



## CITY OF FAIRBURN

### CITY HALL

56 Malone Street

Fairburn, GA 30213

April 8, 2019 @ 6:00 PM

### WORKSHOP AGENDA

- |      |   |   |
|------|---|---|
| I.   | Meeting Called to Order:                    | The Honorable Elizabeth Carr-Hurst, Mayor |
| II.  | Roll Call                                   | Shana T. Moss, Interim City Clerk         |
| III. | Presentations:                              | None                                      |
| IV.  | Discussions:                                | Councilmembers                            |
| V.   | Review of Agenda Items for Council Session: | Councilmembers                            |
| VI.  | Executive Session                           | None                                      |
| VII. | Adjournment                                 | Councilmembers                            |

When an Executive Session is warranted, one will be called for the following issues:

(1) Litigation (2) Personnel and (3) Real Estate.



CITY OF FAIRBURN  
CITY HALL  
56 Malone Street  
Fairburn, GA 30213  
April 8, 2019

## Regular Agenda

### *The Honorable Mayor Elizabeth Carr-Hurst, Presiding*

The Honorable Mayor Pro-Tem Linda J. Davis  
The Honorable Pat Pallend  
The Honorable Ulysses J. Smallwood

The Honorable Alex Heath  
The Honorable Hattie Portis-Jones  
The Honorable James Whitmore

Mr. De'Carlton Seewood  
Mr. Randy Turner

City Administrator  
City Attorney

I. Meeting Called to Order:

The Honorable Mayor Carr-Hurst

II. Roll Call:

Shana T. Moss  
Interim City Clerk

III. Invocation:

Pastor Danita Jones  
In His Great Name Ministries

IV. Pledge of Allegiance:

In Unison

V. Presentations:

Letter of Commendation

Mr. Lorenzo Williams

Life Saving Award

Mr. Chris Chambers

Linesman Appreciation Day Recognition

City of Fairburn

VI. Public Comments: Thirty (30) minutes shall be available for public comments. Each speaker shall be limited to three (3) minutes; however, a speaker may transfer his or her three (3) minutes to another speaker, but no speaker shall be permitted to speak for more than (6) minutes; further in the event, if more than ten (10) speakers desire to speak, each speaker shall be limited to two (2) minutes and no speaker may speak more than four (4) minutes. Issues raised at this time are generally referred to the City Administrator for review. Responses will be provided at a later date.

VII. Adoption of the Council Agenda:

Councilmembers

VIII. Adoption of Consent Agenda Items:

Councilmembers

- IX. Adoption of City Council Minutes: Councilmembers  
March 25, 2019 Council Meeting
- X. Public Hearing: Ms. Tarika Peaks  
**Planning and Zoning**  
Rezoning with two concurrent variances (19RZ001 with 19CV001) 19CV001 is being  
withdrawn by the applicant.
- XI. Agenda Items:  
1. **Office of the Mayor** Mayor Elizabeth Carr-Hurst  
Appointment of Mrs. Carol Berry to the Downtown Development Authority.
2. **Parks and Recreation** Ms. Chapin Payne  
For Mayor and Council to review and approve the usage agreement for Mental  
Fitness, 21<sup>st</sup> Century Learning, Inc. afterschool and summer camp program.
3. **Engineering** Mr. Lester Thompson  
For Mayor and Council to approve Task Order # 3 with Moreland Altobelli for  
Professional Engineering Services.
- XII Council Comments Councilmembers
- XIII. Executive Session Mr. Randy Tuner
- XIV. Adjournment Councilmembers

\*When an Executive Session is required, one will be called for the following issues:  
(1) Personnel (2) Real Estate or (3) Litigation.



City of Fairburn  
Mayor and Council Meeting Minutes  
March 25, 2019  
7:00 PM

I. Call to Order: The meeting was called to order by Mayor Elizabeth Carr-Hurst at 7:01 pm.

II. Roll Call was taken by Interim City Clerk Shana T. Moss. Members present were:

Mayor Elizabeth Carr-Hurst  
Councilmember Alex Heath  
Councilmember Hattie Portis-Jones

Mayor Pro-Tem Linda J. Davis  
Councilmember Pat Pallend  
Councilmember James Whitmore

Member Absent: Councilmember Ulysses J. Smallwood

III. The invocation was given by Reverend Deris Coto, Pastor of Hispanic Ministries at First Baptist Church of Fairburn, Georgia.

IV. The Pledge of Allegiance was recited in unison.

V. There were no Presentations.

VI. Public Comments: Numerous citizens opted to speak during the public hearing.

VII. Adoption of Agenda: The motion to approve the agenda was made by Councilman Whitmore and the second was provided by Mayor Pro-Tem Davis. Vote: 5-0 Motion Carried.

VIII. Approval of Consent Agenda Items: The motion to approve consent agenda items was made by Councilman Whitmore and the second was provided by Councilman Heath. Vote: 5-0 Motion Carried.

IX. Adoption of City Council Minutes: The motion to approve February 25<sup>th</sup>, 2019 minutes was made by Mayor Pro-Tem Davis and the second was provided by Councilman Whitmore. Vote: 5-0 Motion Carried.

X. Public Hearing:  
Mayor Elizabeth Carr-Hurst established protocol for public hearing supporters. She stated those in support and those opposing would be granted 30 minutes. The motion to open the public hearing was made by Councilman Heath and the second was provided by Mayor Pro-Tem Davis. Vote: 5-0 Motion Carried.

1. Lester Family Cemetery Relocation Permit [19CP-001]. Ms. Tarika Peeks  
City Planner Ms. Peeks addressed Mayor and Council stating, "The Official Code of Georgia, Title 36, Chapter 72 Abandoned Cemeteries and Burial Grounds states that no cemetery or burial ground shall be disturbed by the owner for the purposes of developing or changing the use of the land unless a permit is first obtained from the governing authority where the cemetery or burial ground is located."

On January 31, 2019 Brockington and Associates officially submitted a cemetery relocation permit for the Lester Family Cemetery located at 7895 Senoia Road to the Office of Planning and Zoning.



The Code of Georgia requires the cemetery relocation permit to consist of the following:

1. Proof of Ownership
2. Archeologist Report stating the number of graves believed to be present and their location
3. A survey showing the location and boundaries of the cemetery
4. A plan prepared by a genealogist for identifying and notifying the descendants of those buried or believed to be buried in the cemetery and:
5. A Mitigation and Reinternment Plan with the approximate cost of the process.

The Lester Family Cemetery Relocation Permit application contained all of the required information.

Staff provided a copy of the permit applicant to Rachel Black, Deputy State Archeologist with the Georgia Department of Natural Resources, Historic Preservation Division for review. Ms. Black's review comments were:

1. To provide a more legible map detailing the location of the graves as well as the cemetery boundaries.
2. To provide information regarding the proposed disposition of the existing headstones and all above ground grave items.
3. Will an osteologist be on site during the fieldworks?
4. Will an eight-inch screen be used to screen all subadult excavations?

Brockington and Associates addressed all of the questions.

The applicant is proposing to relocate approximately 65 graves [approximately 35 adults and 30 children graves] to Holly Hill Memorial Park Cemetery located at 359 W. Broad Street in Fairburn.

The Planning and Zoning Office have received approximately 147 statements opposing the relocation of the Lester Family Cemetery. 27 of the 147 statements have been provided to you tonight.

Staff Recommendation is denial of the Lester Family Cemetery Relocation Permit.

**The following individual spoke in Support:**

1. Mr. Richard Lindsey, attorney for applicant Mohammad Khimani addressed Mayor and Council. He stated Mr. Khimani had completed and submitted a detailed archaeological report. Letters were sent to the families of the deceased who were buried at the Lester Family Cemetery. The remains would be relocated to Holly Hill Perpetual Care and would be given dignity and honor. He further stated there are Confederate graves at the cemetery and his client would place a monument at the location in remembrance of these soldiers. Mr. Lindsey stated there are 3 points of misinformation which are: (1) there will be one single grave for everyone at the cemetery, that is false every individual will have a separate grave. (2) this is being done to enlarge the liquor store and (3) his client prevented people from visiting the cemetery that is false. He stated the cemetery has been abandoned. The last person buried in the cemetery was in 1912.

**The following individuals spoke in Opposition:**

1. Mr. Gabe Mavis stated he was representing the youth of Fairburn. He is opposed to the relocation of his ancestors.

2. Mrs. Brenda Boyd Torbush stated she was the great, great, great, granddaughter of Dr. Lester to whom the cemetery is named for. She is in opposition to disturbing resting souls. There are families that are buried together, and they should remain together. She was refused the opportunity to place flowers in the cemetery by Mr. Khimani.

3. Mr. Paul H. Lester stated he was devastated when he received the certified letter regarding the relocation of his ancestors. He is in opposition.

4. Mr. Randy Boyd distributed maps and plans to Mayor and Council. He stated a cemetery is a sacred place it is a final resting place for loved ones. These individuals should not be disturbed.

5. Mr. Walter Brown stated he is a former Chief of the Fire Department. There was a fire at the location when he was chief. The applicant Mr. Khimani refused to allow firefighters to come on his property to combat the fire.

6. Mr. Allen Moye, stated he is a 4<sup>th</sup> generation descendant of Dr. Lester and is opposed to the relocation. He stated the family members in the cemetery were here before Fairburn was here.

At this time the 30 minutes granted to the Opposition was over.

**5-minute Rebuttal from the Applicant:**

Mr. Lindsey stated his client Mr. Khimani would take great care in the relocation of the remains. He has never refused anyone who wanted to come to the cemetery. For 30-40 years no one has taken interest in cleaning nor maintaining the cemetery. The last time the cemetery was cleaned the City of Fairburn employees cleaned it.

The motion to end the public hearing was made by Councilman Heath with the second provided by Councilman Whitmore. Vote: 5-0 Motion Carried.

The motion to deny the request was made by Councilman Whitmore with him stating: "Madam Mayor, I make a motion to deny the applicant's request for a permit to relocate the Lester Family Cemetery. Based on the application, the written comments received by the city, the comments received tonight from both the applicant and the individuals in opposition to the application and in light of the legal presumption that the graves should not be disturbed and after balancing the interest of the applicant, the community, the cultural significance of the cemetery and the many individuals interred there, I believe the application should be denied." The second to deny was provided by Councilman Heath.

Vote: 5-0 Motion Carried.

XI. Agenda Items:

1. Office of the Mayor Mayor Elizabeth Carr-Hurst  
To appoint Shana T. Moss as Interim City Clerk. Ms. Moss will be the Interim City Clerk until a permanent clerk is hired. Ms. Moss previously worked with the city in the interim clerk position. The motion to approve was made by Councilman Whitmore with the second provided by Councilman Heath.

Vote: 5-0 Motion Carried.

2. Utilities Stormwater Mayor Elizabeth Carr-Hurst  
For Mayor and Council to approve a Task Order with Integrated Science and Engineering in the amount of \$5,100 to conduct Highly Visible Pollution Source (HVPS) and Industrial Inspections.

This was a consent agenda item. The motion to approve consent agenda was made by Councilman Whitmore and the second was provided by Councilman Heath. Vote: 5-0 Motion Carried.

3. Utilities Mr. Eddie Powell



For Mayor and Council to approve the IPC (Inter-Participant Contract) Amendment with MEAG Power. This was a consent agenda item. The motion to approve consent agenda was made by Councilman Whitmore and the motion was seconded by Councilman Heath. Vote: 5-0 Motion Carried.

#### 4. Police Department

Chief Stoney Mathis

For Mayor and Council to make an addition to Chapter 8 of the City Ordinance-Alcoholic Beverages (8-128). Chief Mathis stated, currently the city has an ordinance section addressing the issuance of and regulation of alcohol licensing. Currently there is not a section outlining the issuance of pouring permits. The police department proposed to begin issuing pouring permits to all employees to on-site consumption premises. Surrounding cities are presently issuing pouring permits to on-site consumption within their City limits. A background check is required for all applicants requesting a pouring permit and they must be 18 years or older. Additionally, surrounding cities are also offering Background Checks and Livescan fingerprinting services and charging a fee for accident. Chief Mathis asked council to approve adding the pouring permit section to the ordinance. The motion to approve was made by Mayor Pro-Tem Davis and the second was provided by Councilman Heath. Vote: 5-0 Motion Carried.

#### 5. Parks and Recreation

Ms. Chapin Payne

For Mayor and Council to review and approve the rental agreement with G. Pat Green for use of 129 W. Broad Street for the City of Fairburn Youth Center daily and event parking. This was a consent agenda item. The motion to approve consent agenda was made by Councilman Whitmore and the second was provide by Councilman Heath. Vote: 5-0 Motion Carried.

### XII. Council Comments:

Councilman Whitmore reported on March 14<sup>th</sup>, 2019 he attended an event honoring John Childs. He congratulated Mayor Carr- Hurst on her Woman of Courage award. He also referenced her upcoming Mayor of the Year Award she will be receiving on March 28, 2019.

Councilman Heath had no comment.

Mayor Pro-Tem Davis thanked everyone for taking relief donations to Talbotton, Georgia.

Councilman Pallend had no comment.

Councilwoman Portis-Jones congratulated Mayor Carr-Hurst on her Woman of Courage award. She thanked Councilman Whitmore for his role in the storm relief efforts. She stated she is a member of the National League of Cities (NLC) Board of Directors. She attended the Congressional Summit where she met with the staffs of Senator Isakson and Senator Perdue. Also, she is on the Board of Directors of the Energy of Natural Resources.

Mayor Carr-Hurst thanked everyone for their assistance and support of the storm relief donations. She congratulated Councilwoman Portis-Jones on being named to the NLC Board of Directors. She thanked Mr. and Mrs. Brown for coming to the council meeting she stated it is always good to see them. She informed everyone about the relocation of Ormondo's Restaurant.

### III. Executive Session: there was none.



XIV. Adjournment: The motion to adjourn the March 25<sup>th</sup>, 2019 Mayor and Council Meeting was made by Councilman Whitmore with the second provided by Mayor Pro-Tem Davis. Vote: 5-0 Motion Carried.

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Shana T. Moss, Interim City Clerk

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Elizabeth Carr-Hurst, Mayor

DRAFT



## CITY OF FAIRBURN

### CITY COUNCIL AGENDA ITEM

**SUBJECT: Rezoning 19RZ-001 with Concurrent Variances [19CV-001/19CV-002]-  
Prestwick Land Holding.**

( ) AGREEMENT                      ( ) POLICY / DISCUSSION                      ( ) CONTRACT  
( X ) ORDINANCE                      ( ) RESOLUTION                      ( X ) OTHER

**Planning and Zoning Commission: 03.12.19**

**Mayor and Council: 04.08.19**

**DEPARTMENT:** Community Development/Planning and Zoning

**BUDGET IMPACT:** None

**PUBLIC HEARING?** ( X ) Yes    ( ) No

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**PURPOSE:** Pestwick Land Holdings, LLC seeks to rezone 4.35 acres from **R-3 (Single-family Residential District)** to **RM-36 (Multi-family Residential District)** with one concurrent variance to allow a 64 unit multi-family residential development.

This item was advertised as 19RZ-001 with two concurrent variances, 19CV-001 and 19CV-002; however, 19CV-001 has been withdrawn by the applicant.

**PLANNING AND ZONING COMMISSION RECOMMENDATION: DENIAL**

**STAFF RECOMMENDATION: APPROVAL CONDITIONAL**

A handwritten signature in black ink, reading "De'Carlton Seewood".

*De'Carlton Seewood, City Administrator*

A handwritten signature in blue ink, reading "Elizabeth Carr-Hurst".

*Elizabeth Carr-Hurst, Mayor*

## APPLICATION INFORMATION

### Rezoning 19RZ-001 with Concurrent Variances [19CV-001 & 19CV-002] – Prestwick Land Holdings

#### APPLICANT/PETITIONER INFORMATION

<b>Property Owner</b> Jeff Couch	<b>Petitioner</b> Prestwick Land Holdings, LLC
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#### PROPERTY INFORMATION

<b>Address:</b>	136 West Broad Street & 0 Strickland Street [Parcel # 09F170600670992 09F170600670232]
<b>Land Lot and District:</b>	Land Lot 67, District 9F
<b>Frontage:</b>	West Broad Street & Strickland Street
<b>Area of Property:</b>	+/- 4.35 acres
<b>Existing Zoning and Use:</b>	R-3 (Single-family Residential District) and Single-Family Residential
<b>Overlay District:</b>	Highway 29 Overlay District
<b>Prior Zoning Cases/History:</b>	None
<b>2035 Comprehensive Future Land Use Map Designation:</b>	Town Center Mixed Use
<b>Compatibility with Fairburn's 2035 Comprehensive Plan:</b>	The request to rezone property from R-3 (Single-family Residential District) to RM-36 (Multi-family Residential District) to allow a 64-unit multi-family development is compatible with the Comprehensive Plan and Future Development Map.
<b>Proposed Zoning:</b>	RM-36 (Multi-family Residential District)

#### MEETING AND HEARING DATES

**Planning and Zoning Commission Meeting**  
Tuesday, March 12, 2019

**Mayor and City Council Public Hearing**  
Monday, April 8, 2019

#### INTENT

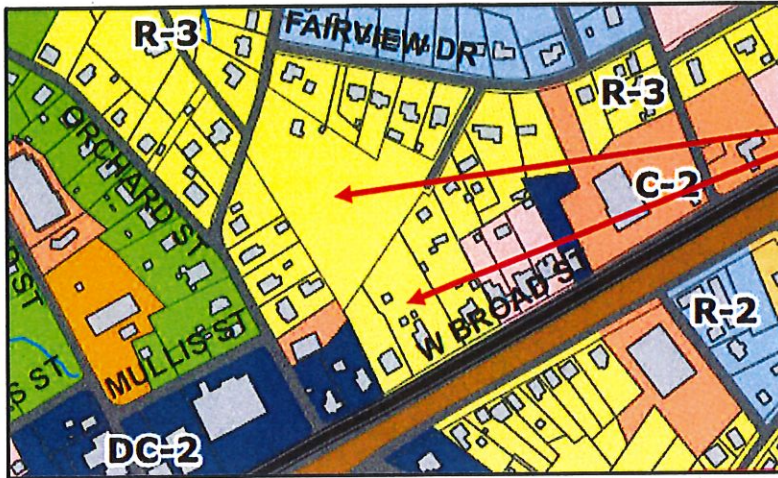
A request to rezone 4.35 acres from R-3 (Single-family Residential District) to RM-36 (Multi-family Residential District) with one concurrent variance to allow a 64-unit multi-family residential development.

#### SURROUNDING ZONING

**North:** R-3 (Single-family Residential District) and R-2 (Single-family Residential District)  
**East:** O&I (Office Institutional District), DC-2 (Downtown Commercial District) and R-3 (Single-family Residential District)  
**South:** R-2 (Single-family Residential District) and R-3 (Single-family Residential District)  
**West:** R-3 (Single-family Residential District), DC-2 (Downtown Commercial District) and R-4 (Single-family District)



## Zoning Map



**19RZ-001, 19CV- 002**  
**64-unit multi-family residential development**  
**+/- 4.35 acres**

## **PUBLIC PARTICIPATION**

The applicant held a public participation meeting on Monday, February 25, 2019 from 6:00 p.m. to 7:00 p.m. at the Manor at Broad Street Senior Complex [155 SW Broad Street, Fairburn]. There were fourteen property owners present at the meeting. The property owners expressed the following concerns about the proposed multi-family development:

1. Inconsistency with the Comprehensive Plan [apartments not wanted]
2. Drainage issues
3. Traffic congestion
4. Screening of the buildings
5. The need for a mixture of rental rates [affordable and market rate units]

The applicant reported that the site will comply with the state and city stormwater management requirements. The applicant also reported that the property will be screened to provide a visual buffer between the buildings and residential houses. It is the opinion of the applicant that the proposed project will increase opportunity downtown with a mixture of income housing units.

## **STAFF COMMENTS**

Engineering/Public Works: No comments at this time.

Fire: No comments at this time.

Water and Sewer:

This property is surrounded by aged infrastructure. The developer must be responsible for assuring capacity is available with respect to all utilities and no adverse consequences will result from placing an additional 96 units in this area.

Fulton County Board of Health:

EHS Comments:

- Since this proposed development constitutes a premise where people work and/or live, onsite sanitary facilities would be mandatory prior to use or occupancy.

- This department will require that plans indicating the number and location of outside refuse containers along with typical details of the pad and approach area for the refuse containers be submitted for review and approval.
- If the proposed development includes an existing individual onsite sewage management system(s), and the system(s) will be abandoned, it shall be abandoned in accordance with Fulton County regulations.
- If this proposed development includes an existing individual onsite water supply system(s), and the system(s) will be abandoned, it shall be abandoned in accordance with Fulton County regulations.
- If there are existing structures to be demolished, this agency is requiring that they be inspected by a certified pest control operator to insure that the premise is rat free. If evidence of rodent infestation is found, the property must be baited prior to demolition.

*General Public Health and EJ Comments:*

- Since a multi-family housing development is not considered an environmentally adverse use, the Fulton County Board of Health does not anticipate any adverse impacts to the health of humans or the environment by allowing the rezoning from R-3 to RM-36 to allow for the development of the proposed 96-unit residential use.
- Since the proposed development is in an area surrounding a railroad, this department recommends that the owner/developer considers the potential noise level and duration in this development's design. Noise has the potential for causing sleep disturbances which can negatively affect mental and physical health.
- Diesel engines emit pollution particles into the air around train tracks diesel pollution has an impact on public health and/or air quality. Diesel exhaust particulate matter is a toxic air contaminant and contains known carcinogens.

## ZONING IMPACT ANALYSIS

***A. Does the proposal permit a use that is suitable in view of the use and development of adjacent and nearby property?***

The applicant is proposing to rezone the subject property from R-3 (Single-family Residential District) to RM-36 (Multi-family Residential District) with one concurrent variance to allow a 64-unit multi-family development. The site will consist of four two story buildings, an amenity area and greenspace. The existing house will be renovated and serve as the leasing facility and clubroom.

Staff is of the opinion that the proposed use is suitable in view of the use and development of adjacent and nearby property. The surrounding area consists of: R-3 (Single-family Residential District) and R-2 (Single-family Residential District) to the north, O&I (Office Institutional District), DC-2 (Downtown Commercial District) and R-3 (Single-family Residential District) to the east, R-2 (Single-family Residential District) and R-3 (Single-family Residential District) to the south, and R-3 (Single-family Residential District), DC-2 (Downtown Commercial District) and R-4 (Single-family District) to the west.

***B. Does the proposal adversely affect the existing use or usability of adjacent or nearby property?***

Staff is of the opinion that the petition if approved would not have an adverse impact on the use or usability of adjacent or nearby properties. The surrounding properties are zoned R-2 (Single-family Residential District), R-3 (Single-family residential District) and R-4 (Single-family Residential District). An existing multi-family residential community is located approximately 1,000 feet from the subject site.



**C. Does the property have a reasonable economic use as currently zoned?**

Staff is of the opinion that the subject property has a reasonable economic use as currently zoned.

**D. Will the proposal result in a use that could cause excessive or burdensome use of existing streets, transportation facilities, utilities or schools?**

Staff is of the opinion that the proposal will not result in a use which will cause an excessive or burdensome use of the existing infrastructure.

**E. Is the proposal in conformity with the policies and intent of the land use plan?**

Staff is of the opinion that the proposal is consistent with the Future Development Map, which designates the site as Town Center Mixed Use. The Town Center Mixed Use Character Area goal is for downtown to become the center of daily life in the city. The development strategies for the Town Center Mixed Use Character Area, as referenced in the Comprehensive Plan are:

- Maintain integrity of interconnected grid and pedestrian circulation;
- Historic structures should be preserved or adaptively reused wherever possible;
- New development should reflect the historical context of building mass, scale and setbacks;
- Encourage mixed-use infill and redevelopment;
- Encourage transit-supportive residential development;
- Economic development strategies should continue to nurture thriving commercial activity;
- Enhance tree planting to include more shade trees and ornamental streetscape plantings and;
- Ensure that future phases of streetscape enhancements are developed in harmony with previous efforts, as well as economic development goals of the City and the Downtown Development Authority

The appropriate land uses for the Town Center Character Area, as referenced in the Comprehensive Plan are:

- Mixed Use
- Civic/Institutional/Educational
- Residential (all types)
- Commercial/Retail/Office
- Small scale low intensity industrial that fits into appropriately scaled and designed structures

The proposal to develop a multi-family development in downtown is consistent with the goals of the Comprehensive Plan which encourages an integration of various residential uses into downtown. Incorporating a mixture of housing stock into downtown will increase activity in downtown and ultimately create a vibrant downtown.

**F. Are there existing or changing conditions that affect the use and development of the property which support either approval or denial of the proposal?**

Staff is of the opinion that there are no existing or changing conditions affecting the use and development of the property, which give supporting grounds for approval or denial of the applicant's proposal.

**G. Does the proposal permit a use that can be considered environmentally adverse to the natural resources, environment, and citizens of Fairburn?**

Geotechnical Environmental Consultants conducted a noise study to determine if noise levels would exceed the U.S. Department of Housing and Urban Development (HUD) limitations for exterior and interior locations. Several noise assessment locations (NAL) were chosen to give a general description of noise levels at the subject property. One NAL had a total day/night noise level (DNL) greater than 65dB. The sources for the predicted levels were identified as one roadway (Hwy29/Broad Street) and one railway (CSX), located directly



south of the site. Most buildings are under the 65dB and do not require mitigation. The applicant's Noise Mitigation Plan addresses the use of suitable wall, window, and door Sound Transmission Class (STC) rating materials to reduce the noise level. In addition to the STC rating materials, other noise reduction methods were recommended such as:

1. Continuous acoustical caulking and compressible neoprene weather stripping should be installed at all exterior door and window openings.
2. Tight seals and acoustical caulking should be installed around all exterior wall penetrations.
3. All bathroom and/or kitchen exhaust fans should duct through the attic or away from the noise source with a duct layout that incorporates at least one 90-degree elbow.
4. All equipment should incorporate vibration mounting as appropriate.
5. As the principal noise source is ground level transportation sources, and not airborne aviation sources, no special construction detail is required for roofs or top-level ceilings.

Fulton County Board of Health reviewed the proposal and does not anticipate the proposed development having any adverse impact to the health of humans or the environment.

### **VARIANCE CONSIDERATIONS**

1. Variance from section 80-337(b)(1) to reduce the required parking from 2 spaces per unit to 1.50 spaces per unit. (19CV-001) – **Withdrawn by applicant**
2. Variance from section 80-91(e)(3) to reduce the side yard setback from 30' to 20'. (19CV-002)

#### **Section 80-251 Variances Considerations:**

- (1) Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of this chapter; or
- (2) The application of the particular provision of this chapter to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public.

The applicant is requesting one (1) concurrent variance as outlined below.

1. Variance from section 80-91(e)(3) to reduce the side yard setback from 30' to 20'. (19CV-002)

#### *Findings:*

The subject property has an odd and irregular shape. The shape of the property on the northwest entrance, on Strickland Street, is narrow and prohibits the construction of a building within the first 150 feet. There are two pinch points on the site. The northwest entrance has a width of 70 feet across the site, and halfway down the length of the site, there is a pinch point where the width shrinks to 125 feet, which prohibits the development from being as efficient as possible. Therefore, based on these reasons, the staff recommends **APPROVAL** of this variance request.

Since the March 12, 2019 Planning and Zoning Commission, the applicant reduced the number of units from 96 to 64; which resulted in a reduction of the required parking spaces from 192 to 128. Therefore, the previous variance request to reduce the number of parking space has been withdrawn. The revised conceptual plan illustrates the following:

- o Parking: 145 spaces
- o Number of Units:
  - 1 Bedrooms – 20 units
  - 2 Bedrooms – 32 units
  - 3 Bedrooms – 12 units
  - TOTAL: 64 units**

## STAFF RECOMENDATION

It is the opinion of staff that the rezoning request is in conformity with the Future Development Map, which designates the site as Town Center Mixed Use. The rezoning of the property from R-3 (Single-family Residential District) to RM-36 (Multi-family Residential District) will not adversely affect the surrounding properties as all adjacent parcels contain residential uses. The proposal to develop a multi-family residential development in the downtown is consistent with the goals and objectives of the Comprehensive Plan and the Town Center Mixed Use development strategies and appropriate uses. Therefore, based on these reasons staff recommends **APPROVAL** **CONDITIONAL** of the rezoning petition.

Should the Mayor and City Council decide to rezone the subject property from R-3 (Single-family Residential District) to RM-36 (Multi-family Residential District) to allow a 64-unit multi-family residential development, staff recommends the following conditions. The applicant's agreement to these conditions would not change staff's recommendations. These conditions shall prevail unless otherwise stipulated by the Mayor and City Council:

A. To restrict the use of the subject property as follows:

1. Residential units at a density no greater than 15 units per acre or 64 units, whichever is less.

B. To the owner's agreement to abide by the following:

1. The property shall be developed in substantial conformity with the Zoning Site Plan stamped received March 25, 2019. Said site plan is conceptual only and must meet or exceed the requirements of the City's ordinances prior to the approval of a Land Disturbance Permit. Any major deviation from this site plan is subject to approval by the City Engineer or designee.

C. To the owner's agreement to the following site development considerations:

1. Provide a 25-foot buffer where buildings directly adjoin residentially zoned property.
2. Amenity package to include a common area with benches, trash receptacles, bicycle parking racks, and a leasing facility with a clubroom.
3. Exterior materials shall be a minimum of thirty percent (30%) brick or stone and forty percent (40%) stone or other cementitious material. Vinyl siding and veneers shall be prohibited. The exterior colors shall be consistent with the Highway 29 Overlay District Downtown Color Palette.
4. All roof mounted equipment shall be screened from the public right-of-way.
5. The number of three (3) bedroom units shall be limited to no more than twenty percent (20%) of the total number of units.
6. Provide vegetated screening adjacent to residentially zoned property located at the northwest and southern entrance of the site.
7. Noise mitigating construction designs and practices as recommended in the Noise Mitigation Plan provided by Geotechnical & Environmental Consultants, Inc. shall be required.

## **ATTACHMENTS**

Impact Analysis & Variance Consideration  
Revised Conceptual Site Plan  
Revised Elevations





## IMPACT ANALYSIS

Applicant: Prestwick Land Holdings LLC

Analyze the impact of the proposed rezoning and answer the following questions:

1. Does the proposal permit a use that is suitable in view of the use and development of adjacent and nearby property? Yes, the site is along the commercial corridor of West Broad.
2. Does the proposal adversely affect the existing use or usability of adjacent or nearby property? No, the development will be properly screened and buffered from the single family residential.
3. Does the property have a reasonable economic use as currently zoned? No, underutilized and not complementary to the commercial corridor.
4. Will the proposal result in a use that could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools? No, the community will add resident that will help boost the local economy
5. Is the proposal in conformity with the policies and intent of the land use plan? Yes, the development supports Highway Mixed Use.
6. Are there existing or changing conditions that affect the use and development of the property which support either approval or denial of the proposal? Yes, the desire of residents to live in downtown Fairburn supports the approval of the zoning.
7. Does the proposal permit a use that can be considered environmentally adverse to the natural resources, environment and citizens of City of Fairburn? No, the development supports Highway Mixed Use.

Attach additional sheets as needed.



**CHECK ONE OF THE FOLLOWING REQUESTED VARIANCE TYPES IN SECTION II.**

**SECTION II VARIANCES REQUIRING PUBLIC HEARING BY THE PLANNING AND ZONING COMMISSION OR CITY COUNCIL**

- ☐ 1) **PRIMARY VARIANCE:** Seeks relief from any provision in the Zoning Ordinance that is not being handled as a minor variance or administrative minor variance.
- ☐ 2) **SECONDARY VARIANCE:** Seeks relief from variance decisions and interpretations made by the zoning administrator or relief from minor variance or administrative minor variance requests.
- ☒ 2) **CONCURRENT VARIANCE:** Seeks relief from any provision in the Zoning Ordinance when filed simultaneously with a rezoning, use permit, or zoning modification request on the same property.

**MINOR & ADMINISTRATIVE MINOR VARIANCES**  
**[NO PUBLIC HEARING REQUIRED]**

- ☐ 1) **MINOR VARIANCE:** Seeks relief from the minimum yard requirements, not to exceed 10% of required setback (example: 35-foot front yard = 3.5-foot variance)
- ☐ 2) **ADMINISTRATIVE MINOR VARIANCE:** Relief requiring 1 foot or less from required building setback

**VARIANCE CONSIDERATIONS:**

- 1) Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of this chapter; or

Relief would be in harmony with the general purpose and intent of this chapter

- 2) The application of the particular provision of this chapter to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public; or

That is correct. The application of these provisions of this chapter to our piece of property, due to its size and shape would create an unnecessary hardship for the owner.

- 3) Conditions resulting from existing foliage or structures bring about a hardship whereby a sign meeting minimum letter size, square footage and height requirements cannot be read from an adjoining public road.





CONCEPT RENDERING

**Ashton Park**

136 NW Broad St. Fairburn, GA 30213

Date: 3/22/19

Owner/Developer: Prestwick Companies  
Architect: Geheber Lewis Associates





## Exhibit A

All that tract or parcel of land lying and being in land lot 67 of the 9F district of Fulton County, Georgia and being more particularly described as follows:

### TRACT 1

Commencing at a point on the westerly right-of-way of Strickland Street (having a 40 foot right-of-way) and the northerly right-of-way of U.S. 29 (West Broad Street, having a variable right-of way); Thence, from said point of commencement and running along the northly right-of-way of U.S. 29 for a distance of plus or minus 312.09 feet to an iron pin set on the northerly right-of-way of U.S. 29, said point being the TRUE POINT OF BEGINNING.

Beginning at the TRUE POINT OF BEGINNING, leaving said right-of-way and continuing in a northwesterly direction North 27 degrees 08 minutes 52 seconds West, for a distance of 176.2 feet to a rock found; Thence, South 86 degrees 11 minutes 30 seconds West for a distance of 18.55 feet to a rock found; Thence, North 40 degrees 09 minutes 49 seconds West for a distance of 67.00 feet to an iron pin found, said point being on the southeasterly line of Tract 2; Thence, continuing in a northeasterly direction and along said line of Tract 2 North 30 degrees 15 minutes 31 seconds East for a distance of 210.53 feet to a ½ inch iron pin set; Thence, leaving said line of Tract 2 and continuing in a southeasterly direction, South 41 degrees 53 minutes 27 seconds East for a distance of 98.14 feet to a ½ inch iron pin set; Thence, South 27 degrees 35 minutes 40 seconds East for a distance of 97.35 feet to a ½ inch iron pin set; Thence, South 29 degrees 15 minutes 56 seconds East for a distance of 170.25 feet to a ½ inch iron pin set on the northerly right-of-way of U.S. 29; Thence, running in a southwesterly direction, along said right-of-way, South 62 degrees 54 minutes 08 seconds West for a distance of 177.28 feet to the TRUE POINT OF BEGINNING.

Said parcel containing 1.296 acres more or less.

### TRACT 2

Commencing at a point on the westerly right-of-way of Strickland Street and the northerly right-of-way of U.S. 29 (West Broad Street); Thence from said point of commencement and running along the northly right-of-way of U.S. 29 for a distance of plus or minus 312.09 feet to an iron pin set on the northerly right-of-way of U.S. 29, said point also being the true point of beginning for Tract 1; Thence, leaving said right-of-way and continuing in a northwesterly direction North 27 degrees 08 minutes 52 seconds West, for a distance of 176.2 feet to a rock found; Thence, South 86 degrees 11 minutes 30 seconds West for a distance of 18.55 feet to a rock found; Thence, North 40 degrees 09 minutes 49 seconds West for a distance of 67.00 feet to an iron pin found, said point being the TRUE POINT OF BEGINNING.

From the TRUE POINT OF BEGINNING continue in a southwesterly direction South 48 degrees 40 minutes 30 seconds West for a distance of 68.58 feet to a ½ inch pin found; Thence, North 26 degrees 32 minutes 11 seconds West for a distance of 69.36 feet to a 5/8 inch iron pin found; Thence, North 27 degrees 57 minutes 43 seconds West for a distance of 99.95 feet to a 5/8 inch iron pin found; Thence, North 28 degrees 46 minutes 08 seconds West for a distance of 97.82 feet to a ½ inch iron pin found; Thence, North 27 degrees 50 minutes 38 seconds West for a distance of 94.30 feet to a ½ inch iron pin



found; Thence, North 28 degrees 19 minutes 23 seconds West for a distance of 199.22 feet to a ½ inch iron pin found on the easterly right-of-way of Strickland Street (having a 40 foot right-of way); Thence, running in a northeasterly direction along the easterly right-of-way North 23 degrees 52 minutes 25 seconds East for a distance of 14.74 feet to a point; Thence, continuing along said right-of-way North 21 degrees 37 minutes 41 seconds East a distance of 35.26 feet to a point; Thence, leaving said right-of-way and continuing in a southeasterly direction South 63 degrees 47 minutes 21 seconds East for a distance of 237.52 feet to an iron pin found; Thence, North 39 degrees 00 minutes 26 seconds East for a distance of 105.97 feet to an iron pin found; Thence, South 54 degrees 08 minutes 17 seconds East for a distance of 14.27 feet to a metal fence post; Thence, South 54 degrees 43 minutes 41 seconds East for a distance of 239.20 feet to an iron pin found; Thence, South 30 degrees 15 minutes 31 seconds West for a distance of 167.75 feet to a ½ inch iron pin set, said point also being the north-east corner of Tract 1; Thence, continuing along the northerly line of Tract 1 South 30 degrees 15 minutes 31 seconds West for a distance of 210.53 feet to the TRUE POINT OF BEGINNING.

Said parcel containing 3.0113 acres more or less.

Re: REZONING ORDINANCE 19RZ-001  
CONCURRENT VARIANCE 18CV-002  
Property of Jeff Couch  
136 West Broad Street & 0 Strickland Street  
09F170600670992 & 09F170600670232  
4.35 acres; Land Lot 67  
District 9F,  
Fairburn, Fulton County, Georgia

**STATE OF GEORGIA  
COUNTY OF FULTON**

**AN ORDINANCE TO REZONE CERTAIN PROPERTY WITHIN THE CITY LIMITS OF THE CITY OF FAIRBURN FROM R-3 (SINGLE-FAMILY RESIDENTIAL DISTRICT) TO RM-36 (MULTI-FAMILY RESIDENTIAL DISTRICT) WITH A CONCURRENT VARIANCE; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES**

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FAIRBURN, GEORGIA, AND IT IS HEREBY ORDAINED BY AUTHORITY OF THE SAME:

**Section 1.** That the City of Fairburn Zoning Ordinance be amended, and the official maps established in connection therewith be changed so that the property located in the City of Fairburn as indicated on Exhibit "A" to this Ordinance be changed from R-3 (Single-Family Residential District) to RM-36 (Multi-Family Residential) with the following conditions:

- A. To restrict the use of the subject property as follows:
  - 1. Residential units at density no greater than 15 units per acre or 64 units, whichever is less.
- B. To the owner's agreement to abide by the following:
  - 1. The property shall be developed in substantial conformity with the Zoning Site Plan stamped received March 25, 2019. Said site plan is conceptual only and must meet or exceed the requirements of the City's ordinances prior to the approval of a Land Disturbance Permit. Any major deviation from this site plan is subject to approval by the City Engineer or designee.
- C. To the owner's agreement to the following site development considerations:
  - 1. Provide a 25-foot buffer where buildings directly adjoin residentially zoned property.



2. Amenity package to include a common area with benches, trash receptacles, bicycle parking racks and a leasing facility with a clubroom.
3. Exterior materials shall be a minimum of thirty percent (30%) brick or stone and forty percent (40%) stone or other cementitious material. Vinyl siding and veneers shall be prohibited. The exterior colors shall be consistent with the Highway 29 Overlay District Downtown Color Palette.
4. All roof mounted equipment shall be screened from the public right-of-way.
5. The number of three (3) bedroom units shall be limited to no more than twenty (20%) of the total number of units.
6. Provide vegetated screening adjacent to residentially zoned property located at the northwest and southern entrance of the site.
7. Noise mitigating construction designs and practices as recommended in the Noise Mitigation Plan provided by Geotechnical & Environmental Consultants, Inc. shall be required.

**Section 2.** That the concurrent variance to the rezoning is as follows:

1. To reduce the side yard setback from 30 feet to 20 feet.

**Section 3.** That the property shall be developed in compliance with the conditions of approval as stated in this Ordinance. Any conditions hereby approved do not authorize the violation of any district regulations; and

**Section 4.** That the official maps referred to, on file in the Office of the City Clerk, be changed to conform with the terms of this Ordinance; and

**Section 5.** In the event any section, subsection, sentence, clause, or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions of the other sections, subsections, sentences, clauses or phrases of this Ordinance, which shall remain in full force and effect as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part thereof. The City Council declares that it would have passed the remaining parts of this Ordinance or retained the previously existing Ordinance if it had known that such part of parts hereof would be declared or adjudicated invalid or unconstitutional.

**Section 6.** Pursuant to the requirements of the Zoning Procedures Act and the City Zoning Ordinance, a properly advertised public hearing was held not less than 15 nor more than 45 days from the date of publication of notice, and which public hearing was held on the 8th day of April, 2019; and

**Section 7.** This Ordinance shall become effective on the 8th day of April, 2019.

**Section 8.** All Ordinances and parts of Ordinances in conflict with this Ordinance are repealed.

APPROVED this 8th day of April, by the Mayor and Council of the City of Fairburn, Georgia.

\_\_\_\_\_  
Elizabeth Carr-Hurst, Mayor

ATTEST:

\_\_\_\_\_  
Shana T. Moss, Interim City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William R. (Randy) Turner, City Attorney





## CITY OF FAIRBURN

### CITY COUNCIL AGENDA ITEM

**SUBJECT:** Appointment of Mrs. Carol Berry to the Downtown Development Authority Board.

☐ AGREEMENT  
☐ ORDINANCE

☐ POLICY / DISCUSSION  
☐ RESOLUTION

☐ CONTRACT  
☒ OTHER

**Submitted:** 03/28/2019

**Work Session:** 03/28/2019

**Council Meeting:** 04/08/2019

**DEPARTMENT:** Office of the Mayor

**BUDGET IMPACT:** Downtown Development Authority

**PUBLIC HEARING?** ☐ Yes ☒ No

---

**PURPOSE:** To appoint Mrs. Carol Berry as a member of the Downtown Development Authority.

**HISTORY:** The City of Fairburn utilizes a Downtown Development Authority Board to improve and enhance the city's downtown district.

**FACTS AND ISSUES:** NA.

**RECOMMENDED ACTION:** Approval of the Appointment of Mrs. Berry.

A handwritten signature in black ink, reading "De'Carlton Seewood".

De'Carlton Seewood, City Administrator

A handwritten signature in blue ink, reading "Elizabeth Carr-Hurst".

Elizabeth Carr-Hurst, Mayor



## CITY OF FAIRBURN

### CITY COUNCIL AGENDA ITEM

**SUBJECT:** Mental Fitness, 21<sup>st</sup> Century Learning, Inc. Usage Agreement

☒ AGREEMENT

☐ POLICY / DISCUSSION

☒ CONTRACT

☐ ORDINANCE

☐ RESOLUTION

☐ OTHER

**Submitted:** April 8, 2019 **Work Session:** April 8, 2019 **Council Meeting:** April 8, 2019

**DEPARTMENT:** Parks and Recreation

**BUDGET IMPACT:** none

**PUBLIC HEARING?** ☐ Yes ☒ No

---

**PURPOSE:** For Mayor and Council to review and approve the usage agreement for Mental Fitness, 21<sup>st</sup> Century Learning, Inc. afterschool and summer camp program.

**HISTORY:** Mental Fitness, 21<sup>st</sup> Century Learning Inc. to provides high-quality after school and summer camp programming that offer students' academic/educational enrichment and recreational STEAM activities in the City of Fairburn.

**FACTS AND ISSUES:**

**RECOMMENDED ACTION:** For Mayor and Council to approve the usage agreement for Mental Fitness, 21<sup>st</sup> Century Learning, Inc. Afterschool and Summer Camp program.

A handwritten signature in black ink, reading "De'Carlton Seewood".

De'Carlton Seewood, City Administrator

A handwritten signature in blue ink, reading "Elizabeth Carr-Hurst".

Elizabeth Carr-Hurst, Mayor



**AGREEMENT FOR AFTERSCHOOL AND SUMMER CAMP PROGRAMMING  
BETWEEN MENTAL FITNESS, 21<sup>ST</sup> CENTURY LEARNING INC.  
AND CITY OF FAIRBURN, GEORGIA**

This Agreement, made as of March 25, 2019 by and between Mental Fitness, 21<sup>st</sup> Century Learning, Inc. (hereinafter "Mental Fitness") and the City of Fairburn, Georgia (hereinafter "the City") is for the provision of afterschool and summer camp programs to be provided by Mental Fitness to the City of Fairburn, Georgia.

**WHEREAS**, the City desires to enter into a contract for afterschool and summer camp programs for the City of Fairburn Parks and Recreation Department; and

**WHEREAS**, Mental Fitness was determined to be a responsible, responsive offeror for such services; and

**WHEREAS**, the City desires to have Mental Fitness provide such services under certain conditions and at certain locations now or hereafter to be determined.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein the parties agree as follows:

**A. CITY PARK PROPERTY INCLUDED:** Mental Fitness agrees to operate afterschool and summer camp programs to be located at the following facilities:

1. Fairburn Youth Center  
149 SW Broad Street  
Fairburn, GA 30213
  - A. Afterschool: Monday -- Friday (2:00pm -- 7:00pm)  
During Fulton County School District Academic Years  
2019-2020
  - B. Summer Camp: Monday -- Friday (7:00am -- 7:00pm)  
2019 (Approximately May 27-August 9)
2. Fairburn Education Campus  
310 NW Broad St,  
Fairburn, GA 30213
  - A. Summer Camp: Monday -- Friday (7:00am - 7:00pm)  
Approximately May 27- August 9  
2019 – Fairburn Education Campus

**B. TERM:** This Agreement shall be effective as of May 27, 2019 and shall continue in effect until the end of the Fulton County School District's 2019 – 2020 academic year; provided, however, that this Agreement may be terminated by either Mental Fitness or the City, with or without cause, upon giving thirty (30) days prior written notice to the other.

C. **RENT:** The City agrees to provide space in the Fairburn Youth Center for the afterschool program, Fairburn Education Campus for summer programming or such other location or locations as the City finds available and appropriate for Mental Fitness to provide the afterschool and summer camp programs described in Section A of this Agreement, and Mental Fitness agrees to pay the City of Fairburn for such space a gross rent during the Term of this Agreement in the amount of \$750.00 per month June – July and \$682.00 per month August – May, which rent shall be paid on or before the tenth (10<sup>th</sup>) day of each month. Effective on the fifteenth (15<sup>th</sup>) day of the month, a ten percent (10%) late fee shall be applied.

D. **MENTAL FITNESS AGREES TO:**

1. Provide high-quality afterschool and summer camp programs that offer students' academic/educational enrichment and recreational activities for Grades K-8. Mental Fitness will implement an enriching and enjoyable afterschool program and summer camp format that blends academic assistance, enrichment, recreation, physical activities, and arts.
2. Hire and manage all personnel who shall be Mental Fitness employees; be responsible for continuous staffing of the afterschool and summer camp programs; comply with all local and state laws, codes, and regulations regarding afterschool and summer camp program personnel shall be adhered to, including, without being limited to -- that all staff, contractors, and volunteers must have a background check on file with Mental Fitness, that the cost of such background checks will be the sole responsibility of Mental Fitness, that all Mental Fitness personnel shall maintain a clean and neat appearance, and that the maximum allowable child to staff ratio will comply with the requirements of the Department of Health and Children Services, 25:1.
3. Provide for dismissal of the afterschool and summer camp programs in the rooms designated as the "game room" and "multipurpose room" at 5:30p.m each day.
4. Provide transportation from selected schools to the City of Fairburn Youth Center at the time of school dismissal
5. To keep all areas clean, sanitary, and maintained in an orderly fashion.
6. Mental Fitness shall provide janitorial supplies and janitorial services for the summer camp program located at the Fairburn Education Campus 310 NW Broad St, Fairburn, GA 30213 for the summer camp program.
7. Mental Fitness shall provide janitorial assistance at the Fairburn Youth Center in the form of supplies during summer camp hours. The City of Fairburn staff and Mental Fitness staff are responsible for the daily cleaning of the Fairburn Youth Center.



8. Provide tables and chairs for the Fairburn Education Campus as necessary to conduct the summer camp program.
9. Mental Fitness shall be responsible (after each day's use) for keeping the used spaces, including all City-owned equipment, in a neat and clean condition, and shall be responsible for repairing any damages caused by Mental Fitness's negligent acts or omissions or intentional misconduct of Mental Fitness, or by the negligent acts of omissions or intentional misconduct of Mental Fitness's students, invitees, agents, and representatives.
10. Mental Fitness shall comply with all terms and conditions of the attached Addendum A relating to insurance and indemnification.
11. Abide by the terms of this Agreement and the contract documents.

**D. THE CITY AGREES TO:**

1. Make periodic inspections (a minimum of once a month) of the Fairburn Youth Center premises and equipment at the operating facility during the contract term.
2. Make periodic inspections (a minimum of once a month) of the Fairburn Education Campus summer camp location premises, or such other designated premises during the Agreement term.
3. Provide utilities, including electricity, solid waste disposal, and water and sewer service.
4. The City shall be responsible for the routine maintenance of the City's facilities unless such maintenance is required as a result of damage caused by Mental Fitness, its employees, agents, or representatives.
5. Provide a "office" area inside of the Fairburn Youth Center's gymnasium

**E. WORK PRODUCTS AND SERVICES REQUIRED**

1. EQUIPMENT AND PROPERTY  
The City will provide trash containers and the City will provide disposal.
2. MAINTENANCE OF EQUIPMENT  
All program related equipment and equipment maintenance will be the responsibility of Mental Fitness.
3. UTILITIES  
The City of Fairburn shall provide utilities to Mental Fitness, at no additional charge, which includes electricity, solid waste disposal, water and sewer service.

The City of Fairburn will not provide telephone service or be responsible for charges incurred for this service by Mental Fitness.

**G. CONTRACT DOCUMENTS:** The Contract Documents consist of this Agreement, and any addenda. Should there be any discrepancy amongst the documents; the above order of priority will prevail.

**H. GOVERNING LAW AND VENUE:** The Contract Documents shall be governed by the laws of the State of Georgia. Any dispute arising with regard to the interpretation or meaning of the Contract Documents which cannot be resolved amicably may be settled by litigation. Both parties agree exclusive venue shall lie in the Superior Court of Fulton County, Georgia.

**I. SEVERABILITY:** Should any portion of this Agreement be deemed unconstitutional or otherwise unenforceable by a Court or body of competent jurisdiction, then the remaining portions of the Agreement shall remain in full force and effect.

**J. ADDENDUM A:** The attached Addendum A is hereby incorporated herein as a part of this Agreement. The City and Mental Fitness agree to accept and be bound by the terms and conditions of Addendum A.

Mental Fitness, 21<sup>st</sup> Century Learning Inc.

City of Fairburn, Georgia

\_\_\_\_\_  
John Childs – Signature

\_\_\_\_\_  
Elizabeth Carr-Hurst, Mayor

\_\_\_\_\_  
John Childs – Printed

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Shana Moss, Interim City Clerk

Approved as to Form:

\_\_\_\_\_  
William R. (Randy) Turner, City Attorney



**ADDENDUM A: INSURANCE REQUIREMENTS; INDEMNIFICATION.**

Mental Fitness shall procure and maintain for the duration of the contract insurance against claims for injuries to persons, including death, as well as damages to property which may arise from or occur in connection with performance of the work hereunder by Mental Fitness, their agents, representatives, employees, or subcontractors.

**A. MINIMUM LIMITS OF INSURANCE**

Mental Fitness shall maintain insurance coverage throughout the term of this Agreement with limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily injury, personal injury, death and property damage for premises/operations, products/completed operations, contractual liability, independent contractors, broad-from property damage, and underground, explosion and collapse hazard.
2. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of Georgia and Employers Liability of \$100,000 per accident.
3. Umbrella Liability: \$5,000,000 combined single limits per occurrence.

**B. DEDUCTIBLES AND SELF-INSURED RETENTION**

Any deductibles or self-insurance retentions must be declared to and approved by the City. At the option of the City, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officer's officials, and employees; or Mental Fitness shall procure a bond guaranteeing payment of losses related to investigations claim administration and defense expenses.

**C. OTHER INSURANCE PROVISIONS**

**1. General Liability, Automobile Liability, and Umbrella Liability Coverages**

The City and its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Mental Fitness.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and its officers, officials employees or volunteers.

Mental Fitness is responsible for insuring its own property and equipment.

**2. Workers' Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City and its officers, officials, employees and volunteers for losses arising from the work performed by Mental Fitness for the Owner.

**3. All Coverages:** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be changed, cancelled, suspended, terminated or non-renewed except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to the City of said change of coverage, cancellation, suspension, termination / or non-renewal.

**D. ACCEPTABILITY.**

Insurance is to be placed with insurers with a Best's rating of no less than A: VII, or otherwise acceptable to the Owner.

#### E. VERIFICATION OF COVERAGE.

Mental Fitness shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. These certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before any work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

#### F. SUBCONTRACTORS

Subcontractor means one not in the employment of Mental Fitness who is performing all or part of the services under this Agreement under a separate contract with Mental Fitness

Mental Fitness shall include all subcontractors as insured under its insurance or shall ensure that subcontractors have met the insurance requirements of this Agreement. The City may request evidence of subcontractor's insurance.

#### G. WAIVER OF SUBROGATION

Mental Fitness shall require all insurance policies in any way related to the work and secured and maintained by Mental Fitness to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against the City. Mental Fitness shall require of subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.

#### INDEMNIFICATION/HOLD HARMLESS AGREEMENT

Mental Fitness shall, in addition to any other obligation hereunder agree to indemnify the City of Fairburn and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City of Fairburn, their agents, elected Officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged a) bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of or resulting from claims to have resulted in whole or in part from any actual or alleged act or omission of Mental Fitness, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work; or b) violation of law, statute, ordinance, governmental administrative order, rule regulation, or infringement of patent rights or other intellectual property rights by Mental Fitness in the performance of the work; or c) liens, claims or actions made by Mental Fitness or other party performing the work, as approved by the City.

The indemnification obligations hereunder shall not be limited by any limitation on the amount, type of damages, compensation or benefits payable by or for Mental Fitness or his/her subcontractor, as approved by the City of Fairburn, under worker's compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any costs or expenses, including attorney's fees, incurred by the City of Fairburn to enforce this agreement shall be borne by Mental Fitness.





## CITY OF FAIRBURN

### CITY COUNCIL AGENDA ITEM

**SUBJECT: APPROVAL OF TASK ORDER NO. 3 WITH MORELAND ALTOBELLI FOR PROFESSIONAL ENGINEERING SERVICES**

( ) AGREEMENT                      ( ) POLICY / DISCUSSION                      ( X ) CONTRACT  
( ) ORDINANCE                      ( ) RESOLUTION                      ( ) OTHER

**Submitted: 03/29/2019                      Work Session: 04/08/2019                      Council Meeting: 04/08/2019**

**DEPARTMENT:** Engineering

**BUDGET IMPACT:** The budget impact is an amount not to exceed \$20,000. It will come out of the Public Works Professional Account (100-4100-52-1200) and it is a budgeted item.

**PUBLIC HEARING?** ( ) Yes                      ( X ) No

---

**PURPOSE:** For Mayor and Council to approve Task Order #3 with Moreland Altobelli for Professional Engineering Services.

**HISTORY:** The City of Fairburn is required to review site development plans, hydrology reports, traffic studies and other associated tasks to ensure compliance with Federal, State, Fulton County and City of Fairburn requirements. Moreland Altobelli was requested to submit an agreement for Professional Engineering Services to better enable the City to satisfy the aforementioned requirements. The Contract Award with Moreland Altobelli for Professional Engineering Services was approved by Mayor and Council on May 14<sup>th</sup>, 2018 with the understanding that task orders associated with the contract would be issued on an as need basis. As such, task order #3 has been provided for review and consideration.

**FACTS AND ISSUES:** Approval of Task Order No. 3 will provide the City the necessary support to review site development plans, hydrology reports, traffic studies and to conduct other associated tasks as required.

**RECOMMENDED ACTION:** Staff recommends that Mayor and Council approve the proposed Task Order No. 3 with Moreland Altobelli for an amount not to exceed \$20,000.

A handwritten signature in blue ink, appearing to read "De'Carlon Seewood".

*De'Carlon Seewood, City Administrator*

A handwritten signature in blue ink, appearing to read "Elizabeth Carr-Hurst".

*Elizabeth Carr-Hurst, Mayor*

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into this 14<sup>th</sup> day of May, 2018 by and between MORELAND ALTOBELLI ASSOCIATES, LLC., a Delaware corporation ("Contractor") and THE CITY OF FAIRBURN, a municipality incorporated in the State of Georgia ("City").

### Recitals:

A. The City desires to secure professional services associated with plan review services and other on-call engineering needs for projects (the "Project").

B. The City has selected Contractor to perform certain Professional Services in connection with the Project, as more specifically set forth below.

C. The City and Contractor desire to enter into this Agreement to set forth the terms and conditions of the services to be provided by Contractor.

D. The City has established the necessary funding for the project through a combination of local, state, and federal funds.

NOW, THEREFORE, in consideration of the matters recited above, the mutual covenants set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein.
2. Services by Contractor. Contractor shall perform the following services as directed by the City, or its designee, and in compliance with requirements of the proposal dated February 5, 2018:
  - (a) Perform the Professional Services described in the Proposal dated February 5, 2018 (Attachment 1);
  - (b) Compile or provide the necessary database of information to complete the scope of work;
  - (c) Keep the City, or its appointee, informed and apprised as to the status of progress by way of regular status reports;
  - (d) Coordinate with the City staff and any stakeholders in the performance of all of Contractor's services;
  - (e) Prepare and maintain files and records in compliance with requirements of the City and Georgia Open Records Act.



3. Contractor's Compensation. For the services to be performed by Contractor described in Section 2 hereof, Contractor will be compensated by the City as outlined on Attachment 2 – Fee Proposal. Payments will be due as follows:

(a) Payment for services rendered will be invoiced monthly and due 30 days after receipt by the City;

(b) Payment for reimbursable and hourly expenses may be invoiced on demand and will be due 30 days after receipt by the City;

No expenses of Contractor shall be reimbursable by the City unless approved in advance in writing by the City. Any additional services, not enumerated in this Agreement or its attachments, which might be required will be outside the scope of this agreement unless mutually agreed by City and Contractor.

4. Contractor's Duties. Contractor shall perform all services required hereunder in a professional manner, adhering to the requirements of Georgia law and standard policies and procedures. Contractor shall be solely responsible for obtaining and maintaining all licenses, if any, required under applicable laws, rules and ordinances necessary for the performance of its services described herein. Contractor shall keep the City and its project manager informed (on at least a weekly basis through informal meetings and correspondence) as to the status of the Project.

4.1 *Contractor Personnel.* Contractor acknowledges that the City selected Contractor for the Project because of the knowledge and experience of certain of Contractor's personnel. Contractor agrees that it shall use experienced and qualified individuals for the performance of each of Contractor's duties and obligations hereunder.

5. City's Responsibilities. The City and its agents shall endeavor to perform the following in a timely manner in order to facilitate Contractor's performance of its services required hereunder:

(a) Furnish plans, surveys, and/or plats of the parcels of property or studies in its possession needed for the Project;

(b) Coordinate with the Contractor in establishing a working relationship with the local government agencies and stakeholders;

(c) Establish procedures and guidelines for responding quickly to requests for information and documentation;

(d) Coordinate with the Contractor in establishing a management and coordination process to facilitate effective communication and coordination among the City, its agents and professionals, and the Contractor.

6. Duration and Termination. This Agreement shall remain in effect until April 30, 2019, unless terminated earlier in accordance herewith. The City may terminate this Agreement for any reason whatsoever upon ten (10) days advance notice to Contractor. In the event of such

termination by the City, the City shall compensate Contractor for all services performed up to the date of termination, and the City shall have no further liability to Contractor, including without limitation, no liability for lost profits. Contractor shall deliver to the City all "work in progress" including, but not limited to, drafts of documents, contact information and status of negotiations. Notwithstanding the foregoing, the City may terminate this Agreement immediately, with or without notice, in the event that Contractor defaults with respect to any of its obligations hereunder.

7. Status. Contractor is, as to the City, an independent contractor and is not nor shall Contractor be deemed to be an employee or agent (except as set forth below) of the City for any purpose whatsoever and nothing contained herein shall be deemed to constitute a contract of employment. In furtherance of the foregoing, Contractor acknowledges that: (a) it is not an employee of the City, (b) it will be working for the City on a temporary basis, (c) the City is not responsible for paying to Contractor or on Contractor's behalf any income tax withholding, unemployment taxes or compensation, workers' compensation premiums or benefits, health insurance premiums or benefits, or any other employment benefits, (d) it is ineligible to participate in, or receive anything from, any City benefit program. Notwithstanding the foregoing, Contractor shall act in the City's behalf for the specific land acquisition activities related herein and Contractor shall only act on the specific instructions and agreements with the City.

8. Insurance and Indemnity. Contractor shall maintain a policy of comprehensive general liability insurance in the combined single limit of at least \$1,000,000 to cover any claims arising out of the performance of the services under this Agreement. Contractor shall indemnify and hold harmless the City from any and all claims, charges, lawsuits and liabilities to the extent caused by any act or omission of Contractor or its agents.

9. Assignability. The City is entering into this Agreement in reliance upon the particular qualifications of Contractor to perform the services herein described. This Agreement may not be delegated or assigned by Contractor and any purported delegation or assignment by Contractor of this Agreement (or rights hereunder) is void unless Contractor has first obtained the prior written consent of the City which consent may be withheld for any reason or no reason. The City may assign this Agreement, in its discretion, to other local government(s) or state agencies with authority for public right of way issues within its jurisdiction.

10. Confidentiality. Except as required by law or by court order, Contractor shall not disclose any information related to the negotiations or agreements with Landowners or related to the performance of its services for the City without the prior written consent of the City.

11. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth opposite their signatures below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by facsimile, with written confirmation by a nationally recognized overnight courier sent the same day as the facsimile, in which case notice shall be deemed delivered upon receipt of confirmation transmission of such facsimile notice, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by facsimile or



personal delivery and delivered after 5:00 p.m. eastern standard time shall be deemed received on the next business day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address or facsimile number shall be effective until actual receipt of such notice. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

12. Miscellaneous. This Agreement shall not be modified or amended except by written instrument signed by each of the parties hereto. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be for any reason unenforceable, the balance shall nonetheless remain in and be of full force and effect, but without giving effect to such unenforceable provision. Time is of the essence hereof. The section headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

**[Signature page follows]**

IN WITNESS WHEREOF, City and Contractor have set their hands and seals hereto as of the day and year indicated next to their signatures.

**CONTRACTOR:**

Address:

**Moreland Altobelli Associates, LLC.  
2450 Commence Avenue, Suite 100  
Duluth, GA 30096**

MORELAND ALTOBELLI ASSOCIATES, LLC., a  
Delaware

By: [Signature]

President

Date signed by Contractor:

\_\_\_\_\_, 20\_\_

SUBSCRIBED AND SWORN BEFORE ME  
ON THIS THE

17th DAY OF April, 2018

[Signature]  
Notary Public

My Commission Expires: 12/26/19



**CITY:**

Address:

**City of Fairburn  
56 Malone St., SW  
Fairburn, GA 30213**

**THE CITY OF FAIRBURN**, a municipality  
incorporated in the State of Georgia

By: [Signature]

Mayor

Date signed by City:

May 15, 2018

Attest: [Signature]

City Clerk

Approved as to form:

[Signature]

City Attorney

[SEAL]





## MorelandAltobelliAssociates,LLC

AN ATLAS COMPANY

2450 Commerce Avenue, Suite 100 • Duluth, Georgia 30096-8910 • Phone: 770/263-5945 • Fax: 770/263-0166 • [ma@maai.net](mailto:ma@maai.net)

L. Joe Boyer  
CEO

Buddy Gratton, PE  
President

Vickie Moreland  
CFO

Holly Moreland  
Vice President

Richard Boulain, PE  
Vice President

Barry Brown, PE  
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Vice President

Albert Joyner, Jr.  
Vice President

Christopher Kingsbury, RLA  
Vice President

L.N. Manchi, PE  
Vice President

Russell Small  
Vice President

To: City of Fairburn  
P.O. Box 145  
Fairburn, Georgia 30213  
Attn: Mr. Lester Thompson

Date: April 16, 2018  
From: Maureen McDonnell  
Copy to: Buddy Gratton

Project: 2018 Professional Engineering Services  
TO No.: 1

**Scope of Work: Provide Professional Engineering Services as described in February 5, 2018 Proposal.**  
**BACKGROUND INFORMATION**

Moreland Altobelli Associates, LLC has prepared this Task Order (TO) in accordance with our Master Services Agreement dated May 14, 2018. This task order has been prepared to assist the City of Fairburn with Professional Engineering Services. The services proposed will better enable the City to complete the project on time, within budget, and meet the project-specific objectives outlined in the scope of services described below. Accordingly, the City will be able to focus its efforts on more strategic goals.

### Task 1 – Construction, Engineering and Inspection Services

- Provide plan review services for projects submitted to the City for development permits .
- Provide engineering services as requested.
- Provide development site inspection services as requested.

The total not to exceed budget of \$20,000.00 as outlined in the attached fee proposal includes staff time and expenses necessary to perform the scope of work outlined above.

If the City requires additional services, Moreland Altobelli Associates, LLC will provide those services in accordance with the existing Unit Rates agreed to with the City. A scope and budget for additional services would be prepared for City approval prior to performing the work.



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**Authorization:**

As our authorization to proceed with the scope of work, schedule and fee structure outlined herein, please sign in the space provided below and return one copy to Moreland Altobelli Associates LLC for our records.

Authorized by: Elizabeth Carr-Hurst

Title: Mayor

Print Name: **Elizabeth Carr- Hurst**

Date: 5/15/2018



## **Attachment 2**

### **City of Fairburn Professional Engineering Services**

	<i>Hourly Rate</i>
Principal-in-Charge	\$135.00
Project Manager	\$125.00
Landscape Architect	\$110.00
Landscape Designer	\$80.00
Survey Department Manager	\$125.00
Traffic Engineer	\$110.00
Construction Liaison Engineer	\$125.00
Senior Site and Drainage Design Engineer	\$125.00
Geologist	\$90.00
Senior Geotechnical Engineer	\$110.00
Senior Structural Engineer	\$135.00
Right of Way Department Head	\$125.00