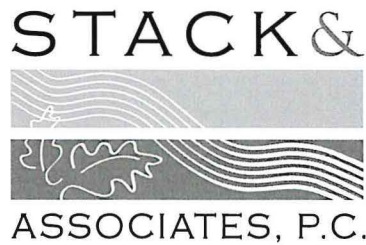


TYLER JOSEPH SNIFF
TELEPHONE: (404) 525-9205
FACSIMILE: (404) 522-0275
E-MAIL: TSNIFF@STACKENV.COM
WWW.STACKENV.COM



ATTORNEYS AT LAW

ATLANTA
260 PEACHTREE STREET • SUITE 1200
ATLANTA, GEORGIA 30303
TELEPHONE: (404) 525-9205
TOLL FREE: (877) 622-3891
FACSIMILE: (404) 522-0275

SAVANNAH
P.O. BOX 13124
SAVANNAH, GEORGIA 31406
TELEPHONE: (912) 232-0567
FACSIMILE: (877) 622-3891

October 30, 2019

VIA EMAIL AND U.S. MAIL

City of Smyrna Planning and Zoning Commission
City of Smyrna Community Development Department
2800 King Street
Smyrna, GA 30080
Email: dmonroe@smyrnaga.gov jpowell@smyrnaga.gov;
tbartlett@smyrnaga.gov; lighthfoot@smyrnaga.gov;
mbye@smyrnaga.gov; erice@smyrnaga.gov;
charrington@smyrnaga.gov; mseagraves@smyrnaga.gov;
rgmartin@smyrnaga.gov; jstaubes@smyrnaga.gov

**Re: Comments of Smyrna/Mableton HOA and Homeowners in Opposition to
Annexation of 12.7-Acre Parcel at 1465 Buckner Road and Rezoning from LDR to
RDA for Construction of 43 Cluster Houses by Beazer Homes**

Dear Chairman Powell et al.:

Please accept these comments submitted on behalf of my clients and other concerned Smyrna and Mableton homeowners in opposition to the annexation of a 12.7-acre Parcel No. 17054200010 and its rezoning from low density residential (“LDR”) R-20 to RDA-Conditional for construction of 43 cluster houses by Beazer Homes at the very congested intersection of Buckner Road and Pebblebrook Road. My clients and the concerned homeowners own and reside in homes next to and near the parcel at issue and include a nearby HOA. I submit these comments on behalf of:

- Enclave at Oakdale Community Association, Inc (“HOA”) (City of Smyrna)
- Vinings Estates (City of Smyrna)
 - Pamela Graham: Parcel 17040300140 (5023 Ridge Oak Walk)
 - Jon & Jamie Katz: Parcel 17047100170 (1210 Grand View Drive)
- Pebblebrook Acres Subdivision
 - Ann Jones: Parcel 17053900080 (5463 Stoneybrook Court);
 - Chris Jones: Parcel 17053900130 (5523 Stonebrook Court);
 - John & Linda McGriff: Parcel 17053900090 (5475 Stoneybrook Court in Pebblebrook Acres)

- Buckland Oaks
 - Joseph & Toni LePage: Parcel 17061100160 (5418 Buckland Way)
 - Roger & Leslie Young: Parcel 17061100100 (5425 Buckland Way)
 - John & Gina Charles: Parcel 17061100090 (5417 Buckland Way)

- Vinings Place
 - Russell Washington: Parcel 17046900660 (5602 Vinings Place Trail)
 - Brian & Rabon McKenzie: Parcel 17046900460 (5637 Vinings Place Trail)

- Buckner Road
 - Michael & Lauren Jones: Parcel Nos. 17054200020 (14 acres at 1435 Buckner Road) & 17054200030 (1 acre at 1441 Buckner Road)
 - Shirley Jones Simmons: Parcel Nos. 17054200050 (1.0 acre at 1385 Buckner Road) and 17054200070 (2.0 acres at Buckner Road)

A. Jones/Buckner Family

The Joneses are the children and grandchildren of Mrs. Edna Buckner and descendants of the Buckner family for whom Buckner Road is named. Several generations of the Buckner family owned and operated a farm on the parcel at issue from the 1800s until around the 1950s. The Joneses currently own and reside on parcels next to the parcel at issue. The Joneses oppose the proposed development because of the damage that it will do to their properties, quality of life, family legacy, and historic resources. Chris Jones plans to build a house and raise his children on part of the historic Buckner farm on Parcel No. 17054200020, but does not want to do so if a cluster development is built next to it. The Jones/Buckner family has supported the City and County over the years including by selling land on which Lindley Academy is located.

B. Enclave at Oakdale HOA

Enclave at Oakdale HOA represents the Enclave at Oakdale Subdivision, a 100+ household subdivision within the City of Smyrna that is located on Oakdale Road near Buckner Road and the parcel at issue. Enclave at Oakdale HOA opposes the proposed development because it will exacerbate severe traffic congestion on Buckner and Oakdale Roads and because it conflicts with the City and County's 2040 Comprehensive Plans and will thus set a bad precedent for future development in and near their community as the City continues to grow.

C. Other Homeowners and Concerned Citizens

The other homeowners signing onto these comments include several homeowners in the Vinings Estates Subdivision (City of Smyrna), as well as the subdivisions of Buckland Oaks, Vinings Place, and Pebblebrook Acres.¹ Further, about 475 citizens have signed a petition opposing the rezoning for many reasons discussed in these comments.

¹ Undersigned counsel will submit an updated copy of this comment letter with additional concerned homeowners signing onto these comments before the final hearing.

Figure 1: Photos of Historic Buckner Farm



Tom Buckner on farm with his prized mule and daughter Ruby Buckner



Glen Jones (father of client Michael Jones) and Edna Buckner Jones on farm

Figure 2: Chris Jones' Children Recently Playing on Historic Buckner Farm



ARGUMENT

For reasons discussed below, my clients and the concerned homeowners oppose the proposed rezoning and annexation, and the proposal violates the City's zoning and tree protection ordinances and the Intergovernmental Agreement with Cobb County.

A. The City Should Not Vote on the Application Until the Ward 7 Seat Is Filled.

The parcel at issue is in Ward 7. Yet, the City Council seat for Ward 7 is vacant. As a result, the residents of Ward 7, which include several of my clients, do not have any democratic representation in land use decisions affecting their ward and communities such as the proposed development. The only fair and democratic action in such a situation is to postpone any vote on the application until the City fills the Ward 7 seat.

B. The Annexation and Rezoning Violates Section 605 of the Zoning Ordinance.

Section 605 of the City Zoning Ordinance mandates that "any parcel . . . of land annexed to the City of Smyrna shall be designated the zoning district classification, which is most similar to and consistent with the Cobb County zoning district classification, applying to said property at the time of its annexation. The . . . parcel shall be subject to the requirements of that district until the planning commission makes a recommendation regarding the existing classification to the nearest similar use of the land." *Id.*

The Cobb County zoning district classification for the subject parcel is R-20 (20,000-square foot lot size). Under this classification, a variance cannot be granted for a lot size less than 15,000 square feet. The City of Smyrna R-20 zoning district classification (20,000-square foot lot size, 2 dwelling units per acre) is most like and consistent with the R-20 Cobb County zoning district classification. The R-20 district is "existing low-density residential areas of the City of Smyrna, and vacant or open areas where similar residential development appears likely to occur."

Consistent with the City of Smyrna R-20 zoning district classification, the subject parcel is a vacant area with existing surrounding low-density residential areas, including the Jones' Properties, the concerned homeowners that live in the subdivisions listed above, and other large lots along Buckner Road. Similar low-density residential development is very likely to occur given the proximity of Whitefield Academy and the recent low-density development of Buckland Oaks on Buckner Road and the R-15 development of Vinings Summit on Pebblebrook Road.

The proposed RDA-Conditional zoning district classification violates Section 605 of the City Zoning Ordinance. The proposed lot size is 5,000 square feet, 25% of the lot size under the R-20 zoning district classification. The proposed density is 3.4 DUA, which is 1.7 times the density permitted under the R-20 zoning district classification. Because the plan clusters 43 houses on 9 acres, the effective density is almost 5 DUA, which is 2.5 times the density permitted under the R-20 zoning district classification.

C. The Annexation and Rezoning Violates the Intergovernmental Agreement for SDS

The Intergovernmental Agreement for Service Delivery Strategy controls land use decisions between the City and the County. The Agreement contains a list of unobjectionable city zoning district classifications for annexation situations. In 2018, the City eliminated the RAD zoning district classification and added the R-10 zoning district classification. Yet the City has not yet updated its list of unobjectionable city zoning district classifications.

Because RAD is no longer a zoning district classification, the only legally permissible unobjectionable city zoning district classifications are R-12, R-15, R-20, and R-30. The Applicant's proposed plan, however, conflicts with all of these classifications because the lot size is only 40% of the minimum lot size of 12,000 square feet under R-12. In addition, the proposed density of about 3.4 DUA violates the maximum allowable density of "3 DUA for undeveloped properties shown on Exhibit B." Consistent with Exhibit B, the parcel at issue is "LDR Undeveloped Land within 2 miles Smyrna" thus the 3 DUA maximum applies.

That the County did not object to the annexation does not undermine this analysis. Because the City and County have not amended the Agreement with a new list of unobjectionable city zoning districts, the County explicitly stated that "there has been no determination as to its acceptability for a parcel within the LDR [low density residential]." Thus, the proposed annexation and RDA-Conditional rezoning violates the Intergovernmental Agreement for Service Delivery Strategies.

D. The Proposed RDA-Conditional Rezoning Fails to Meet Any Zoning Review Factors

The Supreme Court of Georgia unanimously held that "a number of interests . . . will support a restriction on land use, including aesthetics, environmental impact, injury to neighboring property, traffic impacts and potential hazards to pedestrians, and the long-range planning goals for the area." *Diversified Holdings, LLP v. City of Suwanee*, 302 Ga. 597 (2017). For the reasons below, several interests support a restriction on development of the parcel at issue, and the proposed RDA-Conditional rezoning does not meet any of the zoning review factors of Section 1508 of the zoning ordinance:

1. "Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property"

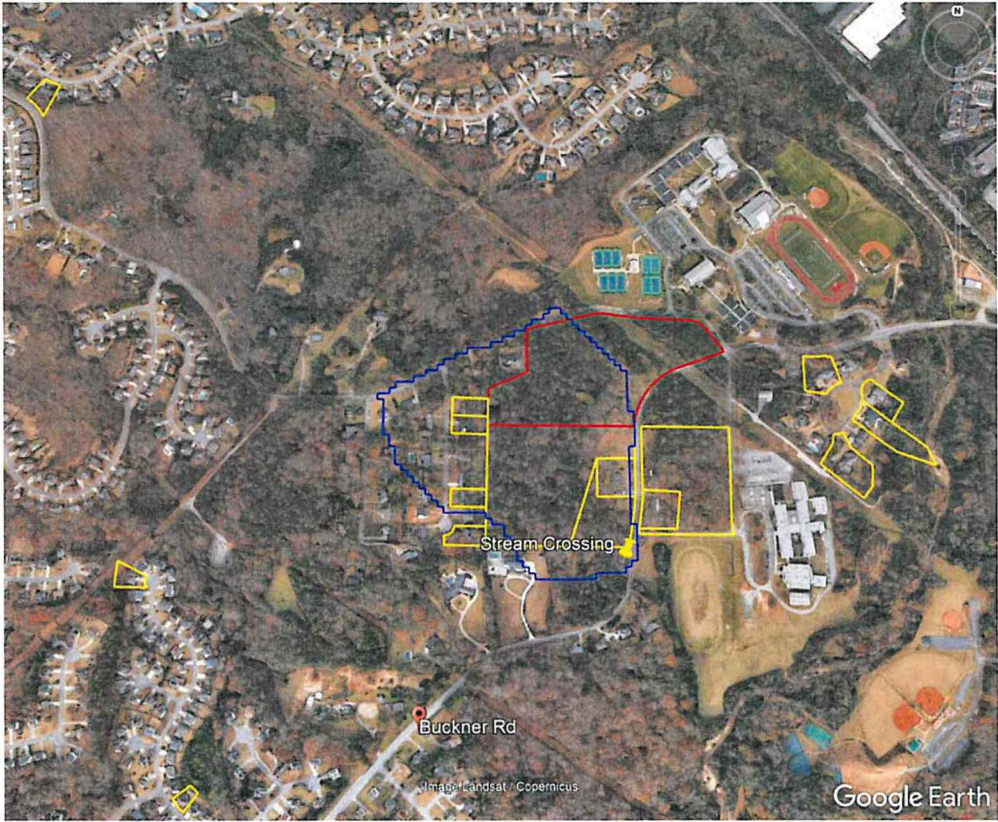
The proposed RDA-Conditional rezoning will permit a cluster development of 43 houses on 9 acres that is not suitable in view of the use and development of adjacent and nearby low-density residential communities. To begin with, there are no adjacent medium or moderate density residential neighborhoods.

The adjacent Pebblebrook Acres Subdivision where the Jonseses and the McGriffs own homes consists of 20,000-square foot lots. Likewise, the nearby Buckland Oaks subdivision where the LePages, Youngs, and Charleses reside also consists of lots greater than 20,000 square feet. There are also several adjacent and nearby residences that are not located within a

subdivision on lots much greater than 20,000-square feet, including the residences of Michael Jones (1.0 acre), Shirley Jones (1.0 acre), James and Sandra Taylor at 1325 Buckner Road (3.8 acres), and Gursharan and Parkash Pannu at 1355 Buckner Road (5.1 acres).

Further, the closest subdivision in the City of Smyrna is Vinings Estates which is a low-density residential neighborhood with many lots much larger than 20,000 square feet. Beazer Homes is also currently developing Vinings Summit on Pebblebrook Road under a R-15 zoning district with a density about 2.1 DUA and a minimum lot size of 7,500 square feet. During consideration of the Vinings Summit Subdivision, planning staff for Cobb County recommended “increasing all lots to at least 10,000 SQFT” because a smaller lot size was “incompatible” with nearby communities including Vinings Estates in the City of Smyrna.

Figure 3: LDR Uses & Clients/Concerned Homeowners (Yellow) Near Parcel at Issue (Red)



- 2. “Whether the zoning proposal or the use proposed will adversely affect the existing use or usability of adjacent or nearby property”

For reasons discussed below, the proposed RDA-Conditional rezoning and 43-unit cluster development will adversely affect the use and usability of adjacent and nearby low-density residential subdivisions, including Buckland Oaks, Vinings Estates, Vinings Cove, Pebblebrook Acres, and residences on large lots along Buckner Road, as well as communities on Oakdale Road including Enclave at Oakdale.

3. “Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned”

The City of Smyrna R-20 zoning district classification is most like and consistent with the existing Cobb County R-20 zoning district classification. Under the R-20 zoning district classification, the property has a reasonable economic use and low-density residential development is very likely to occur given the proximity of Whitefield Academy and the recent low-density development of Buckland Oaks. Beazer Homes also is developing Vinings Summit nearby on Pebblebrook Road under a R-15 zoning district classification and a density of 2.1 DUA.

Experts retained by my clients are working on alternative site plans for development of the property under a R-20, R-15, or Conservation Subdivision zoning district classification that would allow for construction of about 15 to 25 lots (an effective density of up to 2.5 DUA on the approximately 9 acres on which the lots are located), adhere to the City and County Comprehensive Plans, and would preserve the specimen tree stand on the southeast corner of the property. We intend to submit to the City copies of the alternative site plans and a feasibility analysis before the hearings.

It is legally irrelevant whether the parcel would be more valuable if rezoned to RDA-Conditional. *See Diversified Holdings, LLP v. City of Suwanee*, 302 Ga. 597 (2017) (“that the property would be more valuable if rezoned borders on being irrelevant. Instead, the only relevant evidence regarding the value of the subject property is its value as it currently is zoned.”). The Cobb County Tax Assessor recently appraised the parcel at issue at almost \$500,000, a value of about \$40,000 per acre.

4. “Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools”

The proposed cluster development of 43 houses on 9 acres would exacerbate the severe traffic congestion on Buckner, Oakdale, and Pebblebrook Roads by adding dozens of cars to these roads. During weekdays, there is standstill traffic on these roads that substantially diminishes the quality of life for homeowners in the area including the Joneses, the concerned homeowners, and the residents of the Enclave at Oakdale Subdivision.

Some of the worst traffic in the area is immediately next to the parcel at issue. According to the Cobb County Comprehensive Transportation Plan, the 2017 AM and PM Peak Period Levels of Service grades for Oakdale Road in the area of Buckner Road is an “F” with a Volume-Demand-to-Capacity Ratio greater than 1.0. The grade for Buckner Road in the area of the proposed development is a “D.” Atlanta Regional Commission’s Congestion Management Process designated Oakdale Road in the area of Buckner Road a “Congested Road.”

City and County planning documents during the past decade recognize this traffic congestion problem but the City and County have done nothing or very little to relieve the

congestion. The 2009 Cobb County River Line Master Plan describes Buckner Road as “small country road that . . . is very curvilinear and . . . has a very different look and feel to it as compared to many of the newer roads. There are several older homes setback from the road on both sides. . . . In some places, large oaks hang over the road, creating a more relaxed, shady drive than along other roads in the study area.”

The 2009 Plan states that Buckner Road and Oakdale Road “should be improved to better accommodate traffic” and that “improvements will most likely need to be made to Oakdale [and] Buckner . . . in order to accommodate the expected level of traffic in the area.” The Plan also cautions that “infrastructure in the area will . . . have to be updated to accommodate future development, and this will require additional engineering studies.”

The 2015 Cobb County Comprehensive Transportation Plan recommends as short-term projects (2016-2021) improvements to Buckner Road (R-005) including turn lanes at key intersections and a possible roundabout at Pebblebrook Road at an estimated cost of \$9.2 million, and improvements to Oakdale Road (R-282) including road improvements from Buckner Road to Veterans Memorial Parkway and a congestion relief study at an estimated cost of \$1.5 million. The Plan also recommends as a mid-term project (2022-2030) (R-035) widening Oakdale Road to five lanes and creating dual left-turn lanes on Buckner Road at Oakdale Road at a cost of \$10.5 million.

The City and County have not implemented these projects and improvements to traffic on Buckner Road and Oakdale Road and are unlikely to implement them any time soon. The 2016 Cobb County SPLOST list only identified the congestion relief study as a Tier 1 Project for the City of Smyrna at an estimated cost of \$1.5 million. The list identified \$9.2 million in improvements to Buckner Road a project “to be implemented if additional funding becomes available.” The major project to widen Oakdale and construct turn lanes on Buckner Road was not even included on the list of projects. According to recent City and County records, the congestion relief study has yet to begin and there are no record on the potential roundabout at Pebblebrook Road. The 2022 SPLOST list recently presented to Cobb County contained no projects on Buckner Road or Oakdale Road.

It would not be smart growth and would conflict with these planning documents for the City to approve this proposed development or any other major development on Buckner Road, Oakdale Road, or Pebblebrook Road until the City and County implements these critical projects and improvements. It would also flout this zoning review factor.

5. “Whether the zoning proposal is in conformity with the policy and intent of the land use plan”

The zoning proposal is for lot sizes of about 5,000 square feet and a density of about 3.4 DUA. The proposed lot size and density conflicts with the policy and intent of the City and County 2040 Comprehensive Plans and Future Land Use Maps, which the City and County has spent substantial time and resources update and complete.

The “Combined City of Smyrna Future Development Map and Recommended Future Development Categories for Potential Cobb County Annexations” recommends the parcel at issue for “Suburban Residential” development consistent with the nearby suburban residential development of Vinings Estates. The land use plan defines Suburban Residential as less than 3 units per acre and the corresponding zoning districts as R-30, R-20, and R-15—not RDA at 3.4 DUA with an effective density of 5 DUA because the plan clusters 43 houses on 9 acres. Likewise, the County’s Future Land Use Map identifies the parcel at issue as “Low Density Residential” development. **As the County stated in a recent letter to the City, “in LDR the maximum density would be 2.5 DUA” and the appropriate zoning categories are R-20 and R-15, not RDA.**

Further, the 2009 Cobb County River Line Master Plan identifies the areas next to the parcel at issue as low-density residential development. This Plan also emphasizes development that will encourage preservation of historic resources in the area and promote historic-based tourism. The Plan encourages low impact development that protects most of a site’s vegetation. Moreover, the 2018 Cobb County Greenways & Trails Master Plan proposes a multi-use trail called the Nickajack Creek Greenway or Spur Trail through the parcel at issue that would run from Thompson Park to Nickajack Park along the utility easement. The Greenway has a “long history and core group of supporters.”

The zoning proposal does not conform to the policy or intent of any of these land use and comprehensive plans. The lot size permitted under the R-20 zoning district is 20,000 square feet and the lot size permitted under the R-15 zoning district is 15,000 square feet. The proposed lot size is 5,000 square feet—only 25% to 30% of the lot size permitted by R-20 and R-15 zoning district. The proposed density is 3.4 DUA—up to 1.7 times the density permitted by R-20 and R-15 zoning district.

Because the plan clusters all 43 houses on 9 acres, the effective density is 5 DUA—2 to 2.5 times the density permitted by these zoning districts. Section 718, the “Conservation Subdivision” district, permits clustering of houses but only if the plan contains 40% open space and preserves the stand of specimen forest oaks, which the plan at issue fails to do. The lots permitted under this option would be about 20 to 25 lots on around 8.1 acres (after accounting for the slopes, streams, specimen tree stand, and right of way/utility needs).

The parcel at issue is in an area of natural and historical significance. The parcel at issue contains parts of the historic Buckner Farm and a stand of specimen oaks. The 14-acre parcel next to the parcel contains a part of a Union civil war trench and other specimen trees. The Level 1 archaeological survey conducted by the applicant states that earthworks may exist on the parcel at issue and that “field maps estimate Union trench works being located partially within the project area” yet oddly recommends no further archaeological investigation.

The proposed development would destroy the integrity of this area of natural and historical significance. It would also encourage development of the 14-acre parcel. It would foreclose use of these parcels for the uses planned in the plans above including “rare access to important historic resources and features such as . . . civil war trenches, “expanding much-

needed access to greenspace and recreation in South Cobb,” and showcasing “historic features and natural resources, including . . . green spaces, earthworks . . . and other sites.”

Approving the zoning proposal would mean that the City and County has wasted taxpayers’ time and money on these comprehensive planning processes. The City has rejected similar applications to rezone parcels from R-20 to RAD-Conditional, including the proposed development by Venture Homes behind N. Cooper Lake Road for development of 15 homes clustered on 3.8 acres.

Figure 4: Union Civil War Trench on Jones Property



Figure 5: Historical Artifacts Found on Jones Property



Civil War Era Artifacts



Possible American Indian Pottery

6. “Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.”

As discussed above, the existing severe traffic congestion on adjacent and nearby roads, including Buckner, Oakdale, and Pebblebrook Roads gives supporting grounds for disapproval of the zoning proposal. The parcel at issue also contains a specimen tree stand and parts of the historic Buckner Farm. The adjacent Jones Property contains parts of the historic Buckner Farm and a Union civil war trench. Construction of the proposed development will destroy the historic nature of the area and encourage future development of adjacent 14-acre parcel on which other parts of the farm and the trench are located.

7. “Whether the development of the property under the zoning proposal will conform to, be a detriment to or enhance the architectural standards, open space requirements and aesthetics of the general neighborhood, considering the current, historical and planned uses in the area.”

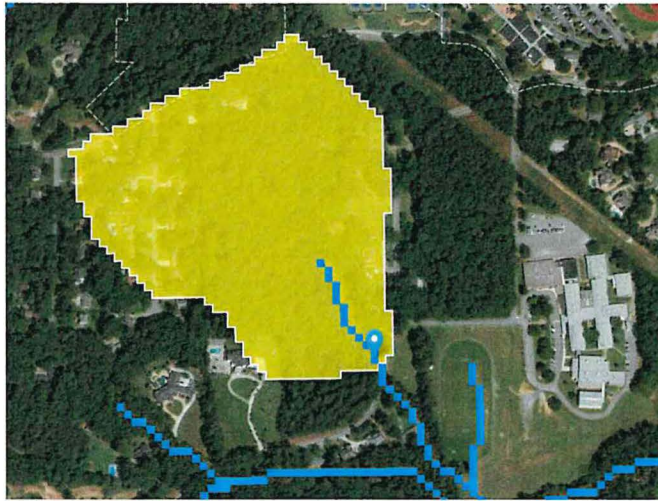
For reasons discussed above and below, the development of the property under the zoning proposal will damage the aesthetics of the general neighborhood considering the current, historical, and planned low-density residential uses in the area and the natural and historic resources in the area.

8. “Under any proposed zoning classification, whether the use proposed may create a nuisance or is incompatible with existing uses in the area.”

As discussed above, the proposed plan will create a nuisance and conflicts with existing uses in the area because it will contribute to severe traffic congestion and is out of character with the surrounding low-density residential neighborhoods. Because of the significant elevation changes on the parcel at issue and the associated cuts and fills, construction of the proposed development will very likely result in erosion and pollution of the stream on the Jones' Properties because of the proximity of the proposed development to this stream and because most of watershed of this stream is the area of the proposed development.

In addition, as discussed below, the proposed development will also destroy a specimen tree stand located on the parcel at issue and damage several specimen boundary trees located on the Jones' Property. Indeed, the Rezoning Tree Location & Protection Plan states that “off-site boundary trees [on the Jones' Property] will be impacted due to grading” and proposes to remove specimen trees on the Jones' Property. The Joneses oppose any damage to and removal of their trees.

Figure 6: Proposed Development Draining to Stream on Jones' Properties



9. “Whether due to the size of the proposed use, in either land area or building height, the proposed use would affect the adjoining property, general neighborhood and other uses in the area positively or negatively.”

For reasons discussed above, the proposed development would damage the adjoining and nearby low-density residential uses and neighborhoods.

E. The Zoning Application Violates the Tree Conservation Ordinance.

The zoning application violates the City’s current and proposed Tree Conservation Ordinance because it: (1) fails to identify and proposes to destroy specimen trees and a specimen tree stand without making all reasonable efforts to save it including alteration of building design and location, and (2) the tree protection plan does not comply with the ordinance.

Figure 7: Stand of Specimen Oaks on Parcel at Issue



The ordinance defines “specimen tree or stand” as “any tree or collective group of trees which qualifies for special consideration for preservation due to size, type, condition, location or historical significance.” Overstory trees greater than 24 inches diameter at breast height (“DBH”) that are not hazardous, dead, dying, or diseased according to ISA Standards are specimen trees. “Specimen tree stands” means “a contiguous grouping of four or more trees which has been determined to be of high value . . . based upon . . . a relatively mature, even-aged stand, a stand with uniform species composition or of a rare or unusual nature, or a stand of historical significance.” The ordinance requires that, for any proposed development, “all reasonable efforts be made to save specimen trees” and states that “reasonable efforts shall include but not be limited to: alteration of building design [and] alternate location of building.”

The ordinance also mandates that “**before** the acceptance of a rezoning application . . . a tree protection plan is required.” The tree protection plan must identify all specimen trees proposed for removal by “exact location, size, species, and condition.” The tree protection plan must also include “calculations showing compliance with the required site density factor using existing trees, replacement trees, and/or alternative compliance methods. Site density compliance shall be demonstrated on the tree protection and tree replacement plans. . . . Tree protection plans submitted prior to rezoning application shall indicate thereon how the minimum site density factor shall be maintained.”

The applicant’s tree protection plan violates the tree protection ordinance because it fails to accurately identify all specimen trees and their condition. The plan incorrectly states that the specimen tree size for overstory hardwoods is 30 inches DBH instead of 24 inches DBH. In addition, David Shostak, an expert arborist who is also the arborist for the City of Alpharetta, performed a site visit to the Michael Jones Property and found that several trees identified as “non-specimen trees” on the applicant’s tree protection plan are in fact specimen trees. He found that most of the trees marked as non-specimen trees because of their condition are in fact in fine condition and that with normal pruning, tree care, and fertilization they should live for many more years.

Mr. Shostak also found that the grouping of about 20 large oaks in the southeast corner of the parcel is a specimen tree stand because they are a rare and mature, even-aged stand of “forest oaks” of historical significance given their legacy on the historic Buckner farm and location next to Buckner Road and near the potential Nickajack Creek Spur Trail and River Line Historic Area. Indeed, several of these oaks are as large as the trees listed on Smyrna’s Champion Tree Program, including a 42-inch white oak and a 54-inch red oak. Mr. Shostak found that Mr. Mahoney misidentified a large post oak as a white oak. Mr. Shostak is preparing a written report of his findings which we will submit in the next few weeks.

The application also violates the tree protection ordinance because the site plan does not make any effort, let alone all reasonable efforts, to save this specimen tree stand or specimen trees. The site plan proposes to remove every single one of the 20 large oaks on the southeast corner of the property. The alternative site plans being prepared by our experts will preserve this specimen tree stand as a community park or protected green/open space. The tree protection

plan also proposes to trespass and remove about 6 specimen trees located on the Jones Property. My clients oppose any such trespass and removal of these trees on their property.

Finally, the application violates the tree protection ordinance because it does not include calculations showing how the minimum site tree density factor shall be maintained. The tree protection plan states under "tree replacement requirements" that "100 inches per acre" or "1,270 inches required" but does not explain how the site plan will feasibly achieve that density given the construction of 43 cluster houses on mostly 5,000 square foot lots. Additionally, the tree protection plan fails to explain how the proposed development will feasibly meet the additional minimum tree density requirement for replacement of specimen trees (inch-for-inch up to 100 additional inches under old ordinance, or another 50 inches per acre under the new ordinance). This is vital given that the applicant seeks to remove dozens of large specimen oaks.

The City is about to adopt a new tree protection ordinance. Approving this application would show that the City does not take seriously tree protection and the requirements of these ordinances.

F. Required Disclosures

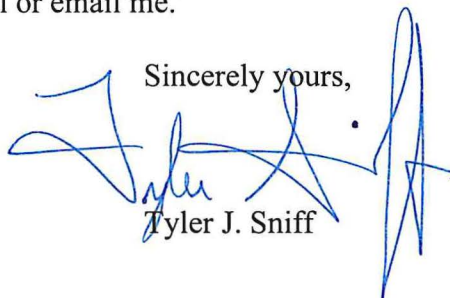
Under O.C.G.A. § 36-67A-3, the opponents of the rezoning action identified in this letter and this attorney have not, within two years immediately preceding the filing of the rezoning action being opposed, made any campaign contributions to a local government official of the local government which will consider the application.

CONCLUSION

In summary, the proposed annexation and RDA-Conditional rezoning violates several provisions of the City's zoning and tree protection ordinances and the Intergovernmental Agreement with Cobb County. My clients do not oppose all development of the parcel at issue. It is feasible to develop the parcel at issue under the R-20 zoning district classification while protecting the specimen tree stand, a proposal which my clients would not oppose.

Because of the significant public interest and complexity of the issues here, I hereby request 25 minutes to present oral argument on behalf of my clients and the other concerned homeowners before the Planning and Zoning Commission at the hearing on November 11th. Thank you very much for the opportunity to submit these comments. If you have any questions about them, please feel free to call or email me.

Sincerely yours,



Tyler J. Sniff

cc: Clients