



**AGENDA
CITY OF MCDONOUGH
CITY COUNCIL MEETING
CITY HALL – MONDAY, APRIL 19, 2021
6:00 PM**

- 1. Call to Order**
- 2. Roll Call**
- 3. Approval of the Agenda**
- 4. Pledge to the Flag**
- 5. Invocation**
- 6. Consent Agenda**
 - A. Adoption of a Resolution declaring that no on-street parking of motor vehicles or trailers shall be permitted on Industrial Parkway, South Point Boulevard and Avalon Parkway effective June 1, 2021.
 - B. Approval to allow Goforth Williamson, Inc. to replace an orbal basin mixer at the Wastewater Treatment Plant. The cost of a new shaft is \$57, 375.00, and the cost to repair the current shaft is \$35,375.00. Depending on whether the repairs can be done or if a new shaft must be acquired the cost will be paid from the Wastewater Treatment Plant Budget.
 - C. Approval to award the bid for the 2021 CDBG project to Helix Group, Inc. and approval of the contract between The City of McDonough and Helix Group, Inc. in the amount of \$257,375.30. (\$200,000.00 will be funded by the Henry County Community Block Grant and the \$57,375.30 will be funded by SPLOST IV funds.
- 7. Resolutions**
- 8. Audit Presentation for FY ending June 30, 2020 Mr. Jimmy Whitaker**
- 9. Approval of a Memorandum of Understanding and Franchise Agreement Discussion for GA Mobility Mr. J.T. Williams and Ms. Auta Lopes**
 - A. Approval of a MOU and Franchise Agreement Discussion
- 10. Community Development**
 - A. Case # 190302 (Rezoning) CC District 3: Craig Elrod
Applicant(s): Blue River Development
Development: Symphony Park
Address: North Racetrack Road & East Travis Dr. (Tax Parcels ID(s): #107-01034000, #107-01001000 & #107-01034001) Request: To rezone property from RA-

200 (Residential Agricultural) to R-50 (Single Family Residential), RTD (Residential Townhouse District), RM-75 (Multi-Family Residential) and 1.5 +/- acres allocated for development of a Public Safety Facility.

Zoning: RA-200 (Residential Agricultural) with conditions per ORD #04-09-13001(A)(Z)

Land Lot(s) 153 of the 7th District 107.88 +/- total acres

MPC Workshop (9/15/20) SPECIAL CALLED

MPC Public Review (10/13/20)

MCC Workshop (10/1/20)

MCC Public Hearing (10/19/20) POSTPONED

MCC Public Hearing (11/16/20) POSTPONED

MCC Public Hearing (12/14/20) POSTPONED

MCC Public Hearing (1/19/21) POSTPONED

MCC Public Hearing (2/15/21) POSTPONED

MCC Public Hearing (3/15/21) HELD

MCC Vote (4/19/21)

B. Case #210101 CC District: #4, CM Kam Varner

Applicant(s): The Residential Group

Development (Crest South Point)

Address/Location: Highway 81 W. (more specifically Parcel(s) #075-01066001, #075-01066002, #075-01066004, #075-01066005, & #075-01066006)

Request: A petition to rezone 5 +/- acres to C-3 (Highway Commercial) and 31 +/- acres to RM-75 (Multi-Family Residential).

Zoning: RA-200 (Residential Agricultural)

Land Lot(s) 161 of the 7th District 36 +/- total acres

MPC Workshop (2/9/21)

MPC Public Review (3/9/21)

MCC Workshop (3/4/21) POSTPONED per Applicant

MCC Workshop (4/1/21)

MCC Public Hearing (3/15/21) POSTPONED per Applicant

MCC Public Hearing (4/19/21)

C. Case #210102 CC District: #1, CM Rufus Stewart

Applicant: Steven Jones for Eagles Rest PH 2

Address: Hampton St. (#M0.35-01004003)

Request: To rezone property to RTD (Residential Townhouse District)

Zoning: R-50 (Single Family Residential) per ORD#00-07-03F

Land Lot(s) 156 of the 7th District 3.085 +/- total acres

MPC Workshop (3/9/21)

MPC Public Review (4/13/21)

MCC Workshop (4/1/21)

MCC Public Hearing (4/19/21)

D. SPECIALTY ITEM: Title 17 Code Amendment

Adoption of an Ordinance to amend/eliminate zoning districts that accommodate the development of multi-family housing within the City limits by repealing City's Zoning Ordinance, Code Section(s) 17.40 (RM-75/Multi-Family Residential), 17.44 (RTD/Residential Townhouse District), and 17.48 (Residential Condominium District/Residential Condominium District).

MPC Workshop (3/9/21)

MPC Public Review (4/13/21)
MCC Workshop (4/1/21)
MCC Public Hearing (4/19/21)

- 11. Unscheduled Public Comments**
- 12. Approval of the April 1, 2021 Workshop Minutes**
- 13. Executive Session (if needed) for: Litigation O.C.G.A. 50-14-2
Real Estate O.C.G.A. 50-14-3 (b)(1)
Personnel O.C.G.A. 50-14-3 (b)(2)**
- 14. City Attorney and City Clerk Comments**
- 15. Councilmembers and Mayor Comments**
- 16. Adjournment**

OPEN MEETINGS COMPLIANCE NOTICE: This is a regularly scheduled meeting of Mayor and Council of the City of McDonough duly noticed pursuant to the requirements of the Georgia Open Meetings Law (O.C.G.A. § 50-14-1, et seq). Notice of the meeting schedule was published in the Henry Herald on January 1, 2020; and a copy the meeting schedule was posted at City Hall and on the City's website, as required by law.

DATE @ TIME

AGENDA ITEM SUMMARY
Date: April 19, 2021

ITEM NUMBER: 6.A.

ITEM SUMMARY:

SPECIAL CONSIDERATIONS OR CONCERNS:

RECOMMENDATION:

FINANCIAL IMPACT:

ATTACHMENTS:

1. Item 6A Resolution no on-street parking

Submitted by:

6A

**STATE OF GEORGIA
CITY OF McDONOUGH**

RESOLUTION No. _____

WHEREAS, on March 4, 2021, the Mayor and Council of the City of McDonough adopted an ordinance regarding parking regulations in the City; and

WHEREAS, on-street parking, particularly of heavy vehicles and trailers, as results in damage to roadways included within the City's municipal street system; and

WHEREAS, the Mayor and Council desire to prohibit on-street parking on certain city rights-of-way.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the City of McDonough designate that no on-street parking of motor vehicles or trailers shall be permitted on **INDUSTRIAL PARKWAY, SOUTH POINTE BOULEVARD and AVALON PARKWAY effective June 1, 2021**. City personnel are directed to place appropriate signage prior to the effective date of this ordinance.

This 19th day of April, 2021.

CITY OF McDONOUGH, GEORGIA

By: _____
Billy Copeland, Mayor

Attest:

Janis Price, City Clerk

AGENDA ITEM SUMMARY
Date: April 19, 2021

ITEM NUMBER: 6.B.

ITEM SUMMARY:

SPECIAL CONSIDERATIONS OR CONCERNS:

RECOMMENDATION:

FINANCIAL IMPACT:

ATTACHMENTS:

1. Item 6B -Repair at the Wastewater Treatment Plant

Submitted by:

AGENDA ITEM SUMMARY
April 19th, 2021

ITEM NUMBER: 6B

ITEM SUMMARY:

Request approval to allow Goforth Williamson, Inc. to replace an orbal basin mixer at the Wastewater Treatment Plant.

SPECIAL CONSIDERATIONS OR CONCERNS:

The current orbal basin mixer is inoperable.

STAFF RECOMMENDATION:

Staff recommends approving this request.

FINANCIAL IMPACT:

Total Cost: \$57,375.00 (if it needs a new shaft)
If they are able to repair the shaft the total cost is \$35,375.00

This Will Be funded from Enterprise Funds: Wastewater Treatment Plant Budget

ATTACHMENTS:

Quote:
Goforth Williamson, Inc.

Submitted and Approved by:

Ronnie Thompson, Public Works Director



Goforth Williamson, Inc.
 Mail To: 373 O'Dell Road
 Ship To: 377 O'Dell Road
 Griffin, GA 30224
 United States of America

Ph: 770-467-0303

Fax: 770-467-0301

Quote

ID: 216547

Date: 16-Mar-21

To

McDonough, City of
 136 Keys Ferry St
 McDonough, GA 30253
 United States of America

Quote To

Jeremy Newton
 City of McDonough
 107 Turner Church Rd
 McDonough, GA 30253
 United States of America

Ph: 770-957-3915

Ph: 770-957-3915

Terms		Ship Via		Salesperson
Net 30 Days		GWI Truck		JGBOS
Quantity	Description	Unit Price	Amount	
	Reference: Orbal Basin Mixer PER YOUR REQUEST, WE ARE PLEASED TO QUOTE THE FOLLOWING:			
	Line: 001 Part: ORBAL BASIN MIXER Repair Expiration Date: 15-Apr-21 Rev: BUDGET Scope of Work: 1. Travel to site. – Turner Church Rd 2. Remove existing Orbal mixer shaft using crane service. 3. Deliver shaft to GWI Service Center. 4. Remove impellers from shaft. 5. Stub existing shaft to repair the bearing fits. 6. Reinstall impellers onto shaft. 7. Deliver shaft to site. 8. Install repaired Orbal mixer shaft and install customer supplied bearings and couplings. 9. Provide and install parts to convert gearbox from chain driven to belt driven. 10. Clean up site and return to GWI Service Center. Note: This quote is for budgetary purposes only. Any work outside the above scope of work will require a revised scope and quote. No further work will be performed without approval of changes. Quote Prepared by Nathan Beasley / Project Manager For the above scope of work, GWI Quotes:			
1	ea	\$35,375.00	\$35,375.00	



Goforth Williamson, inc.

Goforth Williamson, Inc.
 Mail To: 373 O'Dell Road
 Ship To: 377 O'Dell Road
 Griffin, GA 30224
 United States of America

Ph: 770-467-0303

Fax: 770-467-0301

Quote

ID: 216547

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McDonough, City of
 136 Keys Ferry St
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Quote To

Jeremy Newton
 City of McDonough
 107 Turner Church Rd
 McDonough, GA 30253
 United States of America

Ph: 770-957-3915

Ph: 770-957-3915

Terms		Ship Via		Salesperson
Net 30 Days		GWI Truck		JGBOS
Quantity	Description	Unit Price	Amount	
1	Line: 002 Part: REPLACEMENT SHAFT Adder If the shaft cannot be repaired then there will be an adder for a new shaft. Expiration Date: 15-Apr-21 Rev:	\$22,000.00	\$22,000.00	
	PLEASE NOTE: 1. Freight: FOB Origin, ground freight prepaid and charged to curbside of first location. 2. Price "does not" reflect Sales Tax, Documentation, Drawings, or Special Paperwork. 3. We can now accept Visa, Mastercard, American Express and Discover. Please contact us If you would like to pay via credit card. A 5% surcharge will be added to the invoice amount. 4. GWI will provide 1-year warranty on workmanship and materials from the date of delivery 5. Please reference Quote on Purchase order and send your Purchase orders to PurchaseOrders@GoforthWilliamson.com THANK YOU FOR THE OPPORTUNITY TO PROVIDE THIS QUOTE. PLEASE CALL 770-467-0303, OR YOUR SALES REP, IF YOU HAVE ANY QUESTIONS.	Total:	\$57,375.00	

AGENDA ITEM SUMMARY
Date: April 19, 2021

ITEM NUMBER: 6.C.

ITEM SUMMARY:

SPECIAL CONSIDERATIONS OR CONCERNS:

RECOMMENDATION:

FINANCIAL IMPACT:

ATTACHMENTS:

1. Item 6C - Contract

Submitted by:

AGENDA ITEM SUMMARY

April 19th, 2021

ITEM NUMBER: 6C

ITEM SUMMARY:

Approval to award the bid for the 2021 CDBG project to Helix Group, Inc.; Approval of the contract between the City of McDonough and Helix Group Inc. Project which includes Doris St. and Cherry St. sidewalk and drainage improvements; authorization for mayor to sign all related documents.

SPECIAL CONSIDERATIONS OR CONCERNS:

STAFF RECOMMENDATION:

Staff recommends moving forward with Helix Group, Inc.

FINANCIAL IMPACT:

Doris St.: \$184,542.55
Cherry St.: \$72,832.75
Total cost: \$257,375.30

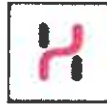
\$200,000 will be funded by Henry County Community Development Block Grant.
\$57,375.30 will be funded by SPLOST IV- Sidewalk connectivity.

ATTACHMENTS:

Contract agreement Helix Group, Inc.
Quotes:
Site Engineering, Inc. - \$809,900.00
C&S Construction & Consulting, Inc. - \$690,861.89
Triad Construction, Inc. - 580,558.10
DAF Concrete, Inc. - \$420,492.50
McLeroy, Inc. - \$399,014.00
Construction 57, Inc. - \$364,347.60
The Corbett Group, LLC - \$360,820.74
Helix Group, Inc. - \$257,375.30

Submitted and Approved by:

Ronnie Thompson,
Public Works Director



HELIX

GROUP

1375 Oakley Industrial Blvd
Fairburn, GA 30213
P: 470-491-4500 F: 470-491-4514

SECTION VII FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

THIS AGREEMENT on this 20 day of April, 2021 is by and between City of McDonough, Georgia ("Owner") and Helix Group, Inc. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1— WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: All material, labor, tools, equipment, and any other miscellaneous items necessary to complete the work in the Construction Drawings & Specifications.

ARTICLE 2 — THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part generally described as follows:

2.01 This project will be constructed at Doris St and Cherry St. The work consists of furnishing and installing all materials, labor, tools, equipment, and related services required for a complete project in accordance with the Contract Documents. This project includes but is not limited to the required traffic control, clearing and grading, concrete, utilities, landscaping, and all other appurtenances necessary to complete Doris St and Cherry St Sidewalk and Drainage Improvements.

2.02 The project has been designed by Whitley Engineering, Inc. (Engineer), which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work

in accordance with the Contract Documents; provided, however, that decisions of the Engineer are subject to final approval by the Owner's public works director.

ARTICLE 3 — CONTRACT TIMES

3.01 Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

- A. The work will be completed and ready for final payment within **140** days after the date when the Contract Times commence to run as provided in Article 10 of the General Conditions.

ARTICLE 5 — CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to sum o f the amounts determined pursuant to Paragraphs 5.01.A below:

- A. For all work at the Unit Price Base Bid of: **Two Hundred Fifty Eight Thousand Nine Hundred Forty Seven and 30/100 Dollars (\$258,947.30)**

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established (and in the case of Unite Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
 - 1. Prior to completion, progress payments will be made in an amount equal to the percentage indicated below.
 - a. 90 percent of Work completed (with the balance being retainage) . If the Work has been 50 Percent completed as determined by Engineer, and if the character and progress of the work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

- b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer.

ARTICLE 7 — INTEREST

7.01 All moneys not paid when due as provided in the General Conditions shall bear interest at the rate of 1.0 percent per annum.

ARTICLE 8 — CONTRACTOR'S REPRESENTATION

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- E. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 — CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement.
2. Performance Bond.
3. Payment Bond.
4. Addenda.
5. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - c. Certificate of Insurance.
 - d. Plans by Whitley Engineering, Inc. for Cherry St dated 08/06/2018 and Doris St dated 11/12/2020.
6. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - e. Notice to Proceed.
 - f. Work change Directives
 - g. Change Orders.

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

ARTICLE 10 — MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

Indemnification: The CONTRACTOR shall indemnify and hold harmless the OWNER and Consulting ENGINEER (also known as Whitley Engineering, Inc.) and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the WORK, provided that any such claim, damage, loss, expense, or attorney's fees is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and is caused in whole or in part by any negligent act or omission of the

CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not the negligent act is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Clause. In any and all claims against the OWNER or the Consulting ENGINEER or any of their agents or employees, by any employee of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation set forth in this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Subcontractor under workers' or workman's compensation acts, disability benefit acts or other employee benefit acts.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on Apr. 20 2021 (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

City of McDonough, Georgia

Helix Group Inc.

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Attest: 1

Title: _____

Title: P

5

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of the _____ day of APRIL, 2021, by and between the CITY OF McDONOUGH, GEORGIA ("McDONOUGH") and GEORGIA MOBILITY SOLUTIONS, INC., or assigns ("GA Mobility"), each a Party" and collectively the "Parties".

- 1. GA Mobility desires to provide in the McDONOUGH, its very first Network, which will become the envy of the World. GA Mobility, an affiliate of JPODS, LLC., wants this to become the very first Personal Rapid Transit network in the State of Georgia. This will not cost McDONOUGH anything. It will be efficient, convenient, energy efficient, quiet, with no emissions, solar-powered and with high capacity. GA Mobility will be fully responsible for the safety, operation and certification, as regulated by the State of Georgia.**
- 2. This MOU is intended to enumerate the general terms for the future FRANCHISE AGREEMENT and this MOU will not be binding upon McDONOUGH unless, and until McDONOUGH approves the FRANCHISE AGREEMENT. The FRANCHISE AGREEMENT will require GA MOBILITY to maintain a time-table for the various components of the Network.**
- 3. This MOU confirms that the McDONOUGH is interested in providing support to GA MOBILITY for the purpose of building and operating a NETWORK of autonomous, solar-powered pods, known as a Personal Rapid Transit (PRT), starting in the SOUTH POINT Shopping area and Highway 81. McDONOUGH will cooperate with GA MOBILITY in making available the necessary Right-of-Ways and Air Rights. Finally, McDONOUGH and GA MOBILITY will begin negotiating and entering into a long-term FRANCHISE AGREEMENT between the parties.**
- 4. McDONOUGH agrees to work with GA MOBILITY to finalize a FRANCHISE AGREEMENT and to authorize GA MOBILITY to build, operate and maintain a GA MOBILITY Network in McDONOUGH, and this MOU will not be binding upon McDONOUGH until appropriate review and approval of**

the FRANCHISE AGREEMENT by all appropriate parties, including the Mayor and City Council of McDONOUGH.

- 5. McDONOUGH is interested in seeing the GA MOBILITY solution implemented, based upon the following representations:**
 - a. GA MOBILITY's network will be 100% privately financed, solar-powered, high capacity and operating 24/7;**
 - b. GA MOBILITY will free-up ground space needed for parking.**
 - c. GA MOBILITY will build a pure green energy project that will be environmentally friendly.**
 - d. GA MOBILITY will be responsible for operating and maintaining their Network that will operate in the Right-of-Ways and Air Rights controlled by the McDONOUGH.**
 - e. In exchange, GA MOBILITY will pay to the McDONOUGH five percent (5%) of its Gross Revenue earned from operations within the McDONOUGH rights of ways and their system will be at least 5 times more efficient than present modes of transportation using Public Right of Ways.**
- 6. McDONOUGH agrees to work with GA MOBILITY to streamline a process for GA MOBILITY, and its representatives, to obtain the appropriate Right-of-Ways, necessary Air Rights and Easements and permits for the initial Network, as well future expansion within other parts of McDONOUGH, as mutually agreed upon by the parties.**
- 7. GA MOBILITY will plan, construct and put into operation a small pilot route, within and near to the SOUTH POINT shopping area, to enable evaluation by the parties, before completing the remaining parts of the Network, as mutually agreed upon by the parties.**
- 8. GA MOBILITY confirms that the GA MOBILITY NETWORK will be approved for safe operation before opening up for public use.**

IN WITNESS WHEREOF, the Parties have executed this MOU on this ____Day of APRIL, 2021.

CITY OF McDONOUGH, GEORGIA

By:_____

Name: Billy Copeland

Title: MAYOR

Attest:

By_____

Name:_____

(SEAL)

Approved as to form:

Attorney for the

CITY OF McDONOUGH

GEORGIA MOBILITY SOLUTIONS, INC.

By:_____

Name: Auta Lopes

Title: PRESIDENT/CEO

Attest:

By:_____

Name: J. T. Williams, Secretary

(SEAL)

DRAFT OF FRANCHISE AGREEMENT

This Agreement is made and entered into this ____ day of April, 2021 by and between:

- City of McDonough, GA (CITY)
- JPods LLC, a Wyoming company, and Georgia Mobility Company LLC, a Georgia company (individually and collectively, COMPANY).
- This agreement establishes the terms and conditions between CITY and COMPANY to plan, design, construct, operate, and maintain a JPods solar-powered mobility network in CITY.

Whereas, COMPANY has patented technology to build grade-separated solar-powered mobility networks (6,810,817, Intelligent Transport System, the Physical Internet®)

“A method of controlling a transportation System for moving people, freight, and any combination whereof using a distributed network of intelligent devices without requiring the aid of a human driver”

“The method comprising Solar and wind power generators integrated into the Physical Structure of said Transportation System augmenting first power means”, and,

Whereas, JPods Personal Rapid Transit Systems (NETWORK) are lightweight, efficient, convenient, energy efficient, quiet, no emissions, solar-powered, and high capacity; and,

Whereas, COMPANY accepts responsibility to design, engineer, procure, fabricate, construct, install, certify, and operate NETWORK; and,

Whereas, COMPANY accepts responsibility for safety, operation, and certification as regulated by the STATE regulations (see Definitions in Paragraph 1):

Whereas, COMPANY accepts responsibility for building the NETWORK over roads so the movement of people and cargo flows in an efficient, convenient, comfortable, and safe manner, without unduly disrupting the flow of traffic on those roads; and,

Whereas, COMPANY agrees to provide a removal and restoration bond for the NETWORK if the NETWORK ceases operation for 60 days. The bond shall be by a bonding insurance company with an “A” or better rating by AM Best; and,

Whereas the CITY, desires to have safe, efficient, and sustainable transportation infrastructure; and,

FRANCHISE AGREEMENT: JPods Solar-powered Mobility Network

Whereas the CITY has sovereignty to grant Rights of Way (ROW) easements within the jurisdiction of the CITY.

NOW THEREFORE WITNESSETH, for \$10 and other valuable considerations, the receipt and sufficiency thereof is hereby specifically acknowledged, the parties hereto agree to the following:

1. **DEFINITIONS** - The capitalized terms used but not otherwise defined in this Agreement shall have the following meanings and definitions
 - 1.1. **NETWORK** - Transportation guideways, towers, poles, lines, inhaul cable, brackets, conduits, solar-collection units, transportation energy distribution, fixtures, self-driving vehicles, control systems, and necessary appurtenances owned or operated by COMPANY for the purpose of providing transportation services for public use.
 - 1.2. **Project**: A mutually agreed to NETWORK.
 - 1.3. **JPODS** - JPods, LLC, and Georgia Mobility Company LLC which has sole ownership and management rights to plan, design, construct, own, operate, and maintain NETWORK.
 - 1.4. **Georgia Mobility Company (MMC™)** – Georgia Mobility Company LLC is licensed by JPODS to build JPODS NETWORKS in compliance with the laws and practices of the State of Georgia. JPODS will remain fully responsible for the actions of the MMC.
 - 1.5. **McDonough Mobility Company (LMC™)** – JPODS will form the McDonough Mobility Company to own and operate the JPODS NETWORK in the City of McDonough, GA. JPODS will remain fully responsible for the actions of the LMC.
 - 1.6. **CITY Utility System** - Facilities used for providing related public utility service owned or operated by CITY or agency thereof, including sanitary sewer, storm sewer and water service.
 - 1.7. **5x5 Standard (5X5 STANDARD)** - Defines the regulatory framework for use of Public Ways for transportation services at least five times (5X) more efficient than other modes of transportation using those Public Ways (125 miles per gallon or equivalent economic work per unit of energy) for 5% of their gross revenues.
 - 1.8. **Right to Reject** - The CITY, for 30 days from plan submission date, may reject the NETWORK for any reason whatsoever, so long as that reason (s) is stated in writing and submitted to the COMPANY as per this agreement.
 - 1.9. **Environmental Regulations** - The CITY grants environmental approval for deployment of the NETWORK based on:
 - 1.9.1. Average energy efficiency 5X for 5% of gross transportation revenues.
 - 1.9.2. No continuous disruption of the ground-water flows.
 - 1.9.3. No uniform linear barrier to the movement of people, animals or other modes of transportation.
 - 1.10. **Safety Regulations (SAFETY REGULATIONS)** – The NETWORK shall comply with Georgia's [Office of Insurance and Safety Fire Commissioner](#) and [ASTM F24](#) standards used on the Disney Monorail and rides at Six Flags). This regulatory framework is used because:
 - 1.10.1. Private capital will invest in its known costs of regulations.
 - 1.10.2. It provides a 10,000 time better safety record than roads.

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- 1.10.2.1. ASTM injuries per million people is 0.9 injuries
- 1.10.2.2. Federal DOT regulations injuries per million people is 11,200.
- 1.10.3. It has long been used in Georgia to keep pedestrians safe while in close proximity of power machine networks.
- 1.10.4. There is a well-established enforcement, inspection industry, commercial insurance, and common law.
- 1.10.5. This regulatory framework bypasses the Federal barriers to innovation stated in [Congressional Office of Technology Assessments Study PB-244854, Page 41, Institutional barriers to transportation innovation.](#)
- 1.11. **Notice** - A written notice served by one party on the other party referencing one or more provisions of this Agreement. Notices between the CITY and COMPANY shall be via mutually agreed to Internet Secure Server with archive capabilities.
- 1.12. **Public Ground** - Land owned by the CITY for commercial use, parks, open space, or similar purposes, which is held for use in common by the public.
- 1.13. **Public Way** - The area on, over, or below any street, alley, walkway, bikeway, public utility easement, or other public right-of-way within the CITY in which the CITY has an interest.
- 1.14. **Rights of Way Regulations (ROW REGULATIONS)** - Access to Public Ways and Grounds shall be regulated in conformance with [Georgia's R.O.A.D.S. rights of way system.](#)
- 1.15. **Turn-key** - JPODS, its assignees and those contracted by JPODS/assignees, shall complete all project development and construction activities necessary to achieve a fully completed and operational NETWORK.
- 1.16. **Engineer** - The licensed engineer, appointed by JPODS, responsible for the management and supervision of all project development and construction activities for the performance of the contract.
- 1.17. **Schedule** - The schedule for designing, building, and certification of services as specified in the mutually agreed to plan.
- 1.18. **Drawings** - All the drawings and technical data provided either by JPODS or the CITY.
- 1.19. **Working Day** - The legal working day in the CITY.
- 1.20. **Machinery & Equipment** - All construction tools, machines and equipment.
- 1.21. **Instrument** - Instrument and implement for survey, construction, inspection, material inspection, experiment and so on.
- 1.22. **Secure Server** - The mutual agreed to secure server with archive capabilities.

2. PROJECT SCOPE

- 2.1. To be mutually agreed to by the Parties hereto.

3. ADOPTION OF FRANCHISE

- 3.1. **Grant of Franchise** - CITY hereby grants COMPANY, for a period of 30 years from the date passed hereof, the right to furnish guideway-based transportation services for public and private use within and through the limits of the CITY as its boundaries now exist or as they may be extended in the future.

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- 3.1.1. For these purposes, COMPANY may construct, operate, repair, and maintain NETWORK in, on, over, under, and across the Public Grounds and Ways of CITY, subject to the provisions of this Agreement.
 - 3.1.2. COMPANY may do all reasonable actions necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the CITY pursuant to Agreement and to the further provisions of this franchise agreement.
 - 3.2. **Effective Date** - Written Acceptance: This franchise agreement shall be in force and in effect from and after the date hereof.
 - 3.3. **Capital Requirement** - JPODs must provide proof of \$10 million in capital to be applied to building the NETWORK within 6 months or the CITY may terminate the agreement.
 - 3.4. **Service and Rates** - The service to be provided and the rates to be charged by COMPANY are to be high enough to provide for profitable operation, maintenance, servicing of capital requirements, and network expansion and low enough to encourage use of the NETWORK.
 - 3.5. **Dispute Resolution** - If either party asserts that the other party is in default in the performance of any obligation herein, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written via SECURE SERVER.
 - 3.5.1. Representatives of the parties shall promptly meet and attempt, in good faith, to negotiate a resolution of the dispute.
 - 3.5.2. If the dispute is not resolved within 30 days of the written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used, or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court to interpret and enforce this franchise, or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.
4. **LOCATION, OTHER REGULATIONS**
- 4.1. **Location of Facilities** - NETWORK shall be located, constructed, and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Grounds and Ways and so as not to disrupt normal operation of any CITY Utility System therein. NETWORK shall be located as determined by joint agreement between the CITY and COMPANY.
 - 4.1.1. COMPANY'S construction, reconstruction, operation, repair, maintenance, power, power distribution, and location of NETWORK shall be subject to permits if required by separate Agreement and to other reasonable regulations of the CITY to the extent consistent with the terms of this franchise agreement.
 - 4.1.2. COMPANY may abandon underground components of the NETWORK in place, provided that, at the CITY's request, COMPANY will remove those components

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interfering with a CITY improvement project to the extent such NETWORK components are uncovered by excavation as part of the CITY improvement project within 4 months of abandonment.

- 4.2. **Street Openings** - COMPANY shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the CITY, if required by a separate Agreement, for which the CITY may impose a reasonable fee.
 - 4.2.1. Permit conditions imposed on COMPANY shall not be more burdensome than those imposed on other utilities for similar facilities or work. COMPANY may, however, open and disturb any Public Ground or Public Way without permission from the CITY where an emergency exists requiring the immediate repair of NETWORK. In such event, COMPANY shall notify the CITY by telephone, email and/or the website deployed to coordinate with the office designated by the CITY as soon as practicable. Not later than the second working day thereafter, COMPANY shall obtain any required permits and pay any required fees.
- 4.3. **Restoration** - After undertaking any work requiring the opening of any Public Ground or Public Way, COMPANY shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter that are a consequence of COMPANY actions, not to include consequences such as extreme weather, vandalism, or other work by the CITY.
 - 4.3.1. The work shall be completed as promptly as weather permits, and if COMPANY shall not promptly perform and complete the work, remove all dirt, rubbish, equipment, and material, and put the Public Ground or Public Way in the said condition, the CITY shall have, after demand to COMPANY to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of COMPANY. COMPANY shall pay to the CITY the cost of such work done for or performed by the CITY.
 - 4.3.2. This remedy shall be in addition to any other remedy available to the CITY for noncompliance with this Section, but the CITY hereby waives any requirement for COMPANY to post a construction performance bond, certificate of insurance, letter of credit, or any other form of security or assurance that may be required, under a separate existing or future Agreement of the CITY, of a person or entity obtaining the CITY's permission to install, replace or maintain facilities in a Public Way.
- 4.4. **Avoid Damage to NETWORK** - Nothing in this Agreement relieves any person from liability arising out of the failure to exercise reasonable care to avoid damaging NETWORK while performing any activity.
 - 4.4.1. No one except those authorized by the COMPANY may perform work on the NETWORK.
 - 4.4.2. The CITY shall notify the COMPANY in advance of any work being performed under its authority that could potentially destabilize any part of Public Grounds and Ways through which NETWORK is deployed.

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- 4.5. **Notice of Improvements** - The CITY must give COMPANY reasonable notice of plans for improvements to Public Grounds and Ways where the CITY has reason to believe that NETWORK may affect or be affected by the improvement.
- 4.5.1. The notice must be given to the COMPANY in a sufficient length of time in advance of the actual commencement of the work to permit the COMPANY to make any necessary additions, alterations, or repairs to its NETWORK.
- 4.5.2. The COMPANY shall provide the CITY notice of improvements within the CITY permitting process for structures that intersect Public Grounds and Ways. COMPANY improvements to electronics, software, mechanics, and components of the NETWORK, which are trade secrets of the COMPANY, need not be disclosed and will be accounted for within the insurance, safety, and operations documents of the COMPANY.
- 4.6. **Shared Use of NETWORK** - COMPANY shall make space available on its NETWORK for CITY fire, water utility, police, or other CITY facilities upon terms and conditions acceptable to COMPANY whenever such use will not interfere with the use of such NETWORK by COMPANY.
- 4.6.1. The CITY shall pay for any added costs or lost profits incurred by COMPANY because of such use by the CITY. To the extent practical and commercially viable, the COMPANY will allow use of NETWORK by telephone, cable television, and other communication companies at typical commercial rates.
- 4.6.2. COMPANY is free to implement agreements for non-interference use of its structures with the exception of CITY non-interference codes.
5. **RELOCATIONS**
- 5.1. **Relocation of NETWORK in Public Grounds and Ways** - If the CITY determines to vacate a Public Ground or Way for a CITY improvement project, or to grade, regrade, change the line of any Public Ground or Way, or construct or reconstruct any CITY Utility System in any Public Ground or Way, the CITY may order the COMPANY to relocate its NETWORK located therein if relocation is reasonably necessary to accomplish the CITY's proposed public improvement with the following conditions.
- 5.1.1. COMPANY is authorized to reuse removable versions of its NETWORK in initial deployments when ridership is uncertain or in areas where removal is likely.
- 5.1.2. Except as provided in Section 4.3, the COMPANY shall relocate its NETWORK and be reimbursed the cost of such relocation. Reimbursements shall be in the form of deductions from payments made under the 5X5 STANDARD.
- 5.1.3. The CITY shall give the COMPANY reasonable time frame to relocate for a CITY improvement project, or to grade, regrade, or change the line of any Public Ground or Way or to construct or reconstruct any CITY Utility System.
- 5.2. **Relocation of NETWORK in Public Ground** - CITY may require COMPANY, at CITY's expense, to relocate or remove its NETWORK from Public Ground upon a finding by CITY that the NETWORK have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

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- 5.3. **No Waiver** - The provisions of this franchise apply only to facilities constructed on Public Grounds or Ways and shall not be construed as to waive or modify any rights obtained by COMPANY for installations within Rights-of-Way not owned by CITY.

6. RESPONSIBILITIES

6.1. Responsibilities of the CITY

- 6.1.1. At no cost to the CITY, or as funded by JPODS, the CITY will assist the COMPANY with project activities, such as public meetings, review/comment on routes, and coordinating with other users of the Rights of Way, permitting, utility relocations, and construction inspections.
- 6.1.2. At no cost to the CITY, or as funded by JPODS, The CITY will cooperate with the COMPANY in working with other governments and networking companies.

6.2. Responsibilities of the COMPANY

- 6.2.1. COMPANY shall complete all Project development activities, including feasibility studies, environmental studies, site survey, geotechnical engineering, engineering design, plan preparation, and permitting required for project approval.
- 6.2.2. COMPANY shall complete Project construction activities in coordination with CITY and in accordance with an approved schedule designed to minimize impacts to existing surface traffic operations and commercial/residential/other landowners adjacent to Public Grounds and Ways.
- 6.2.3. COMPANY shall actively prepare for the establishment of the NETWORK with the appropriate CITY agency.
- 6.2.3.1. COMPANY may acquire land for construction purposes in accordance with statutory procedures and shall be in accordance with the relevant laws.
- 6.2.3.2. The COMPANY will comply with applicable laws in transferring the NETWORK to the Local Mobility Company (LMC).
- 6.2.3.3. The COMPANY will remain responsible for enforcing the standards required for NETWORKs. The COMPANY has all rights defined in its policies and procedures to enforce compliance by the Local Mobility Company.
- 6.2.4. COMPANY ensures successful implementation and operation of NETWORK via observation of performance metrics designed to:
- 6.2.4.1. Guarantee the NETWORK operates in accordance with technical standards.
- 6.2.4.2. Achieve public transportation needs and sightseeing functions.
- 6.2.4.3. Maintain safe, quiet, reliable, energy-efficient operations with zero emissions.
- 6.2.5. Facilitate CITY's long-term plans with improved transportation performance, safety metrics, and economic development associated with the successful implementation and operation of the NETWORK.
- 6.2.5.1. Help CITY promote the application of NETWORKs and sustainable transportation solutions.

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- 6.2.5.2. If any sub-network within the NETWORK ceases to operate for 60 days, the COMPANY shall remove above ground components of the NETWORK expeditiously, within 6 months.

7. PERFORMANCE STANDARDS

- 7.1. System design, fabrication, installation, safety, insurance, inspection practices shall comply with SAFETY REGULATIONS (paragraph 1.8).
- 7.2. Environmental approvals are granted based on the NETWORK exceeding the efficiency of existing roads by the 5X5 STANDARD as measured in passenger-mile per unit of energy consumed.
- 7.2.1. The COMPANY will document to the CITY's satisfaction that the NETWORK exceeds by 5 times (5X) the efficiency of transport modes currently operating in the Public Grounds and Ways, measured by exceeding 125 miles per gallon (5X5 STANDARD).
- 7.2.2. The COMPANY agrees it shall take all feasible measures to ensure that the provisions of this Agreement shall be carried out with due regard to ecological and environmental factors and in compliance with all applicable government environmental regulations.
- 7.3. The NETWORK will be configured to collect at least 2 megawatt-hours per typical mile from renewable sources where access to sunshine is reasonably available. The NETWORK will store, transport, and use its collected energy to be carbon-neutral and energy self-reliant.
- 7.4. All taxes and fees assessed on the NETWORK shall be limited to 5% of gross revenues of the LMC and paid to the aggregate rights-of-way holders by the LMC, guaranteed by COMPANY.

8. TREE TRIMMING AND OTHER HAZARDS

- 8.1. The COMPANY will, at its expense, trim trees and shrubs in the Public Grounds and Ways of CITY to avoid interference with the proper construction, operation, repair, and maintenance of the NETWORK.
- 8.2. The COMPANY shall save the CITY harmless from any liability arising therefrom, and is subject to permits or other reasonable regulations by the CITY for Tree Trimming tasks.
- 8.3. Hazards identified by the COMPANY not on Public Grounds or Ways or owned by third parties shall be mitigated by the CITY. The COMPANY may fund mitigating those risks, with such funds being deducted from the 5X5 STANDARD payments.

9. FORCE MAJEURE

- 9.1. None of the parties hereto shall be in breach of its obligations under this Agreement under the occurrence of an Event of Force Majeure. An Event of Force Majeure shall mean an event which is beyond the control or ability of the party affected to prevent, avoid, or remove, and shall include:
- 9.1.1. War (whether declared or not), hostilities, invasion, armed conflict, act of foreign enemy, insurrection, strike, revolution, or usurped power.

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- 9.1.2. Nuclear explosion, radioactive or chemical contamination or ionizing radiation.
- 9.1.3. Acts of terrorism, sabotage, or criminal damage.
- 9.1.4. Natural catastrophes, including but not limited to earthquakes, floods, exceptional inclement weather, and subterranean spontaneous combustion.

10. INDEMNIFICATION

- 10.1. **Indemnity of CITY** - COMPANY shall indemnify, keep, and hold the CITY free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, the issuance of permits, or the operation of the NETWORK located in the Public Grounds and Ways.
 - 10.1.1. The CITY shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the CITY's negligence as to the issuance of permits for, or inspection of, COMPANY's plans or work.
 - 10.1.2. The CITY shall not be indemnified if the injury or damage results from the performance in a proper manner, or acts reasonably deemed hazardous by COMPANY, and such performance is nevertheless ordered or directed by CITY after notice of COMPANY's determination.
 - 10.1.3. The COMPANY shall maintain commercial insurance in accordance with SAFETY REGULATIONS (paragraph 1.8).
- 10.2. **Defense of CITY** - In the event a suit is brought against the CITY under circumstances where this agreement to indemnify applies, COMPANY at its sole cost and expense, shall defend the CITY in such suit if written notice thereof is promptly given to COMPANY within a period wherein COMPANY is not prejudiced by lack of such notice.
 - 10.2.1. If COMPANY is required to indemnify and defend, it will thereafter have control of such litigation, but COMPANY may not settle such litigation without the consent of the CITY, which consent shall not be unreasonably withheld.
 - 10.2.2. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the CITY, and COMPANY, in defending any action on behalf of the CITY, shall be entitled to assert in any action every defense or immunity that the CITY could assert in its own behalf.
 - 10.2.3. This franchise agreement shall not be interpreted to constitute a waiver by the CITY of any of its defenses of immunity or limitations on liability under other applicable statutes.
- 10.3. **Indemnities** - Each of the parties hereto shall indemnify and hold harmless each of the other parties against any injury, damage, loss, or expense which is attributable to:
 - 10.3.1. Any breach or non-performance by the indemnifying party of the provision of this Agreement.
 - 10.3.2. Negligence, default, or other act of omission giving rise to a cause of action by any third party under any relevant law on the part of the indemnifying party or its

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employees or agents in the course of or arising out of the implementation of the project.

10.4. **Third party claims** - Each of the parties hereto agree that, if and to the extent that any third-party claim is accepted as valid but cannot expeditiously be determined to be attributable to any particular party to this contract, all the parties shall pay claim hereto in respect of which liability cannot clearly be excluded, in their Proportionate Ratio, until it is finally determined which of the parties hereto (and to what extent) are responsible for the payment of such damages.

10.5. **Consequential Loses** - None of the parties hereto shall be liable to any other party under this Agreement for any claim of loss of profits, or any other consequential or indirect damages, suffered by that other party provided that this exclusion shall not apply to any damages payable by a party under a liability to any third party in respect to which that party has a right of indemnity under the provisions of this Section 9.

10.6. **Patent Claim** - None of the parties hereto shall lodge any claim against another party on grounds of the infringement by that other party upon any patent right, copyright, or other similar right relating to the use of technical information where such use arises from the implementation of the NETWORK.

11. CONFIDENTIAL INFORMATION

11.1. Each of the parties hereto shall use its best endeavor to keep in strict confidence and shall bind all of its staffs and employees to keep in strict confidence, all commercial and technical information in whatever form acquired by it (whether directly or indirectly) from or concerning any other party under this Agreement or in connection with the Implementation of the project (Confidential Information). None of the parties hereto shall utilize such Confidential Information for any purposes other than those contemplated in this Agreement.

11.2. Further, none of the parties hereto shall, at any time, disclose any Confidential Information to any person who is not a party to this Agreement for any purposes other than those contemplated in this Agreement without the prior approval of all the relevant parties hereto.

11.3. The following information shall be excluded from the foregoing scope of Confidential Information:

11.3.1. Information which at the time of disclosure is generally available to the public.

11.3.2. Information which after disclosure becomes generally available to the public through no fault of the receiving party.

11.3.3. Information which the receiving party can show was in its possession prior to disclosure and which was not acquired directly or indirectly from any other party hereto.

11.3.4. Information which the receiving party can show, was received by it after the time of disclosure without any obligation of confidentiality and which was not acquired directly or indirectly from either of the other parties hereto.

11.3.5. Information directly related to public safety under this agreement.

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- 11.4. The Confidentiality obligations set out in Section 11 above shall survive the termination of this Agreement and the COMPANY shall impose the same confidentiality obligations as afore said upon any qualified contractors which may have access to any confidential information during the implementation of the projects.
- 11.5. To the extent practical Confidential Information shall be stored in a SECURE SERVER.

12. VACATION OF PUBLIC GROUNDS AND WAYS

- 12.1. The CITY shall give COMPANY at least six months prior written notice of a proposed vacation of a Public Ground or Way.
- 12.2. The COMPANY shall have a reasonable opportunity to purchase the vacated Public Grounds and Ways at fair market price. If the vacated Public Grounds or Ways are involved with the demolition resettlement of these major facilities, such as energy related public utility service, communication cables, transformer facilities and underground construction, the COMPANY shall pay for the reasonable resettlement fees in accordance with the provisions of a separate Demolition Agreement passed by CITY.
- 12.3. Except where required for a CITY improvement project, the vacation of any Public Ground or Way, after the installation of NETWORK, shall not operate to deprive COMPANY of its rights to operate and maintain such NETWORK until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to COMPANY. In no case, however, shall CITY be liable to COMPANY for failure to specifically preserve the Public Grounds and Ways.

13. FRANCHISE FEE

- 13.1. **Fee Schedule** - During the term of the franchise hereby granted, and in lieu of all permit or other fees to be imposed on COMPANY, the CITY may impose on COMPANY a franchise fee not to exceed five percent (5%) of the COMPANY's Gross Revenues from transportation provided within the CITY's Public Grounds and Ways.
- 13.2. **Terms Defined** - For the purpose of this Section, the following definitions apply:
 - 13.2.1. **"Gross Revenue"** means all sums received by the LMC for transportation services to its customers traveling via the NETWORK located within the CITY's Public Grounds and Ways.
 - 13.2.2. **Collection of the Fee** - The franchise fee shall be paid monthly and shall be based on the amount collected by COMPANY during the period for which payment is to be made.
 - 13.2.2.1. The payment shall be due the last business day of the month following the period for which the payment is made.
 - 13.2.2.2. The franchise fee may not be changed for the period of the franchise.
 - 13.2.2.3. The time and manner of collecting the franchise fee may be subject to reasonable changes by the CITY.

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- 13.2.2.4. Additionally, the COMPANY agrees to provide at the time of each payment a statement summarizing how the fee payment was determined, including information showing fare-box receipts in the period for which the payment is being made to account for any uncollectables, refunds, error corrections, and other relevant data.

14. MISCELLANEOUS PROVISIONS

- 14.1. **Time Of Essence** - Time is of the essence of each provision of this Agreement.
- 14.2. **Consent Of parties** - Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.
- 14.3. **Successors And Assigns** - This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.
- 14.4.
- 14.5. **Exhibits** - All Exhibits referred to are attached hereto and incorporated herein by this reference.
- 14.6. **Integrated Agreement** - Modification: This instrument contains the entire agreement of the parties and cannot be amended or modified except by a written agreement, executed by the parties to this agreement, as amended.
- 14.7. **Captions** - The captions of this Agreement are for convenience purposes only, and shall have no effect on its construction or interpretation.
- 14.8. **Singular and Plural; Gender** - When required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and the impersonal pronoun "it" shall refer to either of the above, a corporation, partnership, joint venture, or other entity, regardless of number or gender.
- 14.9. **Execution Of Documents** - The parties hereto hereby agree to execute and deliver such further instruments, agreements, contracts, and documents, as may be reasonably required to effectuate the stated and intended purposes of this Agreement.
- 14.10. **Counterparts** - This Agreement may be executed simultaneously in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 14.11. **Severability** - Every section, provision, or part of this Agreement is declared separate from every other section, provision, or part, and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part.
- 14.12. **Priority** - Where a provision of any other CITY Agreement conflicts with the provisions of this Agreement, the provisions of this Agreement shall prevail.
- 14.13. **Limitation on Applicability** - This Agreement constitutes a franchise agreement between the CITY and COMPANY as the only parties, and any clause in this franchise agreement shall not benefit any third party (including the majority of the public) in any way any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the

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terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

15. AMENDMENT PROCEDURE

- 15.1. The parties to this Agreement may, at any time, propose that the Agreement be amended to address a subject of concern and the other party will consider whether it agrees that the amendment is mutually appropriate.
- 15.2. If an amendment is agreed upon, the Agreement shall be amended.
- 15.3. All amendments will be executed by all Parties.

16. PREVIOUS FRANCHISES SUPERSEDED

- 16.1. This franchise supersedes any previous transportation franchise granted to COMPANY or its predecessor.

17. ARBITRATION and LEGAL DISPUTES

- 17.1. To be governed by ICC Regulation (Rules of Conciliation and Arbitration of the International Chamber of Commerce, latest Edition).
- 17.2. Legal disputes shall be resolved under the Laws of the State of Georgia.

AGENDA ITEM SUMMARY
April 19, 2021

Item Number:

10A

ITEM SUMMARY:

The request for Case #190302, is to rezone property from RA-200 (Residential Agricultural) to R-50 (Single Family Residential), RTD (Residential Townhouse District) and RM-75 (Multi-Family Residential) per a PUD (Planned Unit Development) configuration with 1.5 +/- acres allocated for a Public Safety Facility. The subject property is recognized as Tax Parcel(s) ID #107-01034000, #107-01001000 & #107-01034001, bordered by Racetrack Road & Travis Drive.

SPECIAL CONSIDERATIONS OR CONCERNS:

Said application is to be processed in accord with schedule herein:

09/15/20 Municipal Planning Commission Workshop (Special Called) - HELD
10/13/20 Municipal Planning Commission Public Review
10/01/20 City Council Workshop
10/19/20 City Council Public Hearing - POSTPONED
11/16/20 City Council Public Hearing - POSTPONED
12/14/20 City Council Public Hearing - POSTPONED
01/19/21 City Council Public Hearing - POSTPONED
02/15/21 City Council Public Hearing - POSTPONED
03/15/21 City Council Public Hearing
04/19/21 City Council Vote

RECOMMENDATION(S):

MPC Meeting (10/13/20)

Scott Reeves made motion for denial of the rezoning, Terri O'Quinn seconded.

➤ **Vote: 4 (Yes) – 1 (No): Motion Passed**

STAFF: Approval of the Rezoning from RA-200 (Residential Agricultural) with conditions per ORD #04-09-13001 (A)(Z) to R-50 (Single Family Residential), RTD (Residential Townhouse District), RM-75 (Multi-Family Residential) and 1.5 +/- acres allocated for development of a Public Safety Facility.

NOTE: Scale & scope of work for proposed development warrant drafting of a Development Agreement as a means of outlining stipulated conditions in order to provide for economic sustainability per the subject property's location along the Highway 81 E Corridor.

ATTACHMENTS:

ORD #21-04-19001(Z)

P/Z Final Staff Report (Exhibit B)

Submitted by:

Charles Reese, Community Development Director

Eric Pitts, Consulting City Planner

**STATE OF GEORGIA
CITY OF MCDONOUGH**

ORDINANCE NO. 21-04-19001(Z)

AN ORDINANCE, PURSUANT TO MCDONOUGH CODE OF ORDINANCES SECTION 17.104.020(A)(1), AMENDING THE ZONING MAP OF THE CITY OF MCDONOUGH; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MCDONOUGH AND IT IS HEREBY ORDAINED BY AUTHORITY HEREOF:

SECTION 1.

This ordinance applies to the following real property per the application filed by Blue River Development for Symphony Park (Case #190302):

All that lot, tract or parcel of land, otherwise known as a portion of Parcel #, lying and being in Land Lot(s) 153 of the 7th District of Henry County, Georgia, consisting of 107.88 +/- acres and being more particularly described on Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2.

The above property is hereby zoned R-50 (Single Family Residential), RTD (Residential Townhouse District), RM-75 (Multi-Family Residential) AND C-2 (Central Commercial), and subject to the new conditions of development contained in Exhibit "B," attached hereto and incorporated herein by reference.

SECTION 3.

The sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining section, subsections, paragraphs, sentences, clauses and phrases of this ordinance.

SECTION 4.

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

SECTION 5.

This ordinance shall become effective immediately upon adoption.

So ordained this 19th day of April, 2021.

CITY OF MCDONOUGH, GEORGIA

BILLY COPELAND, MAYOR

ATTEST:

APPROVED AS TO FORM:

JANIS PRICE, CITY CLERK

CITY ATTORNEY

Exhibit A
Legal Description (See Attached)

Legal Description

Tract 1

BEGINNING AT A;

**THENCE, NORTH 00 DEGREES 53 MINUTES 00 SECONDS EAST A DISTANCE OF 1,570.76 FEET;
THENCE, NORTH 00 DEGREES 19 MINUTES 21 SECONDS EAST A DISTANCE OF 232.25 FEET;
THENCE, NORTH 89 DEGREES 28 MINUTES 40 SECONDS EAST A DISTANCE OF 244.20 FEET;
THENCE, NORTH 76 DEGREES 37 MINUTES 19 SECONDS EAST A DISTANCE OF 376.20 FEET;
THENCE, SOUTH 62 DEGREES 37 MINUTES 05 SECONDS EAST A DISTANCE OF 1,268.33 FEET;
THENCE, SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 1,316.85 FEET;
THENCE, NORTH 89 DEGREES 33 MINUTES 10 SECONDS WEST A DISTANCE OF 396.57 FEET;
THENCE, NORTH 89 DEGREES 44 MINUTES 59 SECONDS WEST A DISTANCE OF 723.69 FEET;
THENCE, NORTH 89 DEGREES 50 MINUTES 12 SECONDS WEST A DISTANCE OF 641.68 FEET,
TO THE POINT OF BEGINNING.**

SAID TRACT OR PARCEL CONTAINING 67.64 ACRES (2,946,378 SQUARE FEET).

Legal Description

Tract 2

BEGINNING AT A;
THENCE, SOUTH 57 DEGREES 18 MINUTES 34 SECONDS EAST A DISTANCE OF 44.94 FEET;
THENCE, SOUTH 53 DEGREES 53 MINUTES 26 SECONDS EAST A DISTANCE OF 180.54 FEET;
THENCE, SOUTH 86 DEGREES 07 MINUTES 58 SECONDS EAST A DISTANCE OF 79.92 FEET;
THENCE WITH A CURVE 52.64', ALONG A CURVE TO THE LEFT (SAID CURVE HAVING A RADIUS OF 399.94', AND A CHORD BEARING SOUTH 00 DEGREES 06 MINUTES 27 SECONDS WEST, A DISTANCE OF 52.60 FEET);
THENCE, SOUTH 89 DEGREES 44 MINUTES 49 SECONDS WEST A DISTANCE OF 309.23 FEET;
THENCE, SOUTH 00 DEGREES 04 MINUTES 50 SECONDS EAST A DISTANCE OF 181.92 FEET;
THENCE, NORTH 62 DEGREES 37 MINUTES 05 SECONDS WEST A DISTANCE OF 1,268.33 FEET;
THENCE, NORTH 89 DEGREES 57 MINUTES 20 SECONDS EAST A DISTANCE OF 410.50 FEET;
THENCE, NORTH 89 DEGREES 57 MINUTES 20 SECONDS EAST A DISTANCE OF 228.30 FEET;
THENCE, NORTH 89 DEGREES 25 MINUTES 07 SECONDS EAST A DISTANCE OF 202.76 FEET;
THENCE, SOUTH 57 DEGREES 04 MINUTES 17 SECONDS EAST A DISTANCE OF 393.56 FEET;
TO THE POINT OF BEGINNING.
SAID TRACT OR PARCEL CONTAINING 7.81 ACRES (340,179 SQUARE FEET).

March 6, 2019

Legal Description

Tract 3

BEGINNING AT A;

THENCE,NORTH 88 DEGREES 56 MINUTES 16 SECONDS WEST A DISTANCE OF 426.79 FEET;

THENCE,NORTH 89 DEGREES 33 MINUTES 10 SECONDS WEST A DISTANCE OF 754.86 FEET;

THENCE,NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 1,316.85 FEET;

THENCE,NORTH 00 DEGREES 04 MINUTES 50 SECONDS WEST A DISTANCE OF 181.92 FEET;

THENCE,NORTH 89 DEGREES 44 MINUTES 49 SECONDS EAST A DISTANCE OF 309.23 FEET;

THENCE WITH A CURVE 349.65', ALONG A CURVE TO THE LEFT (SAID CURVE HAVING A RADIUS OF 399.94', AND A CHORD BEARING SOUTH 28 DEGREES 42 MINUTES 31 SECONDS EAST, A DISTANCE OF 338.62 FEET);

THENCE,SOUTH 53 DEGREES 45 MINUTES 15 SECONDS EAST A DISTANCE OF 356.66 FEET;

THENCE,SOUTH 86 DEGREES 27 MINUTES 57 SECONDS EAST A DISTANCE OF 181.82 FEET;

THENCE,SOUTH 86 DEGREES 28 MINUTES 16 SECONDS EAST A DISTANCE OF 246.44 FEET;

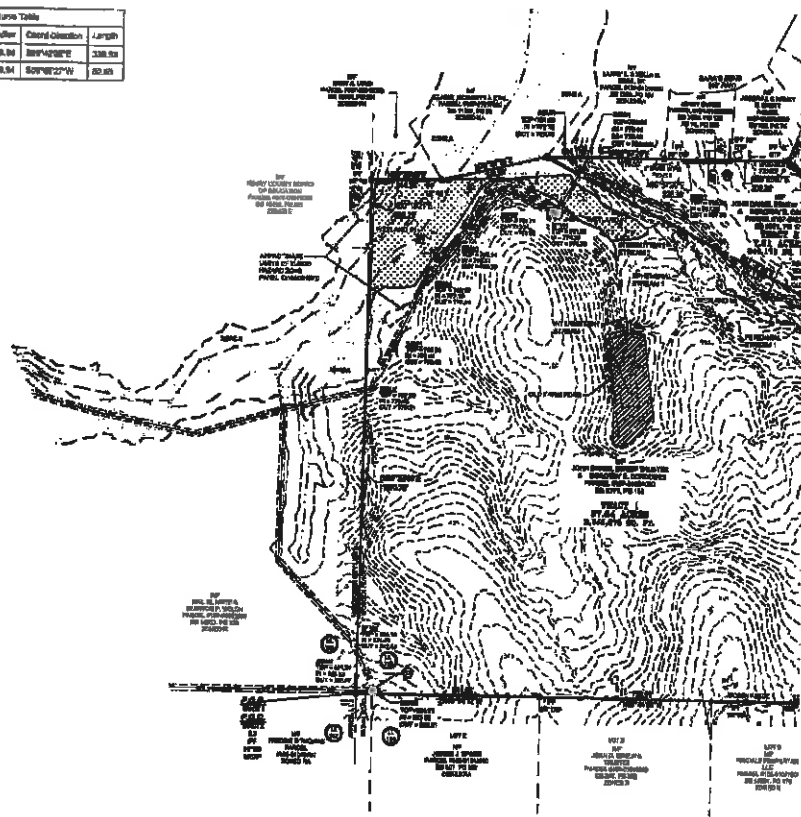
THENCE,SOUTH 00 DEGREES 18 MINUTES 08 SECONDS WEST A DISTANCE OF 979.70 FEET;

TO THE POINT OF BEGINNING.

SAID TRACT OR PARCEL CONTAINING 32.43 ACRES (1,412,803 SQUARE FEET).

ALTA/NSPS LAND TITLE ST
BLUE RIVER DEVEI
AQUISITIONS,
LAND LOT 153, 7TH D
HENRY COUNTY, GE

Curve Table				
Curve #	Length	Radius	Central Angle	Length
C1	340.85	500.00	88°40'58" E	338.55
C2	32.54	288.54	50°48'22" W	32.35



ALTA/NSPS LAND TITLE SURVEY FOR:
 BLUE RIVER DEVELOPMENT
 AQUISITIONS, LLC
 LAND LOT 153, 7TH DISTRICT
 HENRY COUNTY, GEORGIA

Curve Table				
Curve #	Length	Radius	Chord Distance	Length
101	0.000	0.000	0.000	0.000
102	0.000	0.000	0.000	0.000

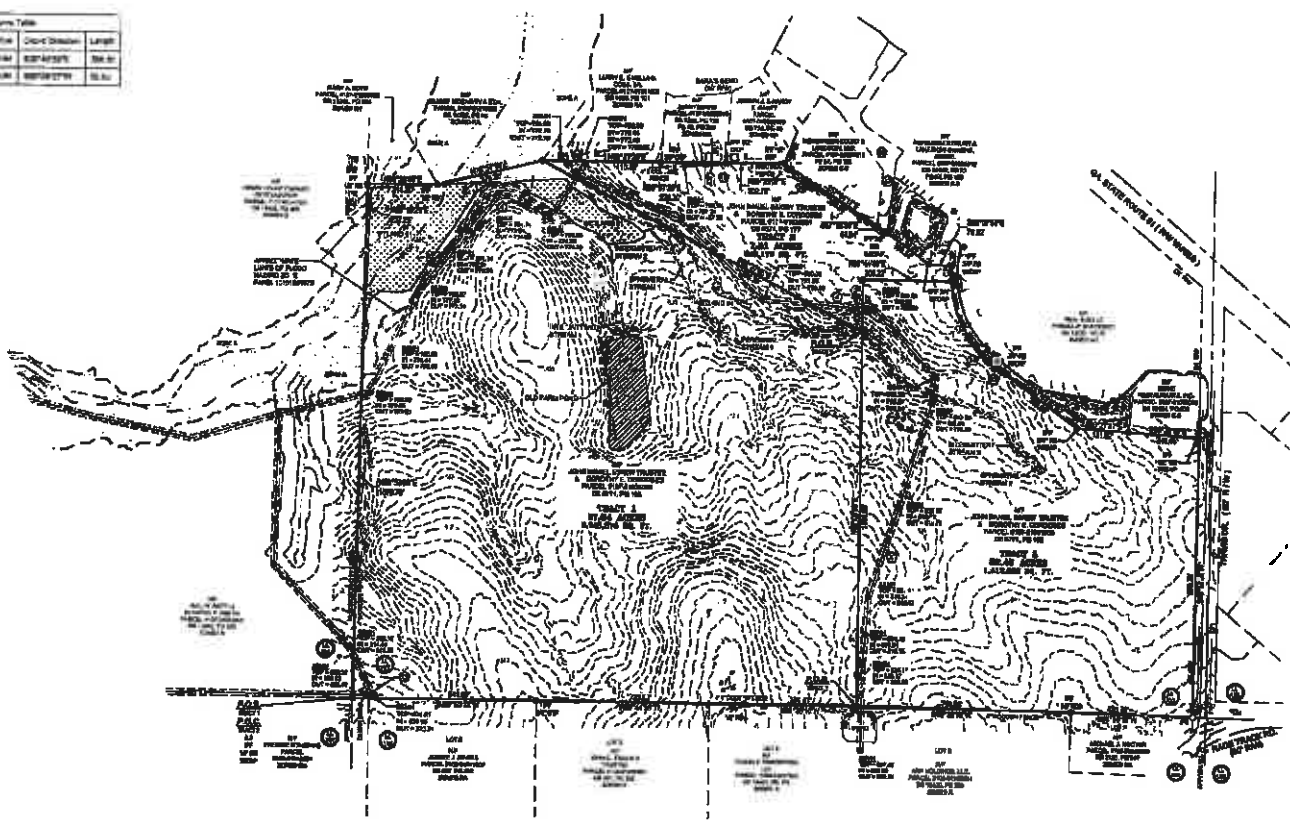


Exhibit B
Conditions of Development

REFER TO FINAL STAFF REPORT



City of McDonough, Georgia

Community Development Department

Rezoning Staff Report

DENIED

Case Petition #: 190302

Applicant: Blue River Development for Symphony Park

Address/Location: North of Racetrack Road and East of Travis Drive (Parcels #107-01034000, #107-01001000 & #107-01034001)

Rezoning Request:

- **RA-200** (Residential Agricultural) with conditions per ORD #04-09-13001 (A)(Z) to **R-50** (Single Family Residential), **RTD** (Residential Townhouse District), **RM-75** (Multi-Family Residential) and 1.5 +/- acres allocated for development of a Public Safety Facility.

Community Development (Planning & Zoning) Staff Recommendation: (Refer to Pages 3-6)

- Staff recommends **Approval** of the Rezoning from **RA-200** (Residential Agricultural) with conditions per ORD #04-09-13001 (A)(Z) to **R-50** (Single Family Residential), **RTD** (Residential Townhouse District), **RM-75** (Multi-Family Residential) and 1.5 +/- acres allocated for development of a Public Safety Facility.

*Note: Recommendations per review of the Applicant's Letter of Intent, Standards of Review, and as-built conditions of site (i.e. irregular shape, size, and topography).

Land Lot/District: Land Lot(s) 153 of the 7th District of Henry County.

Subject Property Location: North of Racetrack Road and East of Travis Drive.

Tract Size: 107.88 +/- acres

Council District: 3, Craig Elrod

Municipal Planning Commission:

Work Session – September 15, 2020

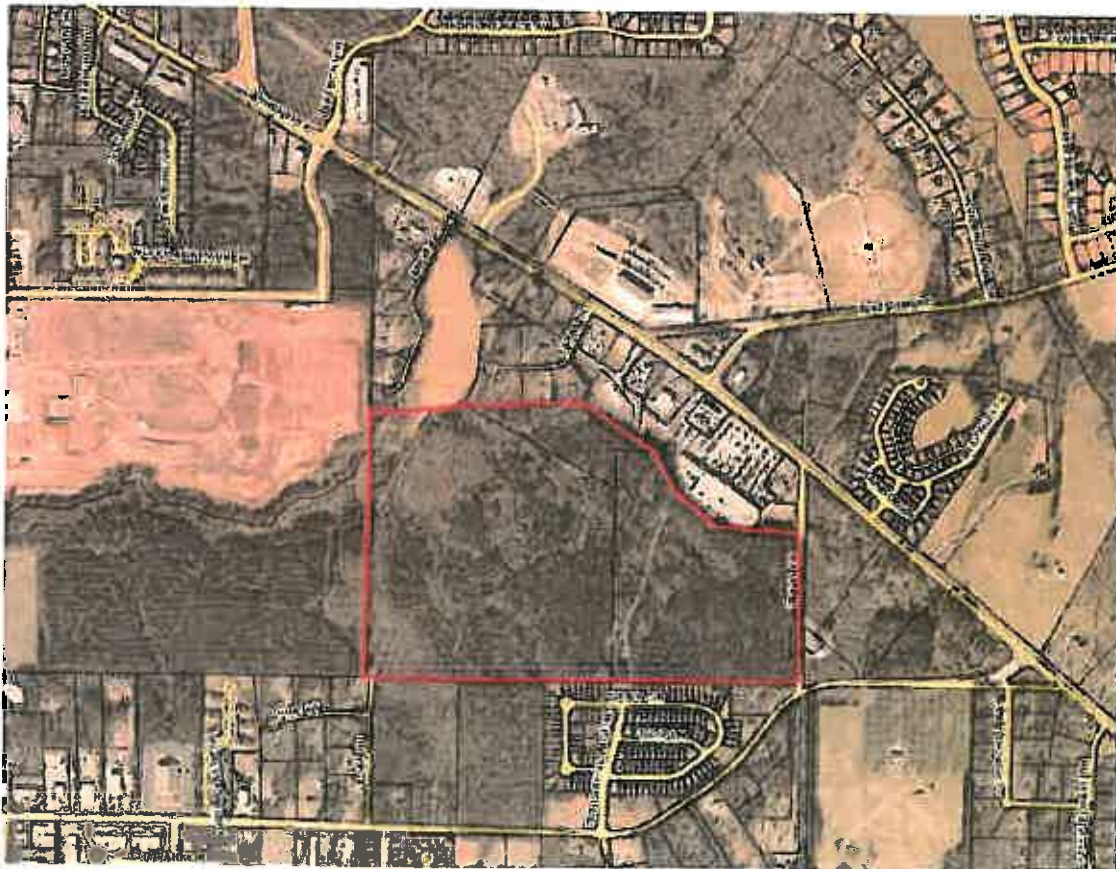
Public Review –October 13, 2020

City Council:

Work Session –October 1, 2020

Public Hearing –October 19, 2020

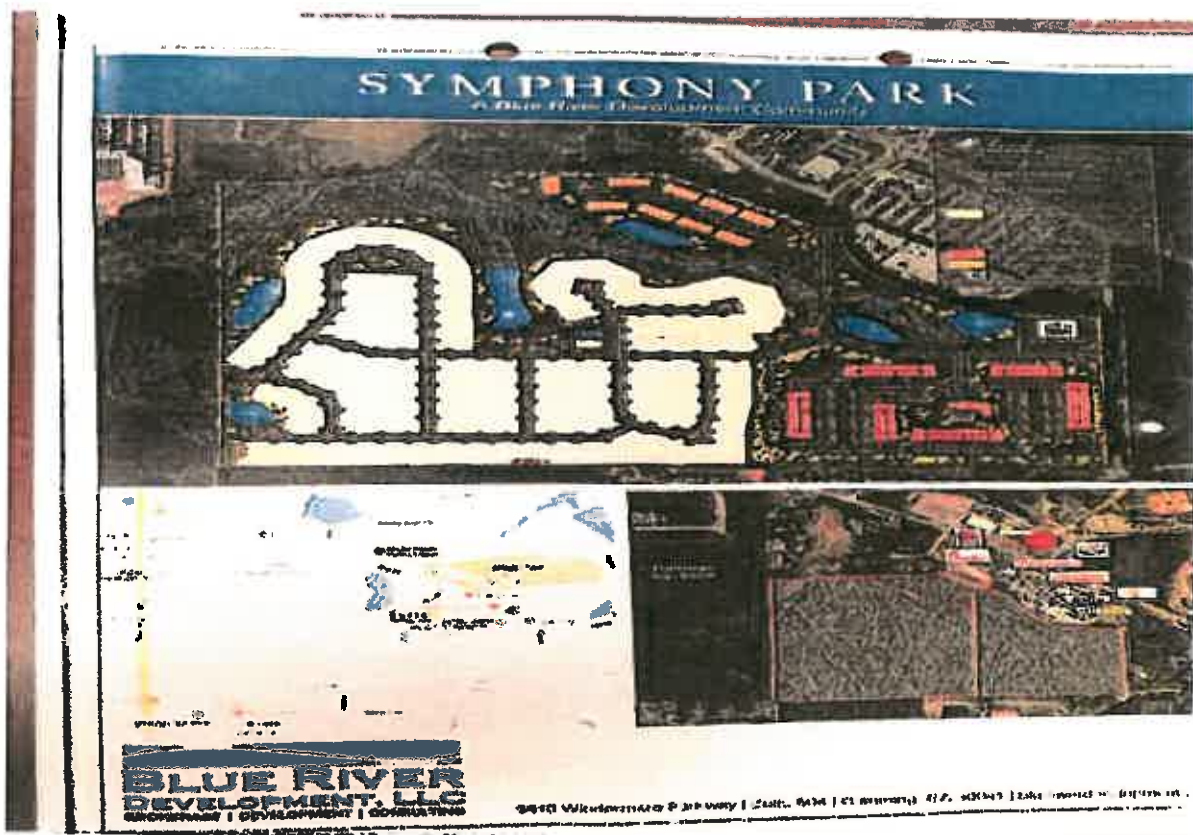
cmh



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Background Information:

The subject property is presently zoned **RA-200 (Residential Agricultural)** and located south of SR 81, west of Travis Drive and North of Racetrack Rd. It is directly behind the Publix Shopping center along SR 81, in an area identified as a Highway Activity Center providing a gateway into the City. This project is a master-planned residential property on 107.88 +/- acres. The project contains 499 total residential units, including 180 single-family homes, 16 cottages, and 250 multifamily units. The overall density of the site is 4.6 dwelling units per acre. Access to the site is proposed to be provided from the north by an extension of Lake Dow Rd and from the East with a new street off Travis Drive. An additional emergency –only access gate is proposed at the southeastern corner of the site along Travis Drive, south of the primary entrance.



Final Staff Recommendations by:
Eric C. Pitts, P.E., City Planner

- Staff recommends **Approval** of the Rezoning from **RA-200 (Residential Agricultural)** with conditions per ORD #04-09-13001 (A)(Z) to **R-50 (Single Family Residential)**, **RTD (Residential Townhouse District)**, **RM-75 (Multi-Family Residential)** and 1.5 +/- acres allocated for development of a Public Safety Facility.

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Sample Single Family Detached Residential

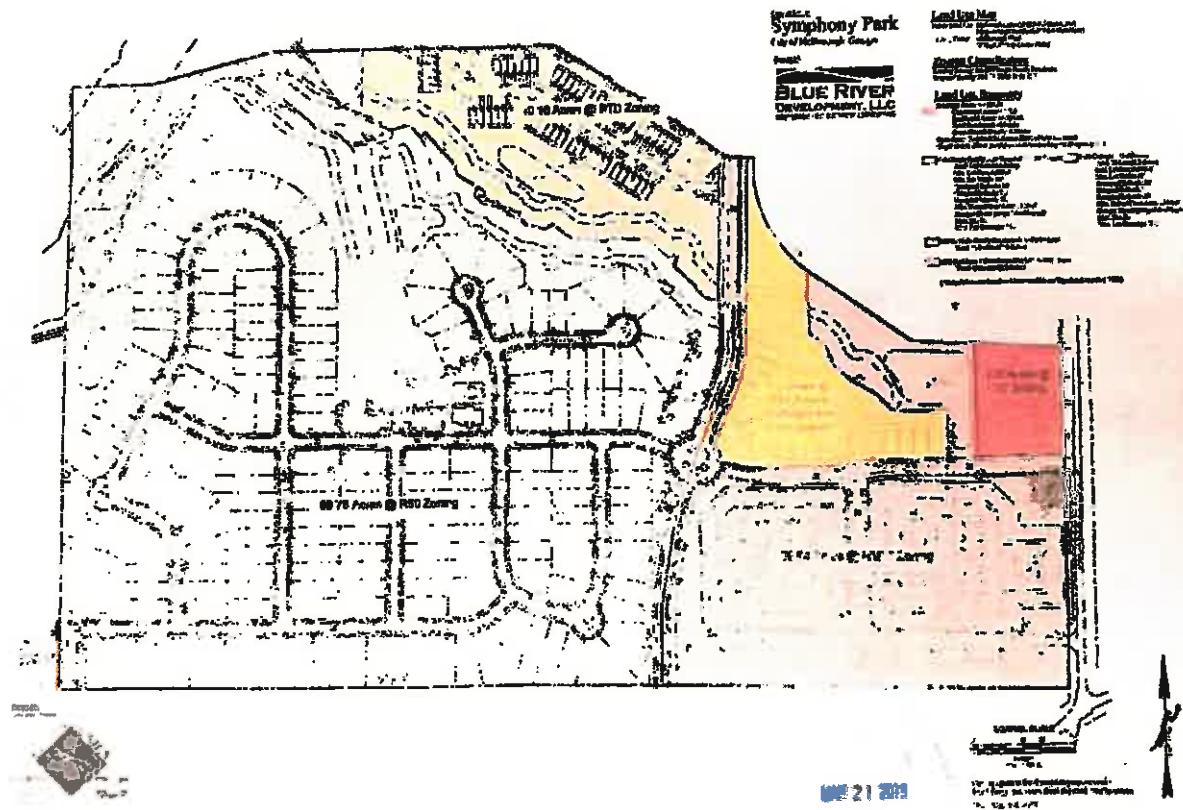


Sample Residential Townhouse District



Sample Multi Family Residential





Section I - Natural

1. Provide a minimum twenty (20) feet landscape buffer along the Travis Drive Corridor rights of way and along the spine roads of the development.
2. Provide a minimum five (5') foot landscape strip with six (6') foot high, black chain link fencing installed parallel to the north, south, and west property lines that is comprised of mixed hardwoods (overstory/understory); evergreens; shrubbery; and native ornamental grass varieties to create a naturalized appearance.
3. All trees planted on-site shall be a minimum of three (3) inches in caliper and a minimum of twelve (12') feet in height at time of planting. Street trees, Japanese Zelkova variety or other approved species that are minimal invasive at maturity with respect to Public Safety, shall be required.
4. Foundation plantings, min. three (3) gal, container size, at time of planting, shall be required adjacent to facades of structures.
5. All disturbed areas shall be sodded or landscaped. Parking and service areas, for the "RM POD", with exception of on street parking, shall be screened with landscaping from the public right-of-ways.

6. Comprehensive landscape plan prepared by a Georgia licensed landscape architect shall be reviewed by the Community Development Director prior to the issuance of site development permit/construction improvement plan.

Section II - Human Environment

1. Sidewalks minimum of five (5') feet in width shall be provided along interior street and an eight (8') feet in width multi-use trail shall be added along the main spine road.
2. Hard surface pedestrian pathways/nature trails, minimum five (5') feet in width, shall be provided within the R-50 POD.
3. Pedestrian seating benches/areas shall be provided along the internal street of the R-50 POD (estimated interval guide of one (1) per every 200 feet of lineal frontage) per placement review by the Community Development Director.

Section III – Built Environment

1. Buildings/Structures shall be constructed of brick and/or stone, and may include plank siding as an accent, on all four sides. The brick and/or stone element shall comprise a minimum 25% for residential/multi-family properties for compatibility with surrounding developed properties. Final exterior design standards shall be approved by the Community Development Director and/or his/her designee in accord with Chapter 15.68 Façade Review.
2. Variations in roof lines with use of 3-D architectural shingles and/or decorative standing seam metal roofing (i.e. entry overhangs, exterior accent) and/or tiles with approved paint color finish (i.e. copper or verdigris) approved by the Community Development Director and/or his/her designee.
3. Development ID signage shall be monument style with brick and/or stone base. Maximum overall height of primary signage shall be Twelve (12') feet, including reader boards and property address identified in a minimum eight (8") inch copy. One (1) monument sign shall be permitted per driveway/curb cut onto public road frontage.
4. Wall signage shall be limited to one (1) sign per building and/or tenant elevation of heated exterior wall with a maximum permissible amount of three (3) wall signs per tenant or occupant spaces to account for any future Mixed Use Retail conversion space(s).
5. On premise directional signage, when approved by the Community Development Director and/or his/her designee, may include a masonry base (brick and/or stone) per overall thematic design for community and be monument style not to exceed two (2) square feet in area and three (3') feet in overall height from finished grade.

6. Temporary signs including, but not limited to, banners; temporary/portable signs; pennants; and streamers shall be prohibited, excepting “Grand Opening” temporary banner and signage for the opening of a tenant or for the development as a whole, not to exceed ninety (90) days in each case. Flags shall be limited to not more than one (1) United State Flag and/or one (1) State of Georgia flag, and/or Corporate ID Flag. Balloons and other inflatable advertising device shall be prohibited. At no time shall vehicles, including delivery trucks, be utilized as a means of advertising.
7. Minimum widths for Interior streets are to be fourteen (14) feet in width for One Way traffic and twenty-four (24’) feet in width for two (2) way traffic. Final design layout, including width measurement, subject to review/approval of the McDonough Fire Chief and City Engineer.
8. Traffic control (i.e. speed humps) and/or barrier devices (i.e. bollards) shall be employed to channel traffic and deter interference with parking lot vehicular/pedestrian circulation.
9. Street Lighting shall be included along all subdivision streets and shall be placed 150 to 210 feet apart on alternating sides of the street where possible.
10. For the RM POD, refuse disposal for the proposed development shall be as follows:
 - Centralized communal dumpster/trash receptacles shall be fully screened by a masonry structure (i.e. brick and/or stone) minimum six (6’) feet in height with operable screening gates to allow access by city’s Waste Service Provider and shall be incorporated into the landscape to minimize overall appearance amid streetscape.
11. Detention/retention facilities, where provided, shall be incorporated into the approved master and landscape plans per a master storm water management plan. Also, said facilities shall comply with the city’s Storm Water Facility Maintenance Agreement to ensure effective operations and maintenance.
12. No development shall commence without connection to public water & sewer.

Professional Staff (City/Henry County/State) Analysis:

Section 17.104.050 Review by other agencies

- Police Chief (Mr. Preston Dorsey) - No comments returned
- Fire Chief (Mr. Steve Morgan) - No comments returned
- City Engineer (Mr. Mark Whitley) – No Comments returned
- Building Official (Mr. Mark Dobson) – 11/01/19 Traffic Signals at both ends of Travis Drive, Upgrade to existing and new connecting roads for width and specs for additional traffic volumes



- Public Works Director (Mr. Ronnie Thompson) - No comments returned
- City Environmental Engineer (Mr. Tom Fleming) - No comments returned
- Henry County Department of Transportation (Mr. David Simmons) – 9/21/20, requests traffic study, roadway and intersection design for road system access to be granted, including, pavement sections, lane width and turning lanes. Recommends tie-in to commercial development to north as well and acquiring County-owned Road to SR 81 (continuation of Lake Dow Road) to access this property. Also recommend access to Travis Road and to Iris Lake Road. Recommend looking forward to future improvements to these access points and how development would affect current planned improvements, such as (SPLOST V) future roundabout at Iris Lake Road (or Iris Lake Village Road) and Racetrack Road and Travis Road. Recommend no access from development to Cedar Road except as needed for emergency purposes.
- Henry County Board of Education (Carl Knowlton) – 03/09/2020 provided estimates on 998 students, utilizing calculation of two (2) students x 499 units, for Tussahaw Elementary School, McDonough Middle School, and McDonough High School. The Projected Capital Improvement costs are \$25,000 per classroom for modular and \$30,000 per classroom for permanent. Increase in classrooms needed is 40, based on 25 students per class.
- Henry County Environmental Health Department (Ms. Glenda Scott) - No comments returned
- Henry County Water Authority (Scott Sage) –
- Georgia Department of Transportation (Mr. Donald Wilkerson) – 11/01/19 - Off System, No comments

Infrastructure: Water Service: City of McDonough

Sewer Service: City of McDonough

Electricity: Georgia Power

Telephone: AT&T

Cable Television: TBD

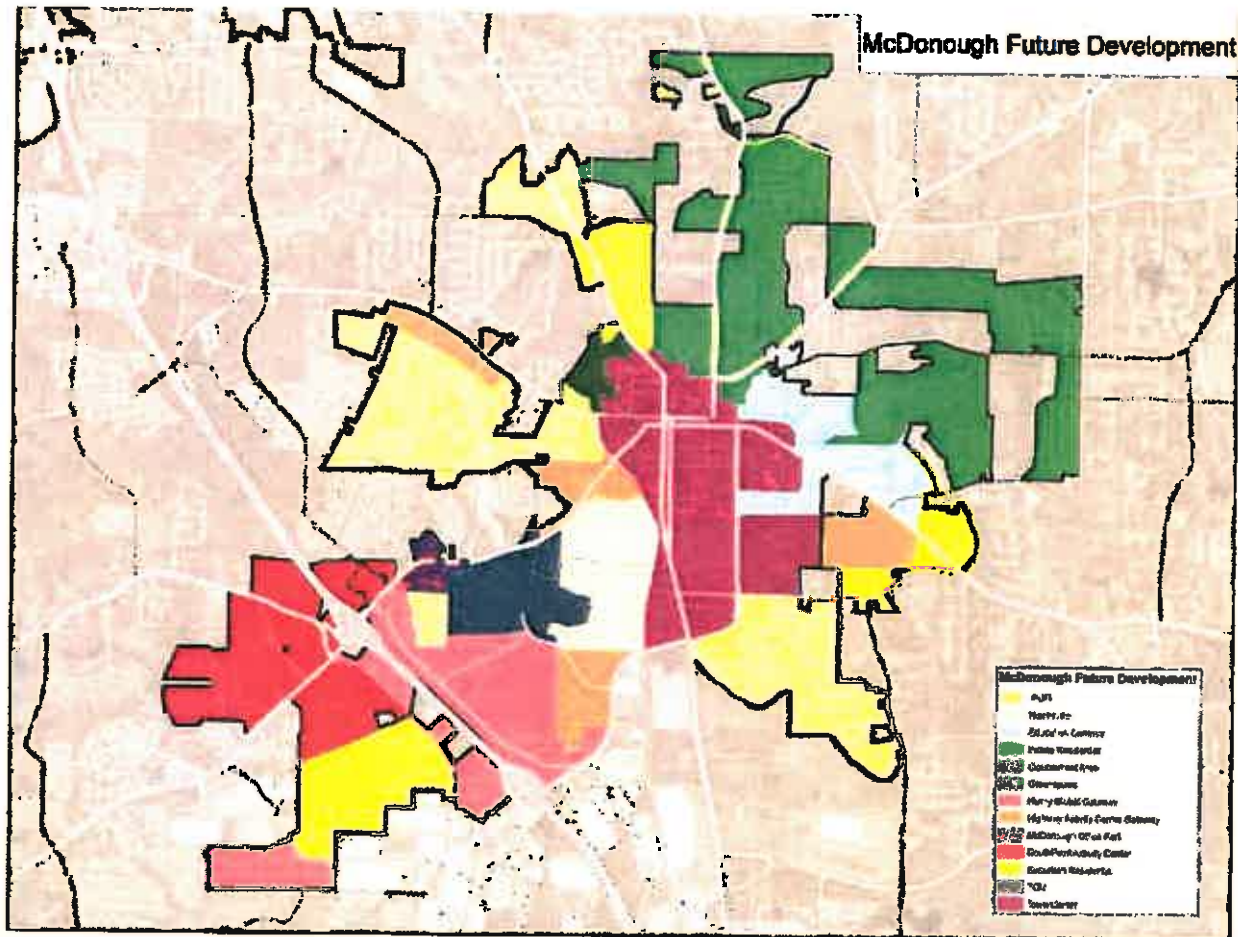
Schools: Tussahaw Elementary, McDonough Middle, and McDonough High

Environmental: Small Water Supply Watershed: The site lies OUTSIDE all Small Water Supply Watersheds within the city.

[Handwritten signature]

Wetlands and Floodplain: N/A for the portion requested to be rezoned.

2040 Comp Plan: The 2040 JHCCCP designates the subject property as part of the Highway Activity Center Gateway along SR 81 E., bounded by SR 81 E, Travis Drive and Racetrack Rd.



Transportation: Proposed Ingress/Egress from the north by an extension of Lake Dow Rd and from the East with a new street off Travis Drive. An additional emergency –only access gate is proposed at the southeastern corner of the site along Travis Drive, south of the primary entrance

Zoning History: The property is presently zoned RA-200 (Residential Agricultural) with conditions per ORD#04-09-13001 (A)(Z)

Regulations: Zoning Ordinance, Building and Development Ordinance, Soil Erosion and Sedimentation Control Ordinance, and Tree Preservation.



Comments: N/A



Staff Analysis: (Refer to Chapter 17.104 Amendments)

Section 17.104.048 Standards of Review for Rezoning

➤ A(1.) The existing land use pattern;

Answer: The subject property is bordered by the following (Refer also to zoning maps):

- **North Boundary**
Zoning: C-2 (Central Commercial)
Property ID: #107-01006003
Land Use: Grocery Store, Retail Shops & Restaurants
- **East Boundary**
Zoning: N/A
Property ID: Travis Drive
Land Use: Public Infrastructure (Roadway) - City
- **South Boundary**
Zoning: RM-75 (Multi-Family Residential)
Property ID:
Land Use: Iris Lake Village Subdivision
- **West Boundary**
Zoning: rm-75 (Multi-Family Residential)
Property ID: #107-01032000
Land Use: Currently wooded area (Pending development by McDonough Leased Housing Association, LLC)

➤ A(2.) The possible creation of an isolated district unrelated to adjacent and nearby districts;
Answer: No. The R-50 (Single Family Residential), RM-75 (Multi-Family Residential), and RTD (Residential Townhouse District) request would couple with the existing zoning districts, associated with the Highway Activity Center Gateway designation.

➤ A(3.) The population density pattern and possible increase or overtaking load on public facilities including, but not limited to, schools, utilities, and streets;
Answer: Minimal impact, per the proposed development primarily utilizing an existing transportation corridor, Travis Drive (between Racetrack Rd and SR 81E) and Lake Dow Rd extension for primary ingress/egress to proposed internal streets. There are no reasons to suspect the requested petition would be burdensome to existing public facilities which already serve the site and surrounding properties.

➤ A(4.) The cost of the City and other governmental entities in providing, improving, increasing, or maintaining public utilities, schools, streets, and other public safety measures;
Answer: Minimal or no cost to the City or other governmental entity is expected due to the scope of work for the proposed development on-site. It is understood that there may be additional costs incurred from future development of this property; however, the costs shall be borne entirely by the applicant or the successors in title.

➤ A(5.) The possible impact on the environment, including, but not limited to, drainage, soil erosion and sedimentation, flooding, air quality, and water quantity.



Answer: Minimal with respect to scope of work (i.e. site design, landscaping and placement of structures) proposed for development on-site. New development will require a Land Disturbance Permit (LDP) plan review which shall include review/approval of Stormwater Management plan to ensure proper site design of improvements.

- A(6.) Whether the proposed Zoning Map amendment will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations;
Answer: The requested zoning change is expected to create compatibility with and/or enhance the value of adjacent and nearby properties

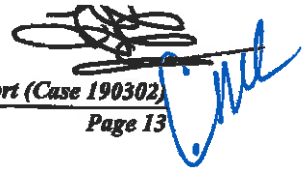
- A(7.) Whether there are substantial reasons why the property cannot be used in accordance with existing regulations;
Answer: Yes, the permitted uses within the current RA (Residential Agricultural) zoning designation impose limitations on the lot sizes, number of homes that can be constructed on the subject property, particularly a service station with multiple fuel pumps.

- A(8.) The aesthetic effect of existing and future use of the property as it relates to the surrounding area;
Answer: It is expected, per the inclusion of the stipulations recommended, that the subject property will be compatible with adjacent developed properties per scope of work, scale of the proposed development on-site, and proposed use expected to allow for continuation of the economic sustainability/expansion of projects within this Highway Activity Center Gateway corridor.

- A(9.) The extent to which the proposed Zoning Map amendment is consistent with the Land Use Plan;
Answer: The 2040 FLUM identifies the subject property as Medium-High Density residential within the delineated boundaries of the Highway Activity Center Gateway within the city's jurisdictional boundaries along the SR 81E Corridor.

- A(10.) The possible effects of the proposed Zoning Map amendment to the character of a Zoning district, a particular piece of property, neighborhood, a particular area, or the community.
Answer: Minimal, due to scope of work for the proposed development on-site that is deemed to be compatible with the zoning and land uses encompassing the subject property. It is expected that the proposed development may act as an economic catalyst and significantly enhance the future sustainability of development along the SR 81 E and Racetrack Rd Corridors.

- A(11.) The relation that the proposed Zoning Map amendment bears to the purpose of the overall zoning scheme, with due consideration given to whether or not the proposed change will help carry out the purposes of these regulations;
Answer: The subject property is located in an area characterized by Commercial/ Mixed Use and Residential Development. Development of said property will enhance, in addition to providing diversity of housing concepts, the expansion of Residential zoned land uses directly associated with identified Highway Activity Centers.



- A(12.) Applications for a Zoning Map amendment which do not contain specific site plans carry a rebuttal presumption that such rezoning shall adversely affect the zoning scheme;

Answer: Applicant submitted a conceptual site plan with the Rezoning request.

- A(13.) The consideration of the preservation of the integrity of residential neighborhoods shall be considered to carry great weight;

Answer: N/A, however, the proposed stipulations, with identification & design of an enhanced development template with specific thresholds for exterior façade materials, respect as well as provide for architectural compatibility with the adjacent developed Residential properties and Non-Residential Specialty properties so as to assist in maintaining, or enhancing the property values of residential neighborhoods in proximity.

- A(14.) In those instances in which property fronts a major thoroughfare and also adjoins an established residential neighborhood, the factor or preservation of the residential area shall be considered to carry great weight.

Answer: N/A, refer to notes for A(13).

AGENDA ITEM SUMMARY
April 19, 2021

Item Number: 10B

ITEM SUMMARY:

The request for Case #210101 (Crest South Point) is for a rezoning of the subject property recognized as Tax Parcel ID #075-01066001, #075-01066002, #075-01066004, #075-01066005, & #075-01066006, located at Hwy. 81 W.

SPECIAL CONSIDERATIONS OR CONCERNS:

Said application is to be processed in accord with schedule herein:

2/9/21 Municipal Planning Commission Workshop
3/9/21 Municipal Planning Commission Public Review
3/4/21 City Council Workshop – POSTPONED PER APPLICANT REQUEST
3/15/21 City Council Public Hearing - POSTPONED PER APPLICANT REQUEST
4/1/21 City Council Workshop
4/19/21 – City Council Public Hearing

RECOMMENDATION (Community Development Director):

MPC (3/9/21 Meeting)

Calvin McClenden made motion for denial of the rezoning, Scott Reeves second.

- **Vote:** 3-2 (Motion Passed)
 - **Yes Votes (Scott Reeves, Stanley Head, Calvin McClenden)**
 - **No Votes (Terry Ellington, Terri O'Quinn)**

Staff – Recommends approval of rezoning from RA-200 (Residential Agricultural) to RM-75 (Multi-Family Residential) and C-3 (Highway Commercial) with conditions.

FINANCIAL IMPACT: (Funding Source) – N/A

ATTACHMENTS:

ORD# 21-04-19002(Z)
P/Z Final Staff Report (Exhibit B)

Submitted by:

Charles Recsc, Community Development Director
Eric Pitts, Consulting City Planner

**STATE OF GEORGIA
CITY OF MCDONOUGH**

ORDINANCE NO. 21-04-19002(Z)

AN ORDINANCE, PURSUANT TO MCDONOUGH CODE OF ORDINANCES SECTION 17.104.020(A)(1), AMENDING THE ZONING MAP OF THE CITY OF MCDONOUGH; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MCDONOUGH AND IT IS HEREBY ORDAINED BY AUTHORITY HEREOF:

SECTION 1.

This ordinance applies to the following real property per the application filed by The Residential Group for Crest South Point:

All that lot, tract or parcel of land, otherwise known as a Parcel #075-01066001, #075-01066002, #075-01066004, #075-01066005, & #075-01066006, lying and being in Land Lot(s) 161 of the 7th District of Henry County, Georgia, consisting of 36 +/- acres and being more particularly described on Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2.

The above property is hereby zoned C-3 (Highway Commercial) consisting of 5+/- acres and RM-75 (Multi-Family Residential) consisting of 31+/- acres, and subject to the new conditions of development contained in Exhibit "B," attached hereto and incorporated herein by reference.

SECTION 3.

The sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining section, subsections, paragraphs, sentences, clauses and phrases of this ordinance.

SECTION 4.

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

SECTION 5.

This ordinance shall become effective immediately upon adoption.

So ordained this 19th day of April, 2021.

CITY OF MCDONOUGH, GEORGIA

BILLY COPELAND, MAYOR

ATTEST:

APPROVED AS TO FORM:

JANIS PRICE, CITY CLERK

CITY ATTORNEY

Exhibit A
Legal Description (See Attached)

TRG McDonough

Tract 1

All that tract or parcel of land lying and being in Land Lot 161 of the 7th District, City of McDonough, Henry County, Georgia and being more particularly described as follows:

To reach the TRUE POINT OF BEGINNING commence at a point at the southeasterly most mitered intersection of the southeasterly Right of Way of Haven Ridge Drive (50' R/W) and the northeasterly Right of Way of State Route 81 (80' R/W); thence running southeasterly along said Right of Way of State Route 81 439.62 feet to a 1 1/2" open top pipe found; thence North 00° 46' 07" West a distance of 3.71 feet to an iron pin set; thence running along a curve to the right an arc length of 278.04 feet, (said curve having a radius of 4677.44 feet, with a chord bearing of South 74° 15' 12" East, and a chord length of 278.00 feet) to an iron pin set; thence running along a curve to the right an arc length of 261.34 feet, (said curve having a radius of 2446.97 feet, with a chord bearing of South 69° 15' 37" East, and a chord length of 261.22 feet) to an iron pin set; thence running along a curve to the right an arc length of 194.70 feet, (said curve having a radius of 1862.52 feet, with a chord bearing of South 63° 05' 11" East, and a chord length of 194.61 feet) to an iron pin set and the TRUE POINT OF BEGINNING; from point thus established and leaving said Right of Way North 25° 11' 12" East a distance of 212.44 feet to an iron pin set; thence South 89° 58' 12" East a distance of 183.86 feet to an iron pin set; thence South 02° 13' 12" West a distance of 338.00 feet to a nail found on the aforementioned Right of Way of State Route 81; thence running along said Right of Way North 60° 51' 37" West a distance of 299.02 feet to the TRUE POINT OF BEGINNING. Said tract contains 1.440 Acres (62,736 Square Feet).

TRG McDonough

Tract 2

All that tract or parcel of land lying and being in Land Lot 161 of the 7th District, City of McDonough, Henry County, Georgia and being more particularly described as follows:

To reach the TRUE POINT OF BEGINNING commence at a point at the southeasterly most mitered intersection of the southeasterly Right of Way of Haven Ridge Drive (50' R/W) and the northeasterly Right of Way of State Route 81 (80' R/W); thence running southeasterly along said Right of Way of State Route 81 439.62 feet to a 1 1/2" open top pipe found; thence North 00° 46' 07" West a distance of 3.71 feet to an iron pin set; thence running along a curve to the right an arc length of 278.04 feet, (said curve having a radius of 4677.44 feet, with a chord bearing of South 74° 15' 12" East, and a chord length of 278.00 feet) to an iron pin set; thence running along a curve to the right an arc length of 261.34 feet, (said curve having a radius of 2446.97 feet, with a chord bearing of South 69° 15' 37" East, and a chord length of 261.22 feet) to an iron pin set; thence running along a curve to the right an arc length of 194.70 feet, (said curve having a radius of 1862.52 feet, with a chord bearing of South 63° 05' 11" East, and a chord length of 194.61 feet) to an iron pin set; thence South 60° 51' 37" East a distance of 299.02 feet to a nail found and the TRUE POINT OF BEGINNING; from point thus established and leaving said Right of Way North 02° 13' 12" East a distance of 976.06 feet to a 1/2" rebar found; thence South 64° 24' 49" East a distance of 190.17 feet to a 1/2" rebar found; thence South 02° 39' 47" West a distance of 974.46 feet to a 1/2" rebar with cap found on the aforementioned Right of Way of State Route 81; thence running along said Right of Way running along a curve to the right an arc length of 182.64 feet, (said curve having a radius of 3060.03 feet, with a chord bearing of North 63° 56' 42" West, and a chord length of 182.61 feet) to the TRUE POINT OF BEGINNING. Said tract contains 3.834 Acres (167,021 Square Feet).

TRG McDonough

Tract 3

All that tract or parcel of land lying and being in Land Lot 161 of the 7th District, City of McDonough, Henry County, Georgia and being more particularly described as follows:

To reach the TRUE POINT OF BEGINNING commence at a point at the southeasterly most mitered intersection of the southeasterly Right of Way of Haven Ridge Drive (50' R/W) and the northeasterly Right of Way of State Route 81 (80' R/W); thence running southeasterly along said Right of Way of State Route 81 439.62 feet to a 1 1/2" open top pipe found; thence North 00° 46' 07" West a distance of 3.71 feet to an iron pin set; thence running along a curve to the right an arc length of 278.04 feet, (said curve having a radius of 4677.44 feet, with a chord bearing of South 74° 15' 12" East, and a chord length of 278.00 feet) to an iron pin set; thence running along a curve to the right an arc length of 261.34 feet, (said curve having a radius of 2446.97 feet, with a chord bearing of South 69° 15' 37" East, and a chord length of 261.22 feet) to an iron pin set and the TRUE POINT OF BEGINNING; from point thus established and leaving said Right of Way North 00° 02' 44" West a distance of 1410.82 feet to a 1/2" rebar found; thence South 84° 43' 39" East a distance of 500.22 feet to a 1/2" rebar found; thence South 02° 14' 52" West a distance of 229.74 feet to a point on the westerly terminus of Sons Drive (60' R/W); thence running along said terminus South 02° 14' 52" West a distance of 78.43 feet to a point; thence leaving said terminus South 02° 14' 52" West a distance of 315.54 feet to a 1/2" rebar found; thence South 02° 13' 12" West a distance of 638.05 feet to an iron pin set; thence North 89° 58' 12" West a distance of 183.86 feet an iron pin set; thence South 25° 11' 12" West a distance of 212.44 feet an iron pin set on the aforementioned Right of Way of State Route 81; thence running along said Right of Way running along a curve to the left an arc length of 194.70 feet, (said curve having a radius of 1862.52 feet, with a chord bearing of North 63° 05' 11" West, and a chord length of 194.61 feet) to the TRUE POINT OF BEGINNING. Said tract contains 14.732 Acres (641,726 Square Feet).

TRG McDonough

Tract 4

All that tract or parcel of land lying and being in Land Lot 161 of the 7th District, City of McDonough, Henry County, Georgia and being more particularly described as follows:

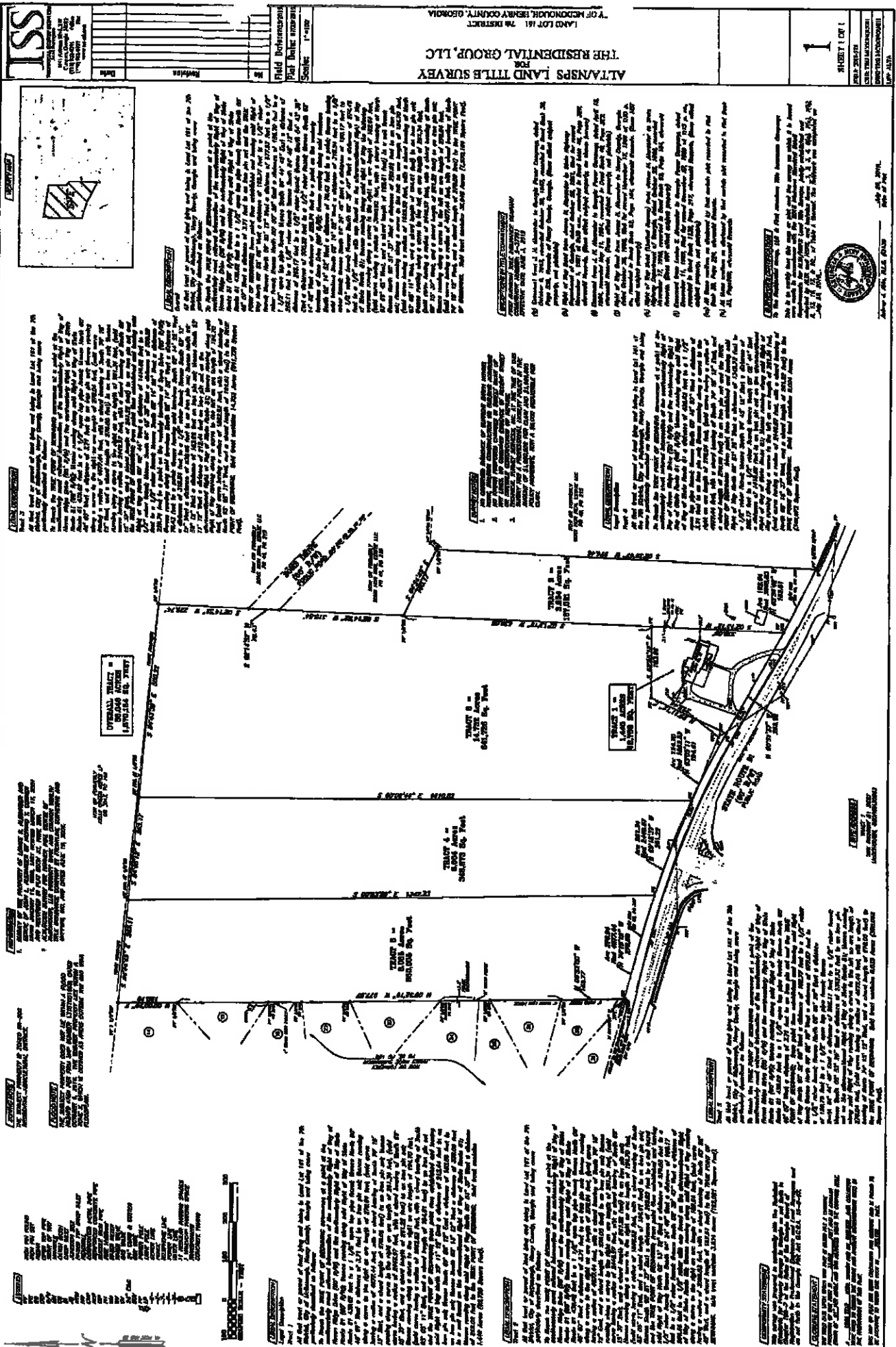
To reach the TRUE POINT OF BEGINNING commence at a point at the southeasterly most mitered intersection of the southeasterly Right of Way of Haven Ridge Drive (50' R/W) and the northeasterly Right of Way of State Route 81 (80' R/W); thence running southeasterly along said Right of Way of State Route 81 a distance of 439.62 feet to a 1 1/2" open top pipe found; thence North 00° 46' 07" West a distance of 3.71 feet to an iron pin set; thence running along a curve to the right an arc length of 278.04 feet, (said curve having a radius of 4677.44 feet, with a chord bearing of South 74° 15' 12" East, and a chord length of 278.00 feet) to an iron pin set and the TRUE POINT OF BEGINNING from point thus established and leaving said Right of Way North 00° 53' 29" West a distance of 1342.73 feet to a 1/2" rebar found; thence South 84° 45' 12" East a distance of 265.17 feet to a 1/2" rebar found; thence South 00° 02' 44" East a distance of 1410.82 feet to an iron pin set on the aforementioned Right of Way of State Route 81; thence running along said Right of Way running along a curve to the left an arc length of 261.34 feet, (said curve having a radius of 2446.97 feet, with a chord bearing of North 69° 15' 37" West, and a chord length of 261.22 feet) to the TRUE POINT OF BEGINNING. Said tract contains 8.004 Acres (348,673 Square Feet).

TRG McDonough

Tract 5

All that tract or parcel of land lying and being in Land Lot 161 of the 7th District, City of McDonough, Henry County, Georgia and being more particularly described as follows:

To reach the TRUE POINT OF BEGINNING commence at a point at the southeasterly most mitered intersection of the southeasterly Right of Way of Haven Ridge Drive (50' R/W) and the northeasterly Right of Way of State Route 81 (80' R/W); thence running southeasterly along said Right of Way of State Route 81 439.62 feet to a 1 1/2" open top pipe found; thence North 00° 46' 07" West a distance of 3.71 feet to an iron pin set and the TRUE POINT OF BEGINNING; from point thus established and leaving said Right of Way North 00° 52' 00" West a distance of 162.77 feet to a 1/2" rebar found; thence North 00° 52' 19" West a distance of 977.97 feet to a 1/2" rebar found; thence North 00° 00' 29" East a distance of 150.79 feet to a 1 1/2" open top pipe found; thence South 84° 44' 49" East a distance of 265.11 feet to a 1/2" rebar found; thence South 00° 53' 29" East a distance of 1342.73 feet to an iron pin set on the aforementioned Right of Way of State Route 81; thence running along said Right of Way running along a curve to the left an arc length of 278.04 feet, (said curve having a radius of 4677.44 feet, with a chord bearing of North 74° 15' 12" West, and a chord length of 278.00 feet) to the TRUE POINT OF BEGINNING. Said tract contains 8.035 Acres (350,008 Square Feet).



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JAN 1 2011
THE RESIDENTIAL GROUP, LLC
ALPANS LAND TITLE SURVEY

ALPANS LAND TITLE SURVEY
FOR
THE RESIDENTIAL GROUP, LLC
LAND LOT 161, 7th DISTRICT
TOWN OF MCDONOUGH, DEKALB COUNTY, GEORGIA

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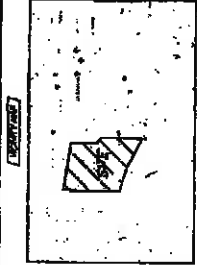


Exhibit B
Conditions of Development

REFER TO FINAL STAFF REPORT



City of McDonough, Georgia
Community Development Department

Case 210101

John D. Edling
Cali McLean

Rezoning Staff Report

Case Petition #210101

Applicant: The Residential Group for Crest South Point

Address/Location: Highway 81 W.

Council District: 4, CM Kam Varner

Current Zoning – RA-200 (Residential Agriculture)

Request:

Rezoning 5+/- acres to C-3 (Highway Commercial) and 31 +/- acres to RM-75 (Multi-Family Residential).

Land Lot/District: Land Lot(s) 161 of the 7th District

Parcel ID: #075-01066001, #075-01066002, #075-01066004, #075-01066005, & #075-01066006

Tract Size: 36 +/- acres

Meetings:

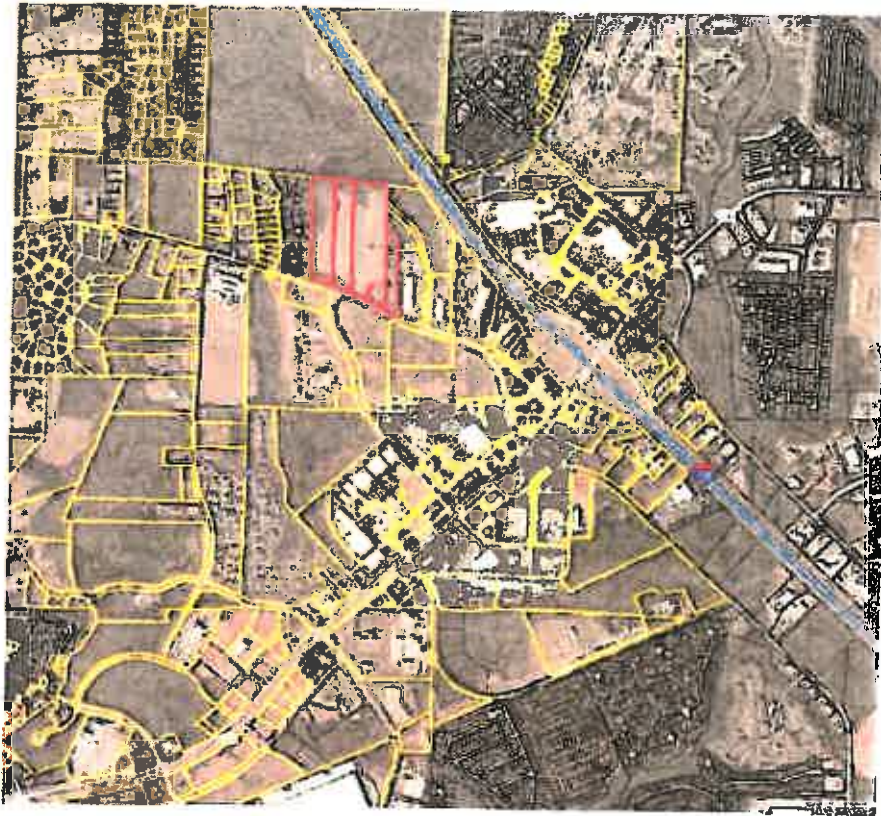
- 02/09/21 Planning Commission Workshop
- 03/04/21 City Council "Workshop"
- 03/09/21 Planning Commission Public Review
- 03/15/21 City Council "Public Hearing"

Community Development Staff recommendation:

Approval of rezoning of 5+/- acres to C-3 (Highway Commercial) and 31 +/- acres to RM-75 (Multi-Family Residential).

Background Information

The subject property is presently zoned RA -200 and is located at Highway 81 W. It is situated along the Highway 81 W. corridor. The applicant is requesting to rezone 5 +/- acres to C-3 (Highway Commercial) and 31 +/- acres to RM-75 (Multi-Family Residential).



Professional Staff (City/Henry County/State) Analysis:
Section 17.104.050 Review by other agencies

- Police Chief (Mr. Ken Noble) - *No comments returned.*
- Fire Chief (Mr. David Williams) – *email response 02/04/2021- no issues.*
- City Engineer (Mr. Mark Whitley) - *No comments returned.*
- Building Official (Mr. Mark Dobson) – *email response 10/6/2020, no comments.*
- Public Works Director (Mr. Ronnie Thompson) – *email response 02/02/2021, no issues.*
- City Environmental Engineer (Mr. Tom Fleming) - *No comments returned.*
- Henry County Board of Education (Dr. Carl Knowlton) – *email response 02/01/2021 – Based on average of 2 students per household, this 80 unit development will generate 160 new students requiring 6 new class rooms.*
- Henry County Dept. of Transportation (Mr. David Simmons) - *No comments returned.*
- Henry County Environmental Health Dept. (Ms. Glenda Scott) - *No comments returned.*
- Henry County Water Authority (Ms. Fritz Jacques) - *No Comments returned.*
- Georgia Department of Transportation (Mr. Donald Wilkerson) – *email response 02/05/2021 – Applicant will be required to apply for a GDOT permit, ICE study, Traffic study, meet the requirements of the current GDOT Access manual for spacing outparcels. They will need to provide inter parcel access, a deceleration lane and Left turn lane will also be required.*

Infrastructure: Water Service: City of McDonough

County

Sewer Service: City of McDonough

County

Electricity: Georgia Power

Telephone: Spectrum

Cable Television:

Schools: Not affected by petition request per scope of work

Final Staff Recommendation by: Eric C Pitts, PE, Consultant City

Staff recommends **Approval** of the **Rezoning** of 5+/- acres to C-3 (Highway Commercial) and 31 +/- acres to RM-75 (Multi-Family Residential) with the following stipulations outlined herein:

Approval of rezoning from RA 200 to C-3 and RM-75 with the following conditions: Prior to the issuance of any site development and building permits for subject property with approved zoning designation, the following shall be reviewed and approved as noted:

- *A master landscape plan executed outlining the proposed plans by applicant and approved stipulations by City Council herein for review/issuance of approval by the City of McDonough Community Development Director and/or his/her designee. Landscape design & materials shall demonstrate compatibility with the landscape design, plant species, and plant size(s) for the developments*
- *Georgia DOT, City of McDonough and Henry County DOT to retain final approval of the ingress/egress of the development based on the final calculations of parking submitted with the site development plan review.*

Natural:

- 1.) *Buffer/landscape strip plantings shall incorporate the following minimum plant varieties: Magnolia, Leyland Cypress, Deodar Cedar, Cryptomeria, Ginko, maple, oak, holly, dogwood, azalea, and native ornamental grass varieties. Virginia Pine shall not be utilized in more than five (5) percent of the plantings and allowed only within perimeter buffer only. Loblolly Pine and Bradford Pear shall be prohibited.*
- 2.) *All trees, except street trees, shall be a minimum of two (2) inches in caliper at the time of planting and six (6) feet in height at the time of planting. Street trees shall be three (3) inches in caliper and six (6) feet in height at the time of planting. Fifty (50) percent of all shrubs shall be required to be a minimum of three (3) gallon in size at the time of planting whereas the remainder may be a minimum of two (2) gallon in size.*
- 3.) *Foundation plantings shall be provided along the front façade of built structures where facing rights-of-way (vehicular/pedestrian) except areas necessary for ingress/egress. A minimum of five (5) different varieties shall be utilized within the foundation planting plan with a three (3) foot mulch bed containing the plantings in order to improve visual aesthetics, conserve water sources, and assist plant life.*

- 4.) Development, common space, amenity shall feature fully sodded lots, front, side(s), rear and all areas within the rights-of-way, exempting natural landscape areas. Seeding shall be prohibited.

Human:

- 1.) Development ID signage shall be monument style with brick and/or stone base, and may include wood accents (i.e. cedar). Maximum overall height of primary signage shall be Twelve (12') feet including property address identified in a minimum eight (8") inch copy.
- 2.) Minimum widths for Interior streets are to be fourteen (14) feet in width for One Way traffic and twenty-four (24') feet in width for two (2) way traffic. Final design layout, including width measurement, subject to review/approval of the McDonough Fire Chief and City Engineer as a part of Master Development Plan requirement.
- 3.) Streetlights with Georgia Power and/or Central Georgia EMC authorized architectural design shall be installed along both sides of interior subdivision streets. The design of said lighting fixtures shall be reviewed and approved by Community Development Director and/or designee per Ordinance 06-07-10B.

Built:

- 1.) The RM-75 zoned portion of the development shall be consistent in every way with the road construction, road connections (subject to GDOT approval), layout, site data, building mix as shown and specified on the document filed with the rezoning application entitled "Site Plan & Unit Matrix" dated 9-25-2019. In addition, building number 1000 on said Matrix shall be four stories with internal elevator systems and, on the first floor, shall provide for commercial and office uses which may also include amenities for the residents.
- 2.) The RM 75 zoned portion of the development shall be architecturally built in a manner consistent with the documents supplemented with the rezoning application entitled.
- 3.) The following shall apply regarding **Exterior Façade Design** standards for buildings constructed, noting principal and accessory structures shall be architecturally compatible. Final exterior design standards, shall be approved by the Community Development Director and/or his/her designee in accord with Chapter 15.68 Façade Review:

Provided; however, that:

- ✓ All structures are to feature architectural 3-D shingles (30 year shingle);
- ✓ All exposed areas of the foundation are to be clad with brick or stone;
- ✓ Brick structures may feature quoins on the exterior corners;

- ✓ The facades of all structures shall be reviewed and approved by the Community Development Director and/or designee per Ordinance 06-07-10B whereby dwellings and accessory structures shall feature a diversity of garage/entry door/window/shingle style(s) and colors to add variety to streetscape. .
- 4.) Detention/retention facilities, where provided, shall be incorporated into the approved master and landscape plans per a master storm water management plan. Also, said facilities shall comply with the city's Storm Water Facility Maintenance Agreement to ensure effective operations and maintenance.
- 5.) No development shall commence without connection to public water & sewer
- 6.) All underground utilities shall be required.
- 7.) All other requirements of the McDonough Zoning Ordinance, Subdivision Regulations, and Construction Standards which have not been specifically exempted or varied herein per written request of the applicant and legal advertisements shall be required.

Staff Analysis: (Refer to Chapter 17.104 Amendments)

Section 17.104.048 Standards of Review for Rezoning

- A(1.) The subject property is bordered by the following (refer to Zoning Maps):

North boundary (Parcel 074-01022000)

Zoning: County

Land Use: Conservation

East Boundary (105 Sons Drive)

Zoning: C-3

Land Use: Car dealership

South Boundary (State Route 81)

Zoning: N/A

Land Use: State Highway

West Boundary (Haven Ridge)

Zoning: Single Family Residential

Land Use: Residential subdivision

- A(2.) The possible creation of an isolated district unrelated to adjacent and nearby districts;
Answer: No. The C-3 (Highway Commercial) and RM-75(Multi-Family Residential) request aligns with the existing zoning districts encompassing the subject property as noted in A(1).

- **A(3.)** The population density pattern and possible increase or overtaxing load on public facilities including, but not limited to, schools, utilities, and streets;
Answer: No impact to the population density pattern and there is a possible increase on public facilities due to the scope of work and minor scale of the proposed development on-site.
- **A(4.)** The cost of the City and other governmental entities in providing, improving, increasing, or maintaining public utilities, schools, streets, and other public safety measures;
Answer: Minimal or no cost to the City or other governmental entity is expected due to the scope of work.
- **A(5.)** The possible impact on the environment, including, but not limited to, drainage, soil erosion and sedimentation, flooding, air quality, and water quantity.
Answer: Minimal impacts are expected with respect due to the existing as built conditions of the subject property, scope of work, and scale of the proposed development on site.
- **A(6.)** Whether the proposed Zoning Map amendment will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations;
Answer: The stipulations are expected to create compatibility with and enhance the value of adjacent & nearby properties.
- **A(7.)** Whether there are substantial reasons why the property cannot be used in accordance with existing regulations;
Answer: Yes, the existing RA- 200 (Residential Agricultural) zoning designation does not allow for a Multi-Family residential densities or Commercial activity.
- **A(8.)** The aesthetic effect of existing and future use of the property as it relates to the surrounding area;
Answer: It is expected, per the inclusion of the stipulations recommended, that the subject property will be compatible with adjacent properties developed within recent years per the existing as built conditions, the scope of work, scale of the proposed development on-site.
- **A(9.)** The extent to which the proposed Zoning Map amendment is consistent with the Land Use Plan;
Answer: The subject property is within the delineated boundaries of the SR 81 corridor that allows for a mix of residential, office, and commercial uses.
- **A(10.)** The possible effects of the proposed Zoning Map amendment to the character of a Zoning district, a particular piece of property, neighborhood, a particular area, or the community.
Answer: The proposed amendment, including proposed land use, is deemed to be compatible with the zoning and land uses encompassing the subject property.
- **A(11.)** The relation that the proposed Zoning Map amendment bears to the purpose of the overall zoning scheme, with due consideration given to whether or not the proposed change will help carry out the purposes of these regulations;

Answer: The proposed development, inclusive of the stipulations recommended by staff, is expected to be a catalyst for continuation of re-development and/or adaptive re-use of properties along the identified segment of SR 81.

- **A(12.)** Applications for a Zoning Map amendment which do not contain specific site plans carry a rebuttal presumption that such rezoning shall adversely affect the zoning scheme;
Answer: Applicant submitted photos of the existing, as built conditions present on-site and proposed parking.
- **A(13.)** The consideration of the preservation of the integrity of residential neighborhoods shall be considered to carry great weight;
Answer: The proposed development, inclusive of the stipulations recommended by staff, is expected to not adversely affect the integrity of the residential properties
- **A(14.)** In those instances in which property fronts a major thoroughfare and also adjoins an established residential neighborhood, the factor or preservation of the residential area shall be considered to carry great weight.
Answer: The proposed development, inclusive of the stipulations recommended by staff, is expected to provide an effective land use transition.

AGENDA ITEM SUMMARY
April 19, 2021

Item Number:

10C

ITEM SUMMARY:

The request for Case #210203 (Eagles Rest PH 2) is for rezoning of the subject property recognized as Tax Parcel ID #M03.5-01004003, bordered by Hampton Street.

SPECIAL CONSIDERATIONS OR CONCERNS:

Said application is to be processed in accord with schedule herein:

03/09/21 Municipal Planning Commission Workshop
04/13/21 Municipal Planning Commission Public Review
04/01/21 City Council Workshop
04/19/21 City Council Public Hearing

RECOMMENDATION (Community Development Director):

MPC (4/13/21 Meeting)

Stanley Head made motion for Denial of the rezoning request, Yolanda Williams Second

➤ **Vote: 5-0 (Unanimous)**

STAFF: Approval of the Rezoning to RTD (Residential Townhouse District) with conditions.

FINANCIAL IMPACT: (Funding Source) – N/A

ATTACHMENTS:

ORD #21-04-19003(Z)

P/Z Final Staff Report (Exhibit B)

Submitted by:

Charles Reese, Community Development Director

Eric Pitts, Consulting City Planner

**STATE OF GEORGIA
CITY OF MCDONOUGH**

ORDINANCE NO. 21-04-19003(Z)

AN ORDINANCE, PURSUANT TO MCDONOUGH CODE OF ORDINANCES SECTION 17.104.020(A)(1), AMENDING THE ZONING MAP OF THE CITY OF MCDONOUGH; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MCDONOUGH AND IT IS HEREBY ORDAINED BY AUTHORITY HEREOF:

SECTION 1.

This ordinance applies to the following real property per the application filed by Steven Jones for Eagles Rest PH 2:

All that lot, tract or parcel of land, otherwise known as Parcel #M0.35-01004003, lying and being in Land Lot(s) 156 of the 7th District of Henry County, Georgia, consisting of 3.085 +/- acres and being more particularly described on Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2.

The above property is hereby zoned RTD (Residential Townhouse District), and subject to the new conditions of development contained in Exhibit "B," attached hereto and incorporated herein by reference.

SECTION 3.

The sections, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause or phrase shall be declared illegal by the valid judgment or decree of any court of competent jurisdiction, such illegality shall not affect any of the remaining section, subsections, paragraphs, sentences, clauses and phrases of this ordinance.

SECTION 4.

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

SECTION 5.

This ordinance shall become effective immediately upon adoption.

So ordained this 19th day of April, 2021.

CITY OF MCDONOUGH, GEORGIA

BILLY COPELAND, MAYOR

ATTEST:

APPROVED AS TO FORM:

JANIS PRICE, CITY CLERK

CITY ATTORNEY

Exhibit A
Legal Description (See Attached)

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 156, 7TH DISTRICT, HENRY COUNTY, GEORGIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH REBAR FOUND ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 20/81 (ALSO KNOWN AS HAMPTON STREET) (80 FOOT RIGHT-OF-WAY WIDTH) LOCATED 951 FEET FROM THE INTERSECTION OF PHILLIPS DRIVE AND HAMPTON STREET;

THENCE, LEAVING SAID RIGHT-OF-WAY LINE, 550.89 FEET ALONG A CURVE TO THE LEFT (SAID CURVE HAVING A RADIUS OF 520.77 FEET AND A CHORD BEARING SOUTH 70 DEGREES 36 MINUTES 29 SECONDS EAST, 525.56 FEET) TO A 1/2 INCH REBAR;

THENCE, SOUTH 08 DEGREES 56 MINUTES 53 SECONDS EAST, 146.79 FEET TO A 1/2 INCH REBAR;

THENCE, SOUTH 48 DEGREES 06 MINUTES 44 SECONDS WEST, 67.50 FEET TO A 1/2 INCH REBAR;

THENCE, SOUTH 04 DEGREES 35 MINUTES 24 SECONDS WEST, 86.09 FEET TO A 1/2 INCH REBAR;

THENCE, NORTH 84 DEGREES 01 MINUTES 22 SECONDS WEST, 46.63 FEET TO A 1/2 INCH OPEN TOP PIPE;

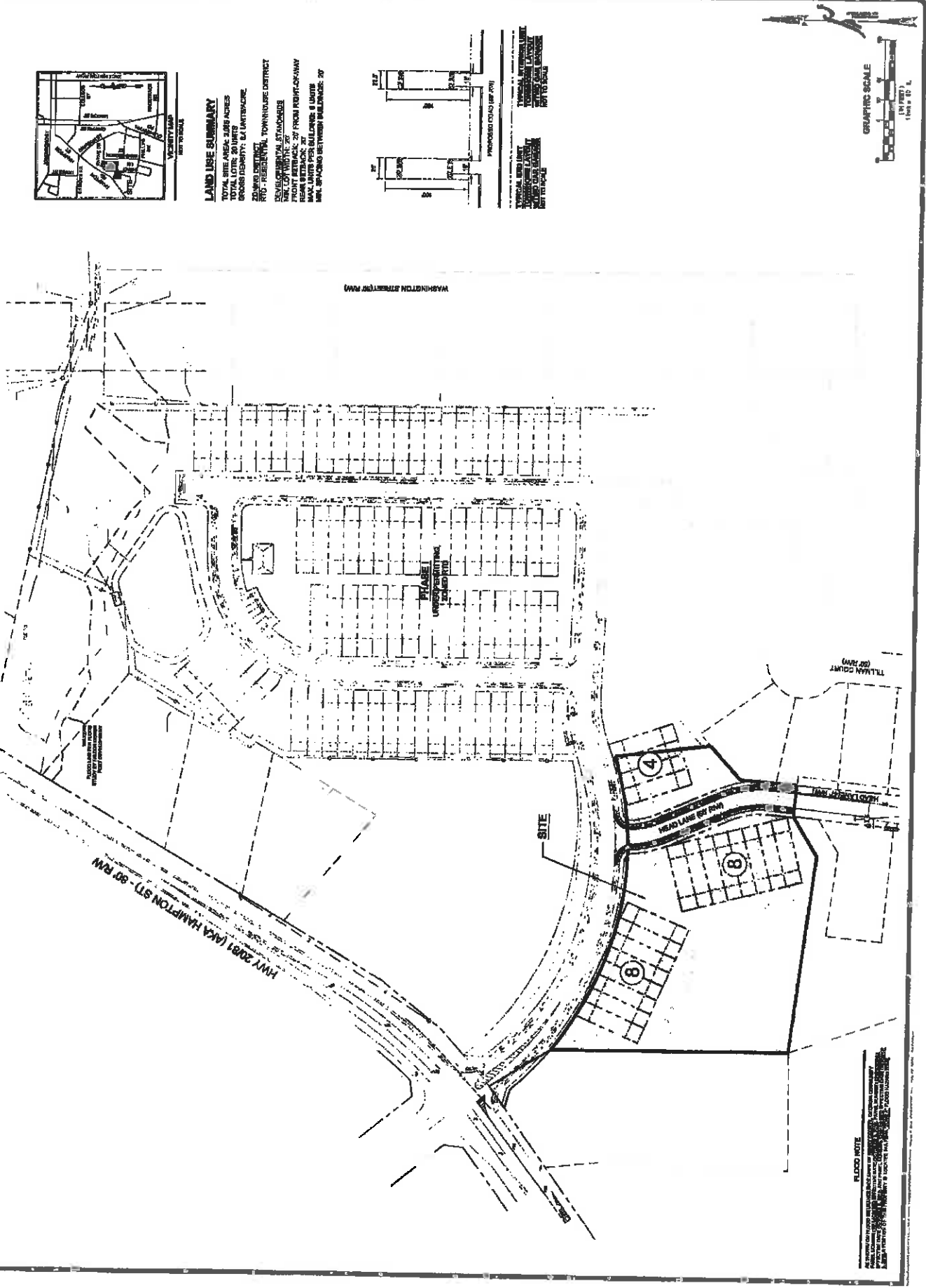
THENCE, SOUTH 58 DEGREES 50 MINUTES 35 SECONDS WEST, 68.84 FEET TO A 1/4 INCH REBAR;

THENCE, NORTH 82 DEGREES 42 MINUTES 01 SECONDS WEST, 295.90 FEET TO A 1/2 INCH REBAR;

THENCE, NORTH 00 DEGREES 06 MINUTES 06 SECONDS WEST, 354.92 FEET TO A 1/4 INCH REBAR;

THENCE, NORTH 31 DEGREES 58 MINUTES 30 SECONDS WEST, 105.94 FEET TO THE **POINT OF BEGINNING**.

SAID TRACT OR PARCEL CONTAINING **3.085 ACRES (134,398 SQUARE FEET)**.



LAND USE SUMMARY
TOTAL SITE AREA: 2.05 ACRES
TOTAL LOTS: 20 UNITS
GROUND DISTRICT: R1 (SINGLE-FAMILY)
ZONING DISTRICT: R1 (SINGLE-FAMILY)
NO. OF RESIDENTIAL TOWNHOUSE DISTRICT
RESIDENTIAL TOWNHOUSE DISTRICT
TOTAL TOWNHOUSE UNITS: 20
TOTAL LOTS: 20
TOTAL AREA: 2.05 ACRES
TOTAL LOTS: 20
TOTAL AREA: 2.05 ACRES

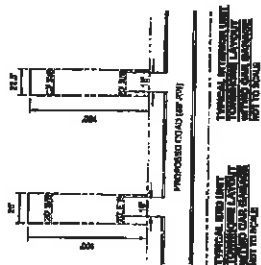


Exhibit B
Conditions of Development

REFER TO FINAL STAFF REPORT



City of McDonough, Georgia
Community Development Department

Denied
James D. Edgington
City Manager

Rezoning Staff Report

Case Petition #210203

Applicant: Steven Jones of Bovis, Kyle, Burch & Medlin, LLC for Eagles Rest Phase 2

Address/Location: Hampton Street

Council District 4: Kam Varner

Request:

Land Lot/District: Land Lot(s) 156 of the 7th District; located

Tract Size: Approximately acres 3.085 +/- (Parcel #M0.35-01004003)

Meetings:

- 3/9/21 Planning Commission Workshop
- 4/1/21 City Council Workshop
- 4/13/21 Planning Commission "Public Review"
- 4/19/21 City Council "Public Hearing"

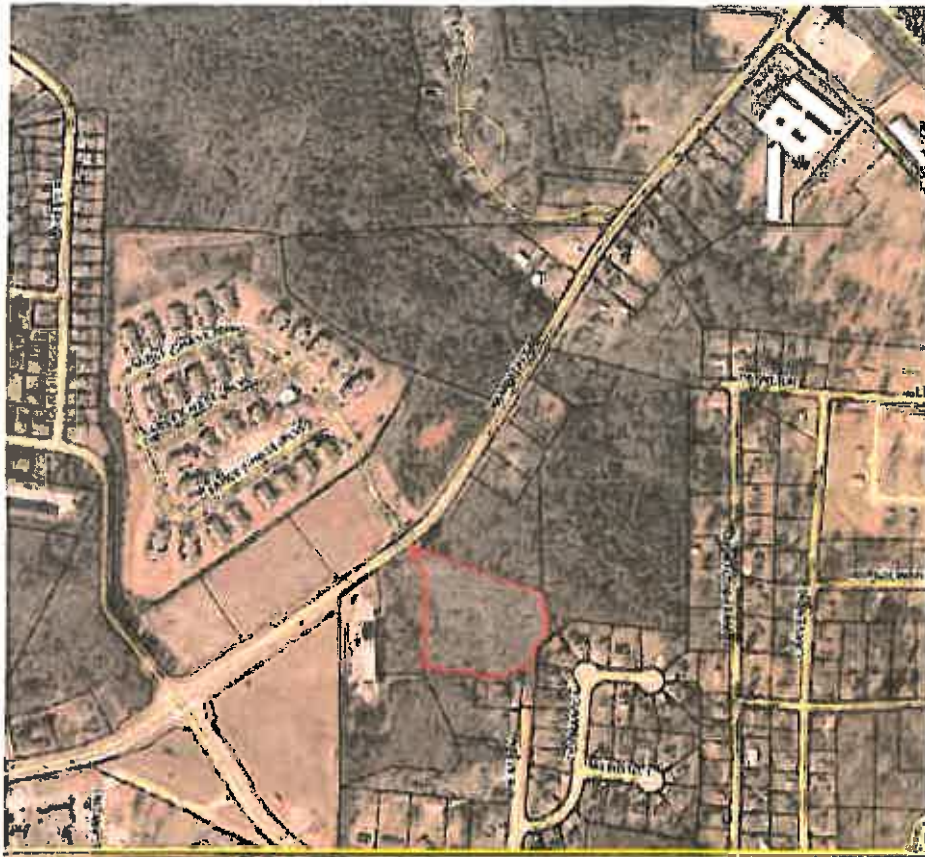
Community Development Staff recommendation:

Staff recommends *Approval* of the Rezoning to *RTD (Residential Townhouse District)* of the 3.085 +/- acres tract with conditions

Background Information

The subject property is presently zoned R-50 and is located on Hampton Street in McDonough, GA. It is situated along the corridor. It is Phase 2 of the Eagles Rest townhome community which is already zoned RTD (Residential Townhouse District).

PHOTOS OF PARCEL LOCATION



Professional Staff (City/Henry County/State) Analysis:
Section 17.104.050 Review by other agencies

- Police Chief (Mr. Ken Noble) - *No comments returned.*
- Fire Chief (Mr. Steve Morgan) - *No comments returned.*
- City Engineer (Mr. Mark Whitley) - *The entranceway at Highway 20 is not clear. It appears that some property will need to be obtained from the property owner to the west to construct a proper roadway at the intersection. GDOT approval should be required before the LDP is issued for either phase.*
- Building Official (Mr. Mark Dobson) – *The document is unclear. Does not show the true layout of the building with setbacks and driveways and right of ways. The original zoning ordinance will need to be modified for the Head Lane connection.*
- Public Works Director (Mr. Ronnie Thompson) – *email response 03/08/2021, no issues.*
- City Environmental Engineer (Mr. Tom Fleming) - *No comments returned.*
- Henry County Board of Education (Dr. Carl Knowlton) – *March 17, 2021 – at 40 units (only 20 proposed) additional 80 students (average of 2 students per unit) for a need of 3 additional classrooms.*
- Henry County Dept. of Transportation (Mr. David Simmons) – *email response 03/05/2021 – no comments.*
- Henry County Environmental Health Dept. (Ms. Glenda Scott) - *No comments returned.*
- Henry County Water Authority (Ms. Fritz Jacques) - *No Comments returned.*
- Georgia Department of Transportation (Mr. Donald Wilkerson) – *emailed response 03/05/2021- Developer will need to obtain a permit from GDOT to access SR 20/81. This property and properties at 353 Hampton Street and 365 Hampton Street will be required to have a shared access for SR 20/81 with a shared access agreement recorded with all 3 plats with no other access points on 353 Hampton Street and 365 Hampton Street along the frontage of SR 20/81. A deceleration/ acceleration lane and a left turn lane into the site will be required to get access.*

Infrastructure: Water Service: City of McDonough

Sewer Service: City of McDonough

Electricity: Georgia Power

Telephone: TBD

Cable Television: TBD

Schools: Henry County Schools

Final Staff Recommendation by: Eric C Pitts, PE, Consultant City Planner

Staff recommends **Approval** of the Rezoning to **RTD (Residential Townhouse District)** = 3.085 +/- acres with the following stipulations outlined herein:

Approval of rezoning from R-50 to RTD with the following conditions:

- The development shall include sidewalk and street lighting along all roadways within the development.
- The development shall include a Children's playground in either Phase 1 or Phase 2.
- The development shall include auxiliary/overflow off street parking in Phase 1 and Phase 2.
- All townhomes shall be a minimum of twenty-two Feet (22') wide and all townhomes shall have a two (2) car garage.
- Facades of the residences shall have at least fifty percent (50%) of the front elevation consisting of brick/stone with the remainder to be either brick/stone, stucco or fibrous concrete board (e.g., hardi-plank)
- Vinyl shall only be permitted to be used for eaves and soffits.
- There shall be a Boulevard style entrance with extensive landscaping that shall have interconnectivity to Head Lane.
- Connection to water and sewer is required prior to development.
- A homeowner's association shall be established for the proposed development for the purpose of providing maintenance of the common areas.
- Restrictive covenants regulating uses and structures shall be imposed upon the development.
- All other conditions of development will be in accordance with the development ordinances of the City.

Staff Analysis: (Refer to Chapter 17.104 Amendments)

Section 17.104.048 Standards of Review for Rezoning

- A (1.) The subject property is bordered by the following (refer to Zoning Maps):

North/Northwest boundary (353 Hampton Street)

Zoning: R-50 (Single Family Residential)

Land Use: Vacant Residential Tract

East Boundary (Eagles Rest Townhomes Phase 1)

Zoning: RTD

Land Use: Townhome Community

South Boundary (249 Head Lane)

Zoning: R-50 (Single Family Residential)

Land Use: Developed lot with dwelling structure

West Boundary (365 Hampton Street)

Zoning: C-2

Land Use: Vacant Commercial

- **A (2.)** The possible creation of an isolated district unrelated to adjacent and nearby districts;
Answer: No. The RTD (Residential Townhome District) request aligns with the existing RTD zoning districts adjacent to the subject property as noted in A(1).
- **A (3.)** The population density pattern and possible increase or overtaxing load on public facilities including, but not limited to, schools, utilities, and streets;
Answer: With the exception of the schools and water/sewer resources, there should be minimal impact to the City
- **A (4.)** The cost of the City and other governmental entities in providing, improving, increasing, or maintaining public utilities, schools, streets, and other public safety measures;
Answer: The cost to the city will be minimal, with the exception of the schools, as the developer will make the improvements required to gain access from SR 20/81 and Head Lane.
- **A (5.)** The possible impact on the environment, including, but not limited to, drainage, soil erosion and sedimentation, flooding, air quality, and water quantity.
Answer: Minimal impacts are expected with respect due to the existing as built conditions of the subject property, scope of work, and minor scale of the proposed development on site.
- **A (6.)** Whether the proposed Zoning Map amendment will be a deterrent to the value or improvement of development of adjacent property in accordance with existing regulations;
Answer: The stipulations, customarily associated with the development standards of the city are expected to create compatibility with and enhance the value of adjacent & nearby properties.
- **A (7.)** Whether there are substantial reasons why the property cannot be used in accordance with existing regulations;
Answer: None other than developers' feasibility of development
- **A (8.)** The aesthetic effect of existing and future use of the property as it relates to the surrounding area;
Answer: It is expected, per the inclusion of the stipulations recommended, that the subject property will be compatible with adjacent properties developed within recent years per the existing as built conditions, the scope of work, scale of the proposed development on-site.
- **A (9.)** The extent to which the proposed Zoning Map amendment is consistent with the Land Use Plan;
Answer: The subject property is within the delineated boundaries of the mixed use corridor of the SR 20/81 corridor that allows for a mix of residential, office, and commercial uses.
- **A (10.)** The possible effects of the proposed Zoning Map amendment to the character of a Zoning district, a particular piece of property, neighborhood, a particular area, or the community.
Answer: The proposed amendment, including proposed land use, is deemed to be compatible with the zoning and land uses encompassing the subject property.

- **A (11.)** The relation that the proposed Zoning Map amendment bears to the purpose of the overall zoning scheme, with due consideration given to whether or not the proposed change will help carry out the purposes of these regulations;
Answer: The proposed development, inclusive of the stipulations recommended by staff, is expected to be a catalyst for continuation of re-development and/or adaptive re-use of properties along the identified segment of Hampton Street (a.k.a. SR 20/81).
- **A (12.)** Applications for a Zoning Map amendment which do not contain specific site plans carry a rebuttal presumption that such rezoning shall adversely affect the zoning scheme;
Answer: Applicant submitted photos of the existing, as built conditions present on-site and proposed parking.
- **A (13.)** The consideration of the preservation of the integrity of residential neighborhoods shall be considered to carry great weight;
Answer: The proposed development, inclusive of the stipulations recommended by staff, is expected to not adversely affect the integrity of the residential properties
- **A (14.)** In those instances in which property fronts a major thoroughfare and also adjoins an established residential neighborhood, the factor or preservation of the residential area shall be considered to carry great weight.
Answer: The proposed development, inclusive of the stipulations recommended by staff, is expected to provide an effective land use transition.

10 D.

**STATE OF GEORGIA
COUNTY OF HENRY**

ORDINANCE NO. _____

WHEREAS, the City has experienced a proliferation of multi-family developments over the last decade which have brought about increased traffic, burdens on its public safety departments, and excessive demands on utility infrastructure, and

WHEREAS, there currently exists an adequate number of multi-family developments in the City, providing affordable housing opportunities for low and moderate-income current and future residents; and

WHEREAS, amending the City's zoning ordinance as provided herein will allow the housing market to balance and adjust existing multi-family developments into a proper mix of housing opportunities within the City; and

WHEREAS, public hearing to solicit and receive input on this change has been advertised and held in accordance with the requirements of state law.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE GOVERNING AUTHORITY OF THE CITY OF McDONOUGH that chapter 17 of the code of ordinances regarding business licenses and regulation be amended as follows:

-1-

Deleting, in their entirety, sections 17.40, 17.44, and 17.48 of the City's zoning ordinance for a period of five (5) years, or until April 19, 2026,

-2-

If any ordinance, or part thereof, is in conflict herewith, this ordinance shall have preference. If any provisions of this ordinance are held invalid, such invalidity shall not affect any of the other provisions which can be given effect without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

This ordinance shall become effective upon adoption this 19th day of April, 2021.

CITY OF McDONOUGH

By: _____
Billy Copeland, Mayor

Attest: _____
Janis Price, City Clerk

Approved as to form:

James E. Elliott, Jr., City Attorney