

**OCTOBER 19, 2010 ZONING HEARING  
“OTHER BUSINESS”  
COMMISSION DISTRICT 2**

**ITEM # 2**

**PURPOSE**

To consider a Settlement of Litigation for Tri-Kell Investments, Inc, Riverview Associates.Ltd. and Riverview Village, LLC regarding rezoning application Z-49 (Tri-Kell Investments, Inc.) of 2008, for property located at the northwesterly intersection of U.S. Highway 41 and Paces Mill Road in Land Lots 976, 977, 1016 and 1017 of the 17<sup>th</sup> District.

ORIGINAL DATE OF APPLICATION: 10-21-08APPLICANTS NAME: TRI-KELL INVESTMENTS, INC.THE FOLLOWING REPRESENTS THE FINAL DECISIONS OF THE  
COBB COUNTY BOARD OF COMMISSIONERS**BOC DECISION OF 02-17-09 ZONING HEARING:**

**TRI-KELL INVESTMENTS, INC.** (Riverview Associates, Ltd. and Riverview Village, LLC, owners) requesting Rezoning from **GC** to **RRC** for the purpose of Mixed Use Development in Land Lots 976, 977, 1016 and 1017 of the 17<sup>th</sup> District. Located at the northwesterly intersection of U.S. Highway 41 and Paces Mill Road.

The public hearing was opened and Mr. John Moore, Mr. Ron Sifen and Ms. Jody Smith addressed the Board. Following presentation and discussion, the following motion was made, discussed and amended as follows:

MOTION: Motion by Ott, second by Goreham, to **approve** Rezoning to the **RRC** zoning district **subject to**:

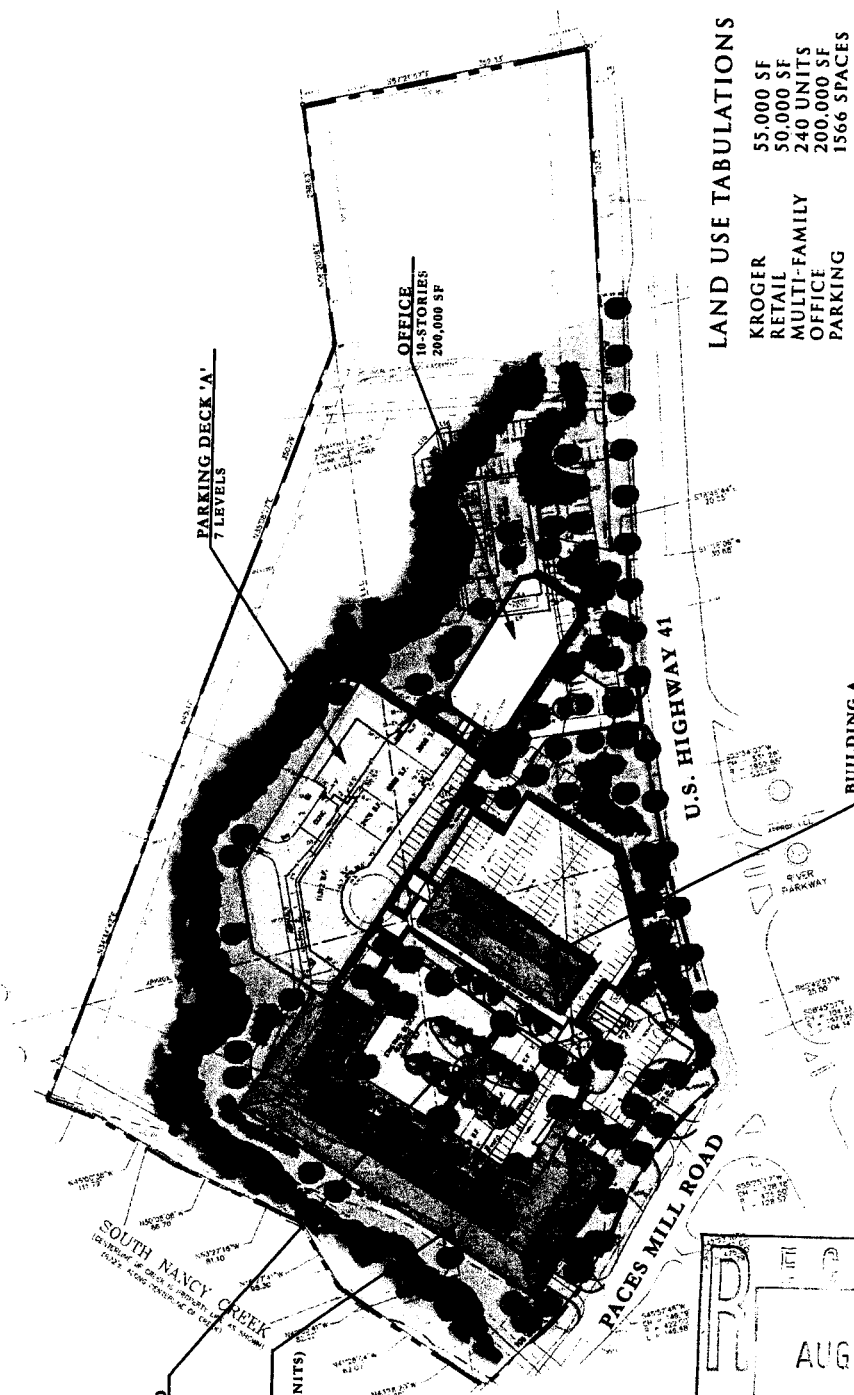
- site plan submitted, received by the Zoning Division August 7, 2008, with the District Commissioner approving minor modifications (attached and made a part of these minutes)
- final site plan approval by the District Commissioner
- reversion clause so that if a demolition permit and subsequent construction permit is not pulled, along with demolition of site, within 36 months - then the site reverts back to the previous zoning (applicant may return to BOC as an Other Business Item if Highway 41 project issues arise)
- letter of agreeable conditions from Mr. John Moore dated February 3, 2009, not otherwise in conflict and with the following changes (attached and made a part of these minutes):
  - Page No. 3 – Item No. 8 – last sentence change to: “...from 7:00 a.m. to 7:00 p.m. and Sunday from 2:00 p.m. to 7:00 p.m.”
  - Page No. 3 – Item No. 9 – last sentence change to: “... Monday through Saturday from 7:00 a.m. to 10:00 p.m. and Sunday from 11:00 a.m. to 9:00 p.m.”
  - maximum of 105,000 square feet of commercial development (office and retail) as shown on site plan
- maximum of 180 residential units *unless Highway 41 is widened, if widened, then the maximum number of units allowed will be 216*
- maximum of 8 stories for the office building; *however if Highway 41 is widened up to 10 stories will be allowed*
- Development of Regional Impact Study (including GRTA and ARC findings on file in the Zoning Division)
- Fire Department comments and recommendations
- Water and Sewer Division comments and recommendations
- Stormwater Management Division comments and recommendations
- *revised* Cobb DOT comments and recommendations (attached and made a part of these minutes)
- 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** 3-2 (Goreham and Olens opposed)

Min. Bk. 57 Petition No. 2-49 '08  
 Doc. Type Site Plan  
 Meeting Date 2-17-09



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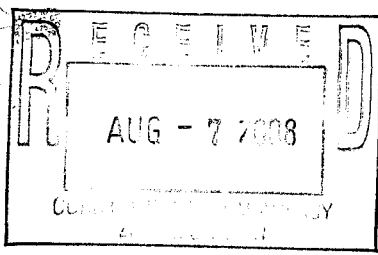
**LAND USE TABULATIONS**

KROGER	55,000 SF
RETAIL	50,000 SF
MULTI-FAMILY	240 UNITS
OFFICE	200,000 SF
PARKING	1566 SPACES

1140 SPACES @ PARKING DECK 'A'  
 370 SPACES @ PARKING DECK IN BUILDING B  
 56 SURFACE SPACES @ COURTYARD

**BUILDING 'B'**  
 RETAIL-1 STORY (50,000 SF)  
 RESIDENTIAL-4 STORIES (192 UNITS)  
 PARKING-2 LEVELS BELOW

**BUILDING A**  
 KROGER (55,000 SF)  
 RESIDENTIAL-3 STORIES (48 UNITS)



**RIVERVIEW**  
 TRAMMELL CROW RESIDENTIAL/TRI-KELL INVESTMENTS



# MOORE INGRAM JOHNSON & STEELE

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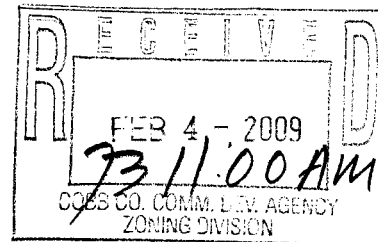
OF COUNSEL  
JOHN L. SKELTON, JR.<sup>†</sup>

<sup>†</sup> ALSO ADMITTED IN TN  
\* ALSO ADMITTED IN FL  
\*\* ALSO ADMITTED IN NM  
\*\*\* ALSO ADMITTED IN NC  
\*\*\*\* ALSO ADMITTED IN CA  
♦ ADMITTED ONLY IN TN

February 3, 2009

Hand Delivered

Mr. John P. Pederson, AICP  
Planner III  
Zoning Division  
Cobb County Community Development Agency  
Suite 300, 191 Lawrence Street  
Marietta, Georgia 30060-1661



RE: Application for Rezoning - Application No. Z-49 (2008)

Applicant: Tri-Kell Investments, Inc.  
Owners: Riverview Associates, Ltd. and  
Riverview Village, LLC

Min. Bk. 57 Petition No. Z-49 Property:  
Doc. Type Letter of agreeable  
Conditions  
Meeting Date 2-17-2009

18.01 acres located at the intersection of the  
westerly side of Cobb Parkway and the  
northerly side of Paces Mill Road,  
Land Lots 976, 977, 1016, and 1017,  
17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia

Dear John:

As you know, the undersigned and this firm represent the Applicant, Tri-Kell Investments, Inc. (hereinafter referred to as "Applicant"), and the Property Owners, Riverview Associates, Ltd. and Riverview Village, LLC (hereinafter collectively referred to as "Owners"), in the above-referenced Application for Rezoning with regard to a total tract of 18.01 acres, more or less, located at the intersection of the westerly side of Cobb Parkway and the northerly side of Paces Mill Road, Land Lots 976, 977, 1016, and 1017, 17<sup>th</sup> District, 2<sup>nd</sup> Section, Cobb County, Georgia (hereinafter referred to as the "Property" or the "Subject Property"). After review and completion of the Development of Regional Impact ("DRI") process by the Atlanta Regional Commission and the Georgia Regional Transportation Authority; meetings with planning and zoning staff; reviewing the zoning staff comments and recommendations; discussions and meetings with area residents and homeowner representatives; and reviewing the uses of

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Zoning Division  
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surrounding properties, we have been authorized by the Applicant and Owners to submit this letter of agreeable stipulations and conditions, which, if the Application for Rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the Subject Property. This letter shall supersede and replace in full the letter of agreeable stipulations and conditions dated and filed November 26, 2008. The revised 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; together with any and all Departmental Comments and Staff Recommendations relating to the Subject Property from any prior zoning actions.
- (2) Applicant seeks rezoning of the Subject Property from the existing zoning category of General Commercial ("GC") to the proposed zoning category of Regional Retail Commercial ("RRC"), with reference to the Site Plan prepared for Applicant by Hughes Good O'Leary & Ryan dated September 2, 2002, and submitted to the Cobb County Zoning Office with the Application for Rezoning on August 7, 2008.
- (3) The Subject Property consists of approximately 18.01 acres of total site area and shall be developed for a mixed-use development consisting of office, retail, and condominiums and related services.

**STIPULATIONS APPLICABLE TO THE OVERALL DEVELOPMENT**

- (1) There shall be master protective covenants for the entire development which will include all phases of the development; and concurrent therewith a master association, and possibly sub-associations, will be formed which will include all component parts of the proposed development. The master association shall be responsible for the oversight, upkeep, and maintenance of the entrance areas, common areas, open space areas, and the like contained within the overall development.
- (2) The master association, and any sub-associations, to be formed hereunder shall have architectural design regulations which shall control such items as signage for

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individual units, and other such usual and necessary covenants and restrictions to protect the quality and integrity of the total development.

- (3) Entrances to the proposed development shall be as more particularly shown and reflected on the referenced Site Plan.
- (4) Entrance signage for the proposed overall development shall be ground-based, monument-style signage, with the finish, materials, and color being in conformity with the architecture and design of the various components. Such signage shall contain no flashing sign components.
- (5) The entrance areas, together with all islands and planted areas, shall be professionally designed, landscaped, and maintained. These areas shall be part of the overall landscape plan approved by staff as part of the plan review process.
- (6) Lighting within the proposed development shall be environmentally sensitive, decorative, and themed to the architecture and style of the respective components of the development.
- (7) Additionally, hooded security lighting shall be utilized on the exteriors of the buildings and throughout the walkways, parking, and parking deck areas.
- (8) All dumpsters servicing any portion of the overall development shall be enclosed with a minimum six (6) foot high brick enclosure on three sides with a solid wooden screen gate or doors on the access side. All dumpsters shall contain rubber lids to minimize noise. Dumpsters shall be emptied Monday through Saturday from 5:00 a.m. to 7:00 p.m. and Sunday from 2:00 p.m. to 7:00 p.m.
- (9) Parking lot cleaning with the use of mechanical equipment shall be restricted to hours Monday through Saturday from 5:00 a.m. to 10:00 p.m. and Sunday from 11:00 a.m. to 9:00 p.m.
- (10) Deliveries to the proposed retail uses shall be limited to between the hours of 5:00 a.m. to 11:00 p.m., Monday through Friday; 9:00 a.m. to 7:00 p.m. on Saturday and Sunday.
- (11) Store hours which are open to the public for the retail uses proposed for this development shall be limited to Monday through Saturday, 6:00 a.m. to

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10:00 p.m. and Sunday from 6:00 a.m. to 9:00 p.m. Restaurants may remain open until 2:00 a.m.

- (12) There shall be no tenant vehicles or vehicles of any type parked in front of the proposed buildings containing tenant identification signage or advertising signage. This provision shall be contained within any lease between Applicant and any prospective tenant, and Applicant agrees to enforce these provisions against any tenant which violates the foregoing. Additionally, there shall be no vehicles parked in front of the proposed retail centers with "for sale" signs posted thereon.
- (13) Minor modifications to the within stipulations, the referenced Site Plan, lighting, landscaping, architecture, site features, and the like, may be approved by the District Commissioner, as needed or necessary.
- (14) All setbacks and buffer areas may be penetrated for purposes of access, utilities, and stormwater management, including, but not limited to, detention/retention facilities, drainage facilities, and any and all slopes or other required engineering features of the foregoing.
- (15) Applicant agrees to comply with all Cobb County development standards and ordinances relating to project improvements, except as approved by the Board of Commissioners or by the Department of Transportation or Community Development Agency, as their authority may allow.
- (16) All streets within the proposed development shall be private with the construction therefor complying in all respects as to materials, base, and other requirements to the Cobb County Code.
- (17) All landscaping referenced herein shall be approved by the Cobb County Arborist as part of the plan review process and incorporated into the overall landscape plan for the proposed development.
- (18) Applicant agrees to comply with all Cobb County Stormwater Management requirements applicable to the Subject Property.
- (19) All utilities for the proposed development shall be located underground.

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- (20) The following uses shall be prohibited from the proposed overall development:
- (a) Video arcades as a primary use;
  - (b) Adult-themed bookstores as a primary use;
  - (c) Automotive sales, repair, and/or service facilities;
  - (d) Gas station;
  - (e) Truck and trailer leasing facilities;
  - (f) Automotive paint and body repair shops;
  - (g) Automotive upholstery shops;
  - (h) Billiards and pool halls which are the sole or predominant use;
  - (i) Bus stations (not to exclude bus stops);
  - (j) Fraternity and sorority house;
  - (k) Full-service gas stations;
  - (l) Light automotive repair;
  - (m) Rooming houses and boarding houses;
  - (n) Any form of adult entertainment business; and
  - (o) Nightclubs and bars, except that same would be permitted within a restaurant or hotel provided that they are an integral part of a restaurant or hotel operation.
- (21) As to the overall development, there shall be "zero lot lines" among the various components within the development so as to allow for the free flow of access, parking, and the like.



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- (22) The exterior walls of the various levels of the parking deck referenced herein shall be of sufficient height to block vehicle lights from shining outside the deck.
- (23) Applicant agrees to install Leyland Cypress along the westerly property line, being the southerly one-half of this property line, and the southerly property line, being the westerly one-half of this property line. These plantings shall be a minimum of eight (8) feet in height, planted on a staggered row with ten (10) foot centers. These shall be installed by Applicant, at the latest, upon commencement of construction of the proposed re-development.

**I. OFFICE COMPONENT**

- (1) The office component of the proposed development shall consist of a maximum 10-story office tower containing approximately 200,000 square feet.
- (2) Parking for tenants of the proposed office tower shall be accomplished by providing connectivity to the proposed maximum 7-level parking deck (denoted as Parking Deck "A" on the referenced Site Plant). The parking deck shall provide approximately 1,140 spaces.
- (3) The exterior finish of the proposed office building shall consist of glass, brick, stone, and stucco, or combinations thereof; and shall be substantially similar to the renderings presented to the Planning Commission and Board of Commissioners at the respective upcoming public hearings.

**II. RESIDENTIAL CONDOMINIUM UNITS**

- (1) The residential condominium units shall be located as follows:
  - (a) A maximum of forty-eight (48) units shall be contained within a maximum of three (3) stories located above the one-story retail (proposed Kroger store) building noted as "Building A" on the referenced Site Plan; and

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- (b) A maximum of one hundred ninety-two (192) units shall be contained within a maximum of four (4) stories located above the one-story retail building noted as "Building B" on the referenced Site Plan; together with parking consisting of a maximum of two (2) levels beneath the building.
- (2) There shall be a maximum of two hundred forty (240) condominium units ranging from 700 to 2,000 square feet in heated living space. The average unit shall be approximately 1,100 square feet.
- (3) The exterior finish of the proposed residential condominium units shall consist of brick, stone, or stucco, or combinations thereof.
- (4) Floor plans and finishes for the residential condominium units shall consist, at a minimum, of the following:
  - (a) Enhanced corian, granite, or marble counter tops, or other solid surface materials;
  - (b) Gas burning fireplaces as an upgrade;
  - (c) Minimum ceiling heights:
    - i) Minimum 9 feet from floor to finished ceiling and greater; and
    - ii) Minimum 10 feet between floors;
  - (d) European or upscale wooden face-frame cabinetry;
  - (e) Stainless steel appliances or equivalent;
  - (f) Extra-deep stainless steel sinks and side-by-side refrigerators/freezers as upgrades;
  - (g) A selection of hardwood flooring, high-end carpet, and tile throughout;
  - (h) Spacious open floor plans which eliminate the necessity for typical hallways within the units;

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- (i) Brushed chrome, brushed nickel, or oiled rubbed bronze bathroom and kitchen fixtures;
  - (j) Ceramic tile bathrooms and laundry rooms;
  - (k) Spacious walk-in closets;
  - (l) High-speed internet wiring in all rooms of each unit;
  - (m) Garden tubs with showers;
  - (n) Eight (8) foot entry doors subject to fire rating.
- (5) The residential units shall be condominiums as the term "condominium" is defined under the Georgia Condominium Act.
- (6) The residential units shall be "for sale" units only. A maximum of ten (10) percent of the proposed units may be leased at any one time.

**III. RETAIL COMPONENT**

- (1) The retail component of the proposed development shall be contained within two separate buildings as follows:
- (a) Approximately 55,000 square feet for a proposed supermarket located on the ground level of "Building A," as more particularly shown and reflected on the referenced Site Plan;
  - (b) Approximately 50,000 square feet of retail space located on the ground level of "Building B," as more particularly shown on the referenced Site Plan.
- (2) The exterior façade of the buildings for the retail component shall consist of glass, brick, stone, and stucco, or combinations thereof, and shall be substantially similar to the renderings presented to the Planning Commission and Board of Commissioners at the respective public hearings.

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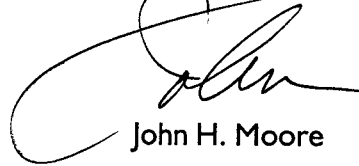
- (3) All exhausts from restaurant facilities shall be filtered to minimize grease and odors.

We believe the requested zoning, pursuant to the Site Plan and the stipulations set forth herein, is an appropriate use of the Subject Property. The proposed community is an exciting project which fits together various types of product into one development. The proposed development shall promote the "live where you work" concept; shall be of the highest quality; shall be compatible with surrounding retail developments, businesses, and neighborhoods; and shall be an enhancement to the Subject Property and Cobb County as a whole. Thank you for your consideration in this request.

With kindest regards, I remain

Very truly yours,

MOORE, INGRAM, JOHNSON & STEELE, LLP



John H. Moore

JHM:cc

c: Cobb County Board of Commissioners:  
Samuel S. Olens, Chairman  
Helen C. Goreham  
Annette Kesting  
Joe L. Thompson  
Tim Lee

Ron Sifen  
Shane Coldren  
Vinings Homeowners Association

Steve Robinson  
Area Resident

Tri-Kell Investments, Inc.

APPLICANT: Tri-Kell Investments, Inc.

PETITION NO.: Z-49

PRESENT ZONING: GC

PETITION FOR: RRC

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**TRANSPORTATION COMMENTS**

Min. Bk. 57 Petition No. 2-49 '08  
Doc. Type Revised DOT  
Comments/Recommendations  
Meeting Date 2-17-09  
Meeting Location Field investigation and office review

The following comments and recommendations are based on field investigation and office review of the subject rezoning case:

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Cobb Parkway	22660	Arterial	55 mph	GDOT	100'
Paces Mill Road	11700	Major Collector	35 mph	Cobb County	80'

*Based on 2007 traffic counting data taken by GDOT. (Cobb Parkway)*  
*Based on 2007 traffic counting data taken by Cobb County DOT. (Paces Mill Road)*

**COMMENTS AND OBSERVATIONS**

Cobb Parkway is classified as an Arterial and according to the available information; the existing right-of-way does meet the minimum requirements for this classification.  
Paces Mill Road is classified as a Major Collector and according to the available information; the existing right-of-way does meet the minimum requirements for this classification.

Cobb Parkway is identified as a road improvement project.

The applicant understands that the GDOT project will convert the full access southern drive on Cobb Parkway to a right-in/ right-out.

The western side of Cobb Parkway is identified as the corridor for the extension of the Mountain to River Trail.

Install sidewalk, curb and gutter along Paces Mill Road.

GDOT permits will be required for work that encroaches upon State right-of-way.

**RECOMMENDATIONS**

Recommend applicant enter into a development agreement pursuant of O.C.G.A. 36-71-13 for dedication of the following system improvements to mitigate traffic concerns: a) donation of right-of-way and easements on the west side of Cobb Parkway and the north side of Paces Mill Road, a minimum to accommodate the proposed road widening and trail project, GDOT Project Number STP-001-5(47).

Recommend applicant coordinate with Cobb County DOT prior to development plan approval to ensure compatibility with the proposed road improvement project and the trail extension.

Recommend installing sidewalk, curb and gutter along Paces Mill Road.

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

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

