

**FEBRUARY 17, 2015 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 3**

ITEM OB- 67 (2014)

PURPOSE

To clarify and give Staff direction regarding a zoning stipulation for the Enclave at Cripple Creek subdivision regarding rezoning application Z-132 of 2006 (Ovation Homes, LLC), for property located at the southwesterly intersection of North Booth Road and Cripple Creek Drive in Land Lots 217 and 288 of the 16th District. (*Held by the Board of Commissioners’ from the November 18, 2014 Board of Commissioners hearings*)

BACKGROUND

The subject property was zoned RA-5 with stipulations in 2006. The project sat partially developed during the recent recession, and was lost by the original developer. One of the stipulations reads:

“Maximum ten percent (10%) rental clause to be included in covenants”

It has been brought to Staff’s attention that this clause was not included in the covenants. The declarant and original developer are defunct and no longer involved in this project. Almost all the houses have been built and sold. A number of the houses have been purchased as rental properties by other parties. Since the declarant is gone, there is not an entity to serve notices of violations or citations to regarding this stipulation. Also, Cobb County normally does not get involved with private covenants. This stipulation causes a conflict with the County’s policy of staying out of private covenants and enforcing the zoning stipulations. Staff would need clarification and direction from the Board of Commissioners regarding keeping this zoning stipulation, deleting the zoning stipulation or amending the zoning stipulation. The Board of Commissioners' decision is attached for review.

RECOMMENDATION

The Board of Commissioners consider the proposed request for clarification and direction.

ATTACHMENTS

Zoning Stipulations

Application for Rezoning Cobb County, Georgia

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

Application No. Z- 132

PC Hearing Date: 09/06/06

BOC Hearing Date: 09/19/06

Applicant OVATION HOMES, LLC
(applicant's name printed)

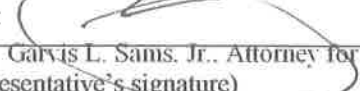
Business Phone 770/633-5361

Address 295 West Crossville Rd., Suite 630, Roswell, GA 30075

Home Phone _____

SAMS, LARKIN & HUFF, LLP
(representative's name printed)

Address 376 Powder Springs St., Ste. 100, Marietta, GA 30064

By: 
Garvis L. Sams, Jr., Attorney for Applicant
(representative's signature)

Business Phone 770-422-7016

Beeper or Fax # 770-426-6583

Signed, sealed and delivered in presence of:

Julia B. McCarson
Notary Public

My commission expires: _____



Titleholder SEE ATTACHED
(titleholder's name, printed)

Business Phone _____

Signature SEE ATTACHED
(attach additional signature, if needed)

Address _____

Signed, sealed and delivered in presence of:

Notary Public

My commission expires: _____

Zoning Request From R-20
(present zoning)

to RA-5
(proposed zoning)

For the Purpose of Single family detached residential community
(subdivision, restaurant, warehouse, apt., etc.)

Size of Tract 6.07 **Acre(s)**

Location Intersection of Shiloh Road and Booth Road, along western side of Cripple Creek Drive
(street address, if applicable; nearest intersection, etc.)

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

We have investigated the site as to the existence of archeological and/or architectural landmarks. I hereby certify that there ~~are~~ are no such assets. If any exist, provide documentation with this application.

OVATION HOMES, LLC
By: 
Garvis L. Sams, Jr., Attorney for Applicant

We have investigated the site as to the existence of any cemetery located on the above property. I hereby certify that there ~~is~~ is not such a cemetery. If any exist, provide documentation with this application.

OVATION HOMES, LLC
By: 

ATTACHMENT TO APPLICATION FOR REZONING

Application No.: Z- 132

Hearing Dates:

Planning Commission: 09/06/06

Board of Commissioners: 09/19/06

Applicant: OVATION HOMES, LLC

Titleholder: GREGORY JOEL HULSEY and KAREN R. HULSEY

Signature: *Gregory Joel Hulsey*
GREGORY JOEL HULSEY,
a/k/a GREGORY HULSEY

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

Address: 797 N. Booth Road

Kennesaw, GA 30144

Telephone No.: ()

Signed, sealed and delivered
in the presence of:

Shabbi Ahmad



Expires: 4/18/2010

Application No.: Z-132

Hearing Dates:

Planning Commission: 09/06/06

Board of Commissioners: 09/19/06

Applicant: OVATION HOMES, LLC

Titleholder: RUBY D. HAMBY

Signature: *Ruby D Hamby*
RUBY D. HAMBY

Address: 4430 Lambert Drive

Kennesaw, GA 30144

Telephone No.: (770) 926.5214

Signed, sealed and delivered
in the presence of:

Claudette Ebanks

Notary Public

Commission Expires: April 17, 2010

(Notary Seal)

June 30, 2006.

ORIGINAL DATE OF APPLICATION: 09-19-06APPLICANTS NAME: OVATION HOMES, LLC

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

BOC DECISION OF 09-19-06 ZONING HEARING:

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

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

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

- **site plan dated September 7, 2006, with District Commissioner to approve final site plan (copy attached and made a part of these minutes)**
- **letter of agreeable stipulations from Mr. James Balli dated September 13, 2006 (copy attached and made a part of these minutes)**
- **mandatory homeowners association**
- **maximum ten percent (10%) rental clause to be included in covenants**
- **Bells Ferry Civic Organization representative(s) to be at available at Plan Review**
- **engineering to be completed prior to issuance of Land Disturbance Permits**
- **potential homeowners to be informed of the changes recommended by DOT staff**
- **Fire Department comments and recommendations**
- **Water and Sewer Division comments and recommendations**
- **Stormwater Management Division comments and recommendations**
- **Cobb DOT comments and recommendations**
- **owner/developer to enter into a Development Agreement pursuant to O.C.G.A. §36-71-13 for dedication of system improvements to mitigate traffic concerns**

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



OVATION HOMES
 700 North Peachtree Street, N.E.
 Atlanta, Georgia 30309
 Phone: 404.525.8800
 Fax: 404.525.8801

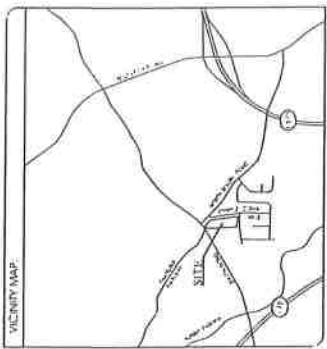
Revision: _____
 Date: _____
 No. _____
 Description: _____



Project Title:
**THE ENCLAVE AT
 CRIPPLE CREEK**
 A Single Family Residential Subdivision

Project Location:
 270 North Peachtree Street
 L.L. 217 & 281, 104 Duross, 2nd Section
 DeKalb County, Georgia
 Project No.: 10-012100
 Date: 10/1/00
 LTR: 10/1/00
 1st Packet File: September 7, 2006
 Scale: Horizontal: 1" = 40'
 Vertical: 1" = 20'

Sheet Title:
SITE PLAN



SITE DATA

ACRES: 6.37 ACRES
 TOTAL LOT AREA: 276,000 SQ. FT.
 TOTAL LOT AREA: 6.37 ACRES
 TOTAL LOT AREA: 276,000 SQ. FT.
 TOTAL LOT AREA: 6.37 ACRES
 TOTAL LOT AREA: 276,000 SQ. FT.

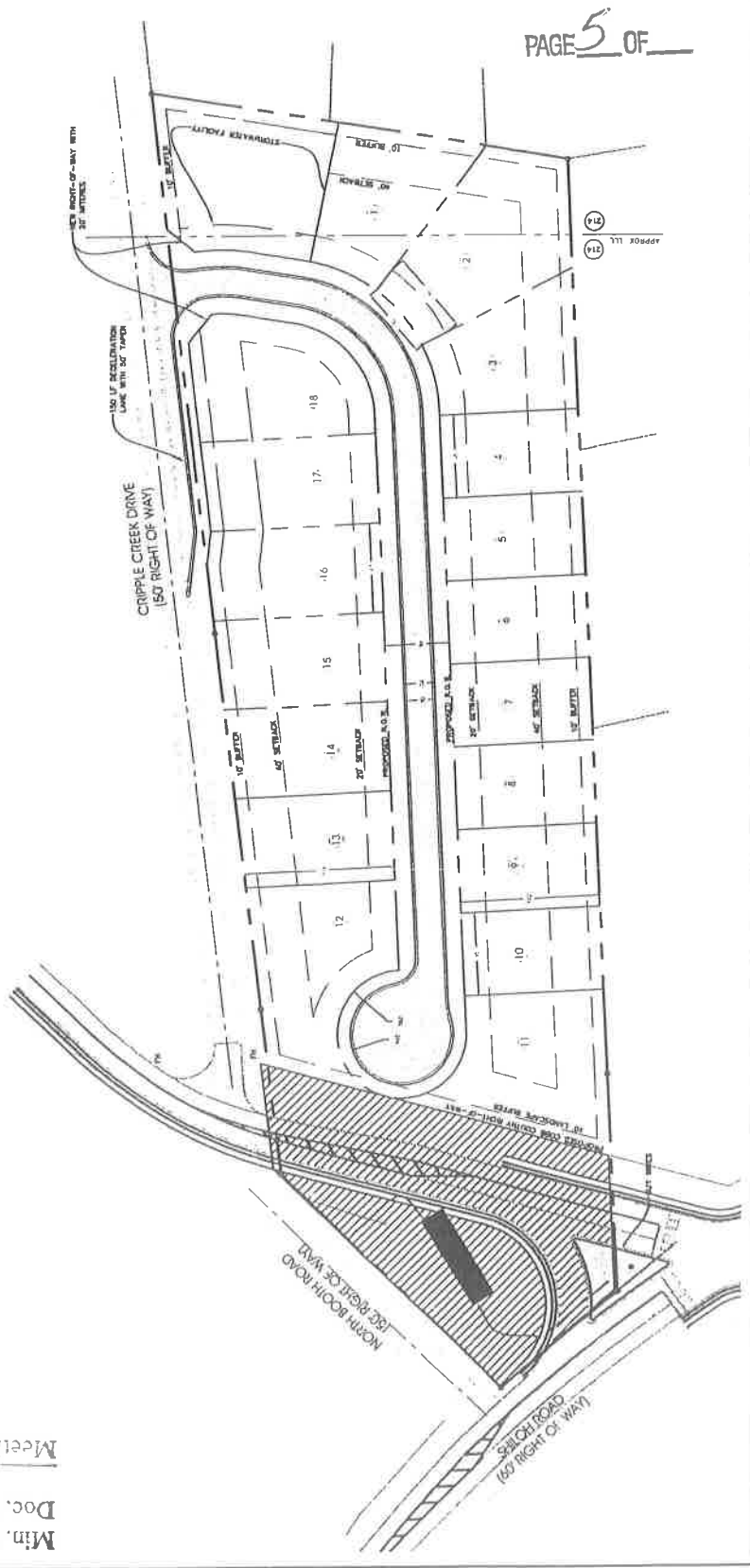
FINANCING REQUIREMENTS:

1. NO LOTS TO BE BUILT ON THE SAME DAY.
 2. NO LOTS TO BE BUILT ON THE SAME DAY.
 3. NO LOTS TO BE BUILT ON THE SAME DAY.
 4. NO LOTS TO BE BUILT ON THE SAME DAY.
 5. NO LOTS TO BE BUILT ON THE SAME DAY.

LOT DATA

LOT NO.	AREA (SQ. FT.)	AREA (ACRES)	AREA (SQ. FT.)	AREA (ACRES)
1	11,100	.25	11,100	.25
2	11,100	.25	11,100	.25
3	11,100	.25	11,100	.25
4	11,100	.25	11,100	.25
5	11,100	.25	11,100	.25
6	11,100	.25	11,100	.25
7	11,100	.25	11,100	.25
8	11,100	.25	11,100	.25
9	11,100	.25	11,100	.25
10	11,100	.25	11,100	.25
11	11,100	.25	11,100	.25
12	11,100	.25	11,100	.25
13	11,100	.25	11,100	.25
14	11,100	.25	11,100	.25
15	11,100	.25	11,100	.25
16	11,100	.25	11,100	.25
17	11,100	.25	11,100	.25
18	11,100	.25	11,100	.25
19	11,100	.25	11,100	.25
20	11,100	.25	11,100	.25
21	11,100	.25	11,100	.25
22	11,100	.25	11,100	.25
23	11,100	.25	11,100	.25
24	11,100	.25	11,100	.25
25	11,100	.25	11,100	.25
26	11,100	.25	11,100	.25
27	11,100	.25	11,100	.25
28	11,100	.25	11,100	.25
29	11,100	.25	11,100	.25
30	11,100	.25	11,100	.25
31	11,100	.25	11,100	.25
32	11,100	.25	11,100	.25
33	11,100	.25	11,100	.25
34	11,100	.25	11,100	.25
35	11,100	.25	11,100	.25
36	11,100	.25	11,100	.25
37	11,100	.25	11,100	.25
38	11,100	.25	11,100	.25
39	11,100	.25	11,100	.25
40	11,100	.25	11,100	.25
41	11,100	.25	11,100	.25
42	11,100	.25	11,100	.25
43	11,100	.25	11,100	.25
44	11,100	.25	11,100	.25
45	11,100	.25	11,100	.25
46	11,100	.25	11,100	.25
47	11,100	.25	11,100	.25
48	11,100	.25	11,100	.25
49	11,100	.25	11,100	.25
50	11,100	.25	11,100	.25
51	11,100	.25	11,100	.25
52	11,100	.25	11,100	.25
53	11,100	.25	11,100	.25
54	11,100	.25	11,100	.25
55	11,100	.25	11,100	.25
56	11,100	.25	11,100	.25
57	11,100	.25	11,100	.25
58	11,100	.25	11,100	.25
59	11,100	.25	11,100	.25
60	11,100	.25	11,100	.25
61	11,100	.25	11,100	.25
62	11,100	.25	11,100	.25
63	11,100	.25	11,100	.25
64	11,100	.25	11,100	.25
65	11,100	.25	11,100	.25
66	11,100	.25	11,100	.25
67	11,100	.25	11,100	.25
68	11,100	.25	11,100	.25
69	11,100	.25	11,100	.25
70	11,100	.25	11,100	.25
71	11,100	.25	11,100	.25
72	11,100	.25	11,100	.25
73	11,100	.25	11,100	.25
74	11,100	.25	11,100	.25
75	11,100	.25	11,100	.25
76	11,100	.25	11,100	.25
77	11,100	.25	11,100	.25
78	11,100	.25	11,100	.25
79	11,100	.25	11,100	.25
80	11,100	.25	11,100	.25
81	11,100	.25	11,100	.25
82	11,100	.25	11,100	.25
83	11,100	.25	11,100	.25
84	11,100	.25	11,100	.25
85	11,100	.25	11,100	.25
86	11,100	.25	11,100	.25
87	11,100	.25	11,100	.25
88	11,100	.25	11,100	.25
89	11,100	.25	11,100	.25
90	11,100	.25	11,100	.25
91	11,100	.25	11,100	.25
92	11,100	.25	11,100	.25
93	11,100	.25	11,100	.25
94	11,100	.25	11,100	.25
95	11,100	.25	11,100	.25
96	11,100	.25	11,100	.25
97	11,100	.25	11,100	.25
98	11,100	.25	11,100	.25
99	11,100	.25	11,100	.25
100	11,100	.25	11,100	.25

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



SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

Min. Trk. 45 Petition No. Z-132
Doc. Type Letter of
agreeable stipulations
Date Sept. 19, 2006

PAGE 6 OF

770-422-7016

TELEPHONE

770-426-6583

FACSIMILE

WWW.SAMSLARKINHUFF.COM

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

September 13, 2006

OF COUNSEL
DAVID P. HARTIN

*ALSO LICENSED TO PRACTICE
IN ALABAMA

VIA HAND DELIVERY

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



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

Dear John:

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

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

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

VIA HAND DELIVERY

PAGE 7 OF

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

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

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

VIA HAND DELIVERY

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

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

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

Very truly yours,

SAMS, LARKIN & HUFF, LLP


James A. Balli
jballi@samslarkinhuff.com

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

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

PAGE 9 OF

AUTHORIZATION FOR REZONING STIPULATION

Application No.: Z-132

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

Applicant: OVATION HOMES, LLC

Titleholder: GREGORY JOEL HULSEY and KAREN R. HULSEY

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

Signature: *Gregory J. Hulsey*
GREGORY JOEL HULSEY,
a/k/a GREGORY HULSEY

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

Address: 797 N. Booth Road

Kennesaw, GA 30144

Telephone No: (770) 591 9322

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

PAGE 10 OF



Petition No 2-132
Meeting Date Sept. 19, 2006
Continued

PAGE 11 OF 11



Z-132

-engineering
INNOVATIVE SOLUTIONS

1400 Lexington Blvd., Suite 300
Charlotte, NC 28226
Phone: 704.546.8888
Fax: 704.546.8889



OVATION HOMES
704.546.8888
1400 Lexington Blvd., Suite 300
Charlotte, NC 28226

No.	Description	Date

Copyright 2006
All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the author.



Project Title
THE ENCLAVE AT CRIPPLE CREEK

A Single Family Residential Subdivision
Project Location
of North Tryon Rd

L1: 217-A JAY JONES DRIVE, 2nd FLOOR
Charlotte, NC 28226

Project No. 06-093-001
Drawn by DVA
Checked by J. Smith
Date: June 21, 2006

Scale: 1" = 30'
North Arrow

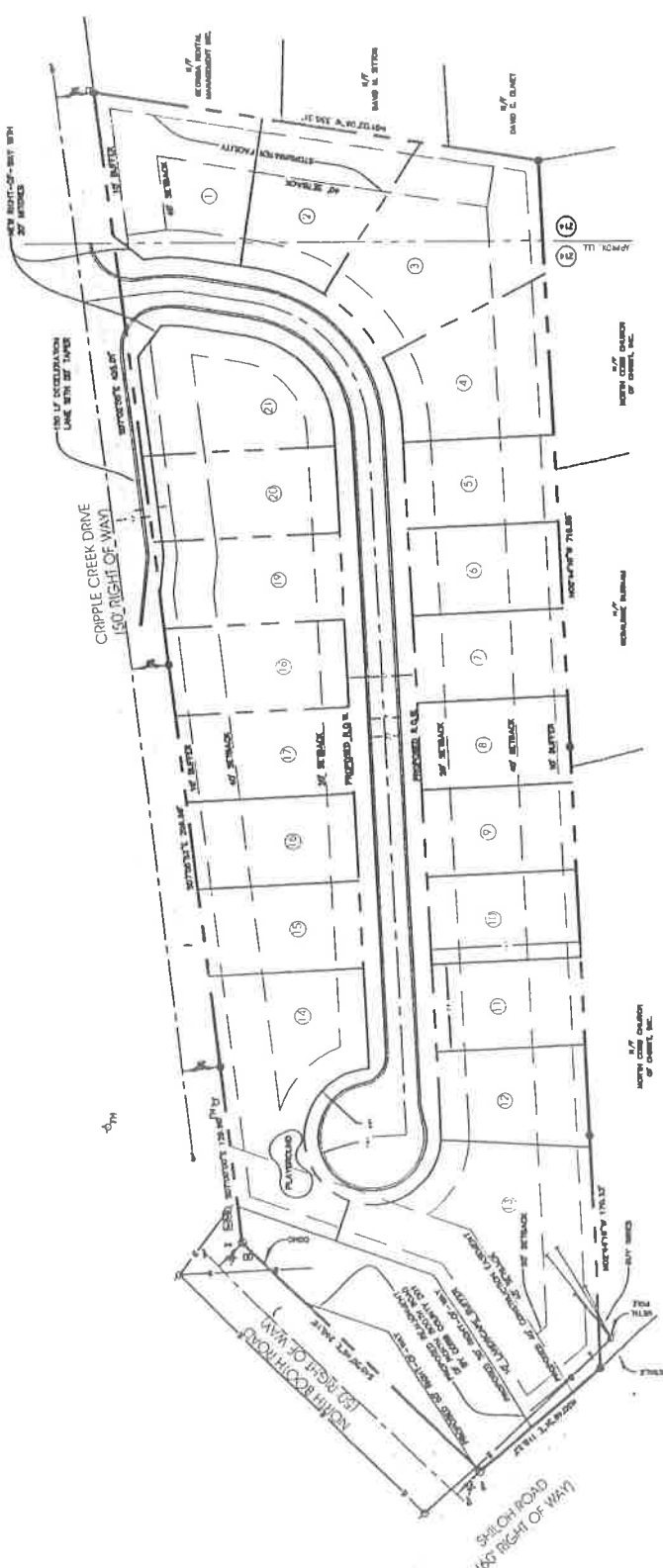
Sheet Title
SITE PLAN



SITE DATA

2.12 DUA
2.13 STA. 100
2.14 STA. 200
2.15 STA. 300
2.16 STA. 400
2.17 STA. 500
2.18 STA. 600
2.19 STA. 700
2.20 STA. 800
2.21 STA. 900
2.22 STA. 1000
2.23 STA. 1100
2.24 STA. 1200
2.25 STA. 1300
2.26 STA. 1400
2.27 STA. 1500
2.28 STA. 1600
2.29 STA. 1700
2.30 STA. 1800
2.31 STA. 1900
2.32 STA. 2000
2.33 STA. 2100
2.34 STA. 2200
2.35 STA. 2300
2.36 STA. 2400
2.37 STA. 2500
2.38 STA. 2600
2.39 STA. 2700
2.40 STA. 2800
2.41 STA. 2900
2.42 STA. 3000
2.43 STA. 3100
2.44 STA. 3200
2.45 STA. 3300
2.46 STA. 3400
2.47 STA. 3500
2.48 STA. 3600
2.49 STA. 3700
2.50 STA. 3800
2.51 STA. 3900
2.52 STA. 4000
2.53 STA. 4100
2.54 STA. 4200
2.55 STA. 4300
2.56 STA. 4400
2.57 STA. 4500
2.58 STA. 4600
2.59 STA. 4700
2.60 STA. 4800
2.61 STA. 4900
2.62 STA. 5000
2.63 STA. 5100
2.64 STA. 5200
2.65 STA. 5300
2.66 STA. 5400
2.67 STA. 5500
2.68 STA. 5600
2.69 STA. 5700
2.70 STA. 5800
2.71 STA. 5900
2.72 STA. 6000
2.73 STA. 6100
2.74 STA. 6200
2.75 STA. 6300
2.76 STA. 6400
2.77 STA. 6500
2.78 STA. 6600
2.79 STA. 6700
2.80 STA. 6800
2.81 STA. 6900
2.82 STA. 7000
2.83 STA. 7100
2.84 STA. 7200
2.85 STA. 7300
2.86 STA. 7400
2.87 STA. 7500
2.88 STA. 7600
2.89 STA. 7700
2.90 STA. 7800
2.91 STA. 7900
2.92 STA. 8000
2.93 STA. 8100
2.94 STA. 8200
2.95 STA. 8300
2.96 STA. 8400
2.97 STA. 8500
2.98 STA. 8600
2.99 STA. 8700
2.100 STA. 8800

JUL 10 2006
CORP. C. I.



APPLICANT: Ovation Homes, LLC

PETITION NO: Z-132

770-633-5361

HEARING DATE (PC): 09-06-06

REPRESENTATIVE: Sams, Larkin & Huff, LLP

HEARING DATE (BOC): 09-19-06

770-422-7016

PRESENT ZONING: R-20

TITLEHOLDER: Gregory J. and Karen R. Hulsey, Ruby D. Hamby

PROPOSED ZONING: RA-5

PROPERTY LOCATION: Located at the southwesterly intersection of Shiloh Road and North Booth Road and on the westerly side of Cripple Creek Drive, south of North Booth Road.

PROPOSED USE: Subdivision

ACCESS TO PROPERTY: Cripple Creek Drive

SIZE OF TRACT: 6.07 acres

DISTRICT: 16

PHYSICAL CHARACTERISTICS TO SITE: Single-family houses

LAND LOT(S): 217

PARCEL(S): 6, 24, 35

TAXES: PAID X DUE _____

COMMISSION DISTRICT: 3

CONTIGUOUS ZONING/DEVELOPMENT

- NORTH: R-20/ Single-family house
- SOUTH: R-20/ Cripple Creek subdivision
- EAST: R-20/ Single-family houses
- WEST: R-20/ single-family house, North Cobb Church of Christ

OPPOSITION: NO. OPPOSED _____ PETITION NO: _____ SPOKESMAN _____

PLANNING COMMISSION RECOMMENDATION

APPROVED _____ MOTION BY _____

REJECTED _____ SECONDED _____

HELD _____ CARRIED _____

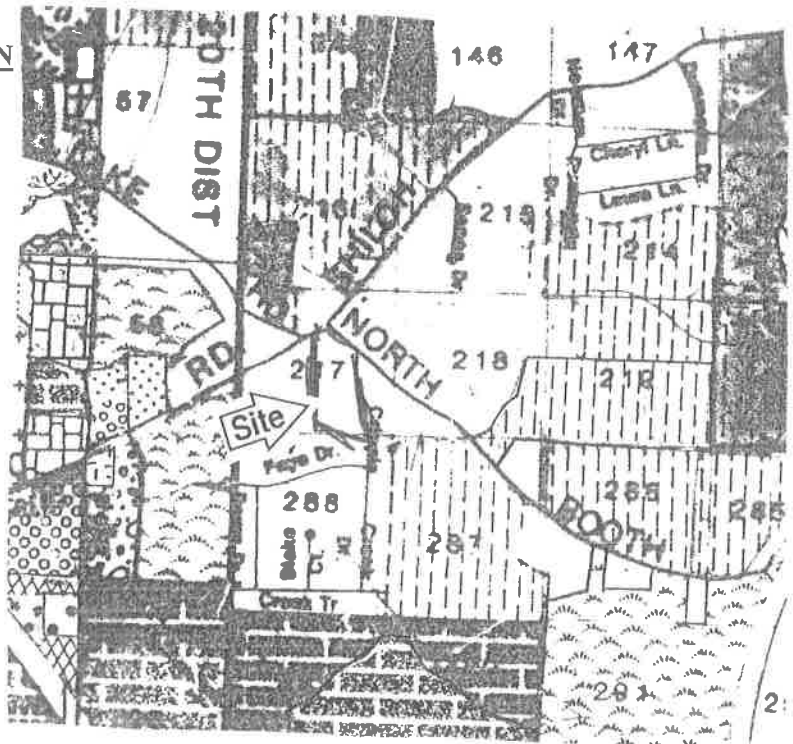
BOARD OF COMMISSIONERS DECISION

APPROVED _____ MOTION BY _____

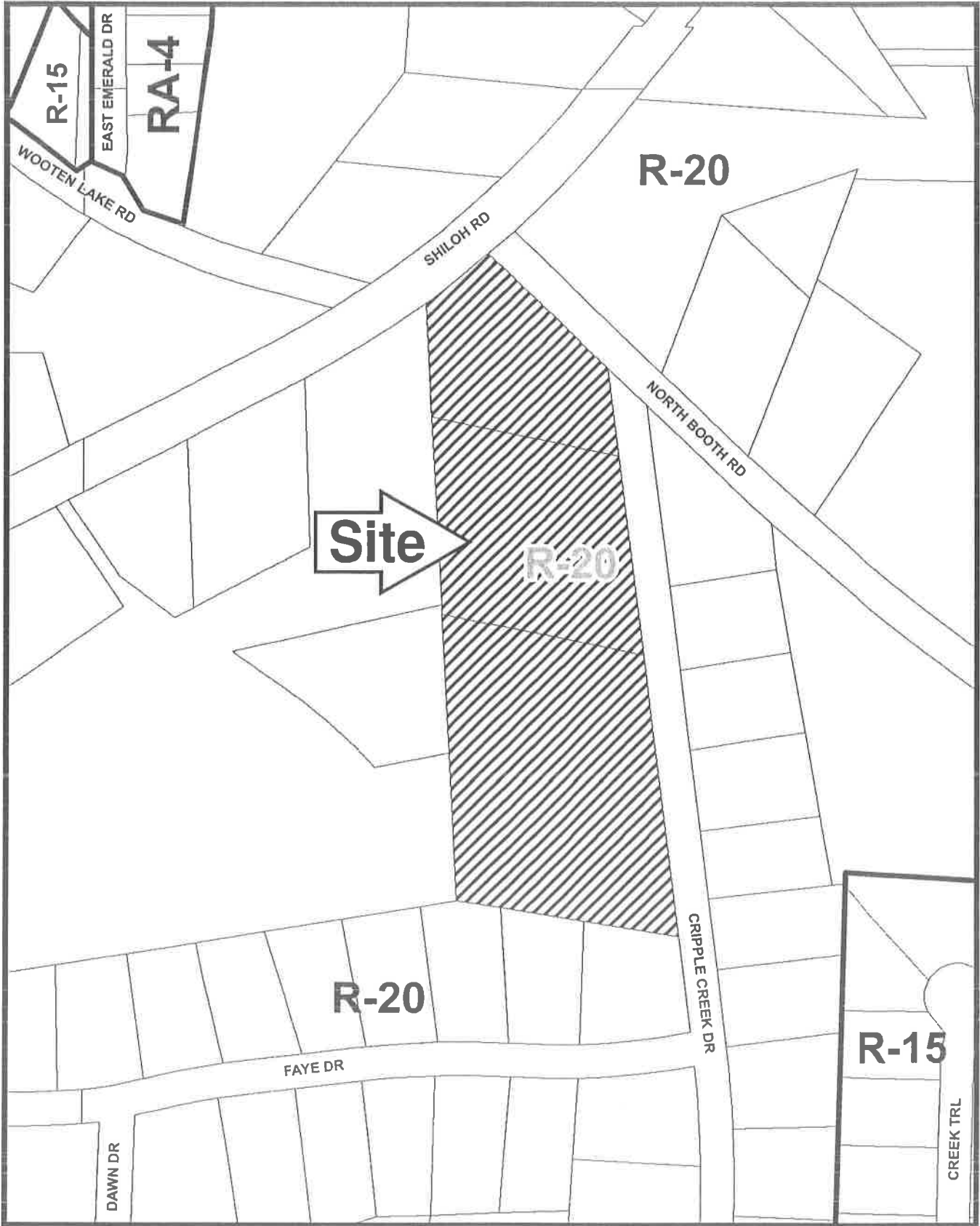
REJECTED _____ SECONDED _____

HELD _____ CARRIED _____

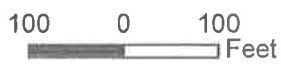
STIPULATIONS:





Z-132



This map is provided for display and planning purposes only. It is not meant to be a legal description.



-  Draft Parcel Boundary
-  Approximate Zoning Boundary

APPLICANT: Ovation Homes, LLC

PETITION NO.: Z-132

PRESENT ZONING: R-20

PETITION FOR: RA-5

PLANNING COMMENTS:

Staff Member Responsible: John P. Pederson

Land Use Plan Recommendation: Medium Density Residential (2.5 to 5 units per acre)

Proposed Number of Units: 21 Overall Density: 3.46 Units/Acre

Present Zoning Would Allow: 11 Units Increase of: 10 Units/Lots

The applicant is requesting the RA-5 zoning district to develop a single-family detached subdivision. The houses would be craftsman in styling with exteriors consisting of a mixture of components, such as brick, stone, stacked stone, masonry siding, cedar shake and/or stucco. The houses would be a minimum 2,000 square-feet, and would start selling in the mid to high \$200,000's. Each house would have an attached two-car garage. Additionally, there would be an area dedicated for a playground adjacent to lot 14.

Historic Preservation: After reviewing various county resources including historic and archeological resource surveys, documented Civil War trench maps, and historic aerial maps, staff finds no known historic properties affected by this application. No further comment. No action by applicant requested at this time.

Cemetery Preservation: No comment.

APPLICANT: Ovation Homes, LLC
 PRESENT ZONING: R-20

PETITION NO.: Z-132
 PETITION FOR: RA-5

SCHOOL COMMENTS:

Name of School	Enrollment	Capacity Status	Number of Portable Classrooms
Chalker Elementary	904	Under	
Palmer Middle	1,196	Over	
Kell High	1,912	Over	

* School attendance zones are subject to revision at anytime.

Additional Comments:

Approval of this rezoning could adversely impact enrollment at Palmer Middle and Kell High Schools.

FIRE COMMENTS:

The applicant is responsible to ensure all Cobb County Fire and Emergency Services Code requirements are met related to this project. Plans will need to be submitted to the Cobb County Fire Marshall's Office, prior to any permits being issued.

Standard comments:

1. Provide 24-hour emergency phone number (offset in bold print on all sheets).
2. Fire Hydrant
 - a. Commercial: Fire hydrant within 500 feet of most remote part of structure.
 - b. Residential: Fire hydrant within 500 feet of structure.
3. Fire apparatus access road shall extend to within 150-feet of all portions of the facility or any portion of the exterior wall of the first floor IFC 503.1 2003 Edition. **All access roads shall have an all weather driving surface capable of supporting 75,000 pounds with an unobstructed width of not less than 20-feet, 25-foot inside turning radius, 50-foot outside turning radius and unobstructed vertical clearance of not less than 13-feet 6 inches.** Dead-end access roads in excess of 150-feet shall be provided with a turn-around IFC 503.2.5 2003 Edition. Cul-de-sac with an island: minimum 60-foot radius to outside curb, measured to inside of curb. Minimum lane width = 24-feet. Residential cul-de-sac without island: 38-foot outside radius. Commercial cul-de-sac to have a 60-foot paved radius. Hammerhead turn-around: total of 110-feet needed (45-feet + 20-feet wide roadway + 45-feet).

Additional Comments:

APPLICANT Ovation Homes, LLC

PETITION NO. Z-132

PRESENT ZONING R-20

PETITION FOR RA-5

NOTE: Comments reflect only what facilities were in existence at the time of this review.

WATER COMMENTS:

- Available at Development? Yes No
- Fire Flow Test Required? Yes No

Size / Location of Existing Water Main(s): 6" AC / W side Cripple Cr Dr

Additional Comments:

Developer may be required to install/upgrade water mains, based on fire flow test results or Fire Department Code. This will be resolved in the Plan Review Process.

SEWER COMMENTS:

- In Drainage Basin? Yes No
- At Development? Yes No

Approximate Distance to Nearest Sewer: At site in road

Estimated Waste Generation (in G.P.D.): **A D F** 8,400 **Peak** 21,000

Treatment Plant: Noonday

- Plant Capacity Available? Yes No
- Line Capacity Available? Yes No
- Projected Plant Availability: 0 - 5 year 5 - 10 years over 10 years
- Dry Sewers Required? Yes No
- Off-site Easements Required? Yes* No
- Flow Test Required? Yes No
- Letter of Allocation issued? Yes No
- Septic Tank Recommended by this Department? Yes No
- Subject to Health Department Approval? Yes No

* If off-site easements are required, Developer must submit easements to CCWS for review / approval as to form and stipulations prior to the execution of easement(s) by the property owner(s). All easement acquisitions are the responsibility of the Developer.

Additional Comments:

Sewer to be extended by developer to upper property line

Developer will be responsible for connecting to the existing County water and sewer systems, installing and/or upgrading all outfalls and water mains, obtaining on and/or off site easements, dedication of on and/or off site water and sewer to Cobb County, as may be required. Rezoning does not guarantee water/sewer availability/capacity unless so stated in writing by the Cobb County Water System. Permit issuances subject to continued treatment plant compliance with EPD discharge requirements.

APPLICANT: Ovation Homes, LLC

PETITION NO.: Z-132

PRESENT ZONING: R-20

PETITION FOR: RA-5

DRAINAGE COMMENTS

FLOOD HAZARD: [] YES [X] NO [] POSSIBLY, NOT VERIFIED

DRAINAGE BASIN: Noonday Creek FLOOD HAZARD INFO: Zone X

- [] FEMA Designated 100 year Floodplain Flood.
[] Flood Damage Prevention Ordinance DESIGNATED FLOOD HAZARD.
[X] Project subject to the Cobb County Flood Damage Prevention Ordinance Requirements.
[] Dam Breach zone from (upstream) (onsite) lake - need to keep residential buildings out of hazard.

WETLANDS: [] YES [X] NO [] POSSIBLY, NOT VERIFIED

Location:

- [] The Owner/Developer is responsible for obtaining any required wetland permits from the U.S. Army Corps of Engineer.

STREAMBANK BUFFER ZONE: [] YES [X] NO [] POSSIBLY, NOT VERIFIED

- [] Metropolitan River Protection Area (within 2000' of Chattahoochee River) ARC (review 35' undisturbed buffer each side of waterway).
[] Chattahoochee River Corridor Tributary Area - County review (___ undisturbed buffer each side).
[] Georgia Erosion-Sediment Control Law and County Ordinance - County Review/State Review.
[] Georgia DNR Variance may be required to work in 25 foot streambank buffers.
[] County Buffer Ordinance: 50' , 75' , 100' or 200' each side of creek channel.

DOWNSTREAM CONDITION

- [X] Potential or Known drainage problems exist for developments downstream from this site.
[X] Stormwater discharges must be controlled not to exceed the capacity available in the downstream storm drainage system.
[X] Minimize runoff into public roads.
[X] Minimize the effect of concentrated stormwater discharges onto adjacent properties.
[X] Developer must secure any R.O.W required to receive concentrated discharges where none exist naturally
[] Existing Lake/Detention Pond Downstream ____.
Additional BMP's for erosion sediment controls will be required.
[] Lake Study needed to document sediment levels (pre- and post-development).
[X] Stormwater discharges through an established residential neighborhood downstream.
[X] Project engineer must evaluate the impact of increased volume of runoff generated by the proposed project on existing downstream stormdrainage system.

APPLICANT: Ovation Homes, LLC

PETITION NO.: Z-132

PRESENT ZONING: R-20

PETITION FOR: RA-5

DRAINAGE COMMENTS CONTINUED

SPECIAL SITE CONDITIONS

- Provide comprehensive hydrology/stormwater controls to include development of out parcels.
- Submit all proposed site improvements to Plan Review.
- Any **spring activity** uncovered must be addressed by a qualified geotechnical engineer (PE).
- Structural fill must be placed under the direction of a qualified registered Georgia geotechnical engineer (PE).
- Existing facility.
- Project must comply with the Water Quality requirements of the CWA-NPDES-NPS Permit and County Water Quality Ordinance.
- Water Quality/Quantity contributions of the existing lake/pond on site must be continued as baseline conditions into proposed project.
- Calculate and provide % impervious of project site.
- Revisit design; reduce pavement area to reduce runoff and pollution.

INSUFFICIENT INFORMATION

- No Stormwater controls shown.
- Copy of survey is not current - Additional comments may be forthcoming when current site conditions are exposed.
- No site improvements showing on exhibit.

ADDITIONAL COMMENTS/SUGGESTIONS

1. The site plan exhibit provided shows the proposed stormwater management facility located on Lots 1 – 3. Per County Code the detention pond must be located on its own parcel with direct access from the public R/W. This will result in the loss of at least one of these lots (Lot 1).
2. The site naturally discharges through an existing residential lot located at the corner of Cripple Creek and Faye Drives (4030 Cripple Creek Drive). There is a 10-foot recorded drainage easement indicated on the subdivision plat located along the western property line. However, the existing stormwater channel through the lot is not located within the easement and passes very close to the existing house. The existing 18-inch CMP culvert under Faye Drive is significantly clogged with debris. This results in significant flooding risk for the existing house. Adequate conveyance of the proposed site discharge must be provided through this downstream lot. The preferred solution would be to expand the recorded drainage easement to 20 feet and pipe the proposed detention outflow directly to the existing Faye Drive culvert. This issue must be resolved at Plan Review.
3. The allowable discharge from the site must account for the existing downstream culvert capacity.

APPLICANT: Ovation Homes, LLC

PETITION NO.: Z-132

PRESENT ZONING: R-20

PETITION FOR: RA-5

TRANSPORTATION COMMENTS

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
Cripple Creek Road	NA	Local	25 mph	Cobb County	50'
North Booth Road	6600	Major Collector	35 mph	Cobb County	80'
Shiloh Road	20200	Arterial	35 mph	Cobb County	100'

*Based on 2003 traffic counting data taken by Cobb County DOT. (North Booth Road)
Based on 2005 traffic counting data taken by Cobb County DOT. (Shiloh Road)*

COMMENTS AND OBSERVATIONS

Cripple Creek Road is classified as a Local and according to the available information, the existing right-of-way does meet the minimum requirements for this classification.

North Booth Road is classified as a Major Collector and according to the available information, the existing right-of-way does not meet the minimum requirements for this classification.

Shiloh Road is classified as an Arterial and according to the available information, the existing right-of-way does not meet the minimum requirements for this classification.

The realignment of North Booth Road with Wooten Lake Road at the Shiloh Road intersection is identified in the 2005 SPLOST as an operational improvement project.

Install sidewalk, curb and gutter along Cripple Creek Road.

RECOMMENDATIONS

Recommend applicant coordinate with Cobb County Department of Transportation prior to development plan approval to ensure compatibility with the realignment of North Booth Road.

Recommend installing sidewalk, curb and gutter along Cripple Creek Road.

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

STAFF RECOMMENDATIONS

Z-132 OVATION HOMES, LLC

- A. It is Staff's opinion that the applicant's rezoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The area contains a mixture of land uses, such as single-family houses on large lots, cluster homes, churches, and schools.

- B. It is Staff's opinion that the applicant's rezoning proposal will not have an adverse affect on the usability of adjacent or nearby property. The applicant's single-family detached proposal should be compatible with adjacent residential and institutional uses.

- C. It is Staff's opinion that the applicant's rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities or utilities. This opinion can be supported by the departmental comments contained in this analysis. However, the school system has expressed concerns regarding the proposal.

- D. It is Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the *Cobb County Comprehensive Plan*, which delineates this property to be within a Medium Density Residential Land Use Category, with densities ranging from 2.5 to 5 units per acre. The proposed density is 3.46 units per acre.

- E. It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give supporting grounds for approving the applicant's rezoning proposal. The applicant's proposal is consistent with the *Cobb County Comprehensive Plan*. The applicant's proposal is located in an area that contains a few different types of residential uses, such as cluster houses, R-20 subdivisions, and large acreage single-family lots. The proposed single-family use would be compatible with adjacent uses.

Based on the above analysis, Staff recommends APPROVAL subject to the following conditions:

- Site plan received by the Zoning Division July 6, 2006, with the District Commissioner approving minor modifications;
- Fire Department comments;
- Water and Sewer comments and recommendations;
- Stormwater Management comments and recommendations;
- 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.

The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.

Application for "Other Business" Cobb County, Georgia

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

BOC Hearing Date Requested: 09/20/2011

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

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

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

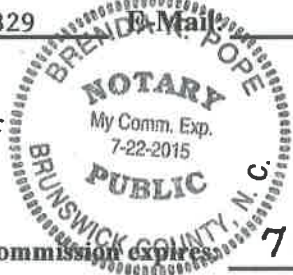
Signed, sealed and delivered in presence of:

Carolyn E. Cook My commission expires: January 10, 2015
Notary Public



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

Address: 2281 Clairmont Road, Atlanta, GA 30329 E-Mail: _____
BY: [Signature]
(Property owner's signature) Charles K. Yorke, Manager



Signed, sealed and delivered in presence of:

Brenda K. Pope My commission expires: 7-22-2015
Notary Public

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

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

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

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

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

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

(List or attach additional information if needed)

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

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

BEFORE THE COBB COUNTY BOARD OF COMMISSIONERS

Applicant/Property Owner: Enclave at Cripple Creek, LLC

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

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

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

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

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

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

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

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

ORIGINAL DATE OF APPLICATION: 09-19-06APPLICANTS NAME: OVATION HOMES, LLC

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

BOC DECISION OF 09-20-11 ZONING HEARING:

OTHER BUSINESS ITEM #3 – TO CONSIDER A STIPULATION AMENDMENT FOR ENCLAVE AT CRIPPLE CREEK, LLC REGARDING REZONING APPLICATION Z-132 OF 2006 (OVATION HOMES, LLC)

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

Mr. John Pederson, Zoning Division Manager, provided information regarding a stipulation amendment. The public hearing was opened and there being no speakers, the public hearing was closed. Following presentation and discussion, the following motion was made:

MOTION: Motion by Birrell, second by Ott, to **approve** Other Business Item No. 3 for stipulation amendment regarding rezoning application Z-132 of 2006 (Ovation Homes, LLC), for property located at the southwesterly intersection of North Booth Road and Cripple Creek Drive in Land Lots 217 and 288 of the 16th District, **subject to:**

- **remove footnote one (1) on page no. two (2) related to price points from stipulated letter of agreeable conditions from Mr. James Bali dated September 13, 2006**
- **all previous stipulations and conditions to remain in effect, *not otherwise in conflict***

VOTE: **ADOPTED 4-0**