



Planning and Zoning Commission

AGENDA

Tuesday, October 6, 2020 ♦ 7:00 p.m.

Join Zoom Meeting

Video link: <https://zoom.us/j/92616223084>

Dial-in #: (929) 205-6099

Meeting ID: 926 1622 3084

- Call to Order
- Determination of a Quorum
- Approval of the Meeting Agenda
- Approval of September 1, 2020 Meeting Minutes
- Public Hearing
- Old Business
- New Business
 - Final Plat 2020140 Strack Lot #1 (0 Bohannon Rd, parcel # 09F080000310588)
 - Use Permit 2020083 and Concurrent Variances 2020135 & 2020136 Safeguard Landfill Management (7700 Roosevelt Hwy)
 - ❖ A allow the expansion of Safeguard Landfill onto an additional +/-28.17 acres with two (2) concurrent variances:
 1. Concurrent variance from Section 80-220(b)(11) No portion of a new or expanded landfill shall be located within a one mile radius of the property line of a residentially zoned or used property
 2. Concurrent variance from Section 80-220(b)(12) An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location
- Staff Report
- Commissioner Comments
- Adjournment

CITY OF FAIRBURN



CITY OF FAIRBURN PLANNING AND ZONING COMMISSION AGENDA ITEM

SUBJECT: Final Plat 2020140 - Strack Lot #1

- | | | |
|------------------------------------|--|---|
| <input type="checkbox"/> AGREEMENT | <input type="checkbox"/> POLICY / DISCUSSION | <input type="checkbox"/> CONTRACT |
| <input type="checkbox"/> ORDINANCE | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

Planning and Zoning Commission: 10/06/20 Work Session: N/A Council Meeting: 10/12/20

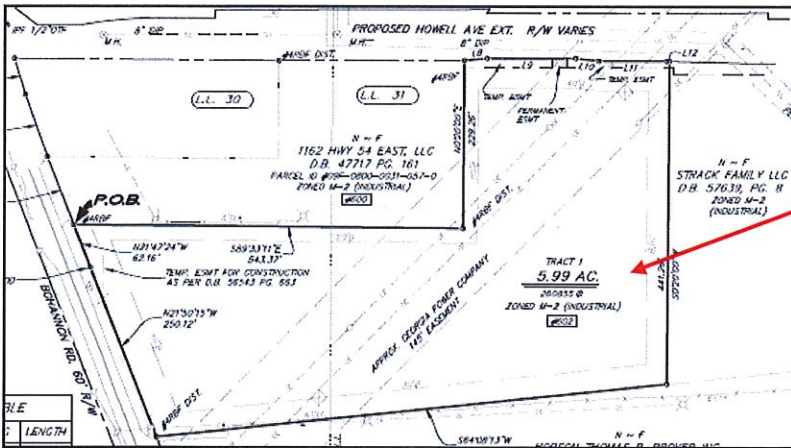
DEPARTMENT: Community Development/Planning and Zoning

BUDGET IMPACT: None

PUBLIC HEARING: Yes No

PURPOSE: For the Planning and Zoning Commission to review and make a recommendation to the Mayor and City Council for the final plat for Strack Lot #1.

DISCUSSION: The applicant is requesting a final plat approval for Lot # 1 of the Strack Development project. The property is located on the northeast side of Bohannon Road and will also have frontage on Howell Ave, which is currently under construction. The property is 5.99 acres and zoned M-2 (Heavy Industrial).



**0 Bohannon Road
Parcel # 09F080000310588**

The plat has been reviewed by staff and meets all the current regulations of the City Ordinances.

RECOMMENDED ACTION: Staff recommends **APPROVAL** of the Strack Lot #1 Final Plat.

Attachment: Strack Lot #1 Final Plat

Approval

This final plat has been prepared in accordance with the development codes and ordinances of the city, and has been approved by the city for recording in the Office of the Clerk of the Superior Court of Fulton County.

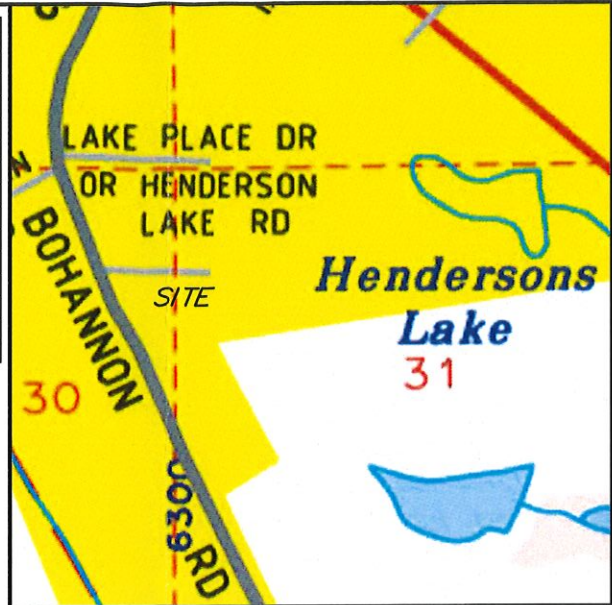
City Engineer _____ Date _____

City Clerk _____ Date _____

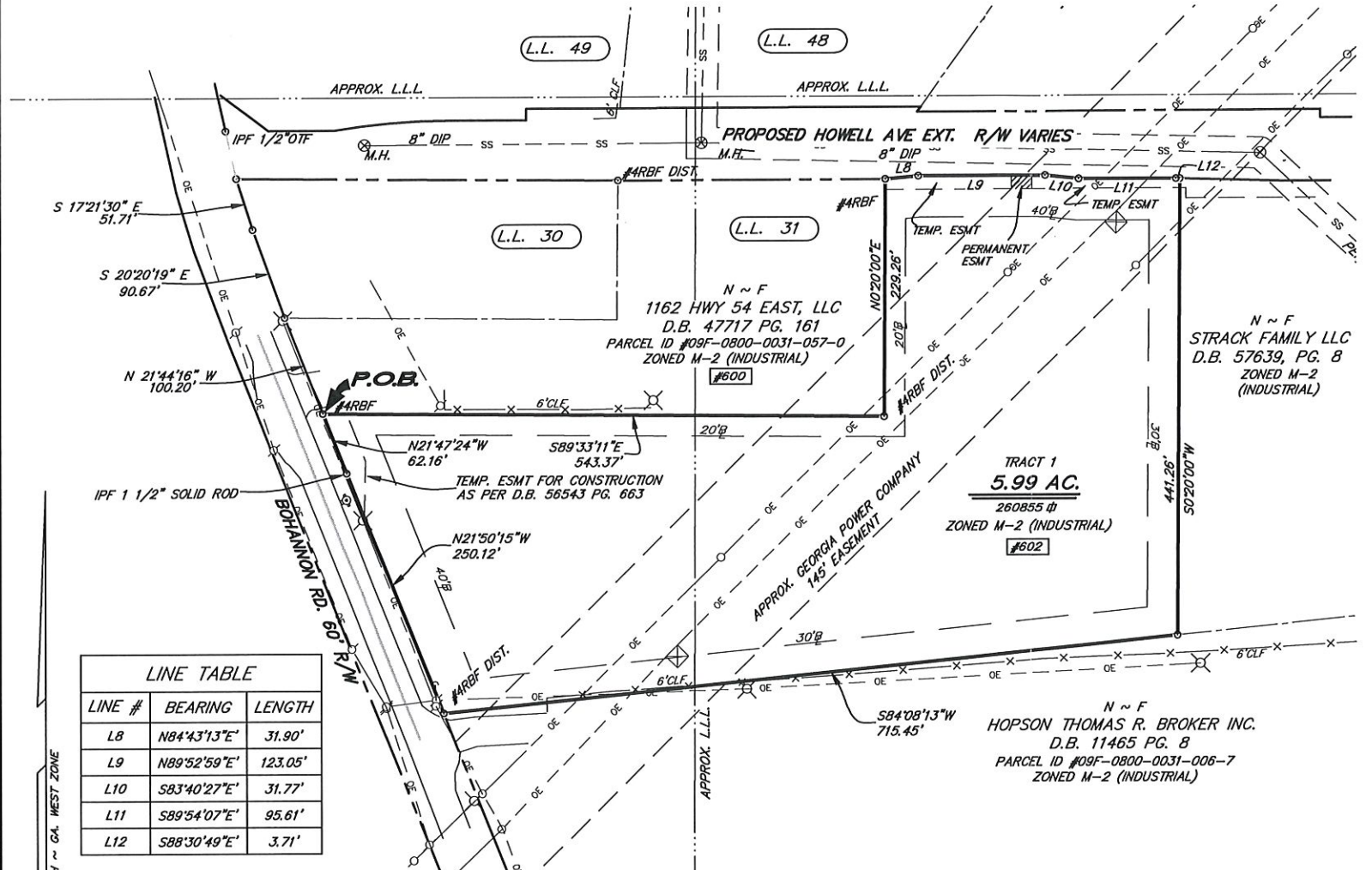
Mayor/City Administrator _____ Date _____

LEGEND

⊙ P.P. - POWER POLE	⊙ C.B. - CATCH BASIN
⊙ L.P. - LIGHT POLE	— R.C.P. - REINFORCED CONCRETE PIPE
⊙ F.H. - FIRE HYDRANT	— C.M.P. - CORRUGATED METAL PIPE
⊙ M.H. - SANITARY SEWER MANHOLE	— F.F.E. - FINISHED FLOOR ELEVATION
⊙ W.M. - WATER METER	• W.V. - WATER VALVE
⊙ G.M. - GAS METER	⊙ TELEPHONE MANHOLE
⊙ R.B.S. - REINFORCING BAR SET	— UNDERGROUND ELECTRICAL LINE
⊙ R.B.F. - REINFORCING BAR FOUND	— OVERHEAD POWER LINES
⊙ C.T.F. - CRIMP TOP PIPE FOUND	⊙ H.W. - HEADWALL
⊙ O.T.F. - OPEN TOP PIPE FOUND	⊙ P.B.X. - POWERBOX
⊙ R/W MON. - RIGHT-OF-WAY MONUMENT	— WATER LINE
— TYPE OF FENCE	— UNDERGROUND TELEPHONE LINE
⊙ J.B. - JUNCTION BOX	— GAS LINE
⊙ D.I. - DROP INLET / YARD INLET	



CLERK OF THE SUPERIOR COURT
RECORDING INFORMATION



LINE TABLE

LINE #	BEARING	LENGTH
L8	N84°43'13"E	31.90'
L9	N89°52'59"E	123.05'
L10	S83°40'27"E	31.77'
L11	S89°54'07"E	95.81'
L12	S88°30'49"E	3.71'

Surveyor:
It is hereby certified that this plat is true and correct and was prepared from an actual survey of the property made by me or under my supervision; that all monuments shown hereon actually exist or are marked as "future" and their location, size, type, and material are correctly shown; This plat conforms to all requirements of the Georgia Plat Act. By:

Jason A. Hopkins
Registered Georgia Land Surveyor
Jason A. Hopkins
No. 3215

3215
LAND SURVEYOR
JASON A. HOPKINS

9-25-20
Date

AS REQUIRED BY SUBSECTION (d) OF O.G.C.A. SECTION 15-6-67, THIS PLAT HAS BEEN PREPARED BY A LAND SURVEYOR. THIS PLAT HAS BEEN APPROVED BY ALL APPLICABLE LOCAL JURISDICTIONS THAT REQUIRE PRIOR APPROVAL FOR RECORDING THIS TYPE OF PLAT OR ONE OR MORE OF THE APPLICABLE LOCAL JURISDICTIONS DO NOT REQUIRE APPROVAL OF THIS TYPE OF PLAT. FOR ANY APPLICABLE LOCAL JURISDICTION THAT REQUIRES APPROVAL OF THIS TYPE OF PLAT, THE NAMES OF THE INDIVIDUALS SIGNING OR APPROVING THIS PLAT, THE AGENCY OR OFFICE OF THAT INDIVIDUAL, AND THE DATE OF APPROVAL ARE LISTED IN THE APPROVAL TABLE SHOWN HEREON. FOR ANY APPLICABLE LOCAL JURISDICTION THAT DOES NOT REQUIRE APPROVAL OF THIS TYPE OF PLAT, THE NAME OF SUCH LOCAL JURISDICTION AND THE NUMBER OF THE APPLICABLE ORDINANCE OR RESOLUTION PROVIDING THAT NO SUCH APPROVAL IS REQUIRED ARE LISTED IN THE APPROVAL TABLE SHOWN HEREON. SUCH APPROVALS, AFFIRMATIONS, OR ORDINANCE OR RESOLUTION NUMBERS SHOULD BE CONFIRMED WITH THE APPROPRIATE GOVERNMENTAL BODIES BY ANY PURCHASER OR USER OF THIS PLAT AS TO INTENDED USE OF ANY PARCEL. FURTHERMORE, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS PLAT COMPLIES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN O.C.G.A. SECTION 15-6-67.

Jason A. Hopkins
9-25-20
DATE

THIS PARCEL OF LAND IS NOT IN THE 100 YEAR FLOOD PLAIN AND IS IN ZONE X; ACCORDING TO F.E.M.A. (F.I.A.) COMMUNITY NUMBER # 130314, MAP NUMBER #131210461F & 13120462F DATED SEPT. 18, 2013.

LOCATION OF UTILITIES EXISTING ON OR SERVING THE SUBJECT PROPERTY IS DETERMINED BY OBSERVABLE EVIDENCE ONLY. THIS PROPERTY MAY BE SUBJECT TO EASEMENTS, CLAIMS, PRESCRIPTION AND SUBSURFACE CONDITIONS THAT ARE NOT VISIBLE OR RECORDED, THUS DEEMING THEM UNDETERMINED AND NOT SHOWN. THIS PLAT IS INTENDED FOR THE PARTIES STATED ON THE FACE OF SURVEY. USE OF THE SURVEY BY THIRD PARTIES IS AT THEIR OWN RISK.

THIS PLAT IS PREPARED FROM A FIELD SURVEY USING A FIVE SECOND DIGITAL THEODOLITE AND ELECTRONIC DISTANCE METER; LINEAR PRECISION OF TRAVERSE: 1/43,995'; ANGULAR ERROR: 01" PER POINT. THE TRAVERSE WAS ADJUSTED USING THE COMPASS RULE. LINEAR PRECISION OF THIS PLAT: 1/256,230. MATTERS OF TITLE ARE EXCEPTED.

GPS NOTES:
1.) HORIZONTAL DATUM IS NAD 83. VERTICAL DATUM IS NAVD 88.

2.) THE NORTHING, EASTING, AND ELEVATION OF THE STARTING POINTS FOR THIS SURVEY WERE OBTAINED UTILIZING A TRIMBLE 5800 GPS RECEIVER WITH A TRIMBLE TSC2 DATA COLLECTOR RECEIVING RTK CORRECTIONS VIA A CELL PHONE FROM THE EGPS SOLUTIONS REAL TIME NETWORK. THE TECHNIQUE USED WAS RTK CORRECTED MEASUREMENTS FROM THE TRIMBLE VRS REAL TIME NETWORK OPERATED BY EGPS SOLUTIONS, INC. THE RELATIVE POSITIONAL ACCURACY OBTAINED ON THE POINTS UTILIZED IN THIS SURVEY WERE 0.04 FT. HORIZONTAL AND 0.07 FT. VERTICAL AT THE 95% CONFIDENCE LEVEL.

SURVEYOR REFERENCES:
REFERENCE 1: "ALTA/ASCM LAND TITLE SURVEY CERTIFIED TO" POREX CORPORATION, PRX HOLDINGS, CORP., FIRST AMERICAN TITLE INSURANCE COMPANY, SNTC HOLDINGS, INC. AND HLTH CORPORATION" BY DIVERSIFIED TECHNICAL GROUP, L.L.C. DATED 5/14/2008

CURRENT OWNER:
STRACK FAMILY LLC.
D.B. 57639, PG. 8

DRAWN BY: JAH
CHECKED BY: JAH
FILE: S/BIND/FULTON/9_30
FIELD DATE: 5-23-17
OFFICE DATE: 7-7-20
SCALE: 1"=100'

REVISIONS

09/16/20	ADDRESS COMMENTS
09/25/20	ADDRESS COMMENTS

Gaskins
ENGINEERING • SURVEYING • PLANNING • CONSULTING • CONSTRUCTION MGMT
www.gcsurvey.com LSF# 789

Marietta Office
1266 Powder Springs Rd
Marietta, GA 30064
Phone: (770) 424-7168

Canton Office
147 Reinhardt College Pkwy
Ste. 3 Canton, GA 30114
Phone: (770) 479-9698

Lawrenceville Office
558 Old Norcross Rd Ste. 204
Lawrenceville, GA 30046
Phone: (770) 299-1005

Newnan Office
4046 Ga. Hwy. 154, Ste. 109
Newnan, GA 30265
Phone: (770) 424-7168

BOUNDARY SURVEY FOR:
**TRACT 1
602 BOHANNON RD
STRACK DEVELOPMENT**

LOCATED IN L.L. 30 & 31
9F DISTRICT, CITY OF FAIRBURN
FULTON COUNTY, GA.

IMAGES:

XREFS:

Plotted on: Sep 25, 2020 - 1:02pm
Drawing name: S:\Bnd\FULTON\09_0030\BOHANNON RD - STRACK\DWG\LOT 1 BND PLAT.dwg
Plotted by: jay hopkins



**CITY OF FAIRBURN
PLANNING AND ZONING COMMISSION
AGENDA ITEM**

**SUBJECT: Use Permit 2020083 Safeguard Landfill with two Concurrent Variances
(2020135, 2020136)**

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

Planning and Zoning Commission: 10/6/20 Work Session: N/A Council Meeting: 11/9/20

DEPARTMENT: Community Development/Planning and Zoning Office

BUDGET IMPACT: None

PUBLIC HEARING: () Yes (X) No

PURPOSE: For the Planning and Zoning Commission to make a recommendation to the Mayor and City Council on a use permit petition with two concurrent variances for Safeguard Landfill.

The use permit application was amended on Tuesday, August 4, 2020 to include two concurrent variances from Section 80-220 Landfill, solid waste disposal use permit standards.

STAFF RECOMMENDATION:

DENIAL of the use permit request for Section 80-220 Landfill, solid waste disposal, to allow the expansion of the existing Safeguard Landfill onto an additional +/-28.17 acres

DENIAL of the concurrent variance request to provide relief from Section 80-220(b)(11) - No portion of a new or expanded landfill shall be located within a one mile radius of the property line of a residentially zoned or used property

DENIAL of the concurrent variance request to provide relief from Section 80-220(b)(12) - An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location

APPLICATION INFORMATION

Use Permit Petition 2020083 and Concurrent Variances 2020135, 2020136

APPLICANT/PETITIONER INFORMATION

Property Owners: Safeguard Landfill Management	Petitioner: Safeguard Landfill Management c/o Dillard Sellers
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PROPERTY INFORMATION

Address:	Parcels 07290001551516, 07260001540876, 07290001551185, 07290001551540, 07290001551557 [7700 Roosevelt Hwy]
Land Lot and District:	Land Lot 154 & 155, District 7 th
Frontage:	Roosevelt Highway/Highway 29
Area of Property:	+/- 28.17 acres
Existing Zoning and Uses:	M-2 (Heavy Industrial District)
Overlay District:	Not applicable
2035 Comprehensive Future Land Use Map Designation:	Industrial

MEETING AND HEARING DATES

Planning and Zoning Commission Meeting October 6, 2020	City Council Public Hearing November 9, 2020
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INTENT

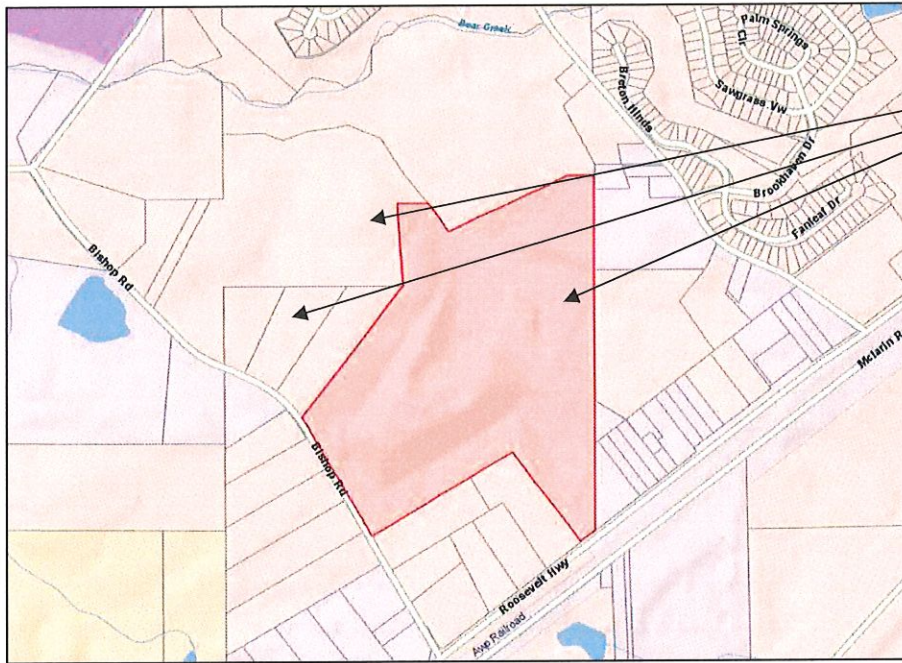
A request for a use permit, Section 80-220 Landfill, solid waste disposal, to allow the expansion of the existing Safeguard Landfill onto an additional +/-28.17 acres with two concurrent variances:

1. To provide relief Section 80-220(b)(11) - No portion of a new or expanded landfill shall be located within a one mile radius of the property line of a residentially zoned or used property
2. To provide relief from Section 80-220(b)(12) - An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location

EXISTING ZONING AND LAND USE OF ABUTTING PROPERTIES

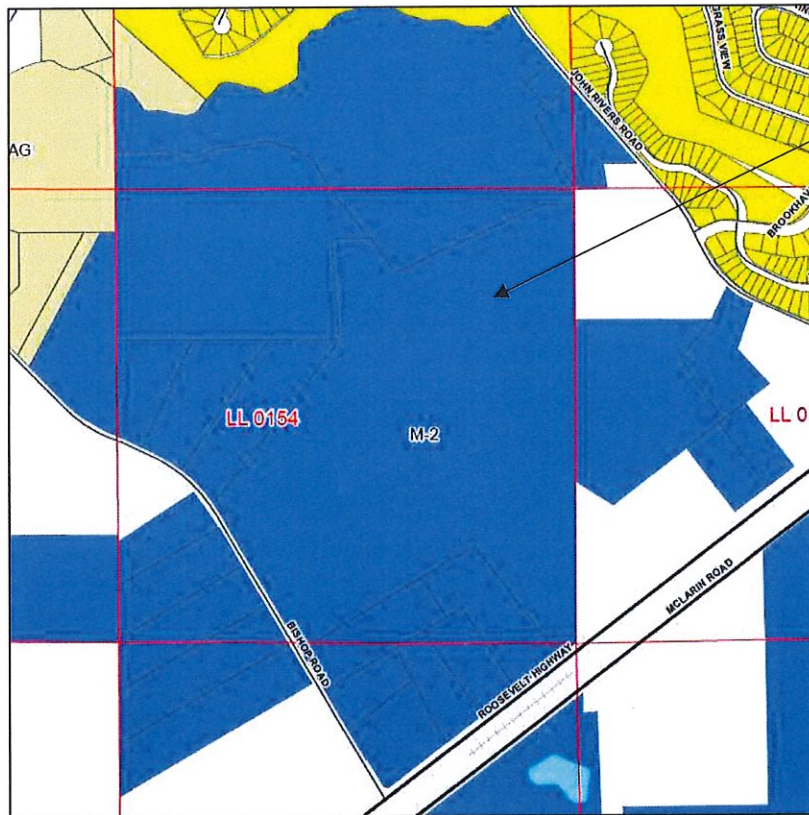
North: M-2 (Heavy Industrial District), AG (Agricultural District) and PD (Planned Development District)
East: M-2 (Heavy Industrial District), City of South Fulton and PD (Planned Development District)
South: M-2 (Heavy Industrial District)
West: M-2 (Heavy Industrial District) and City of South Fulton

PARCEL MAP



Safeguard
Landfill

ZONING MAP



Safeguard Landfill
M-2
(Heavy Industrial)

ARIEL CONCEPTUAL SITE MAP



Landfill
expansion area
(+/- 28.17 acres)

PUBLIC PARTICIPATION

Due to the COVID-19 public health pandemic, the applicant hosted a community conference call instead of an in-person meeting. The conference call was held on Thursday, June 25, 2020 at 6:00 p.m. One (1) property owner participated in the conference call.

The following issues and concerns were expressed:

- Nasal ranger reports and odor testing results
 - What did the testing show? Can we discuss these reports and results further?
- Expansion Area
 - Can you further explain the location of the expansion in relation to the residential neighborhoods located north of the subject property?

The petitioner's response to the issues and concerns were as follows:

- Nasal ranger and odor testing occur twice daily; reports and testing can determine presence of off-site odors. The petitioner will provide follow-up on specific results.
- Expansion is located along Roosevelt Hwy/Hwy 29; the expansion will not occur in the direction of the neighborhoods.

USE PERMIT CRITERIA

Section 80-172 Use Permit Considerations: Staff has reviewed said items pertaining to the subject use, and offers the following comments:

1. Whether the proposed use is consistent with the Comprehensive Land Use Plan adopted by the City Council;

Staff is of the opinion that the proposed use is consistent with the Future Land Use Map and the 2035 Comprehensive Plan. The property is in the Office/Industrial Character Area. The Office/Industrial Character Area consist of a mix of light and heavy industrial uses, as well as office uses. Industrial uses may include manufacturing, processing plants, factories, and warehouses.

The Office/Industrial Character Area recommends the following development strategies:

- Create centers of work and innovation;
- Develop true business parks, with a mix of industrial and office uses;
- Functional traffic flow for all modes of traffic, including large trucks on well-designed streets with curbs and landscaping;
- Buffers to provide transition to surrounding, lower intensity surrounding development; and
- Appropriate screening for outdoor storage and activity areas.

2. Compatibility with land uses and zoning districts in the vicinity of the property for which the Use Permit is proposed;

The area consists of M-2 (Heavy Industrial District), AG (Agricultural District) and PD (Planned Development District) to the north; M-2 (Heavy Industrial District), City of South Fulton and PD (Planned Development District) is to the east, M-2 (Heavy Industrial District) to the south, and M-2 (Heavy Industrial District) and City of South Fulton to the west. Heavy Industrial (M-2) uses surround the property. A conservation area which is owned by the City of Fairburn is located to the north-east of the subject property. Residential zoned and used properties are located within a one-mile radius of the subject property.

3. Whether the proposed use may violate local, state and/or federal statutes, ordinances or regulations governing land development;

Staff is of the opinion that the expansion of the landfill will not violate any local, state, and/or federal statutes, ordinance or regulations. The landfill will be required to adhere to local, state, and/or federal regulations applicable to landfills.

4. The effect of the proposed use on traffic flow, vehicular and pedestrian, along adjoining streets;

The proposed use is not expected to generate many additional hourly trips. There should be limited to no negative impacts to traffic flow on Roosevelt Highway and Bishop Road. The applicant is not proposing any additional curb-cuts (egress/ingress) for the landfill.

5. The location and number of off-street parking spaces;

The applicant is proposing no additional parking spaces with the expansion. The landfill will maintain its current level of operations.

6. The amount and location of open space;

As stated in the petitioner’s application, approximately 84 acres of the 207 acre landfill site will exist as undisturbed buffer space.

7. Protective screening;

The site currently has a 200-ft undisturbed buffer around the perimeter of the existing landfill boundary. The 200-ft buffer requirement will be imposed on the expanded area as well. There is a 500-ft residential buffer at the northwest corner of the site.

8. Hours and manner of operation;

The landfill hours and manner of operations will not change as a result of the proposed expansion. The current operating hours are Monday - Friday 6:00 a.m.- 5:00 p.m., Saturday 6:00 a.m. to 12:00 p.m. and closed on Sunday.

9. Outdoor lighting; and

As stated in the petitioner's application, outdoor lighting on the property will be internally focused and controlled. No negative impact from the site lighting will be imposed on surrounding property owners.

10. Ingress and egress to the property

The landfill has two ingress/egress points, one on Roosevelt Highway/Hwy 29 and one on Bishop Road. No additionally ingress/egress points will be added to the subject property.

VARIANCE CONSIDERATIONS

Section 80-251 Variances Considerations:

Concurrent variances shall only be granted upon showing that:

- (a) 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
- (b) 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
- (c) 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.

The applicant is requesting two concurrent variances as outlined below.

- 1. To provide relief from Section 80-220(b)(11) - No portion of a new or expanded landfill shall be located within a one mile radius of the property line of a residentially zoned or used property
- 2. To provide relief from Section 80-220(b)(12) - An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location

Findings:

#1 *"Harmony with, the general purpose and intent of this chapter"*:

In 2004, Safeguard Landfill original tract was annexed into the City of Fairburn and zoned M-2 (Heavy Industrial). In 2008, landfills were added to the list of permitted uses in the M-2 (Heavy Industrial) zoning district. In 2012, the Zoning Ordinance was amended to remove landfills as a permitted use for M-2 (Heavy Industrial) zoned properties. The current zoning regulations now require a use permit for landfills and includes separate use permit standards. As

a result of the 2012 amendment to the Zoning Ordinance, the petitioner's landfill became a legal non-conforming use.

The 2012 amendment to the city's Zoning Ordinance, which removed landfills as a permitted use from M-2 (Heavy Industrial) zoning district, and made it subject to a use permit was implemented by the city to regulate the negative impact of landfills on the surrounding residential properties. The landfill use permit standards specifically address the location and potential expansion of new or existing landfill(s), stating "no portion of a new or expanded landfill shall be located within a one-mile radius of the property of a residentially zoned or used property and expanded landfills can not include any expanded use within a parcel boundary or location". The intent and purpose of the Zoning Ordinance is clearly stated, in restricting any further expansion of existing landfills and the proximity of a new or expanded landfill to residentially zoned or used property.

As stated in the City's Zoning Ordinance, the zoning regulations have been developed with reasonable consideration of the character of various zoning districts and their peculiar suitability for particular uses, and with the general objective of promoting desirable living environments, stable neighborhoods, sound commercial and industrial areas and protecting the city's natural resources. Approval of the applicant's variance requests would allow the expansion of an existing landfill onto an additional +/-28.17 acres which would not be in harmony with the general purpose and intent of ordinance.

#2 "Extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship"

The applicant has not demonstrated an unnecessary hardship due to any extraordinary and exceptional conditions related to the subject property's size, shape, or topography.

USE PERMIT STANDARDS

Section 80-220 Landfill, solid waste disposal

(a) Required district: M-2 (Heavy Industrial)

(b) Standards:

- (1) No access shall be allowed from local streets.
- (2) Access streets shall be paved and shall be able to withstand maximum load limits established by the state as approved by the director of public works.
- (3) No portion of a new landfill shall be located within a three-mile radius of the property lines of an existing landfill.
- (4) The waste disposal boundary of a landfill shall be located at least 500 feet from all property lines, except adjacent to M-1 (light industrial) and M-2 (heavy industrial) zoned districts.
- (5) A minimum 200-foot buffer and ten-foot improvement setback shall be required along all property lines except public rights-of-way.
- (6) A minimum 50-foot buffer and ten-foot improvement setback shall be required along all public rights-of-way.
- (7) A minimum six-foot high solid fence or wall shall be located on property lines or interior to the required buffers and improvement setbacks.
- (8) Limit hours of operation from 6:00 a.m. to 6:00 p.m., Monday through Saturday.
- (9) The owner shall provide the zoning administrator a current copy of all applicable permits from the state department of natural resource upon application for a land disturbance permit.
- (10) Vehicles shall be allowed into a landfill site only if waste is covered to prevent blowing of material from the vehicle.
- (11) No portion of a new or expanded landfill shall be located within a one-mile radius of the property lines of a residentially zoned or used property.
- (12) An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location.

- (13) The landfill shall be sited and operated in accordance with the Rules of Georgia, Department of Natural Resources, Environmental Protection Division, Chapter 391-3-4 Solid Waste Management, O.C.G.A. § 12-8-20 Georgia Comprehensive Solid Waste Management Plan, and 40 CFR Part 258 (Subtitle D of RCRA).

STAFF RECOMMENDATION

It is the opinion of staff that the current use permit standards that prohibit expanded landfills located within a one-mile radius of residentially zoned or used properties, as referenced in Section 80-220(b)(11), and expanded landfills that include an expanded use within the boundaries of an existing site or location, as referenced in Section 80-220(b)(12), serves the intent and purpose of this provision of the City's Zoning Ordinance, which is to mitigate the negative impacts of landfills on surrounding residential areas as well as protect the public health, safety and welfare of the City's residents. In addition, the applicant has not clearly demonstrated any extraordinary and exceptional conditions exist that would cause an unnecessary hardship due to the size, shape and/or topography of the subject property. Therefore, staff is recommending:

DENIAL of the use permit request from Section 80-220 Landfill, solid waste disposal, to allow the expansion of the existing Safeguard Landfill onto an additional +/-28.17 acres

DENIAL of the concurrent variance request to provide relief from Section 80-220(b)(11) - No portion of a new or expanded landfill shall be located within a one mile radius of the property line of a residentially zoned or used property

DENIAL of the concurrent variance request to provide relief from Section 80-220(b)(12) - An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location

Should the Planning and Zoning Commission decide to recommend approval of the petitioner's use permit request and two concurrent variances, staff recommends the conditions listed below. The applicant's agreement to these conditions would not change staff recommendations. These conditions shall prevail unless otherwise stipulated by the Mayor and City Council.

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

1. A combination of existing trees and newly planted trees (where insufficient vegetation exists) shall be installed to establish the 200-ft buffer. New trees shall be 8'-10' in height at the time of installation. Newly planted trees shall consist of one or a combination of the following trees: Leyland Cypress, Easter Red Cedar, Southern Magnolia, Virginia Pine, Arborvitae, Savannah Holly, Nellie R. Stevens Holly.
2. Disturbed areas of each cell that remains exposed for more than three (3) month shall be grassed and once each cell is at final grade and upon placement of final soil cover, grassing shall be completed within two (2) weeks.
3. As shown on the Safeguard Landfill SWP Expansion conceptual site plan dated received on February 3, 2020, the requested landfill expansion shall be limited to five (5) parcels at the corner of Bishop Road and Roosevelt Highway, specifically Fulton County Parcel ID Nos. 07-290001551516, 07-260001540876, 07-290001551557, 07-290001551540, and 07-290001551185.

ATTACHMENTS

Letter of Intent
Impact Analysis [Use Permit and Variance Consideration]
Conceptual Site Plan

REVISED

**First Amendment to Use Permit Application (2020083)
Adding a Concurrent Variance
Seeking Relief from Zoning Ordinance, Sec. 80-220(b)(11)-(12)**

Letter of Intent and Impact Analysis

Fairburn, GA

Use Permit Application
Concurrent Variance

Applicant:
Safeguard Landfill Management
c/o G. Douglas Dillard, Esq.

Property:
7700 Roosevelt Highway
PARCEL ID#: 07-260001350359
PARCEL ID#: 07-260001540892
PARCEL ID#: 07- 260001540736
PARCEL ID#: 07- 260001540744
PARCEL ID#: 07- 260001540751
PARCEL ID#: 07- 290001551516
PARCEL ID#: 07- 260001540876
PARCEL ID#: 07- 290001551557
PARCEL ID#: 07- 290001551540
PARCEL ID#: 07- 290001551185

Submitted for Applicant by:

G. Douglas Dillard
R. Baxter Russell
DILLARD SELLERS
1776 Peachtree Street, Suite 390N
Atlanta, Georgia 30309
(404) 665-1241
ddillard@dillardsellers.com

RECEIVED

AUG 28 2020

Initial: JD

I. INTRODUCTION

Background

As of August 4, 2020, Safeguard Landfill Management (“Applicant”) had submitted three applications to City Council: (i) use permit, (ii) text amendment concurrent with the use permit, and (iii) variance request concurrent with the use permit. The Applicant requested City Council’s approval of the proposed use permit accompanied by *either* the proposed text amendment *or* concurrent variance request. Applicant’s proposed text amendment and concurrent variance request operated as alternative remedy options to authorize the base use permit request.

On August 10, 2020, City Council denied the requested text amendment application. Based upon this denial, the Applicant now submits this revised Letter of Intent and Written Analysis to clarify and outline those remaining applications before Fairburn Planning & Zoning Commission and City Council. The Applicant respectfully requests approval of its two remaining applications—a use permit and a variance request concurrent with the use permit. In presenting these requests, the Applicant maintains its objections and opposition to the language of the landfill use permit criteria in the Zoning Ordinance.

Use Permit & Concurrent Variance Outline

The Applicant submits these use permit and variance requests in order to become a legal conforming use and to expand the Applicant’s currently operating construction and demolition landfill (“C&D landfill”). The subject property is approximately +/-207.67 acres and consists of ten (10) separate parcels (“the Property”). The Applicant’s existing operations occupy approximately +/-179.5 acres on 5 parcels. The Applicant submits these requests in order to conform to the current zoning regulations and subsequently expand the landfill operation onto an additional +/-28.17 acres on 5 parcels. The entire Property is zoned M-2 in the City of Fairburn.

In 2004, the Applicant’s original landfill tract was annexed into the City of Fairburn and zoned M-2. In 2008, Applicant’s landfill use was added to the list of permitted uses in the M-2 zoning regulations of the Fairburn Zoning Ordinance. In 2012, the Zoning Ordinance was modified to remove Applicant’s C&D landfill use as a permitted use for M-2 properties. As the current regulation for landfill use, the 2012 amendment now requires a use permit for landfill operations and includes separate use permit standards. As a result of the 2012 amendment to the Zoning Ordinance, the Applicant’s landfill use became a legal non-conforming use. Following a minor code revision in October 2019, the Zoning Ordinance includes thirteen (13) separate use permit standards.

Applicant now requests approval of the proposed use permit with a concurrent variance granting relief from the hardship imposed by the landfill use permit standards No. 11 and No. 12. Landfill use permit standards No. 11 and No. 12 create an unnecessary hardship for the Applicant. The Applicant is unable to comply with use permit standard No. 11, as the Property and its “expanded landfill” area are located “within a one-mile radius of the property lines of a

2) Compatibility with land uses and zoning districts in the vicinity of the property for which the use permit is proposed?

The use of the Property as a C&D landfill is consistent and compatible with the other industrial land uses and industrially zoned properties in the surrounding area. Applicant's proposed use will not adversely affect adjacent or nearby properties. The area of proposed expansion is not adjacent to residential properties in the City of Fairburn. Furthermore, the Applicant will maintain substantial buffering around the exterior of the Property to sufficiently separate surrounding properties and any nonindustrial uses from the landfill operations.

3) Whether the proposed use may violate local, state, and/or federal statutes, ordinances or regulations governing land development?

No—the Applicant's proposed C&D landfill use will not violate any local, state, or federal statutes or regulations. The Applicant seeks the requested use permit with concurrent variance in order to comply with local regulations. Furthermore, the Applicant's use is regulated under specific state and federal guidelines, and the landfill use will fully comply with such regulations.

4) The effects of the proposed use on traffic flow, vehicular and pedestrian, along adjoining streets?

The Applicant's current use of the Property and the proposed expansion of the C&D landfill use will not have any adverse effect on the traffic flow along either Roosevelt Highway or Bishop Road. As shown on the submitted site plan, the Applicant does not propose any new entrances or points of ingress/egress on the Property. Additionally, the Applicant's landfill operations will not substantially increase traffic in the area, as the Applicant submits these zoning requests in order to maintain its current level of operations on the Property.

5) The location and number of off-street parking spaces?

The Applicant proposes no additional parking spaces with these land use and zoning requests, as the Applicant will maintain its current level of operations on the Property.

6) The amount and location of open spaces?

The Applicant currently maintains extensive open space on the Property, including in the buffer areas along the perimeter of the site. As shown on the proposed site plan, approximately 84 acres of the 207-acre landfill site will exist as undisturbed buffer space.

7) **Protective screening?**

As shown on the proposed site plan, extensive buffering exists along the perimeter of the Property. Applicant will also comply with all additional screening requirements for the landfill use, as described in the use permit requirements.

8) **Hours and manner of operation?**

Applicant will not expand its hours and manner of operation beyond its current use. Applicant will also comply with all related requirements for the landfill hours and manner operation, as described in the use permit requirements.

9) **Outdoor lighting?**

Any outdoor lighting on the Property will be internally focused and controlled so as not to disturb or affect surrounding residences and adjacent property owners.

10) **Ingress and egress to the property?**

The Applicant's current landfill operations employ one ingress/egress point on Roosevelt Highway and one ingress/egress point on Bishop Road. As shown on the proposed site plan, ingress and egress on the Property will remain unchanged. No additionally ingress/egress points will be added with this use permit.

III. CONCURRENT VARIANCE CONSIDERATIONS

As described in the City of Fairburn Zoning Ordinance, Section 80-171(5)(d), Fairburn City Council is authorized to consider variances to use permit standards. In accordance with these regulations, the Applicant amended its Use Permit Application (Application No. 2020083) to add a concurrent variance request seeking relief from the landfill use permit standards for expanded landfills, described by Zoning Ordinance, Section 80-220(b)(11)-(12).

In granting variance requests, Fairburn City Council's review is limited to three considerations. *See* Zoning Ordinance, Section 80-251. These considerations must be reviewed independently, and the Applicant is only required to satisfy one of the three considerations for the variance request to be granted.

Variance Considerations in Section 80-251:

- 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; or

- 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.

As shown by these variance considerations, only considerations (1) and (2) apply to the Applicant's variance request seeking relief from the landfill use permit standards for expanded landfills. Consideration (3) applies to sign variance requests, which the Applicant does not seek. Despite the requirement that only one consideration be satisfied, the Applicant fully satisfies variance considerations (1) and (2), such that Fairburn City Council should approve the Applicant's variance request.

- 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**

Applicant requests relief from the strict application of landfill use permit standards as such relief from an unnecessary hardship is consistent with the general purpose of the Fairburn Zoning Ordinance and the intent of variance requests, outlined in Sections 80-3 and 80-244. Applicant's variance request is in harmony with the general purpose and intent of the City's zoning regulations and future planning documents—satisfying those purposes outlined in the City's code. Applicant's proposed variance is limited in scope and represents the minimum action required to afford relief from those burdens imposed by the current expanded landfill standards. Applicant's proposed variance will not permit a use that is inconsistent with the City's zoning regulations or uses in the surrounding area. Rather, the relief granted by the proposed variance and the proposed landfill expansion will allow a productive and beneficial use to continue and to expand into an area appropriately suited for this use. As described in the Applicant's materials and evidence submitted, the landfill use permit standards in question apply to and harm the Applicant and its landfill operation *alone*. No other landfill operation or property in the City of Fairburn is impacted by these regulations. Furthermore, the proposed expansion—directed to additional property surrounded by the existing landfill and away from residential neighborhoods, will not negatively impact the public health, safety, convenience, and general welfare. Instead, Applicant's requested variance and proposed expansion promote sound industrial development in an industrial area.

- 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**

Strict application of the landfill use permit standards for expanded landfills imposes an unnecessary hardship for the Applicant. Without relief these burdensome standards, specifically standard No. 11 and No. 12, the Applicant is barred from receiving a use permit and thus cannot: (i) establish its current use as a legal conforming use in the City and (ii) expand its operation onto additional land appropriately zoned and situated for C&D landfill use. The size and

topography of the expansion property severely limit future development of this property for any use other than the proposed landfill expansion use. The proposed expansion area and property is surrounded by a landfill, with only other industrial uses adjacent to this property where it is untouched by the surrounding landfill. The size and topography of this property render it virtually unusable, unless relief is granted from the hardship imposed by the expanded landfill use permit standards.

As the only landfill in the City limits, Applicant requests relief from these targeted, arbitrary regulations. As applied to the Applicant and the Property, the expanded landfill standards prevent receipt of a use permit and development of land for a beneficial, legal use. Applicant's proposed expansion will cause no detriment to the public, as the proposed expansion is directed away from residential neighborhoods north of the Property. Additionally, the proposed expansion will not increase the intensity of the landfill operation and no additional traffic will be generated.

IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests approval of the proposed use permit accompanied by the concurrent variance request. If there are any questions about this request, you may contact me at 404-665-1241 or ddillard@dillardsellers.com.

Sincerely,

DILLARD SELLERS

/s/ G. Douglas Dillard

G. Douglas Dillard

R. Baxter Russell

Exhibit A

REQUIRED CONSTITUTIONAL AND ANTE LITEM NOTICE

Georgia law and the procedures of the City of Fairburn require us to raise Federal and State constitutional objections during the public hearing application process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time:

The portions of the Fairburn Zoning Ordinance, facially and as applied to the Property, which restrict the Property to any uses, land use designations, conditions, development standards, or to any zoning districts other than that proposed by the Applicant are unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the Fairburn Zoning Ordinance, facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning classifications other than in accordance with the application as proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking and inverse condemnation of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would be unconstitutional under the Takings Clause of the Fifth Amendment to the Constitution of the United States and the Just Compensation Clause of Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by the City of Fairburn to grant the Application as requested would constitute a taking of the Applicant's property and inverse condemnation. Because of this unconstitutional taking, the City of Fairburn would be required to pay just compensation to the Applicant.

A denial of this Application would constitute an arbitrary and capricious act by the Fairburn Mayor and City Council, without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. A refusal to grant Applicant's requests would lack objective justification and would result only from neighborhood opposition, which would constitute an unlawful delegation of the zoning power to non-legislative bodies in violation of the Georgia Constitution, Article IX, Section II, Paragraph 4.

A refusal by Fairburn Mayor and City Council to grant Applicant's requests in accordance with the criteria requirements as requested by the Applicant would be unconstitutional and discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and owners of the similarly situated property in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any approval of the Application, subject to conditions which are different from the conditions requested by the Applicant, to the extent such different conditions would have the effect of further restricting Applicant's utilization of the Property, would also constitute an arbitrary, capricious and discriminatory act in zoning the Property to a unconstitutional classification and would likewise violate each of the provisions of the State and Federal Constitutions set forth hereinabove.

A denial of the applications outlined above would be unconstitutional. This notice is being given to comply with the provisions of O.C.G.A. § 36-33-5 to afford the City an opportunity to approve the applications as requested by the Applicant. If action is not taken by the City to approve the applications within a reasonable time, a claim will be filed in the Superior Court of Fulton County demanding just and adequate compensation under Georgia law for the taking of the Property, inverse condemnation, diminution of value of the Property, attorney's fees and other damages arising out of the unlawful deprivation of the Applicant's property rights.

