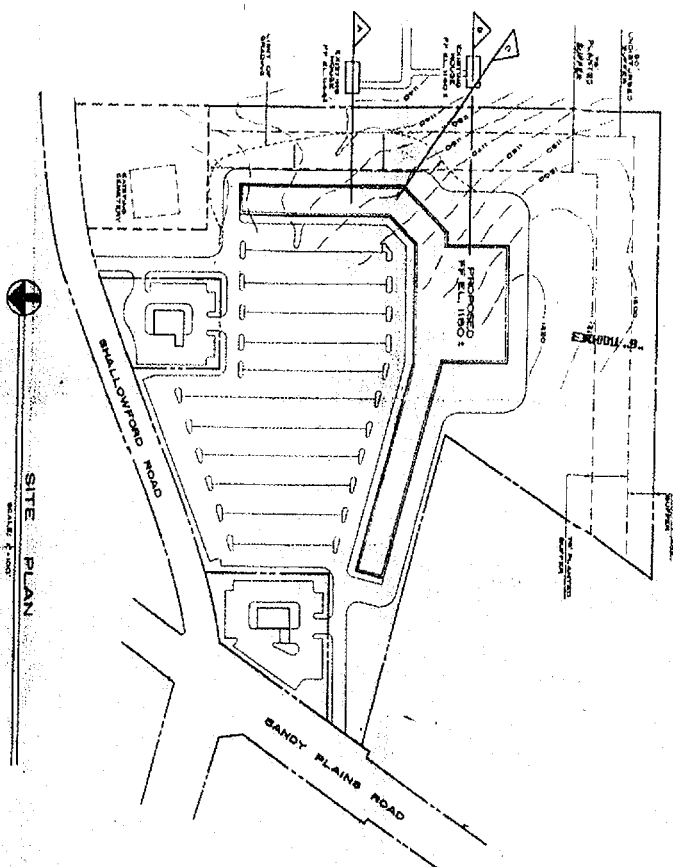
Master Plan. Committee to be formed consisting of Staff, Mr. Thompson or his representative and homeowners to address the buffering and all else related to Parcel #9 and this information be brought back to the Board of Commissioners before action is taken on Parcel #9; 5) report submitted by DOT, dated November 15, 1988, to be made a part of the stipulations; 6) subject to letter of agreement with Whitfield Subdivision; 7) subject to Stipulations and Conditions of Zoning submitted by Larry Thompson at November 15, 1988 hearing. Motion by Wise, second by Christian carried 4-0.

Henry A. Secrist . Chairman

Final Decision of Board of Commissioners (Cont. from Page 1)

at the hearing: 1) Item #13, page #4, of DOT comments; 2) Item #10, page #3, of DOT comments on park entrance 3) that an interior access from Sandy Plains Ball Park to Carl Harrison Park within Parcel #3, second by E. Smith, vote 2-2-1, Burton and H. Smith opposed, Paschal abstained. No action taken due to the lack of three affirmative votes. Board of Commissioners held application until next regularly scheduled zoning hearing. Motion by H. Smith, second by Burton, carried 5-0. (12/20/88) A motion was made by Burton to reject the application, died due to lack of second. Board of Commissioners approved application subject to the following stipulations: 1) Staff recommendations as follows: Revised site plan on file and marked as Exhibit "A" and subject to the sight elevation rendering marked as Exhibit "B". If Parcel 3 is not developed as a medical complex, then development would be as office park and follow same guidelines as the remainder of Parcel 3. Staff Recommendations dated November 15, 1988 within the December 20, 1988 analysis; 2) DOT recommendations dated December 13, 1988; 3) Stipulations and Conditions of Zoning submitted by the applicant subject to revisions presented verbally after review by the County Attorney at the hearing and dated Dec. 20, 1988 and marked as Exhibit "C"; 4) memo on Future Land Use submitted at hearing Dec. 20, 1988; 5) recommended transportation plan presented at original hearing of November 15, 1988. Before the vote Mark Danneman, Zoning Administrator, announced that although Chairman Secrist was not officially in office at the original public hearing of this petition, Chairman Secrist was present at said hearing and has visited the site. Mr. Danneman then asked the audience if there was any objection to Chairman Secrist participating in the voting of this case. No objections were stated. Motion by Powell, second by Paschal, carried 4-0, Burton opposed.

Philip L. Secrist . Chairman



GENERAL NOTES

- 1) All proposed buildings will be indicated in 50% or 75% cut for underground storm drains will have to discharge into street gutter areas. It is also indicated that utility lines will be provided planning on the site after utility company requirements or 5000 County Development Order.
- 2) During construction temporary retention ponds are to be included in 75% cut areas.

action taken on this case and placed on the agenda for the February 21, 1989 Zoning Hearing. 2/21/89 A motion was made by Paschal and seconded by Secrist to readvertise this case and place on the agenda for the March 21, 1989 Zoning Hearing for a public hearing.

SUPPLEMENTAL OTHER BUSINESS AGENDA ITEM

#223

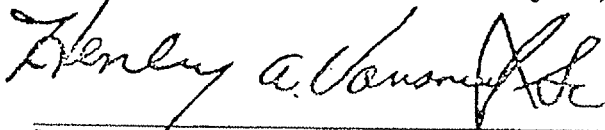
EVELYN J. GORDY-RANKIN (Evelyn J. Gordy-Rankin, Estate W. Frank Gordy - Larry B. Thompson) for rezoning from **NS & R-20** to **R-15, PUD, NS, GC & OI** for the purpose of a Shopping Center, Office, Residence in Land Lots 314, 333, 335, 336, 337, 384, 385, 386, 387, 406, 407, 408, 409 & 334 of the 16th District. Located at the intersection of Sandy Plains & Shallowford Road. 407 acres
Discussion regarding stipulations placed on property at time of rezoning. Burton requested clarification due to the developer (Larry Thompson) indicating that he would not adhere to the stipulations. County Attorney Bob Webb gave a progress report stating that the property is zoned per the motion with both agreeable conditions and unagreeable conditions. Developer has filed suit against the county on the unagreeable conditions of the zoning. Mr. Webb also indicated he had received a letter from Mr. Thompson's attorney offering a settlement to the pending law suit. Mr. Webb had not fully reviewed the settlement offer, but would do so and report to the Board of Commissioners at their earliest convenience.

Board of Commissioners Adjourned.

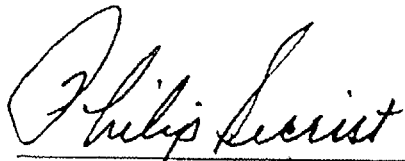
Minutes of the November 15, 1988 Zoning Hearing were adopted by the Planning Commission on a motion by Christian and second by Wise. Motion carried 4-0-1, Jones abstained. Minutes of the December 20, 1988 Zoning Hearing were also adopted by the Planning Commission on a motion by Christian and second by Wise. Motion carried 5-0.

Planning Commission Adjourned.

Adopted minutes of the February 21, 1989 Zoning Hearing.



Henley A. Vansant, Sr., Chairman
Planning Commission



Philip Secrist, Chairman
Board of Commissioners

From 12-20-88 zoning analysis

STAFF RECOMMENDATIONS
COBB COUNTY ZONING HEARING

November 15, 1988

REZONINGS

#223

EVELYN J. GORDY-RANKIN/LARRY THOMPSON (Evelyn J. Gordy-Rankin Estate of W. Frank Gordy - Larry B. Thompson) for rezoning from NS & R-20 to R-15, PUD, NS, GC & OI for the purpose of a Shopping Center, Office, Residence in Land Lots 314, 333, 335, 336, 337, 384, 385, 386, 387, 406, 407, 408, 409 & 334 of the 16th District. Located at the intersection of Sandy Plains & Shallowford Road. 407 acres. The request is not entirely consistent with the Future Land Use Plan. However, the staff supports the concept of this request if the overall density of the multi-family is reduced. The Floor Area Ratio for the office and commercial is below the typical average of 10,000 square feet and is at 8,493 square foot per acre. The agreeable conditions within the Zoning Analysis outlines the conditions the staff would recommend to the Planning Commission and the Board of Commissioners. The final Traffic analysis comments and recommendations from the DOT have not been completed as of 10/11/88.

DECEMBER 13, 1988

RECOMMENDED TRANSPORTATION CONDITIONS

Petition #223

Held from November 15, 1988 Zoning Hearing.

County staff has conducted additional investigation to determine possible alternatives for implementing the "recommended transportation plan" that will be necessary to accommodate this project. The information shown below represents the recommended maximum extent to which County participation should be considered.

It should be noted that the County's participation in the development of the "recommended transportation plan" is predicated upon the commitment that the applicant will dedicate all of the necessary right-of-way for improvements on Sandy Plains Road and Shallowford Road. The anticipated monies saved on right-of-way acquisition have been reallocated to expand the Sandy Plains Road project to include a portion of the recommended improvements on Shallowford Road. Therefore, no changes in the funding of the current 1% road program are recommended.

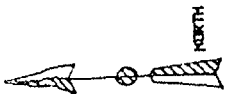
COUNTY RESPONSIBILITY

1. Construct Sandy Plains Road to 4 lanes with a divided median as currently called for in the 1% road program.
2. Realign the Sandy Plains/Shallowford Road intersection as conceptually indicated on the development plan submitted.
3. Construct Shallowford Road to 4 lanes with a divided median to extend to the proposed East Loop Road and West Loop Road.
4. Revise the existing signal operation at the intersection of Shallowford Road and Sandy Plains Road.
5. Construct the recommended improvements at the Holly Springs Road/Sandy Plains Road intersection.
6. Construct the third thru lane on the east side of Sandy Plains Road in front of the school property and the library site.

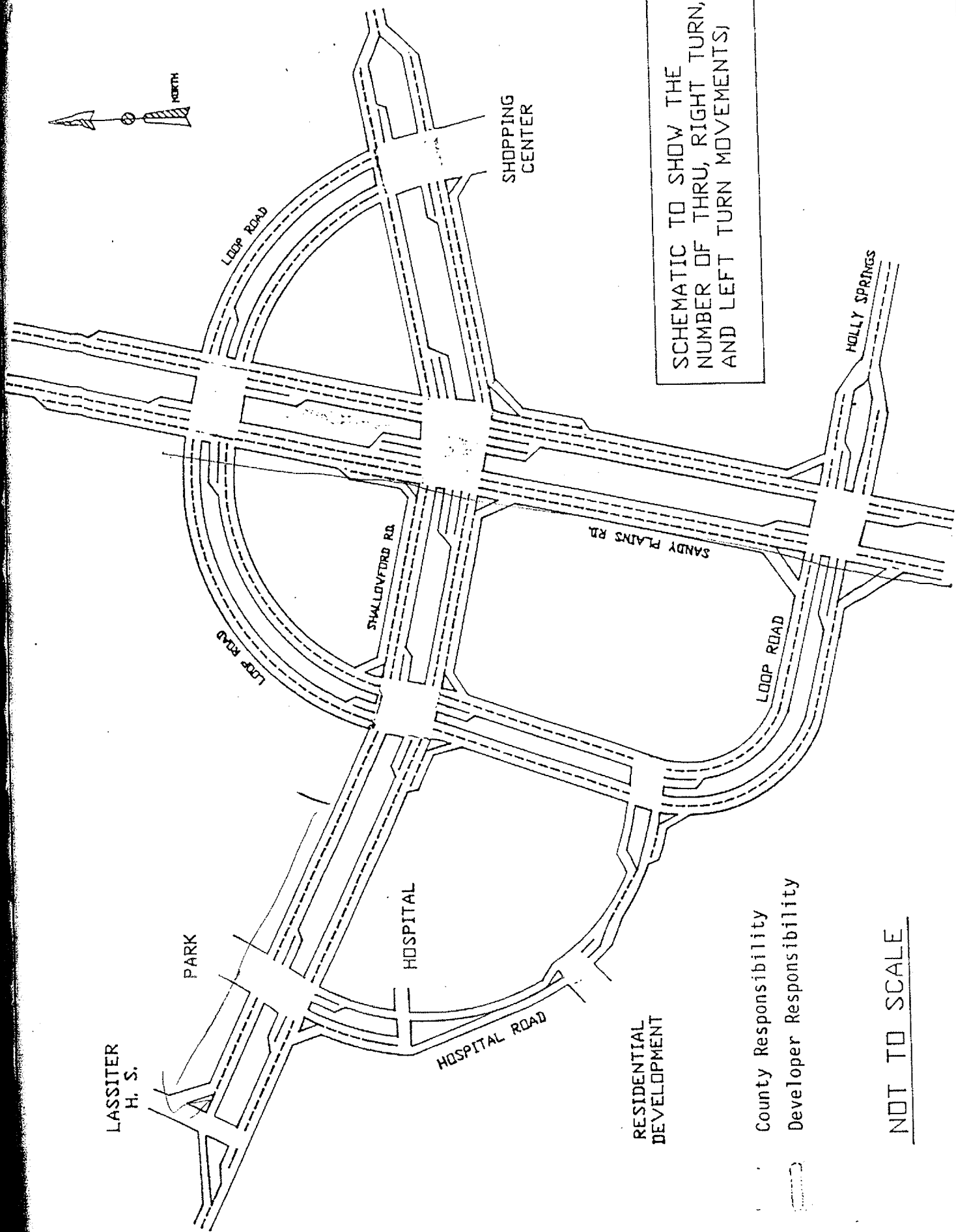
DEVELOPER RESPONSIBILITY

1. Construct all loop roads and hospital road.
2. Construct one additional lane on north side and south side of Shallowford Road between Loop Road East and Loop Road West.
3. Construct one additional lane on Sandy Plains Road through total frontage of all subject property.
4. Reconstruct Shallowford Road to 60 m.p.h. design speed from Loop Road West through Lassiter High School entrance as indicated in "recommended transportation plan".
5. Install traffic signals at all loop road intersections with Sandy Plains and Shallowford Roads.

NOTE: A schematic drawing depicting County/Developer responsible areas is attached.



SCHEMATIC TO SHOW THE
NUMBER OF THRU, RIGHT TURN,
AND LEFT TURN MOVEMENTS)



LASSITER
H. S.

PARK

HOSPITAL

HOSPITAL ROAD

SHALLOVFERD RD.

SANDY PLAINS RD.

LOOP ROAD

LOOP ROAD

LOOP ROAD

SHOPPING
CENTER

HOLLY SPRINGS

RESIDENTIAL
DEVELOPMENT

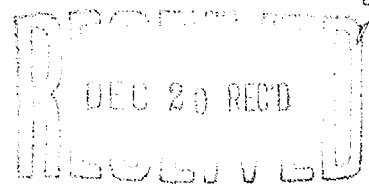
- County Responsibility
- Developer Responsibility

NOT TO SCALE

EXHIBIT "C"

12-20-88

MAJ



STIPULATIONS AND CONDITIONS OF ZONING

Evelyn J. Gordy-Rankin and Larry B. Thompson, applicants for rezoning in petition #223, before the Cobb County Commission, hereby agree to the following stipulations and conditions of zoning, which shall run with the land and be enforceable against any subsequent owner of the involved property, conditioned upon the following:

Approval of their submitted rezoning proposal, as it exists, with no revision, alteration, or addition of zoning conditions or stipulations which are not contained in this document or to which they do not specifically agree. ~~These following stipulations and conditions of zoning, to which applicants agree, shall~~

~~furthermore only become binding in the event that the property is promptly rezoned by December 20, 1988. Additionally, in the~~

event applicant Larry B. Thompson does not purchase the balance of the "involved" property (that being the property depicted in the submitted preliminary plan for Shallowford Road and Sandy Plains Road property, prepared by Reece, Hoopes, and Fincher) by July 31, 1989, then all agreements, stipulations, and conditions

of zoning and road improvements shall ~~be null and void, and the~~

~~involved property shall revert to its zoning prior to the instant rezoning bid.~~

In the event that the subject property is not expeditiously rezoned in accordance with the clear tenor of the submitted rezoning proposal contained in petition #223, augmented only by the conditions and stipulations of zoning which follow or to the

MAJ

REZONING IS SUBJECT TO LARRY B. THOMPSON'S ACQUISITION OF THE BALANCE OF THE INVOLVED PROPERTY

MAJ NOT BECOME EFFECTIVE

conditions to which applicants specifically agree, then the referenced conditions and stipulations of zoning which follow shall be immediately null, void, and unenforceable to any extent whatsoever against any present owner or interest holder in the subject property or against any subsequent interest holder in the referenced property. Additionally, these conditions of rezoning shall be immediately void and unenforceable in the event any present or future historical or botanical designations, not here specifically acknowledged, render the subject tract less developable as submitted. If any homeowner, civic association group or "aggrieved property owner" wins any legal action ^{OF THE INSTANT PROPERTY} contesting a grant of rezoning, ^(MAJ) or is afforded any ruling which impacts the developable characteristics of the property, these conditions and stipulations of rezoning shall be similarly void and unenforceable.

~~All requested stipulations and/or "conditions of zoning" ^(MAJ) which follow are acceded to by Evelyn J. Gordy-Rankin and Larry B. Thompson only at the request and behest of Cobb County, Georgia and are in no manner, shape, or form officiously volunteered to or agreed to by Evelyn J. Gordy-Rankin and Larry B. Thompson. These agreements are entered into purely upon the request of Cobb County, Georgia.~~

I. CONDITIONS AND STIPULATIONS APPLICABLE TO THE "GORDY TRACT"
(THAT ENTIRE TRACT WHICH IS THE SUBJECT OF PETITION #223)

No roadways within the entire development will "cut through" for vehicular traffic reasons to roadways in existing residential subdivisions as of November 15, 1988. This condition shall

specifically not apply to any residential subdivision which applicants seek to develop as part and parcel of the instant rezoning petition. Applicants, however, reserve the right to obtain access to existing utilities and to further construct sedimentation and retention ponds required by Cobb County Authorities.

(1) Sidewalks shall be constructed and placed along all interior roadways in accordance with Cobb County requirements in effect at the time of development.

(2) Applicants agree to allow direct interior access within the proposed development so as to connect Carl Harrison Park and Sandy Plains Park. This access will incorporate and utilize existing streets delineated on the submitted preliminary plan which accompanies the rezoning petition. However, this provision shall be unenforceable in the event that Cobb County authorities determine that the installation of such direct access would affect any "green space" allocation required under Cobb County Planned Unit Development Structures.

(3) Any hospital built in the medical complex within parcel #3 shall be subject to Architectural Control Committee (ACC) approval. Any such hospital shall be a full service local hospital facility which shall not comprise, as a principal source of its services, the treatment of substance abuse patients nor shall it principally be a psychiatric care facility. However, to the extent that such services comprise a normal or expected portion of the broad array of hospital services provided by the hospital, they shall be so permitted. Any hospital constructed

shall not exceed three stories at the point of highest ground elevation.

(4) The development shall be placed under a comprehensive drainage plan acceptable to the appropriate Cobb County Authorities.

(5) TRAFFIC STIPULATIONS -

a) Applicants agree to construct the "loop road" as depicted on the plans submitted with the instant rezoning petition and revised by Reece, Hoopes, and Fincher in their plan effective December ^{7/11/88} 8, 1988. Any "donated" right-of-way as depicted in previous plans is revised to the extent that it is inconsistent with the more recent revisions in the submitted plan dated December 1, 1988, than December ^{7/11/88} 8, 1988. Applicants shall retain title to that portion or those portions of Shallowford Road and Sandy Plains Road which have been deleted from the revised plans dated December 1, 1988, and December ^{7/11/88} 8, 1988. Applicants shall donate sufficient right-of-way on Shallowford and Sandy Plains Road so as to enable the implementation of the traffic plan as depicted in the December 1 and December ^{7/11/88} 8, 1988, plans of Reece, Hoopes and Fincher submitted in this present rezoning application. Applicant agrees to donate right-of-way along Sandy Plains Road and Shallowford Road where the involved property is contiguous to either Shallowford Road or Sandy Plains Road, as this will, sometimes result in roadway donation

and improvement on one side of Sandy Plains Road and Shallowford Road and sometimes result in donation of right-of-way on both sides of Shallowford Road and Sandy Plains Road, according to when the involved property is contiguous to one side or both sides of the respective roads.

The right-of-way deed to Cobb County shall contain reverter provisions to applicant or his successors in title, in the event that Cobb County does not expeditiously construct and develop the Shallowford Road and Sandy Plains Road improvements as depicted on the Reece, Hoopes, and Fincher Plans submitted with the rezoning request.

Applicant agrees to pay the costs associated with the following road way improvements for twelve feet lanes donated between the "loop road" on Sandy Plains Road and Shallowford Road (which totals approximately 8,450 lineal feet) as follows:

8" of graded aggregate stone

4" of A.C. base

2" of A.C. type B (group 1 or 2 leveling)

1 1/2" A.C. surface type "E" Group 2 only. Cobb County and it's respective departments agree that these payments by applicant are the nature of impact fees and are to be applied solely and expeditiously to the referenced road way improvements, and in no way shall be considered general revenues of Cobb County or it's

departments allocable to any other project or any undertaking.

- b) Applicants shall bear the costs of purchase and installation of traffic light systems where the proposed "loop" road intersects Sandy Plains and Shallowford Roads.

II. COMMERCIAL PARCELS

(1) Site lighting - All lighting shall have cut-off lenses in order to direct lighting downward. Any security lights attached to buildings will be focused away from adjacent property and limited to 15 feet in height.

(2) Signs - There shall be no roof signs, no billboards, no temporary signs, except for limited usage of certain special occasion signs, such as "grand opening" signs and certain civic or community purpose signs, such as those announcing little league registration. All signs shall be situated on "monument" basing with an architectural style which complements the development. All signs shall comply with applicable Cobb County Signage Requirements subject to any variance which might be requested then in effect. All signs shall be approved by the Architectural Control Committee (ACC).

(3) Dumpsters shall be located, as much as practicable, in concealed locations and screened with either berms, fences, or both, in a manner so as to permit service access to the dumpsters. Dumpsters shall only be emptied between the hours of 7:00 a.m. and 10:00 p.m.

III. SCREENING RELATIVE TO PARCEL #9

Applicant and his successors and assigns hereby agree to implement the plan for Sandy Plans Road and Shallowford Road prepared for Thompson Enterprises by Robertson Loia, P.C., dated December 2, 1988, Job #88-296, along with all notations and "general notes" there appearing, with the following revision:

In the event that applicant purchases the two residences and appurtenant property at the end of Winterwood Court which are contiguous to the property depicted in the Robertson Loia, P.C. Plan, applicant and his successors shall no longer be required to install underground retention facilities but will be allowed to utilize above ground water retention facilities within the fifty foot "non-disturbed (formerly)" buffer area.

Applicant and his successors and assigns further commit to a 150 foot building set back from the Eastern and Southern property lines (as currently exists) as depicted on the Robertson Loia, P.C. Plan.

The costs of design and installation and maintenance shall be borne by applicants or their successors to the screening relative to parcel #9 as depicted in the Robertson Loia, P.C. Plan.

Applicant and his successors agree to the placement of a security fence on the Eastern and Southern property lines of tract #9. The purpose of this security fence will be to restrict pedestrian access to tract #9, and the costs of installation will be borne by applicants or their successors or assigns.

IV. BUFFERS AND SCREENS RELATING TO TRACT #10

Shall be designed and constructed in accordance with that agreement reached with the Whitfield Homeowners Association, attached as an Exhibit to these stipulations.

V. BUFFERS AND SCREENS APPLICABLE TO TRACT #9

A fifty foot non-disturbed and seventy-five foot planted buffer as depicted in the Robertson Loia, P.C. Plans earlier referenced, shall be located between any presently existing (as of November 15, 1988) residential area and any area developed for commercial purposes. Detention ponds may be located in these buffers, and utilities and/or water or sewer easements may also be located within these buffers, as depicted in the Robertson Loia, P.C. Plans earlier referenced. The buffer areas shall remain in residential zoning classifications.

VI. USES WITHIN THE ENTIRETY OF THE GORDY TRACT DESCRIBED IN PETITION #223 (NOT PREVIOUSLY ADDRESSED ELSEWHERE)

a) There will be no more than two gas/service stations in the entire development on property owned or controlled by the applicant Larry B. Thompson. "Control" shall be determined as encompassing all property which is the subject of the present rezoning application.

b) There will be no "fast food" drive-in establishments fronting on Sandy Plains Road or on Shallowford Road except as follows:

Applicants and their successors shall endeavor to use separate access roads which do not presently exist, to service the fast food establishments envisioned under the submitted rezoning plans.

Applicants shall utilize the access roads as they are depicted to the extent that these roads are approved by local and state transportation authorities, as well as any other necessary government authority. To the extent that these governmental authorities do not permit the development of the "fast food" restaurants as depicted on the submitted preliminary plan for rezoning, applicants and their successors are not bound by the letter of this stipulation. However, applicants and their successors shall endeavor, to the fullest extent possible, to utilize additional access roads.

c) The following uses will not be allowed in the entirety of the property which is subject to this rezoning petition:

- 1) Video Arcades, which is defined as those those establishments offering coin-operated video or other patron participation "games" where such revenue constitutes a principal source of revenue for the particular establishment. However, nothing shall prevent the the sale or rental of video tapes where such rental is primarily designed for off-site or home viewing.
- 2) Adult Book Stores, defined as establishments where the principal business purpose of such establishments involve the sale or rental of sexually explicit books, tapes, or other sexually

explicit paraphernalia or erotica. However, nothing shall preclude any establishment from selling or offering "standard" arrays or selections of magazines, tapes, books, or popular movie-going fare.

VII. LANDSCAPING

The entire development will conform to the Cobb County Tree Ordinance in effect at the time of development. Furthermore, all landscaping must be subjected to Architectural Control Committee review and approval.

VIII. MATERIALS AND COLORS

All materials and colors shall be approved by the Architectural Control Committee.

IX. ARCHITECTURAL CONTROL COMMITTEE (ACC)

Wherever it is envisioned under these conditions and stipulations of zoning that matters will be left to the Architectural Control Commission, that body will be comprised of the following individuals:

- A representative of applicants, or their successors. Larry B. Thompson here acknowledges that contractual commitments require him to retain architectural control of parcels which he may convey to others.
- b) Two land planners and/or architects retained by applicants or their successors.
- c) A representative of the Cobb County Planning and Zoning Department.

- d) A representative designated by an "umbrella" civic association, such as the East Cobb Civic Association, which civic association is in existence at the time of appointment of members to the ACC.
- e) Applicants acknowledge the need for consistency and continuity in the overall design, construction, and maintenance of the land which is the subject of this rezoning application. Given the probability of changing architectural styles, the availability of building materials and methods, and other relevant criteria over the probable 8 to 10 years required for completion of the proposed development, applicants agree that the Architectural Control Committee shall approve architectural design, development design, materials, color, landscaping, and other significant criteria pertinent to the overall design of the project. However, interior design of any structure shall not be subject to ACC approval. The ACC shall have input only to the overall design and street layout of any residential subdivision envisioned under this rezoning proposal, as separate architectural control committees shall be established for residential subdivision purposes. The intent of this commitment on the part of applicants is to coordinate an overall design which emphasizes compatibility and continuity of style on matters of major significance. The control of

the Architectural Control Committee shall be limited to building exteriors and site planning.

X. STIPULATIONS AND CONDITIONS OF ZONING APPLICABLE TO THAT PORTION OF PARCEL #10 LOCATED NORTH AND EAST OF THE PROPOSED LOOP ROAD.

No twenty-four hour outdoor storage of automobiles shall occur to any significant degree. However, this stipulation shall not preclude the occasional parking of an automobile overnight in isolated circumstances.

- b) No outside storage of oil or tires will be permitted.
- c) No twenty-four hour service of automobiles or other vehicles shall be permitted.
- d) Any establishments selling, replacing, or rotating tires shall be located on the extremities of the automobile maintenance building.
- e) No gasoline or diesel fuel sales shall be permitted in this parcel.
- f) No external loud speakers, phone bells, gongs, or other similar noise generating source will be utilized.
- g) No food services (other than incidental beverage, cracker and/or candy machines) shall be permitted.
- h) No automobile body repair work shall be permitted.

XI. In parcel #3, east of the designated loop road, office buildings shall be limited to two stories above the highest

ground elevation for each building. All office building exteriors shall be approved by the ACC.

XII. RESIDENTIAL UNIT SIZE

Within the entirety of the development, the following square footage minimum restrictions shall apply per residential dwelling unit:

R15 - 1800 square feet of heated space

Planned Unit Development - 1500 square feet of heated space

Multi Family - 1200 square feet of heated space

XIII. HISTORICAL DESIGNATIONS

- 1) A ten foot by ten foot parcel shall be designated by applicants, on which applicants shall, at their expense, relocate, the existing Daughters of the American Revolution and Colonial Dames Society Historic Markers. The relocated parcel shall be in the vicinity of the Sandy Plains and Shallowford Road intersection.
- 2) Applicants agree to preserve the Mount Beulah Cemetery under its present zoning classification.
- 3) Cobb County, Georgia desires, due to interests in historical preservation and in the accumulation of archeological data, to excavate a well situated in parcel #9. While it is the preference of applicants to cap the well in the interests of preventing personal injury, applicants, their successors and assigns, agree to permit Cobb County, Georgia and its departments to excavate the referenced well, performed in a manner so as to avoid delay in the development of the property encompassed by

the instant zoning application. Furthermore, Cobb County, Georgia shall assume all liability which may result from personal injury sustained in either excavation of the well, or in any failure to properly fill or cap the well so as to avoid or lessen the prospect of personal injury to any individual.

- 4) As Cobb County, Georgia desires to commemorate an indian trail which may have formerly been located in the vicinity of the property which is the subject of this zoning application. Applicants, and their successors or assigns, hereby agree to make available a portion of parcel #3 for the placement of certain markers and/or appropriate landscaping and related pedestrian access to the marker, to so commemorate the indian trail. However, Cobb County specifically agrees that any such commemoration will specifically be undertaken at its own expense; that any such memorial shall be limited in scope or physical area where it is situated; that this utilization by Cobb County shall in no shape, form or manner, hinder the submitted development plans. Specifically, this utilization by Cobb County shall not affect any building setbacks; it shall not consume any parking spaces; and it shall basically be situated in the building setback areas as presently depicted on the submitted development plans.
- 5) As Cobb County, Georgia desires to perform a botanical survey on parcels #3 and #4, applicants, their successors

and assigns agree that access will be afforded on a one hundred and fifty foot (150') strip by three hundred foot (300') strip in parcel #3 and parcel #4 for the performance of the botanical survey. The purpose of the botanical survey shall be to discern whether there are any endangered species (flora) in this designated area. If it is so determined that any endangered botanical species are there extant, Cobb County will be permitted to expeditiously remove the botanical species so as to take the species off site and presumably to preserve the organism. Under no circumstance will Cobb County be permitted to maintain any endangered species in place in the botanical survey area. Cobb County's sole remedy, in the greater interest of preserving any botanical species which it might find, is to remove the flora for its propagation and survival elsewhere from the tract which is the subject of the instant zoning application. Applicants, their successors or assigns, agree to bear the cost of the botanical survey only. Any removal of flora shall be at the sole cost of Cobb County.

- 6) Under no circumstances, will Cobb County, Georgia require more time for the botanical survey and removal than July, 1989. After July, 1989, any and all interests for survey, inventory, and propagation or removal of any botanical species by Cobb County shall lapse, and Cobb County, Georgia shall have no further claim for protection of endangered species on the instant tract.

7) As Cobb County, Georgia desires to maintain an archeologist on site during the development of the project which is the subject of the instant zoning application, applicants, and their successors and assigns, agree that access by a County-appointed archeologist shall be permitted. The archeologist shall be permitted to remove any artifacts which he or she deem to be historically significant. However, Cobb County agrees that any such survey or excavation shall be performed promptly and with all deliberate speed. To evidence Cobb County's interest in a speedy survey and excavation, Cobb County, Georgia hereby specifically agrees to bear any expenses associated with the delay of development of the entire tract which is the subject of this zoning application. These costs shall include, but not be limited to, any equipment or labor "down time" associated with this archeological survey, excavation, and removal of artifacts.

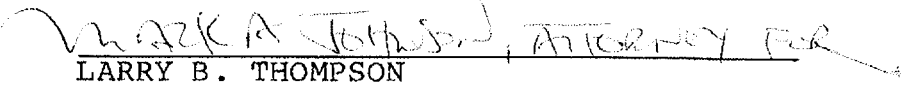
XIV. STIPULATIONS RELATIVE TO PARCEL #12

Applicants agree that, except for the larger anchor tenants, all other tenants shall conform to the requirements of neighborhood shopping zoning regulations as the classification presently exists.

XV. Any metes and bounds or legal descriptions previously submitted pertaining to parcel #4 (neighborhood shopping) and parcel #3 (office and institutional) shall be revised due to the shifting Southward of the Shallowford Road and

Sandy Plains Road intersection as now requested by the Cobb County Department of Transportation. These revisions shall reflect square footage as depicted in the revised Reece, Hoopes, and Fincher Plan dated December 8, 1988, which is now necessitated due to the reconfiguration of the Shallowford Road and Sandy Plains Road intersection by the Cobb County Department of Transportation.

So submitted and agreed this 20 day of December, 1988.


LARRY B. THOMPSON
APPLICANT AND REPRESENTATIVE OF
EVELYN J. GORDY-RANKIN,
IN REZONING PETITION #223,
BEFORE THE COBB COUNTY BOARD OF
COMMISSIONERS ON NOVEMBER 15, 1988.

Application for Rezoning COBB COUNTY

(type or print clearly)

Application No. 2-95
Hearing Date 12-18-

Applicant Evelyn J. Gordy-Rankin Business Phone None Home Phone 261-7477
Larry B. Thompson Address 4387 Papermill Rd., Marietta, Ga. 30067
(representative's name, printed)
[Signature] Business Phone _____ Home Phone _____
(representative's signature)

Titleholder Evelyn J. Gordy-Rankin
Estate of W. Frank Gordy
Larry B. Thompson Business Phone 971-5081 Home Phone 955-9611
[Signature] Address _____
(attach additional signatures, if needed)

Zoning Request From R-20, PUD, O&I To GC, PUD, OI & Modify Zoning
(present zoning) (proposed zoning)
For The Purpose of Mixed Use Development Stipulations _____
(subdivision, restaurant, warehouse, apt., etc.) Size of Tract 407 Acre(s)

Location Intersection of Sandy Plains & Shallowford Roads
(street address, if applicable, nearest intersection, etc.)
Land Lot(s) 314, 333, 335, 336, 337, 384, 385, 386, 387, 406, 407, 408, 16th
313, 409 and 334 District

We have investigated the site as to the existence of archeological and / or architectural landmarks. I have certify that there are no there are such assets. If any they are as follows: _____
Cemetery located N. E. corner L.L. 387 south of Shallowford Road

Evelyn Gordy-Rankin
(applicant's signature)

For Official Use Only - Please see attached page...
Recommendation of Planning Commission _____
_____. Chairman
Board of Commission's Decision _____
_____. Chairman

Original Date of Application: 12-18-90

Applicant's Name: EVELYN J. GORDY-RANKIN

THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE COBB COUNTY PLANNING COMMISSION AND THE COBB COUNTY BOARD OF COMMISSIONERS

REGULAR AGENDA - 12-18-90 PLANNING COMMISSION RECOMMENDATION The Planning Commission recommended approval of application subject to: 1) site plan as submitted, marked as Exhibit "D", dated 10-18-90 (revised), and on file in the Zoning Offices; 2) stipulations of zoning submitted by applicant, marked as Exhibit "E", dated December 11, 1990, and on file in the Zoning Offices; 3) addendum to stipulations of zoning, marked as Exhibit "F", dated December 17, 1990, and on file in the Zoning Offices.; 4) curb-cut plan as amended, marked as Exhibit "G", dated 8-8-89, and on file in the Zoning Offices. Motion by Jones, second by Dameron, carried 4-0.

REGULAR AGENDA - 12-18-90 BOC DECISION The Board of Commissioners approved application as recommended by the Planning Commission, and further subject to: 5) all applicable/previous stipulations not in conflict with this decision to remain in force. VOTE: 4-1, Burton opposed.

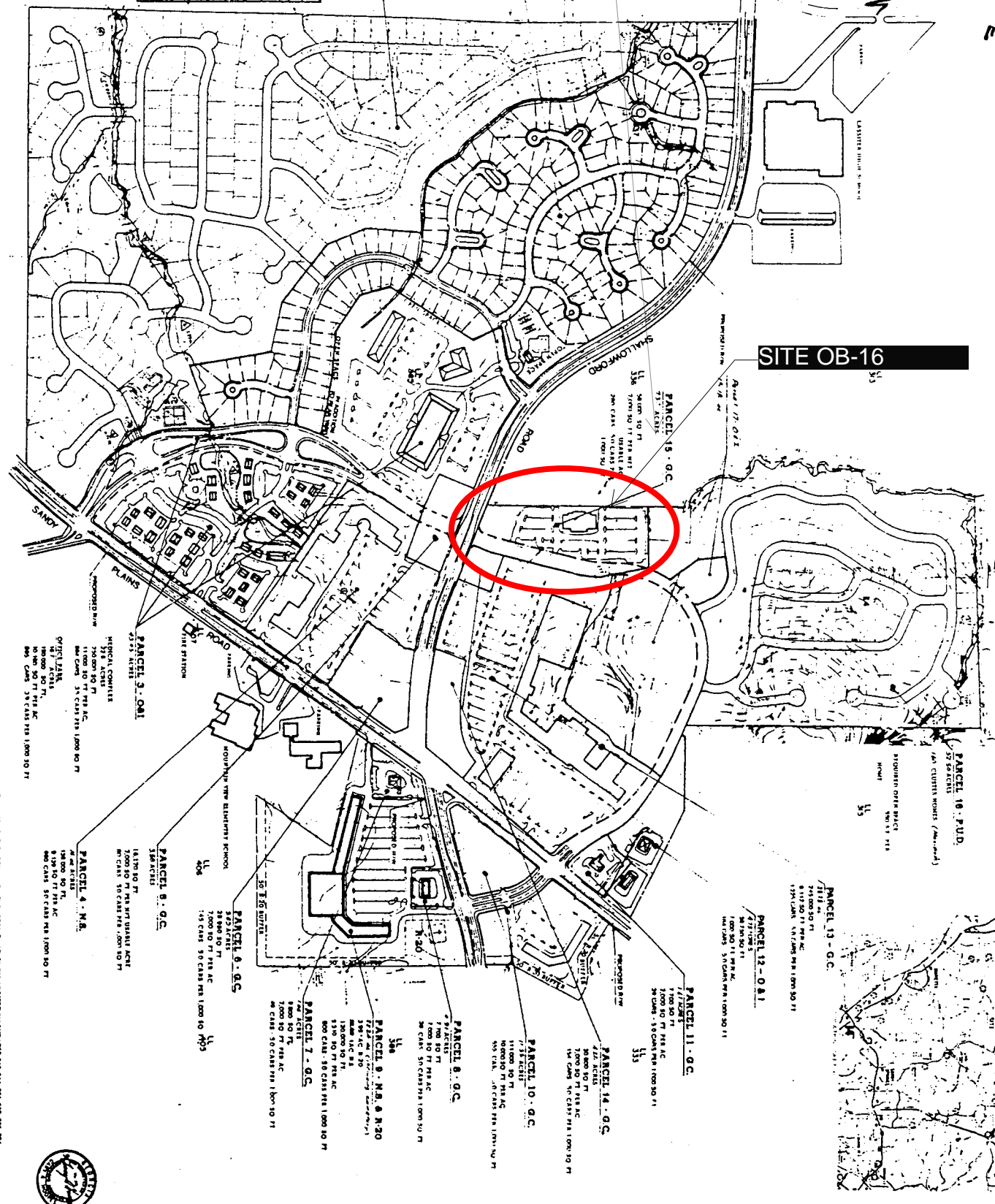
Please see attached page for further information . . .

Karen L. Hach
Karen L. Hach, Deputy Clerk
Cobb County Board of Commissioners

Revised 10-16-1990
 Exhibit "D"
 On reference in
 zoning minutes
 Dec. 18, 1990

WETLAND CHART

WETLAND TYPE	ACRES	PERCENT
SWAMP	1.12	0.12
SHRUB SWAMP	1.12	0.12
WATER	1.12	0.12
WETLAND TOTAL	3.36	0.36



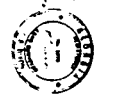
SANDY PLAINS & SHALLOWFORD ROAD PROPERTY

PRELIMINARY PLAN

THOMPSON ENTERPRISES

REBECE, HOOPES & FINCHER
 LAND PLANNERS LANDSCAPE ARCHITECTS
 400 PALMERIE CENTER TOWER - SUITE 40
 ATLANTA, GEORGIA 30308

NOTES: 1. THIS PLAN IS A PRELIMINARY PLAN AND IS SUBJECT TO THE APPROVAL OF THE CITY OF ATLANTA. 2. THE CITY OF ATLANTA RESERVES THE RIGHT TO REVOKE THIS PLAN AT ANY TIME. 3. THE CITY OF ATLANTA RESERVES THE RIGHT TO MODIFY THIS PLAN AT ANY TIME. 4. THE CITY OF ATLANTA RESERVES THE RIGHT TO REVOKE THIS PLAN AT ANY TIME. 5. THE CITY OF ATLANTA RESERVES THE RIGHT TO MODIFY THIS PLAN AT ANY TIME.



RECEIVED

DEC 11 1990

STIPULATIONS OF ZONING APPLICABLE TO THE THOMPSON/GORDY

COBB COUNTY

PLANNING & ZONING

DEPARTMENT

REZONING TRACT

REZONING APPLICATION NO. Z-95

Exhibit "E" - as referenced in
Zoning Minutes of 12-18-90 (X)

In an effort to modify slightly certain pre-existing zoning stipulations placed on this tract of property by action of the Board of Commissioners on December 20, 1988, but primarily to clarify inconsistencies and ambiguities, Applicant agrees that the following stipulations shall be considered conditions of zoning and shall apply to the property which is embodied in the present rezoning application.

Attached as Exhibit "O" is the face of the Application for Rezoning in Application No. 223, which constitutes the final decision of the Board of Commissioners on December 20, 1988, which stands as the official promulgation of zoning of this property. Martin v. Hatfield, 251 GA 638. Applicant shall address these listed conditions ad seriatim:

The first stipulation there delineated is: "1) Staff Recommendations as follows: revised site plan on file and marked as Exhibit "A" and subject to the sight elevation rendering marked as Exhibit "B." If parcel three is not developed as a medical complex, then development would be an office park and follow the same guidelines as the remainder of parcel 3. Staff recommendations dated November 15, 1988 within the December 20, 1988 analysis;"

The stipulations concerning Exhibit "A" (The Site Plan) and Exhibit "B" (The Sight Elevation) are acceptable to applicant. The stipulation concerning the possibility of Parcel 3's not being developed as a medical complex is acceptable.

The references concerning the staff recommendations dated November 15, 1988 within the December 20, 1988 analysis should be deleted. See attached Exhibit 1. The staff's document is largely precatory, is difficult to precisely discern, and is more concretely addressed elsewhere, particularly in attached Exhibit 3.

2) "D.O.T. recommendations dated December 13, 1988;"

This stipulation is partially acceptable. Attached as Exhibits 4 & 5 are the denominated "Recommended Transportation Conditions" dated December 13, 1988. Exhibit 4 concerns those items delineated as "County Responsibility." These conditions are acceptable. Attached Exhibit 5 is entitled "Developer Responsibility." Exhibit 5 should be deleted as it is more specifically addressed in attached Exhibit "3" which is denominated

"E"

"Stipulations and Conditions of Zoning, dated December 20, 1988," and represents seventeen pages of Stipulations and Conditions of Zoning drafted by the attorney for Applicant and which addressed the Developer's responsibilities much more precisely. However, as a result of continuing refinements gleaned from discussions with the Cobb County D.O.T., Developer's responsibilities are further refined as depicted in the revised plan draft by Walden, Ashworth & Associates, Cobb County Project No. 4431.

Furthermore, Applicants and property owners' obligations or responsibilities are limited to right-of-way donation, one lane base and paving, loop road construction, and traffic light installation as more particularly described in attached Exhibit "3" and in these Stipulation refinements. Applicant and property owners shall not be responsible for relocating or costs of relocating any utilities necessitated by the improvements to, or shifting of, Sandy Plains Road and Shallowford Road. The Robertson-Loia, Ruff, Architects & Engineers, Drive Cut Plan, designated as job number 88-296, dated August 8, 1989 shall further govern curb cuts, median breaks, and other matters more particularly described in the referenced plan.

3) "Stipulations and Conditions of Zoning submitted by the Applicant subject to revisions presented verbally after review by the County Attorney and dated December 20, 1988 and marked as Exhibit "C";

This same referenced Exhibit also appears as Exhibit 3 to these Stipulations, and represents the same December 20, 1988 Stipulations mentioned in the previous paragraph. The referenced verbal revisions are included on the face of Exhibit 3 and were initialled by counsel for Applicant. Again, there are certain revisions to this Exhibit 3. They are:

A) The references on the first two pages concerning the effectiveness of stipulations and conditions of zoning and conditioning them upon the acquisition of the entirety of the property of Evelyn J. Gordy-Rankin and Frank Gordy, deceased by Larry B. Thompson. On the face of the document, the zoning stipulations would not become effective if the Evelyn J. Gordy-Rankin property were not acquired by Larry B. Thompson by July 31, 1989. While Applicant Larry B. Thompson currently has a contract in effect with Evelyn J. Gordy-Rankin and the estate of Frank Gordy to presently purchase a portion of the property, with a two year option to purchase the balance of the property, Larry B. Thompson has obviously not "purchase(d) the balance of the single 'involved' property . . . by July 31, 1989. . . "

Applicant Larry B. Thompson seeks to modify this referenced Stipulation as follows:

If Applicant Larry B. Thompson closes (purchases) any of the property presently owned by Evelyn J. Gordy-Rankin and the property owned by the estate of Frank Gordy, deceased, the Stipulations of

Zoning shall apply to the entirety of the property of Evelyn J. Gordy-Rankin, the property of the estate of Frank Gordy, deceased, and the property presently owned by Larry B. Thompson which is included in this Rezoning Application. In the event Larry B. Thompson fails to close (purchase) any of the property presently owned by Evelyn J. Gordy-Rankin and the estate of Frank Gordy, deceased, then the property included in this Rezoning Application (the property of Evelyn J. Gordy-Rankin, the estate of Frank Gordy, deceased and the property owned by Larry B. Thompson) shall revert to the zoning applicable to the respective properties prior to December 20, 1988, further free of all stipulations and conditions of zoning applied conditionally here and by action of the Board of Commissioners on December 20, 1988.

Provision I (5) entitled "Traffic Stipulations" will be further revised by the plans submitted by Walden, Ashworth & Associates, Cobb County Project #4431. The Robertson-Loia, Ruff, Architects & Engineers, Drive Cut Plan, designated as job number 88-296, dated August 8, 1989 shall further govern curb cuts, median breaks, and other matters more particularly described in the referenced plan.

The twelve feet lanes to be constructed on Sandy Plains Road and Shallowford Road shall be constructed in lieu of any additional acceleration/deceleration lanes generally required by the Cobb D.O.T. on developments of this nature.

Provision II (2) concerning signage shall be revised to permit certain usage of temporary signs which will not be required to be "monument" signs. These temporary non-monument signs shall include construction lending signs and others of a similar nature.

Provision VI (A) shall be clarified in order that an anticipated car wash facility which has ancillary sale of gasoline shall not be considered one of the two gas/service stations envisioned under VI (A).

4) "Memo on future land use submitted at hearing December 20, 1988."

This should be deleted as being precatory and a general admonishment. The specifics evincing compliance are more fully expatiated in this and other referenced documents.

5) "Recommended transportation plan presented at original hearing of November 15, 1988."

Applicant requests this condition be deleted, as it completely lacks precision and definition. Applicant submits that the Stipulations and Conditions of Zoning referenced in this document are unambiguous and contain the definiteness required of a condition of zoning.

Additional stipulations and conditions of zoning.

Any and all of the payments and physical improvements on any property to be deeded to or accepted by Cobb County, Georgia, as well as any utilities infrastructure improvements, the costs of which will be borne by Applicant, shall be considered as impact fees by Cobb County, any authority operating in Cobb County, and by any other governmental entity. The costs of these referenced improvements, as well as the costs of any donated property, shall be considered in lieu of any impact fees in the event impact fees are, in the future, required by any governmental entity or authority.

As there is inherent ambiguity as to what constitutes the December 20, 1988 Decision of the Board of Commissioners, which initially zoned this property, Applicant, in an abundance of caution, seeks clarification on the following:

Attached Exhibit 6, containing the planning comments and traffic comments should be revised so that price ranges for the P.D. and R-15 residential houses shall be deleted. As Applicant envisions approximately a ten year build out period, and with the present uncertainty in the real estate markets, pre-ordained prices are inappropriate. Quality of the development is adequately addressed, but market principles should govern pricing. Traffic comments should be deleted as they are more exhaustively contemplated elsewhere.

Attached Exhibit 7 contains Planning comments. Again, pricing of residences should be deleted for the previously articulated reason, but also for the fact that the prices listed on Exhibit 7 are inconsistent with those listed on Exhibit 6, both prepared by Cobb County staffers. Then-anticipated multi-family use should be deleted, as Cobb Count presently lacks sewage capacity to service multi-family usage.

References contained in the Commercial Parcel heading should be revised to reflect that an Auto mall-car wash facility, which has as an ancillary usage gasoline sales, should not be considered one of the two gasoline sales sites.

References to denial of direct access of out parcels to main roads should be revised, as this has been deemed impractical as more particularly depicted in the revised plan by Walden, Ashworth and Associates, Cobb County Project #4431.

References to landscaping should be deleted as more particularly addressed at VII of Exhibit 3.

References to signage should be deleted as more specifically embodied in II (2) of Exhibit 3 as revised by these Stipulations.

References to development of the proposed loop road network

should be clarified to reflect that the construction of the loop road will be phased; i.e., as Applicant purchases portions of the Gordy-Rankin property, the loop roads servicing the purchased property shall be constructed. Contemporaneously with the development of any portion of the subject property, the loop road which shall service the particular property which it abuts shall be constructed.

References to the minimum fifty foot undisturbed natural buffer shall be revised, as the contiguous Whitfield Subdivision property shall be graded and replanted.

The medical complex/hospital shall contain a maximum of 120 beds.

Attached Exhibit 8, which contains planning comments and historic preservation comments shall be deleted as more particularly embodied in XIII of Exhibit 3.

Attached Exhibit 9, entitled "Drainage Comments" is acceptable.

Exhibit 10 containing the water comments, sewer comments, school comments, fire comments, and drainage comments are acceptable except to the extent modified by attached Exhibit "11", being a letter from Cobb County Sewer and Water, dated September 12, 1990, which guarantees sewer capacity. Additionally, while Applicant is responsible for acquisition of easements, this shall clarify that Cobb County is, in certain instances, assisting Applicant in obtaining easements through Cobb County's exercise of eminent domain powers.

Exhibit 2, entitled "Stipulations as part of the approval on Gordy tract" are acceptable except for subprovision 1, which is more particularly addressed in Exhibit 3 and in these proposed revisions. Subprovision 5 is acceptable, except for one commercial tract at the corner of Sandy Plains and loop road north. Subprovision 6 should be deleted.

Submitted this 11th day of DECEMBER, 1990.

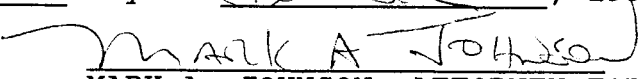
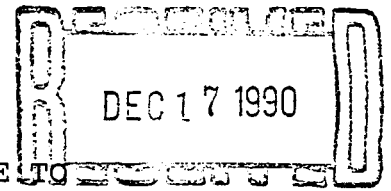

MARK A. JOHNSON, ATTORNEY FOR
APPLICANT, LARRY B. THOMPSON

Exhibit "F" - as referenced in zoning
minutes of 12-18-90 @

PLANNING DEPT.



REZONING APPLICATION NO. Z-95
ADDENDUM TO STIPULATIONS OF ZONING APPLICABLE TO
THE THOMPSON/GORDY REZONING TRACT

SENT TO: _____

In addition to the stipulations of zoning applicable to the Thompson/Gordy rezoning tract filed with the Cobb County Planning and Zoning Department December 11, 1990, applicant Larry B. Thompson amends his previous stipulations filed December 11, 1990 as follows:

(1) The document entitled "Comments and Staff Recommendations, Petition No. 223, November 15, 1988", attached to this Addendum as Exhibit 12, should be deleted as a condition or stipulation of zoning. These matters have been superseded by negotiations by applicant and the zoning staff, and are more particularly addressed elsewhere.

(2) Exhibit 5 to the Stipulations of Zoning applicable to the Thompson/Gordy rezoning tract, entitled "Developer Responsibility" should be deleted for the additional reason that these conditions, to which applicant did not accede, were resolved by virtue of the case of Evelyn J. Gordy-Rankin and Larry B. Thompson, Plaintiffs v. Cobb County, Georgia, et al, Civil Action File No. 89-10354-03, Superior Court of Cobb County.

"F"

(3) Previously addressed Exhibit No. 8, denoted "Historic Preservation" was deleted by Applicant by virtue of his stipulations filed December 11, 1990. However, Applicant concedes that the fifty foot buffering conditions surrounding the cemetery property is an acceptable condition of zoning and one which Applicant reinstates and reaffirms.

The denominated stipulations of zoning applicable to the

Thompson/Gordy rezoning tract, filed in this rezoning application no. Z-95 on December 11, 1990 shall otherwise remain in full forth and effect.

Submitted this 17th day of December, 1990.

ATTORNEY FOR APPLICANT
LARRY B. THOMPSON

MARK A. JOHNSON, P.C.

Mark A. Johnson
MARK A. JOHNSON