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AUG 10 2023

CITY OF CUMMING

REZONING APPLICATION FORM
CITY OF CUMMING, GEORGIA

Rezoning Request No. 2023190

Date Paid 8.11.2023 Receipt#

Amount Paid \$750.00

Property Owner: Name: Agnes Management Co Trustee and Agnes Slack LP of Georgia

Address: 1377 Old Riverside Road

Roswell, GA 30076

Phone:

Applicant: Name: Madison Capital Group Holdings, LLC

(if different from owner) Address: 1355 Peachtree Street, Suite 810

Atlanta, GA 30309

Phone: 919-358-4141

Agent: (if applicable) Name: Sean Courtney - Lipscomb Johnson LLP Phone: 770-887-7761

Existing Zoning: HB

Proposed Zoning: R-3 with variances as identified in Letter of Intent

Existing Use: Vacant/Undeveloped

Proposed Use: Apartments with Active Recreational Facility

Acreage of Site: 30.900 acres

Location of Property: Ronald Reagan Boulevard

(street address)

Tax Map and Parcel # part of 153-034 and 153-001

Applicants shall submit (22) sets of application as follows in order; Application 3 pages, letter of intent, legal description with metes and bounds, plat survey, required site plans, developments plans, elevation drawings to the Zoning Administrative Officer for distribution to the applicable bodies and/or review agencies. The Zoning Administrative Officer may require more or less copies depending on the nature and extent of required review.

All 22 sets must be on 8 1/2 x 11 inch paper. Do not staple!

Please be advised of the following:

- 1) The applicant is bound by the submitted site plan and letter of intent if this application is approved.
- 2) It is a legal requirement that the public hearing for this Rezoning, be advertised in the legal County organ in addition to posting a rezoning sign on the subject property.

Complete the following information. (This section may be addressed in the letter of intent.)

1. The existing uses and zoning of nearby property and whether the proposed zoning will adversely affect the existing use or usability of nearby property.

See Attached Letter of Intent for Items 1-9

2. The extent to which property values are diminished by the particular zoning restrictions.

3. The extent to which the destruction of property values promotes the health, safety, morals or general welfare of the public.

4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner.

5. The physical suitability of the subject property for development as presently zoned and under the proposed zoning district.

6. The length of time the property has been vacant, considered in the context of land development in the area in the vicinity of the property, and whether there are existing or changed conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the rezoning request.

7. The zoning history of the subject property.

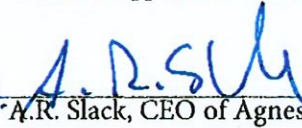
8. The extent to which the proposed zoning will result in a use which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks, or other public facilities.

9. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan, land use plan, or other adopted plans.

Property Owner's Certification

I hereby certify that I am the owner of the property described in the attached legal description, that all information contained in this application is true and correct to the best of my knowledge, and that the applicant and/or agent listed above is authorized to act as the applicant and/or agent in the pursuit of the rezoning of this property. I further certify that, within the past two years, the applicant has not made any campaign contributions or made gifts of \$250 or more to members of the Governing Body or Planning Commission who will consider this application, or that if such contributions or gifts have been made, the amount and recipient of such contributions or gifts will be disclosed within ten (10) days after this application is first filed, as required by Title 36, Chapter 85, Georgia Laws.

Signature of Property Owner:



A.R. Slack, CEO of Agnes Management Company

Printed Name of Property Owner: Agnes Management Co., Trustee of Agnes 400 Conservancy Trust

Date of Signature: 8-10-2023 and sole general partner of Agnes Slack L.P. of Georgia

LAW OFFICES
LIPSCOMB JOHNSON, LLP

112 NORTH MAIN STREET
CUMMING, GEORGIA 30040
TELEPHONE: 770-887-7761
FAX: 770-889-8123

EMORY LIPSCOMB
PUTNAM CLARK SMITH, P.C.
CHRISTOPHER D. LIGHT
SEAN COURTNEY
ASHLEY B. MASHBURN
ANDERSON LIPSCOMB

COY R. JOHNSON
(RETIRED)

L. LEE DAILEY
(1939-2013)

August 10, 2023

VIA HAND DELIVERY

City of Cumming Planning and Zoning Department
Attn: Mr. Scott Morgan, Zoning Administrator
100 Main Street
Cumming, Georgia 30040

Re: Letter of Intent as required by Section 113-110 of the Zoning Ordinance of the
City of Cumming, Georgia – Rezoning for Madison Capital Group Holdings,
LLC
Request No. 2023 _____

Dear Mr. Morgan:

This letter of intent is submitted pursuant to 113-110, and by reference section 113-112, of the Zoning Ordinance of the City of Cumming, Georgia, as part of Madison Capital Group Holdings, LLC (the “Applicant’s”) proposed Rezoning Application (the application and all supplemental documents filed contemporaneously therewith are collectively referred to herein as the “Application”). The Applicant is the agent/authorized representative for the current deed record property owners of the property subject to this rezoning application, commonly known as Forsyth County Tax Parcel Number 153-034 (P/O) and 153-001 and consisting of approximately 30.900 acres (the “Subject Property”). The Applicant seeks to rezone the Subject Property from its existing zoning HB (Highway Business District) to R-3 (Multiple Family Residential District) for the purpose of allowing residential and active recreational uses. The proposed development consists of 300 multi-family units, and approximately 10 acres for proposed active recreational uses. Applicant plans to donate approximately ten acres to the City of Cumming where the proposed active recreational uses are shown and would willingly agree that no Certificates of Occupancy on residential units be issued until that land has been donated. Applicant also understands that neither the City of Cumming nor the Applicant would be required to build the active recreational uses as it is merely a contemplated future use. The estimated time to build-out for this use is between 4 and 5 years or longer depending on economic and marketing conditions.

The Applicant is also seeking the following variances as part of this rezoning request:

1. Maximum density of 9.71 units per acre rather than 6 units per acre.
2. Minimum heated floor area of 700 square feet rather than 800 square feet.
3. Maximum lot coverage of 75% rather than 20%.
4. Maximum building height of 55 feet rather than 40 feet.
5. Stream buffer and impervious surface setback variance as depicted on the proposed site plan.
6. Amenities variance to eliminate requirement for tennis courts.
7. Allow white to be an exterior color.

With regard to the specific rezoning criteria and requested information contained in sections 1 through 9 of the Application, the Applicant hereby addresses them as follows:

The existing zoning of surrounding properties are City of Cumming PUD and Forsyth County – M1, CBD and MINE. The Subject Property lies solely in the City of Cumming. Given that fact, the City of Cumming Future Land Use Map designated the subject property for commercial uses, but based on the fact that it is already adjacent to property currently zoned PUD, the proposed rezoning will not adversely affect the existing use or usability of nearby properties, but will rather complement existing use patterns.

The existing use of the Subject Property at its current zoning classification is undeveloped, and the Applicant is requesting to convert this land into a residential development, therefore it is anticipated that approval of the proposed rezoning to the R-3 district will raise and not diminish surrounding property values.

Approval of the Applicant's Application would not cause a safety hazard or noxious condition, would not reduce property values in the surrounding area, and therefore would promote the health, safety, morals, and general welfare of the public. The relative gain to the public is also estimated to be significant as the proposed residential and recreational uses will mesh well into the existing developing trend of the area.

The Subject Property is physically suitable for development as requested by the Applicant under the R-3 zoning district and is not currently suitable for development under its existing zoning designation.

The Subject Property is currently vacant and to the best of the Applicant's knowledge and belief, there are no existing or changed conditions affecting the use or development of the Subject Property which would give supporting grounds for disapproval of the rezoning request. As far as the Subject Property's zoning history is concerned, to the best of the Applicant's knowledge and belief, the Subject Property was annexed into the City of Cumming as Highway Business (HB) and has been always undeveloped.

The build-out and transition of the Subject Property from its current use to the Applicant's proposed use will be gradual and in keeping with current and estimated growth

Page 3 of 3

patterns in the City, and it is therefore not anticipated that the proposed rezoning/development will result in or cause excessive or burdensome use of existing streets, transportation facilities, utilities, schools, parks, or other public facilities.

Refusal to grant approval of the requested rezoning as described in the Rezoning Application would impose a disproportionate hardship on the Applicant without accruing any benefits to any surrounding property owners. The provisions of the Zoning Ordinance that require the development of the property to be different from the Applicant's plan are unconstitutional in that they would constitute a taking of the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section 3, Paragraph 1 of the Constitution of the State of Georgia, and the Fifth and Fourteenth Amendments to the Constitution of the United States.

A refusal by the City of Cumming to approve this Application, so as to permit viable economic use of the property, would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Applicant and the owners of similarly situated properties in violation of Article I, Section 1, Paragraph 2 of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Furthermore, a decision denying the Application would constitute an arbitrary and irrational abuse of discretion and constitute an unreasonable application of local land use authority bearing no relationship to the public health, safety, morality or general welfare of the public in violation of Article I, Section 1, Paragraph 1 of the Constitution of the State of Georgia and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States. The Applicant maintains that a refusal to approve the Application as requested would be an abuse of discretion under the power granted to local governments by the Georgia Constitution and the Zoning Procedures Law, O.C.G.A. Section 36-66-1, et seq.

The Applicant reserves all other rights and privileges under the Constitutions of the United States and the State of Georgia, and available at law and in equity, in the event that the City of Cumming refuses to approve this Application as requested by the Applicant. The Applicant respectfully asks that the Application be approved as requested and reserves the right to amend this Letter of Intent and the Application by supplementing additional responses and documents.

Thank you very sincerely and respectfully for your consideration of this request.

Sean Courtney,
Attorney for Madison Capital Group Holdings, LLC

204400

Proposed Tract 1 Legal Description

All that tract or parcel of land lying and being in Land Lots 300, 301 and 349 of the 2nd District 1st Section, Forsyth County, Georgia and being more particularly described as follows:

BEGINNING at a 5/8" Rebar Found at the Northwest corner of Land Lot 349, which corner is the common corner of Land Lots 300, 301, 348 and 349 and having Grid North Georgia West Coordinates of N:1517358.8381 E:2300875.6719; thence along the line dividing Land Lots 300 and 348 proceeding North 87 Degrees 28 Minutes 44 Seconds West a distance of 1318.77 feet to a 3/8" Rebar Found at the Southwest corner of Land Lot 301, which corner is the common corner of Land Lots 301, 302, 347 and 348 being on the Southeasterly right of way line of Georgia Highway 400 (A.K.A. Appalachian Highway and U.S. 19) (Variable Right of Way) and having Grid North Georgia West Coordinates of N:1517416.8445 E:2299558.1823; thence along said Southeasterly right of way line proceeding North 45 Degrees 01 Minutes 32 Seconds East a distance of 1232.84 feet to a Calculated Point on the proposed line dividing Proposed Tract 1 and Proposed Tract 2 thence leaving said Southeasterly right of way line and along said proposed dividing line proceeding thence South 37 Degrees 28 Minutes 50 Seconds East a distance of 1076.63 feet to a Calculated Point; South 87 Degrees 27 Minutes 32 Seconds East a distance of 61.50 feet to a Calculated Point; thence with a curve turning to the right an arc distance of 81.74 feet to a Calculated Point, said arc having a radius of 49.98 feet, a chord bearing of South 74 Degrees 17 Minutes 46 Seconds East, and a chord length of 72.93 feet; thence South 87 Degrees 27 Minutes 32 Seconds East a distance of 67.66 feet to a Calculated Point; thence with a curve turning to the right an arc distance of 67.93 feet to a Calculated Point, said arc having a radius of 174.91 feet, a chord bearing of South 76 Degrees 19 Minutes 58 Seconds East, and a chord length of 67.50 feet; thence South 65 Degrees 12 Minutes 25 Seconds East a distance of 244.15 feet to a Calculated Point; thence South 83 Degrees 50 Minutes 04 Seconds East a distance of 46.94 feet to a Calculated Point; thence South 65 Degrees 12 Minutes 25 Seconds East a distance of 128.78 feet to a Calculated Point on the Northwesterly right of way line of Ronald Reagan Boulevard (F.K.A. Old Atlanta Highway) (Variable Right of Way); thence along Northwesterly right of way line of Ronald Reagan Boulevard proceeding South 25 Degrees 42 Minutes 05 Seconds West a distance of 278.59 feet to a Calculated Point; thence South 24 Degrees 19 Minutes 19 Seconds West a distance of 9.92 feet to a Calculated Point; thence North 64 Degrees 59 Minutes 24 Seconds West a distance of 4.48 feet to a Calculated Point; thence South 25 Degrees 00 Minutes 44 Seconds West a distance of 124.65 feet to a 1/2" Rebar Set; thence leaving said Northwesterly right of way line of Ronald Reagan Boulevard proceeding South 89 Degrees 50 Minutes 42 Seconds West a distance of 140.90 feet to a 1" Crimp Top Pipe Found; thence South 24 Degrees 14 Minutes 46 Seconds West a distance of 318.32 feet to a 1" Open Top Pipe Found; thence South 89 Degrees 46 Minutes 48 Seconds West a distance of 103.38 feet to a 1/2" Rebar Found; thence South 24 Degrees 18 Minutes 58

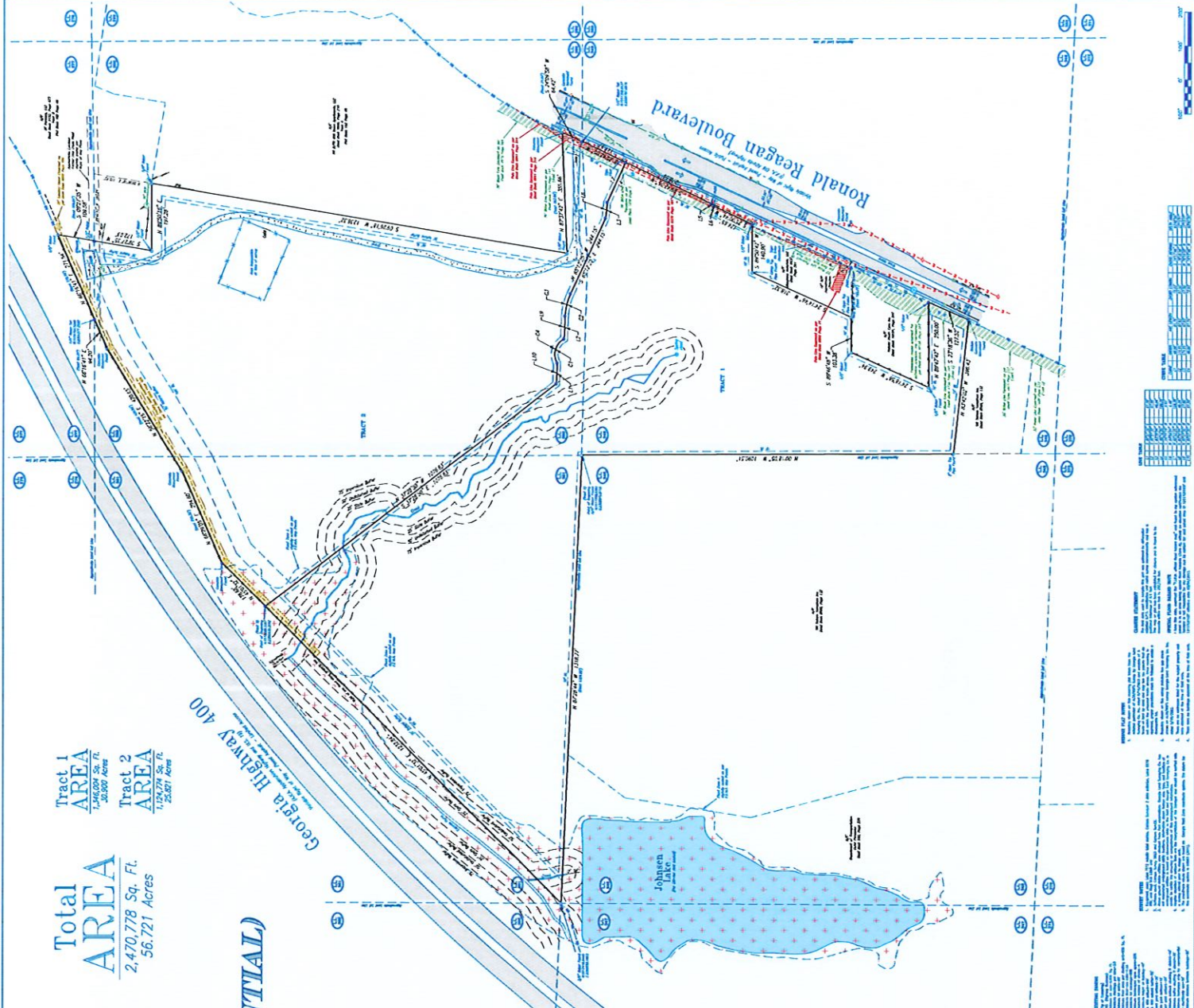
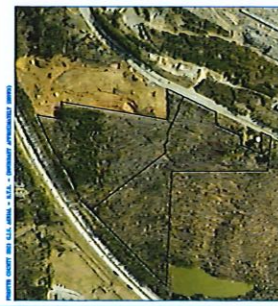
Seconds West a distance of 249.94 feet to a 1/2" Rebar Found; thence North 89 Degrees 47 Minutes 42 Seconds East a distance of 250.00 feet to a 1/2" Rebar Set on the Northwesternly right of way line of Ronald Reagan Boulevard (F.K.A. Old Atlanta Highway)(Variable Right of Way); thence along said Northwesternly right of way line proceeding South 23 Degrees 18 Minutes 36 Seconds West a distance of 127.52 feet to a Broken Concrete Monument Found; thence leaving said right of way line proceeding North 83 Degrees 42 Minutes 02 Seconds West a distance of 396.43 feet to a 2" Open Top Pipe Found on the line dividing Land Lots 348 and 349; thence along said line dividing Land Lots 348 and 349 proceeding North 00 Degrees 18 Minutes 05 Seconds West a distance of 1090.51 feet to a 5/8" Rebar Found at the northwest corner of Land Lot 349 and the POINT OF BEGINNING; having an area of 1,346,004 Sq. Ft., 30.900 Acres, as shown and described as (Tract 1) on Rezoning Plat by Georgia Land Surveying Co., bearing the seal and certification of Josh L. Lewis IV, Georgia Registered Land Surveyor No. 3028, and being referenced as Job Number 204400:2.

Total AREA
2,470,778 Sq. Ft.
56.721 Acres

Tract 1 AREA
1,440,000 Sq. Ft.
33.000 Acres

Tract 2 AREA
1,030,778 Sq. Ft.
23.721 Acres

PROPOSED REZONING-PLAT TO REZONE TRACT 1 FROM (HB) (HIGHWAY BUSINESS) TO (R-3) (MULTIPLE-FAMILY RESIDENTIAL)



LEGEND

MATCH LEGEND

LEGEND

LEGEND



MADISON CAPITAL GROUP, LLC	
Project No.	204400-2
Sheet No.	5979
Scale	1" = 100'
North Arrow	True North
Survey Date	10/20/2017
Surveyor	John A. Johnson
Client	Madison Capital Group, LLC
Address	27700 N. Highway 400, Atlanta, GA 30328
Phone	404.252.1234
Fax	404.252.1235
Website	www.glsurveying.com

NOTICE TO CONTRACTOR

GENERAL NOTES

REVISIONS

