

**APRIL 19, 2016 ZONING HEARING
“OTHER BUSINESS”
COMMISSION DISTRICT 4**

ITEM 020

PURPOSE

To consider a Settlement of Litigation for regarding rezoning application Z-85 (Poma Glass & Specialty Windows, Inc) of 2015, for property located on the west side of Austell Road, and on the south side of Pair Road in Land Lot 706 of the 19th District.

BACKGROUND

The applicant’s application for a change in zoning was approved by the Board of Commissioners on October 20, 2015. The applicant filed a lawsuit in Superior Court challenging the zoning stipulations placed on the property during the zoning hearing. Prior to this case going to court, the applicant and the County entered into agreement to resolve the conflict. The below stipulation will replace zoning bullet #2, which limited the property to glass fabrication and manufacturing only:

“Reasonable noise abatement measures to be implemented to abate noise which, as provided in Section 50-256(b) of the Cobb County Code of Ordinances, either disturbs, injures or endangers the comfort, repose, health, peace or safety of others in the unincorporated areas of the county which is plainly audible 100 feet from the sound's point of origination for the following uses: heavy automotive repair establishments; heavy repair service and trade shops; light manufacturing establishments; machine shops; sawmills (temporary); or tire retreading, recapping facilities or any use which creates noise in violation of Section 50-256(b) of the Cobb County Code of Ordinances.”

All other zoning stipulations would remain intact.

RECOMMENDATION

The Board of Commissioners conduct a Public Hearing and consider the Settlement of Litigation proposal.

ATTACHMENTS

Minutes and Zoning analysis.

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
OCTOBER 20, 2015
PAGE 9

CONSENT AGENDA (CONT.)

LUP-32 CHARLES W. RIMERT (CONT.)

MOTION: Motion by Ott, second by Weatherford, to **add** LUP-32 back to the Consent Agenda.

VOTE: **ADOPTED** 4-0, Lee absent

REGULAR AGENDA (CONT.)

By general consensus, companion cases Z-85 and O.B. 45 were considered concurrently and voted on separately.

Z-85 **POMA GLASS & SPECIALTY WINDOWS, INC.** (Poma Glass & Specialty Windows, Inc. as Successor by Merger with AFGD. Inc. owner) requesting Rezoning from **R-20** to **HI** for the purpose of a Glass Company in Land Lot 706, of the 19th District. Located on the west side of Austell Road, south side of Pair Road (3200 Austell Road).

O.B. 45 To consider amending the site plan and stipulations for Poma Glass & Specialty Windows, Inc. regarding rezoning application #217 of 1978, for property located on the west side of Austell Road and on the south side of Pair Road in Land Lot 706 of the 19th District.

The public hearings for Z-85 and O.B. 45 were opened, and Mr. Clay Massey, Ms. Felecia Brockington, Ms. Kim Phillips, and Mr. Jesus Balesteua addressed the Board. Following presentation and discussion, the following motions were made:

MOTION: Motion by Cupid, second by Ott, to **approve** Z-85 to the **HI** zoning category, subject to:

- Site plan received by the Zoning Division on August 19, 2015 (attached and made a part of these minutes), with District Commissioner approving minor modifications
- For the use of glass fabrication and manufacturing *only* with any future use under HI to come back to the Board of Commissioners as an Other Business Item
- Water and Sewer Division comments and recommendations, *not otherwise in conflict*
- Stormwater Management Division comments and recommendations, *not otherwise in conflict*
- Cobb DOT comments and recommendations, *not otherwise in conflict*

MINUTES OF ZONING HEARING
COBB COUNTY BOARD OF COMMISSIONERS
OCTOBER 20, 2015
PAGE 10

REGULAR AGENDA (CONT.)

Z-85 POMA GLASS & SPECIALTY WINDOWS, INC. (CONT.)

VOTE: **ADOPTED** 4-0, Lee absent

MOTION: Motion by Cupid, second by Ott, to **approve** O.B. 45 for Poma Glass & Specialty Windows, Inc. regarding rezoning application #217 of 1978, for property located on the west side of Austell Road and on the south side of Pair Road in Land Lot 706 of the 19th District, subject to:

- **Site plan received by the Zoning Division on September 15, 2015 (attached and made a part of these minutes)**
- **All previous stipulations and conditions, *not otherwise in conflict*, to remain in effect**

VOTE: **ADOPTED** 4-0, Lee absent

Upon reading the petition into the record and before making a motion, Commissioner Cupid requested a recess so that she could review the Applicant's stipulations.

Vice Chair Birrell called for a lunch recess from 12:01 p.m. until 1:02 p.m.

Z-91 MICHAEL B. KENNEDY (owner) requesting Rezoning from **R-20** to **RA-5** for the purpose of a Residential Subdivision in Land Lots 96 and 121 of the 17th District. Located on the east side of South Hurt Road, across from Donna Drive (3865 South Hurt Road).

The public hearing was opened, and Mr. Richard Smith and Mr. Preston Hobby addressed the Board. Following presentation and discussion, the following motion was made:

MOTION: Motion by Cupid, second by Ott, to **delete** Z-91 to the **R-15** zoning category, subject to:

- **Single family dwellings *only***
- **Site plan and elevations are to be submitted to staff for review and subject to the District Commissioner review and approval.**
- **Each dwelling shall be a minimum of 2,200 square feet finished; heated living space exclusive of garage, basement, or unfinished areas.**
- **Homes are to have three sided architecture having the front and sides of the proposed residences comprised of 60% brick, stacked stone, or stucco type finishes. Vinyl siding shall not be permitted. Other materials for exterior to be cement lap siding, cement shake, or cedar shake shingles or combination thereof. Exterior colors shall fall into the range of those considered to be natural brick, stone, or earth tones.**

Z-85
(2015)

LEGEND

| | | | |
|--------------|--------------|-----------------|---------------|
| 1. BOUNDARY | 2. EXISTING | 3. CONSTRUCTION | 4. UTILITIES |
| 5. EASEMENT | 6. EASEMENT | 7. EASEMENT | 8. EASEMENT |
| 9. EASEMENT | 10. EASEMENT | 11. EASEMENT | 12. EASEMENT |
| 13. EASEMENT | 14. EASEMENT | 15. EASEMENT | 16. EASEMENT |
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| 89. EASEMENT | 90. EASEMENT | 91. EASEMENT | 92. EASEMENT |
| 93. EASEMENT | 94. EASEMENT | 95. EASEMENT | 96. EASEMENT |
| 97. EASEMENT | 98. EASEMENT | 99. EASEMENT | 100. EASEMENT |

NOTE: ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF. ALL ANGLES ARE IN DEGREES AND DECIMALS THEREOF. ALL DISTANCES ARE MEASURED ALONG THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

NOTE: THE SURVEYOR HAS VISITED THE SITE AND HAS FOUND THAT THE INFORMATION PROVIDED BY THE CLIENT IS TRUE AND CORRECT. THE SURVEYOR HAS ALSO FOUND THAT THE INFORMATION PROVIDED BY THE CLIENT IS TRUE AND CORRECT.

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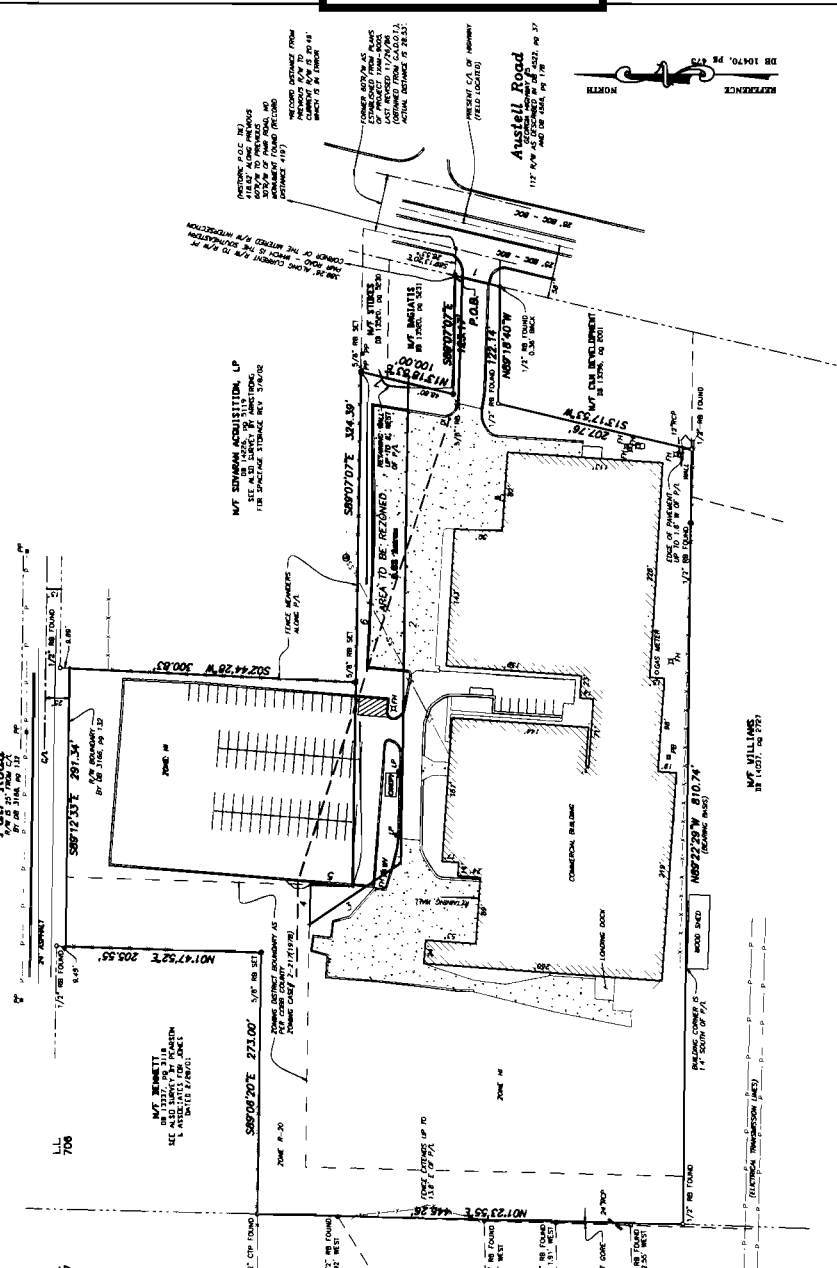
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9.52 Acres

SITE PLAN FOR
Carter Lumber Company

LAND LOT: 708
COUNTY: DEKALB
DATE: AUGUST 6, 2015

SCALE: 1" = 80'

REVISED

AUG 19 2015

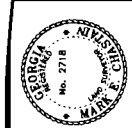
COMM. DEV. AGENCY
ZONING DIVISION

| LINE | BEARING | DISTANCE |
|------|-----------|----------|
| 1 | S172°47'N | 49.03' |

SURVEY NOTES

- CLOSURE PRECISION: THIS SURVEY WAS CONDUCTED AS A FIRST-ORDER SURVEY AND MEETS THE REQUIREMENTS OF THE NATIONAL SURVEYING SYSTEM (NSS) FOR A FIRST-ORDER SURVEY.
- FIELD SURVEY: THE SURVEY WAS CONDUCTED IN THE FIELD AND ALL MEASUREMENTS WERE MADE UNDER NORMAL CONDITIONS.
- COMPUTATION: THE SURVEY DATA WAS COMPUTED USING THE LEAST SQUARES METHOD.
- ADJUSTMENT: THE SURVEY DATA WAS ADJUSTED USING THE LEAST SQUARES METHOD.
- ACCURACY: THE SURVEY ACCURACY IS WITHIN THE TOLERANCES SPECIFIED IN THE NATIONAL SURVEYING SYSTEM (NSS).
- BOUNDARIES: THE SURVEY BOUNDARIES ARE SHOWN ON THIS PLAN AND ARE SUBJECT TO CHANGE.
- EASEMENTS: THE SURVEY EASEMENTS ARE SHOWN ON THIS PLAN AND ARE SUBJECT TO CHANGE.
- UTILITIES: THE SURVEY UTILITIES ARE SHOWN ON THIS PLAN AND ARE SUBJECT TO CHANGE.
- SETBACKS: THE SURVEY SETBACKS ARE SHOWN ON THIS PLAN AND ARE SUBJECT TO CHANGE.
- ENCUMBRANCES: THE SURVEY ENCUMBRANCES ARE SHOWN ON THIS PLAN AND ARE SUBJECT TO CHANGE.
- ADDITIONAL NOTES: THE SURVEYOR HAS VISITED THE SITE AND HAS FOUND THAT THE INFORMATION PROVIDED BY THE CLIENT IS TRUE AND CORRECT.

| LINE | BEARING | DISTANCE |
|------|-----------|----------|
| 1 | S172°47'N | 49.03' |
| 2 | S172°47'N | 49.03' |
| 3 | S172°47'N | 49.03' |
| 4 | S172°47'N | 49.03' |
| 5 | S172°47'N | 49.03' |
| 6 | S172°47'N | 49.03' |
| 7 | S172°47'N | 49.03' |



GEORGIA SURVEYOR'S CERTIFICATION

THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE NATIONAL SURVEYING SYSTEM (NSS) FOR A FIRST-ORDER SURVEY.

DATE OF SURVEY: AUGUST 6, 2015

SURVEYOR: [Name]

DISCLOSURE & NOTICE

THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE NATIONAL SURVEYING SYSTEM (NSS) FOR A FIRST-ORDER SURVEY.

THE SURVEYOR HAS VISITED THE SITE AND HAS FOUND THAT THE INFORMATION PROVIDED BY THE CLIENT IS TRUE AND CORRECT.

IN GOD WE TRUST

FLOOD STATEMENT

THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR THE AREA.

THE SURVEYOR HAS VISITED THE SITE AND HAS FOUND THAT THE INFORMATION PROVIDED BY THE CLIENT IS TRUE AND CORRECT.

CHASTAIN & ASSOCIATES, P.C.

REGISTERED PROFESSIONAL ENGINEER, CONSULTING SURVEYOR

1111 W. BROADWAY, SUITE 1000, ATLANTA, GA 30334

(770) 276-7526

WWW.CHASTAINENGINEERS.COM



APPLICANT: Poma Glass & Specialty Windows, Inc.

PHONE#: (404) 446-4208 **EMAIL:** N/A

REPRESENTATIVE: W. Clay Massey

PHONE#: (404) 881-4969 **EMAIL:** clay.massey@alston.com

TITLEHOLDER: Poma Glass & Specialty Windows, Inc., as

Successor by Merger with AFGD, Inc.

PROPERTY LOCATION: West side of Austell Road, south side of

Pair Road

(3200 Austell Road).

ACCESS TO PROPERTY: Austell Road

PHYSICAL CHARACTERISTICS TO SITE: Drive/parking for

existing industrial development

PETITION NO: Z-85

HEARING DATE (PC): 10-06-15

HEARING DATE (BOC): 10-20-15

PRESENT ZONING: R-20

PROPOSED ZONING: HI

PROPOSED USE: Glass Company

SIZE OF TRACT: 0.63 acre

DISTRICT: 19

LAND LOT(S): 706

PARCEL(S): 3

TAXES: PAID X **DUE** _____

COMMISSION DISTRICT: 4

CONTIGUOUS ZONING/DEVELOPMENT

NORTH: HI/Parking and Self-Storage Facility

SOUTH: HI/Glass Business

EAST: R-20/Donut Shop

WEST: HI & R-20/Glass Business and Buffer

Adjacent Future Land Use:

North: Low Density Residential (LDR) and

Neighborhood Activity Center (NAC)

East: Medium Density Residential (MDR)

- across Austell Road

South: Neighborhood Activity Center

(NAC)

West: Low Density Residential (LDR)

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

PLANNING COMMISSION RECOMMENDATION

APPROVED _____ **MOTION BY** _____

REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

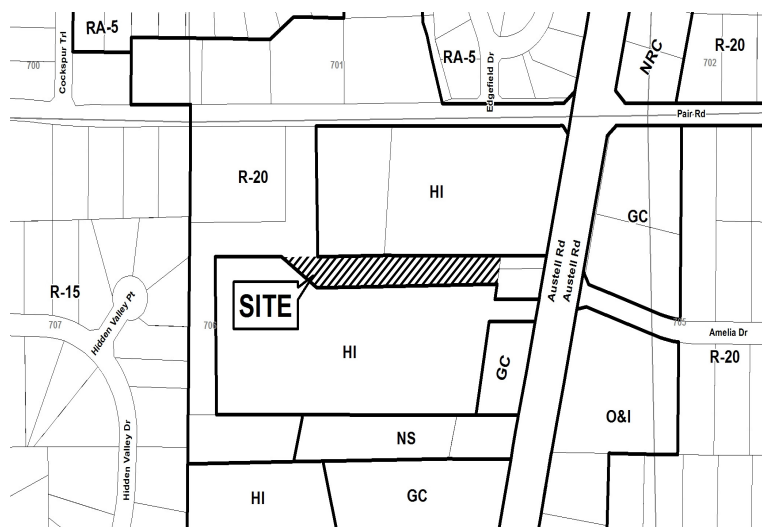
BOARD OF COMMISSIONERS DECISION

APPROVED _____ **MOTION BY** _____

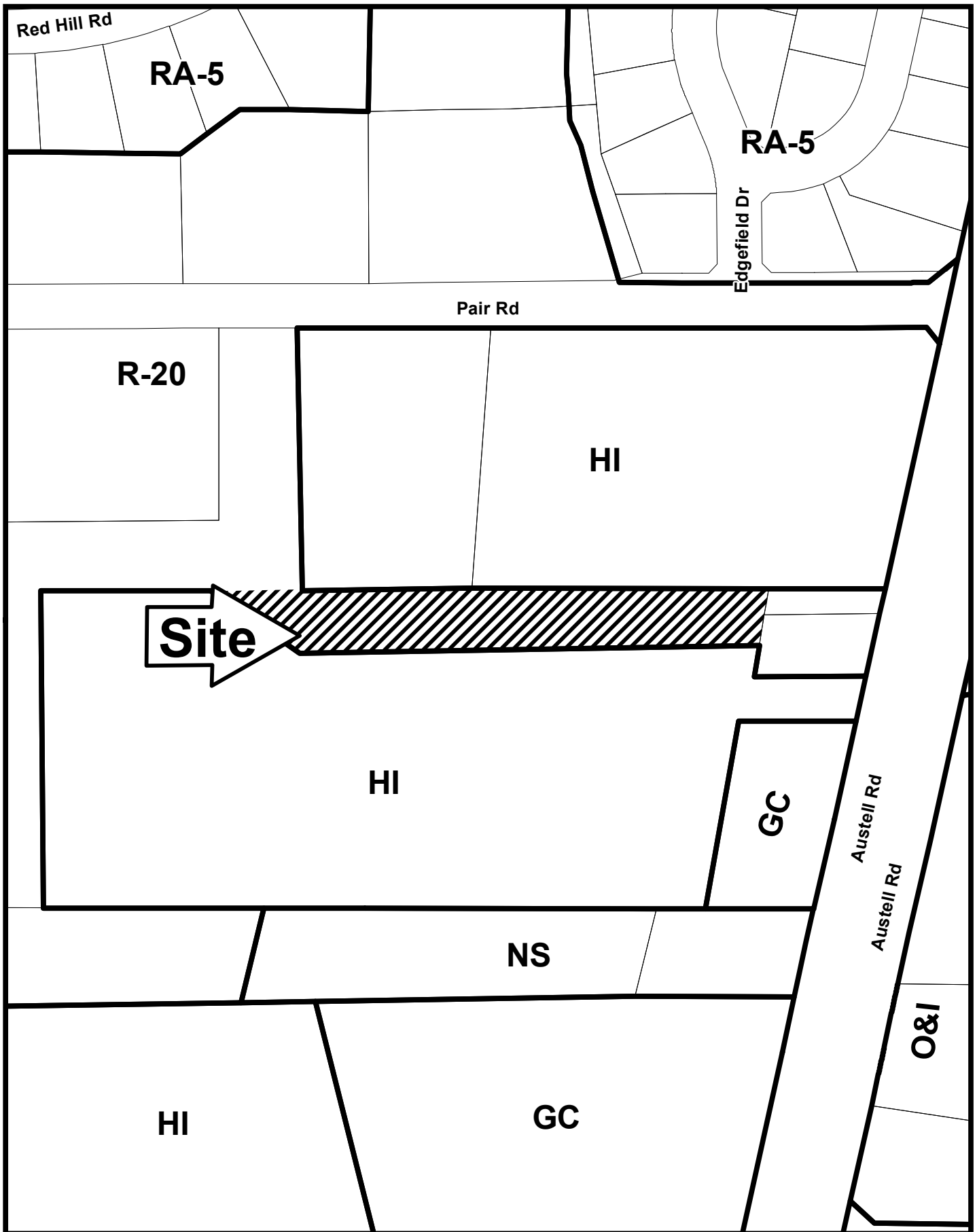
REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

STIPULATIONS:



Z-85



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

0 100 200 Feet



City Boundary
Zoning Boundary

APPLICANT: Poma Glass & Specialty Windows, Inc.

PETITION NO.: Z-85

PRESENT ZONING: R-20

PETITION FOR: HI

ZONING COMMENTS:

Staff Member Responsible: Jason A. Campbell

Land Use Plan Recommendation: Neighborhood Activity Center (NAC)

Proposed Number of Buildings: 0 **Total Square Footage of Development:** 0

F.A.R.: 0 **Square Footage/Acre:** 0

Parking Spaces Required: _____ **Parking Spaces Provided:** _____

Applicant is requesting to rezone an R-20 strip in an existing HI development to the Heavy Industrial district in order to bring the drive aisle and a portion of the existing parking lot under the same zoning category. The property was zoned many years ago and the property to the north was R-20 and 50-foot strip of the subject property was left as R-20 for a buffer. A few years later the abutting property to the north was rezoned to HI. The 50-foot buffer is not required between two HI properties. A lumber company is considering a purchase of the existing glass business building situated on the property and in the due diligence process it was realized that the subject portion of the overall property was zoned R-20.

Cemetery Preservation: No comment.

FIRE COMMENTS:

After analyzing the information presented for a Preliminary Review, the Cobb County Fire Marshal's Office is confident that all other items can be addressed during the Plan Review Stage.

APPLICANT: Poma Glass & Specialty Windows, Inc.

PETITION NO.: Z-85

PRESENT ZONING: R-20

PETITION FOR: HI

PLANNING COMMENTS:

The applicant is requesting a rezoning from R-20 to HI for purpose of a glass and window company. The .63 acre site is located on the west side of Austell Road south of Pair Road. The subject property is an access strip between two lots that are zoned HI.

Comprehensive Plan

The parcel is within a Neighborhood Activity Center (NAC) future land use category, with R-20 zoning designation. The purpose of Neighborhood Activity Center (NAC) category is to provide for areas that serve neighborhood residents and businesses. Typical land uses for these areas include small offices, limited retail and grocery stores.

Specific Area Policy Guidelines:

There are no specific policy guidelines for this area in either the Comprehensive Plan or the Austell Road Livable Centers Initiative (LCI) study.

Adjacent Future Land Use:

- North: Low Density Residential (LDR) and Neighborhood Activity Center (NAC)
- East: Medium Density Residential (MDR) – across Austell Road
- South: Neighborhood Activity Center (NAC)
- West: Low Density Residential (LDR)

Master Plan/Corridor Study

The property is located within the boundary of the Austell Road Corridor Study

Historic Preservation

After consulting various county historic resources surveys, historic maps, archaeology surveys and Civil War trench location maps, staff finds that no known significant historic resources appear to be affected by this application. No further comment. No action by applicant requested at this time.

Design Guidelines

Is the parcel in an area with Design Guidelines? Yes No

If yes, design guidelines area _____

Does the current site plan comply with the design requirements?

Incentive Zones

Is the property within an Opportunity Zone? Yes No

The Opportunity Zone is an incentive that provides \$3,500 tax credit per job in eligible areas if two or more jobs are being created. This incentive is available for new or existing businesses.

Is the property within an Enterprise Zone? Yes No

The Smyrna-Osborne Enterprise Zone is an incentive that provides tax abatements and other economic incentives for qualifying businesses locating or expanding within designated areas for new jobs and capital investments.

APPLICANT: Poma Glass & Specialty Windows, Inc.

PETITION NO.: Z-85

PRESENT ZONING: R-20

PETITION FOR: HI

PLANNING COMMENTS: **Continued**

Is the property eligible for incentives through the Commercial and Industrial Property Rehabilitation Program? Yes No

The Commercial and Industrial Property Rehabilitation Program is an incentive that provides a reduction in ad valorem property taxes for qualifying redevelopment in eligible areas.

For more information on incentives, please call the Community Development Agency, Planning Division at 770.528.2018 or find information online at <http://economic.cobbcountyga.gov>.

Special Districts

Is this property within the Cumberland Special District #1 (hotel/motel fee)?

Yes No

Is this property within the Cumberland Special District #2 (ad valorem tax)?

Yes No

Is this property within the Six Flags Special Service District?

Yes No

APPLICANT Poma Glass & Specialty Windows, Inc.

PETITION NO. Z-085

PRESENT ZONING R-20

PETITION FOR HI

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

Available at Development: Yes No

Fire Flow Test Required: Yes No

Size / Location of Existing Water Main(s): 12" DI / W side of Austell Road

Additional Comments: Existing water customer

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

In Drainage Basin: Yes No

At Development: Yes No

Approximate Distance to Nearest Sewer: On site

Estimated Waste Generation (in G.P.D.): A D F= +0 Peak= +0

Treatment Plant: South Cobb

Plant Capacity: Available Not Available

Line Capacity: Available Not Available

Projected Plant Availability: 0 - 5 years 5 - 10 years over 10 years

Drv Sewers Required: Yes No

Off-site Easements Required: 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 easements by the property owners. All easement acquisitions are the responsibility of the Developer

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

Additional Comments: Existing sewer customer. Proposed pavement and parking only.

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 offsite easements, dedication of on and/or offsite 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: Poma Glass & Specialty Windows, Inc.

PETITION NO.: Z-85

PRESENT ZONING: R-20

PETITION FOR: HI

| |
|---------------------------------------|
| STORMWATER MANAGEMENT COMMENTS |
|---------------------------------------|

No comments.

APPLICANT: Poma Glass & Specialty Windows, Inc. **PETITION NO.: Z-85**

PRESENT ZONING: R-20 **PETITION FOR: HI**

| |
|--------------------------------|
| 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 |
|--------------|---------------------|------------------------|-------------|------------------------|--------------------------|
| Austell Road | 35,300 | Arterial | 45 mph | Georgia DOT | 100' |
| | | | | | |

Based on 2013 traffic counting data taken by Cobb County DOT for Austell Road.

COMMENTS AND OBSERVATIONS

Austell Road is classified as an arterial, state route, and according to the available information the existing right-of-way does meet the minimum requirements for this classification.

RECOMMENDATIONS

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

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

STAFF RECOMMENDATIONS

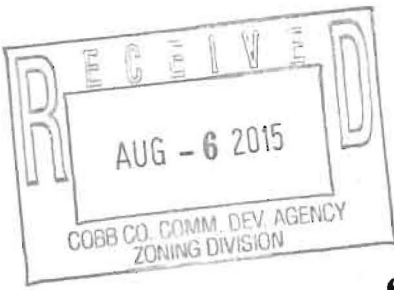
Z-85 POMA GLASS & SPECIALTY WINDOWS, INC.

- 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 overall property has been utilized many years as an industrial glass business. This rezoning request is to bring the existing strip of R-20 into compliance with the property's overall HI zoning.
- 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. As previously mentioned, the property has been utilized for an industrial glass business for many years. The property will continue to be utilized for industrial uses and no expansion is planned at this time.
- 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, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis.
- D. It is Staff's opinion that the applicant's rezoning proposal is not in conformity with the policy and intent of the *Cobb County Comprehensive Plan*, which delineates this property as being in the Neighborhood Activity Center (NAC) land use category. However, the subject property is a small portion of an overall industrial use on property that is zoned HI. The subject property is a driveway that separates the existing industrial use from its HI zoned parking lot.
- 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 subject property is the remnant of an R-20 strip that was originally from an older zoning case. The driveway will continue to be utilized for access to the main building and the parking lot, both of which are zoned HI. The applicant is not planning an expansion of the building. Additionally, the buffer adjacent to the residentially zoned property to the west will remain to protect those properties.

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

- Site plan received by the Zoning Division on August 19, 2015, with the District Commissioner approving minor modifications;
- Water and Sewer Division comments and recommendations;
- Stormwater Management Division comments and recommendations; and
- Department of Transportation comments and recommendations.

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 No. Z-85

Oct. 2015

Summary of Intent for Rezoning

Part 1. Residential Rezoning Information (attach additional information if needed)

- a) Proposed unit square-footage(s): N/A
 - b) Proposed building architecture: N/A
 - c) Proposed selling prices(s): N/A
 - d) List all requested variances: N/A
-
-
-

Part 2. Non-residential Rezoning Information (attach additional information if needed)

- a) Proposed use(s): Pavement and parking area of existing HI development
 - b) Proposed building architecture: N/A
 - c) Proposed hours/days of operation: N/A
 - d) List all requested variances: N/A
-
-
-

Part 3. Other Pertinent Information (List or attach additional information if needed)

Part 4. Is any of the property included on the proposed site plan owned by the Local, State, or Federal Government?

(Please list all Right-of-Ways, Government owned lots, County owned parcels and/or remnants, etc., and attach a plat clearly showing where these properties are located). NO

ALSTON & BIRD L.L.P.

One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424

404-881-7000
Fax: 404-253-8743
www.alston.com

W. Clay Massey

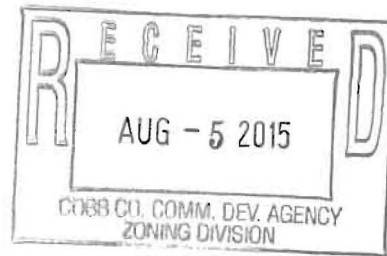
Direct Dial: 404-881-4969

Email: clay.massey@alston.com

August 4, 2015

VIA HAND DELIVERY

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



Re: Application of Poma Glass & Specialty Windows, Inc. to Rezone
a Portion of Parcel 30 in Land Lot 706, 19th District, Cobb
County, Georgia

Mr. Pederson:

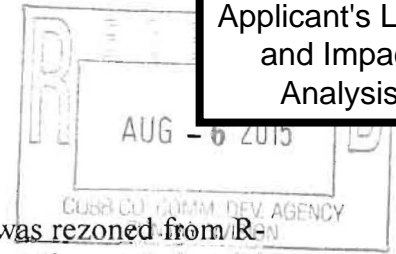
My client Poma Glass & Specialty Windows, Inc. ("Poma Glass") requests that the portion of its property located at 3200 Austell Road, Marietta, Georgia 30008 identified in yellow on the survey attached hereto as **Exhibit A** (the "R-20 Strip") be rezoned from R-20 to HI (Heavy Industrial). I write to explain the need and justifications for the requested rezoning.¹

Poma Glass's property located at 3200 Austell Road, Marietta, Georgia 30008 consists of approximately 9.6 acres on which a glass manufacturing facility has existed since the late 1970s (the "Poma Glass Property"). The Poma Glass Property was rezoned from R-20 to HI in 1978 to allow for this industrial use of the Poma Glass Property, except for a 50-foot wide R-20 strip of the Poma Glass Property running around the perimeter and to the north of the Poma Glass Property toward Pair Road as shown on **Exhibit A** hereto (the "Buffer Boundary"). At that time, the properties to the north and west of the Poma Glass Property were zoned for residential purposes, and the Buffer Boundary retained its R-20 zoning classification in order to provide a 50-foot wide undisturbed natural buffer between the Poma Glass Property's industrial use and the adjacent residential properties. However, in 1984, the adjacent property directly to the

¹ By this application, Poma Glass does not seek the rezoning of any portion of the Buffer Boundary other than the R-20 Strip or the removal of any condition of zoning that applies to the Poma Glass Property.

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north of the Poma Glass Property (the “Adjacent Industrial Parcel”) was rezoned from R-20 to HI. Also, Poma Glass acquired the western portion of the Adjacent Industrial Parcel to use as a parking lot for its facilities on the Poma Glass Property, as shown in the survey attached hereto as **Exhibit B**. Consequently, the R-20 Strip became wedged between two HI-zoned areas and separated Poma Glass’s HI-zoned parking lot from its HI-zoned facilities, as shown on the image of Cobb County’s GIS zoning map attached hereto as **Exhibit C**.

Poma Glass requests that the R-20 Strip be rezoned to HI in order to connect the HI-zoned areas on the Poma Glass Property and to allow its facilities existing within the R-20 Strip to be brought into an appropriate zoning classification.

In accordance with Section 134-121(a)(7) of the Zoning Ordinance, Poma Glass addresses the following factors in support the requested rezoning:

(a) The rezoning of the Subject Property will permit a use that is suitable in view of the use and development of adjacent and nearby property.

As discussed above, the Poma Glass Property and the Adjacent Industrial Parcel have been zoned HI and used for industrial purposes for decades. Rezoning the R-20 Strip to HI is clearly suitable in light of those longstanding industrial uses and industrial zoning classifications. Rezoning the R-20 Strip merely eliminates an intended buffer area that is unnecessary given that the Adjacent Industrial Parcel has not been residentially zoned for decades and is instead zoned and used for industrial purposes. The requested rezoning will also not bring any industrial use of the Poma Glass Property closer to any residentially zoned property. For these reasons, rezoning of the R-20 Strip to HI will permit a use that is clearly suitable in view of the use and development of adjacent and nearby property.

(b) The rezoning of the Subject Property will not adversely affect the existing use or usability of adjacent or nearby property.

Poma Glass incorporates its statements in Section (a) above. As explained therein, rezoning the R-20 Strip to HI will not adversely affect the existing use or usability of adjacent or nearby property.

(c) The Subject Property to be affected by the zoning proposal does not have a reasonable economic use as currently zoned.

R-20 zoning allows the R-20 Strip to be used only for single-family residences and for certain residentially compatible institutional and recreational purposes, with requirements for minimum lot size, lot width, public road frontage and setbacks. Zoning Ord. § 134-197. The size, location and configuration of the R-20 Strip clearly do not allow the R-20 to be used or marketed for those purposes or to meet those requirements. The R-20 Strip therefore does not have any reasonable economic use as currently zoned.

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Page 3

- (d) The rezoning of the Subject Property will not result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.**

Poma Glass incorporates its statements in Section (a) above. Rezoning the R-20 Strip will not increase any use of existing streets, transportation facilities, utilities or schools.

- (e) Rezoning the R-20 Strip will not conflict with the policy and intent of the land use plan.**

Rezoning the R-20 Strip will not change the zoning classification of the Poma Glass Property, which is and has been zoned HI for decades. Rezoning the R-20 Strip will merely eliminate the unnecessary R-20 zoning of a narrow strip of land between existing industrially-zoned and used areas of the Poma Glass Property adjacent to and near other industrial uses along Austell Road. Accordingly, rezoning the R-20 Strip will not conflict with any policy or intent of Cobb County's land use plan.

- (f) The existing conditions affecting the use and development of the R-20 Strip and Poma Glass Property give supporting grounds for approval of the zoning proposal.**

Poma Glass incorporates its statements in Section (a) above. Poma Glass further reiterates that the Poma Glass Property has been used for industrial purposes for decades. The requested rezoning merely eliminates an unnecessary and encumbering strip of R-20 zoning running through Poma Glass's otherwise HI-zoned property to connect and continue the industrial uses on its property. The rezoning will not alter or otherwise affect the circumstances or experience of any adjacent property owners.

Poma Glass asserts the Objections and Assertion of Rights set forth in **Exhibit D** hereto.

Thank you for your consideration of Poma Glass's requested rezoning of the R-20 Strip. If you have any questions, please do not hesitate to contact me.

Very truly yours,

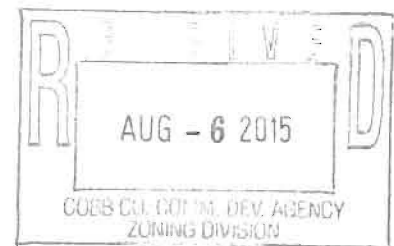

W. Clay Massey

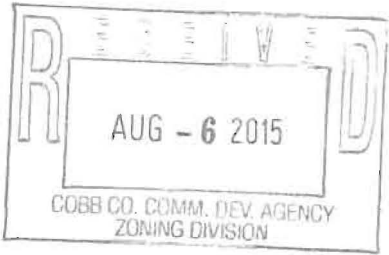


August 4, 2015
Page 4

cc: Chairman Tim Lee (*via* hand delivery w/ enclosures)
Cobb County Commissioners (*via* hand delivery w/ enclosures)
Commissioner Lisa Cupid, District 4 (*via* hand delivery w/enclosures)
Deborah Dance, Esq., County Attorney (*via* hand delivery w/ enclosures)
Christopher F. Correnti, Esq. Poma Glass & Specialty Windows, Inc. (*via* email w/
enclosures)

LEGAL02/35731233v2

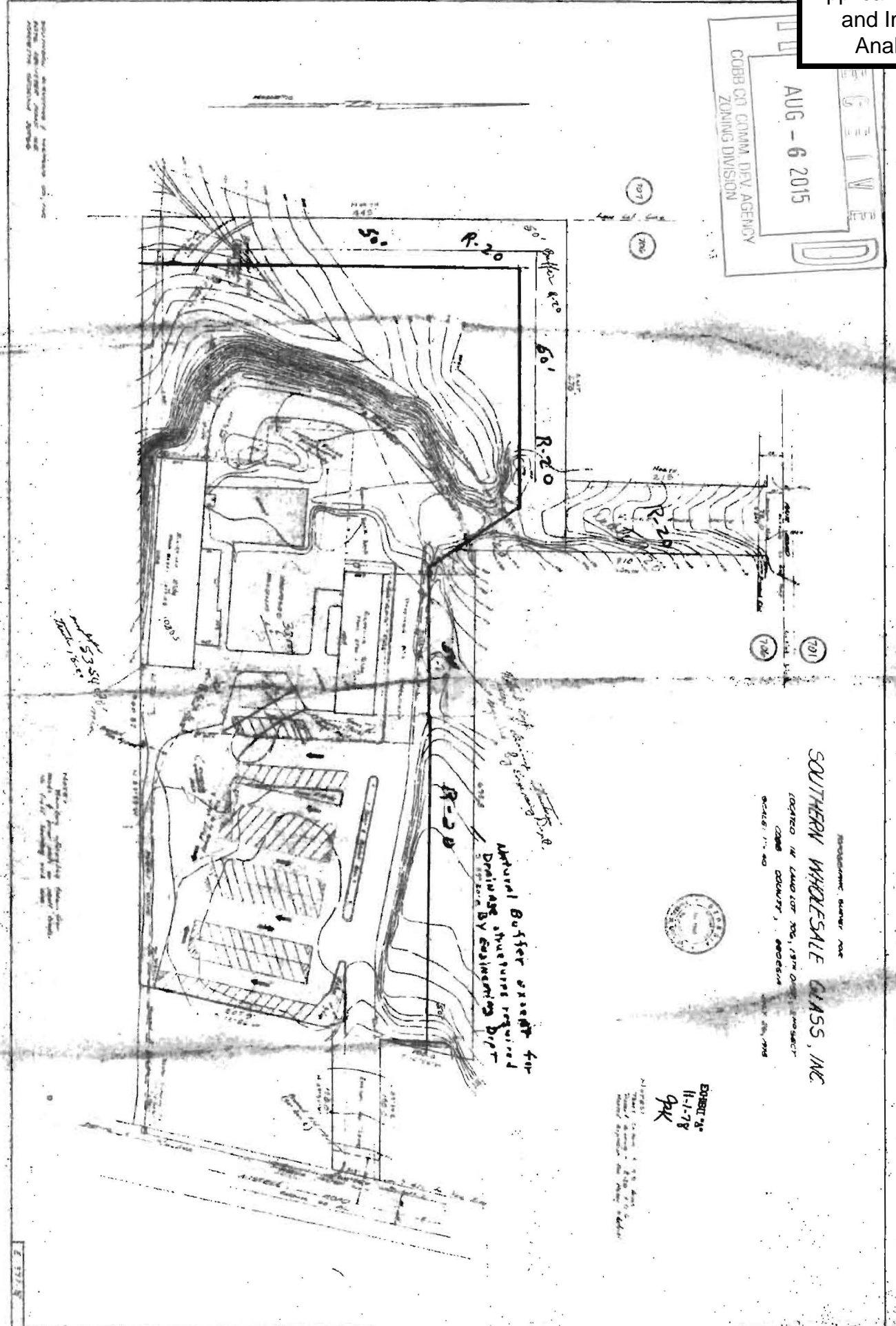




EXHIBIT

“A”

RECEIVED
AUG - 6 2015
COBB CO COMM DEV AGENCY
ZONING DIVISION



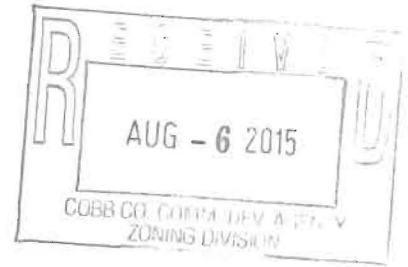
SOUTHERN WHOLESALE CLASS, INC
LOCATED IN LAND LOT 306, 1ST DISTRICT, COUNTY OF COBB, GEORGIA
801-451-1140



EXHIBIT #
11-1-78
gpk

Notwithstanding to whom these plans are approved, the applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.

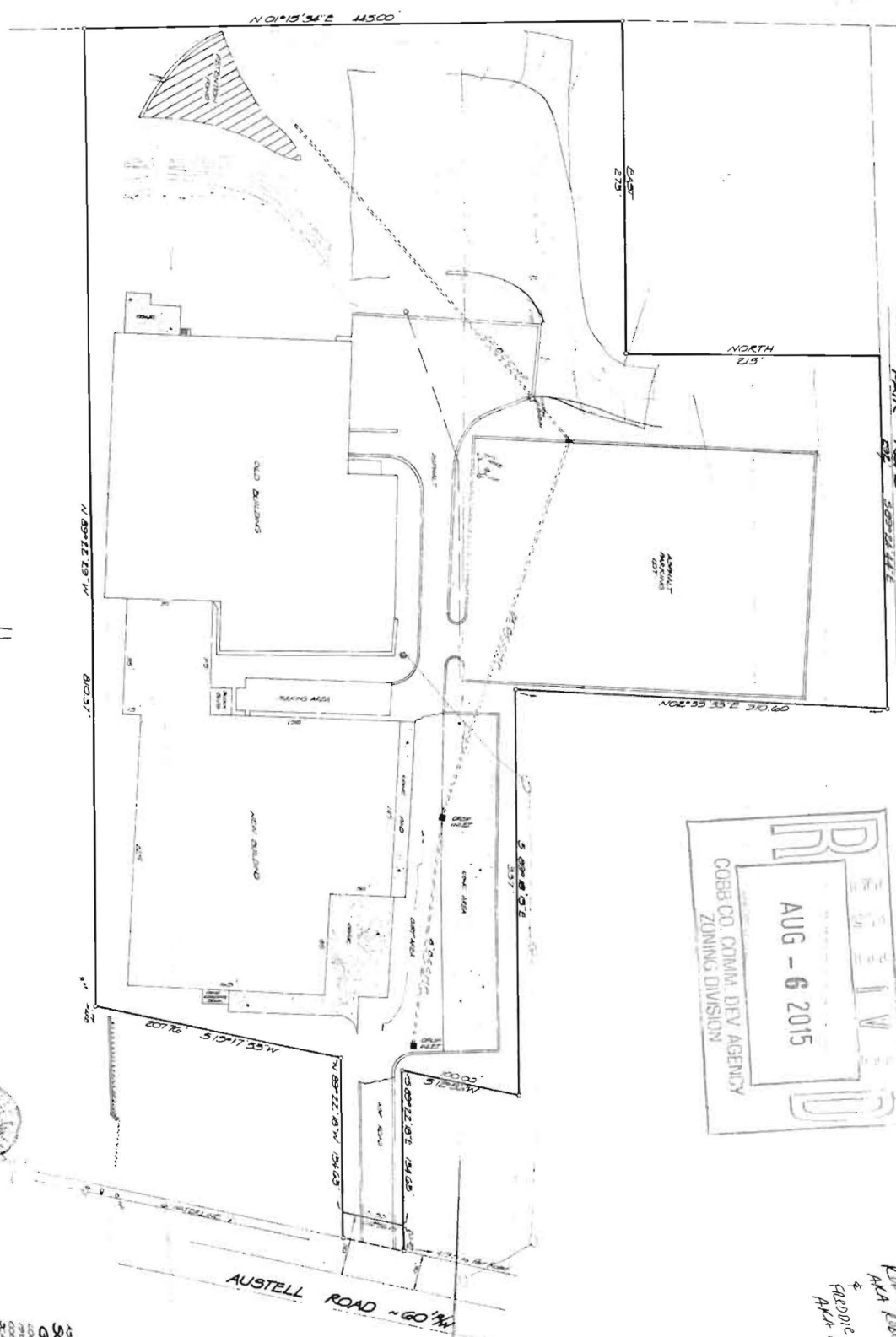
8/17/15



EXHIBIT

“B”

Z-85 (2015)
Applicant's Letter
and Impact
Analysis

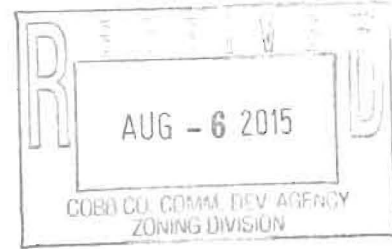


*Robert Griffiths Mitchell
ADA Robert S. Mitchell
+ Freddie Lee Mitchell
ADA Freddie L. Mitchell*



REGISTERED PLANNING FIRM
**SOUTHERN WHOLESALE
GLASS, INC.**
1000 W. BUCKLEBOURNE ROAD
SUITE 100
DUNWOODY, GEORGIA 30118
PHONE: 770-433-1234
FAX: 770-433-1235
WWW.SOUTHERNGLASS.COM

73578

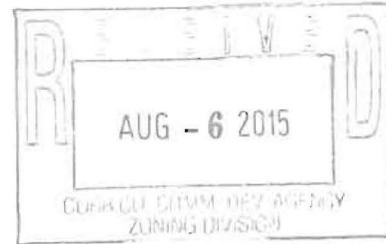


EXHIBIT

“C”

Z-85 (2015)
Applicant's Letter
and Impact
Analysis





EXHIBIT

“D”

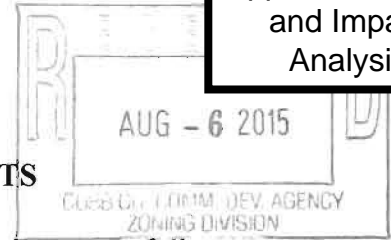


EXHIBIT D

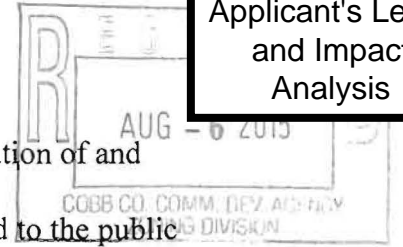
OBJECTIONS AND ASSERTION OF RIGHTS

Poma Glass & Speciality Windows, Inc. (“Poma Glass”) hereby respectfully asserts the following objections and rights with respect to its application to rezone the R-20 Strip from R-20 to HI (Heavy Industrial) as requestd in the attached letter and corresponding rezoning application (the “Application”):

1. The Cobb County Zoning Ordinance (the “Zoning Ordinance”) presently in effect lacks adequate standards for the Board of Commissioners to exercise its power to zone or rezone. The standards are insufficient to contain the discretion of the Board of Commissioners or to provide the courts with a reasonable basis for judicial review. Because the stated standards (individually or collectively) are too vague and uncertain to provide reasonable guidance to the Board of Commissioners or to restrict the Board of Commissioners’ discretion, the Zoning Ordinance violates the Fifth and Fourteenth Amendments of the United States Constitution, as well as Article I, Section III, Paragraph 1 and Article I, Section I, Paragraphs 1 and 2 of the Georgia Constitution.

2. Article IX, Section II, Paragraph 4 of the Georgia Constitution gives Cobb County (the “County”) the power to zone and rezone, which power must be fairly exercised under the Georgia Constitution. An application or disregard of the Zoning Ordinance in a way to deny the Application would violate this constitutional requirement.

3. Denying the Application would be a manifest abuse of the County’s rezoning power to the detriment of Poma Glass, which would cause Poma Glass special and substantial damages.



4. Denying the Application would be a significant deprivation of and detriment to Poma Glass's property rights that is insubstantially related to the public health, safety, morality and welfare of the citizens of the County and constitutes an unconstitutional arbitrary and capricious act, resulting in an unconstitutional taking of Poma Glass's property in violation of Article I, Section I, Paragraphs 1 and 2 of the Constitution of the State of Georgia, 1983; Article I, Section III, Paragraph 1 of the Constitution of the State of Georgia, 1983; and Article I, Section II, Paragraph 3 of the Constitution of the State of Georgia, 1983. Furthermore, denying the Application would violate the due process clause and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

5. Denying the Application would deprive Poma Glass of an economically viable use of its property without just and adequate compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section I, Paragraph I, and Article I, Section III, Paragraph 1(a) of the Constitution of Georgia.

6. Denying the Application would treat Poma Glass and its property unequally to and different from other persons and properties under like circumstances and conditions without a legitimate ground for differentiating Poma Glass and its property from those other persons and properties. Accordingly, denying the Application would violate Poma Glass's constitutional right to equal treatment and protection under the law in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section I, Paragraph 2 of the Constitution of the State of Georgia.

7. Any limitation of Poma Glass's time or opportunity for presentation of the issues before the Planning Commission or the Board of Commissioners would violate the

guarantees of free speech under Article I, Section I, Paragraph 5 of the Georgia Constitution and the First Amendment of the United States Constitution. Further, such limitations would violate Poma Glass's right to petition and assemble, in violation of Article I, Section I, Paragraph 9 of the Georgia Constitution, and the First Amendment of the United States Constitution as well as the due process and equal protection clauses of the Georgia Constitution, and the United States Constitution.

