

APPLICATION FOR REZONING TO THE CITY OF SMYRNA

Type or Print Clearly

(To be completed by City)

Ward: _____

Application No: _____

Hearing Date: _____

APPLICANT: William L. (Bill) Askea

Name: J. Kevin Moore; Moore Ingram Johnson & Steele, LLP
(Representative's name, printed)

Address: Emerson Overlook; 326 Roswell Street; Marietta, GA 30060

Business Phone: (770) 429-1499 Cell Phone: (678) 516-1609 Fax Number: (770) 429-8631

E-Mail Address: jkm@mijs.com

Signature of Representative: BY: MOORE INGRAM JOHNSON & STEELE, LLP
J. Kevin Moore
Georgia Bar No. 519728
Attorneys for Applicant and Property Owners

TITLEHOLDER

Name: Billy Askea and Gearldean Askea
(Titleholder's name, printed)

Address: 252 Unity Drive; Marietta, GA 30064-5448

Business Phone: (770) 436-6100 Cell Phone: (770) 883-1674 Home Phone: (770) 428-0360

E-mail Address: _____

Signature of Titleholder: Billy L. Askea
(Attach additional signatures, if needed) Billy Askea
Gearldean Askea
Gearldean Askea

(To be completed by City)

Received: _____

Heard by P&Z Board: _____

P&Z Recommendation: _____

Advertised: _____

Posted: _____

Approved/Denied: _____

ZONING REQUEST

From RTD to GC
Present Zoning Proposed Zoning

LAND USE

From MDR to CAC
Present Land Use Proposed Land Use

For the Purpose of Commercial

Size of Tract 5.039 acres

Location Off South Cobb Drive, at the terminus of Ask-Kay Drive
(Street address is required. If not applicable, please provide nearest intersection, etc.)

Land Lot (s) 342 District 17th

We have investigated the site as to the existence of archaeological and/or architectural landmarks. I hereby certify that there are no X there are such assets. If any, they are as follows:

Not Applicable.

(To be completed by City)

Recommendation of Planning Commission:

Council's Decision:

CONTIGUOUS ZONING

North: RM-12 (Cobb County)

East: GC

South: R-15

West: RTD

CONTIGUOUS LAND USE

North: MDR (Cobb County)

East: CAC

South: MDR

West: MDR

INFRASTRUCTURE

WATER AND SEWER

A letter from Scott Stokes, Director of Public Works Department is required stating that water is available and the supply is adequate for this project.

A letter from Scott Stokes, Director of Public Works Department is required stating that sewer is available and the capacity is adequate for this project.

- If it is Cobb County Water, Cobb County must then furnish these letters.

Comments:

TRANSPORTATION

Access to Property? Only access to Property is through existing commercial
properties also owned by Applicant from Ask-Kay Drive and South Cobb Drive.

Improvements proposed by developer? Completion of access drive from currently
improved terminus of Ask-Kay Drive.

Comments:

ZONING DISCLOSURE REPORT

Has the applicant* made, within two years immediately preceding the filing of this application for rezoning, campaign contributions aggregating \$250 or more or made gifts having in the aggregate a value of \$250 or more to the Mayor or any member of the City Council or Planning and Zoning Board who will consider this application?

No.

If so, the applicant* and the attorney representing the applicant* must file a disclosure report with the Mayor and City Council of the City of Smyrna, within 10 days after this application is filed.

Please supply the following information, which will be considered as the required disclosure:

The name of the Mayor or member of the City Council or Planning and Zoning Board to whom the campaign contribution or gift was made:

Not Applicable.

The dollar amount of each campaign contribution made by the applicant* to the Mayor or any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application, and the date of each such contribution:

Not Applicable.

An enumeration and description of each gift having a value of \$250 or more by the applicant* to the Mayor and any member of the City Council or Planning and Zoning Board during the two years immediately preceding the filing of this application:

Not Applicable.

Does the Mayor or any member of the City Council or Planning and Zoning Board have a property interest (direct or indirect ownership including any percentage of ownership less than total) in the subject property?

No, to the best of our knowledge, information, and belief.

If so, describe the natural and extent of such interest: Not Applicable.

ZONING DISCLOSURE REPORT (CONTINUED)

Does the Mayor or any member of the City Council or Planning and Zoning Board have a financial interest (direct ownership interests of the total assets or capital stock where such ownership interest is 10% or more) of a corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust, which has a property interest (direct or indirect ownership, including any percentage of ownership less than total) upon the subject property?
No, to the best of our knowledge, information, and belief.

If so, describe the nature and extent of such interest:

Not Applicable.

Does the Mayor or any member of the City Council or Planning and Zoning Board have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?
No, to the best of our knowledge, information, and belief.

If so, describe the relationship and the nature and extent of such interest:

Not Applicable.

If the answer to any of the above is "Yes", then the Mayor or the member of the City Council or Planning and Zoning Board must immediately disclose the nature and extent of such interest, in writing, to the Mayor and City Council of the City of Smyrna. A copy should be filed with this application**. Such disclosures shall be public record and available for public inspection any time during normal working hours.

We certify that the foregoing information is true and correct, this 13th day of March, 2015.

x Billy L. Askea
(Applicant's Signature)
William L. Askea

(Attorney's Signature, if applicable)

Notes

* Applicant is defined as any individual or business entity (corporation, partnership, limited partnership, firm enterprise, franchise, association or trust) applying for rezoning action.

** Copy to be filed with the City of Smyrna Zoning Department and City Clerk along with a copy of the zoning application including a copy of the legal description of the property.

APPLICANT'S AND TITLEHOLDERS' REPRESENTATIVE

ZONING DISCLOSURE REPORT

Has the applicant* made, within two years immediately preceding the filing of this application for rezoning, campaign contributions aggregating \$250 or more or made gifts having in the aggregate a value of \$250 or more to the Mayor or any member of the City Council or Planning and Zoning Board who will consider this application?

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No, to the best of our knowledge, information, and belief.

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Not Applicable.

Does the Mayor or any member of the City Council or Planning and Zoning Board have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?

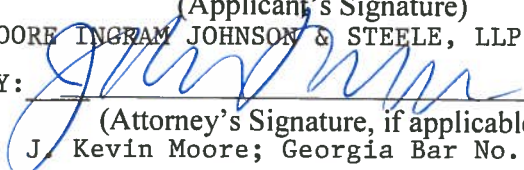
No, to the best of our knowledge, information, and belief.

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Not Applicable.

If the answer to any of the above is "Yes", then the Mayor or the member of the City Council or Planning and Zoning Board must immediately disclose the nature and extent of such interest, in writing, to the Mayor and City Council of the City of Smyrna. A copy should be filed with this application**. Such disclosures shall be public record and available for public inspection any time during normal working hours.

We certify that the foregoing information is true and correct, this 13th day of March, 2015

(Applicant's Signature)
MOORE INGRAM JOHNSON & STEELE, LLP
BY: 
(Attorney's Signature, if applicable)
J. Kevin Moore; Georgia Bar No. 519728

Attorneys for Applicant and Titleholders

Notes

* Applicant is defined as any individual or business entity (corporation, partnership, limited partnership, firm enterprise, franchise, association or trust) applying for rezoning action.

** Copy to be filed with the City of Smyrna Zoning Department and City Clerk along with a copy of the zoning application including a copy of the legal description of the property.

REZONING ANALYSIS

Section 1508 of the Smyrna Zoning Code details nine zoning review factors which must be evaluated by the Planning and Zoning Board and the Mayor and Council when considering a rezoning request. Please provide responses to the following using additional pages as necessary. **This section must be filled out by the applicant prior to submittal of the rezoning request.**

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 Property can only be accessed through existing commercial development.

Existing floodplain and stream buffers provide substantial protection to
adjoining residential properties that are not yet fully developed. As such,
the proposal is suitable in light of adjacent and nearby properties.

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

The Property can only be accessed through existing commercial development.

Existing flood plain and stream buffers provide substantial protection to
adjoining residential properties that are not yet fully developed. As such,
the proposal is suitable in light of adjacent and nearby properties.

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

As currently zoned, the Property has no economic use given that access can
only be obtained through existing commercial property; and, therefore, as
a residentially zoned tract, is land-locked and without economic value
unless rezoned, as requested.

REZONING ANALYSIS (CONTINUED)

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 proposal will not cause any burden on existing infrastructure as the Property would share access through existing commercial property.

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

The proposal is not in conformity with the Land Use Plan. However, the Property has been placed in a residential zoning and land use category despite being land-locked for residential purposes.

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.

Existing and changing conditions support the proposal. Access to the Property is only through existing commercial property. Recently approved residential developments on surrounding and adjacent properties have resulted in land-locking the Property for any residential purposes.

REZONING ANALYSIS (CONTINUED)

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.

The proposal will be in conformance with the aesthetics of existing and adjacent commercial property also owned by the Applicant.

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

The proposal will not create a nuisance and is compatible with adjacent commercial properties through which the only access is provided.

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.

The proposal is consistent with adjoining commercial properties through which the only access is provided.

Behind 2976 bldg, 5W

#10,722

WARRANTY DEED

STATE OF GEORGIA, COUNTY OF COBB

THIS INDENTURE, Made the 6th day of April, in the year one thousand nine hundred eighty-nine, between

E. P. LOGAN

we are pre-EL #10

of the County of Cobb, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

BILLY and GEARLDEAN ASKEA as Joint Tenants With Right of Survivorship as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of Twenty Thousand and no/100ths----- (20,000.00) DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 342 of the 17th District, 2nd Section of Cobb County, Georgia and being more particularly described as follows:

To find the true point of beginning, begin at the Northeast corner of said Land Lot 342; thence Southerly along the line dividing Land Lots 342 and 379, said district and section, for a distance of 401.71 feet to an iron pin, which iron pin is the true point of beginning; continue thence Southerly along said land lot line for a distance of 404 feet, more or less, to the center line of a creek; thence Westerly and Southwesterly along the center line of said creek and following the meanderings thereof for a distance of 736.45 feet, more or less, to the center line of another creek, which other creek is the Westerly boundary of Westfield Trace Subdivision, as shown on the plat recorded in Plat Book 92, Page 88, Cobb County, Georgia records; thence Northwesterly and Northerly along the center line of said other creek for a distance of 703.32 feet, more or less, to a point and corner; thence South 79°35'39" East a distance of 318 feet to the iron pin at the true point of beginning; said tract containing 5.039 acres.

20.00
Cobb County, Georgia Real Estate Transfer Tax
Paid 20.00
Date 4-10-89
Jay C. Stephenson
Clerk of Superior Court

FILED AND RECORDED
09 APR 10 PM 3:57
JAY C. STEPHENSON
COBB SUPERIOR COURT CLERK

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever. in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in the presence of
Witness
E. P. Logan (Seal)
E. P. LOGAN (Seal)

Sworn to and subscribed before me, this the 6th day of April, 1989
Julia B. McCarsen (Seal)
Notary Public
Notary Public, Cobb County, Georgia
My Commission Expires May 10, 1990

5300 PG 04.05



CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Printed: 3/10/2015 6:26:58 PM

Cobb County Online Tax Receipt

Thank you for your payment!

Payer:
BILLY L & GEARLDEN ASKEA

ASKEA BILLY & GERALDEAN

Payment Date: 9/29/2014

Tax Year	Parcel ID	Due Date	Appeal Amount			Taxes Due
2014	17034200100	10/15/2014	Pay:	N/A	or	121.52
Interest	Penalty	Fees	Total Due	Amount Paid	Balance	
\$0.00	\$0.00	\$0.00	\$121.52	\$121.52	\$0.00	

Real Estate Bills

View Bill

Bill Year	2014
Bill	640
Owner	ASKEA BILLY & GERALDEAN
Parcel ID	17034200100

Installment	Pay By	Amount	Payments/Credits	Balance	Interest	Due
1	11/17/2014	\$40.99	\$40.99	\$0.00	\$0.00	\$0.00
TOTAL		\$40.99	\$40.99	\$0.00	\$0.00	\$0.00

©2015 Tyler Technologies, Inc.

LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 342 of the 17th District, 2nd Section of Cobb County, Georgia and being more particularly described as follows:

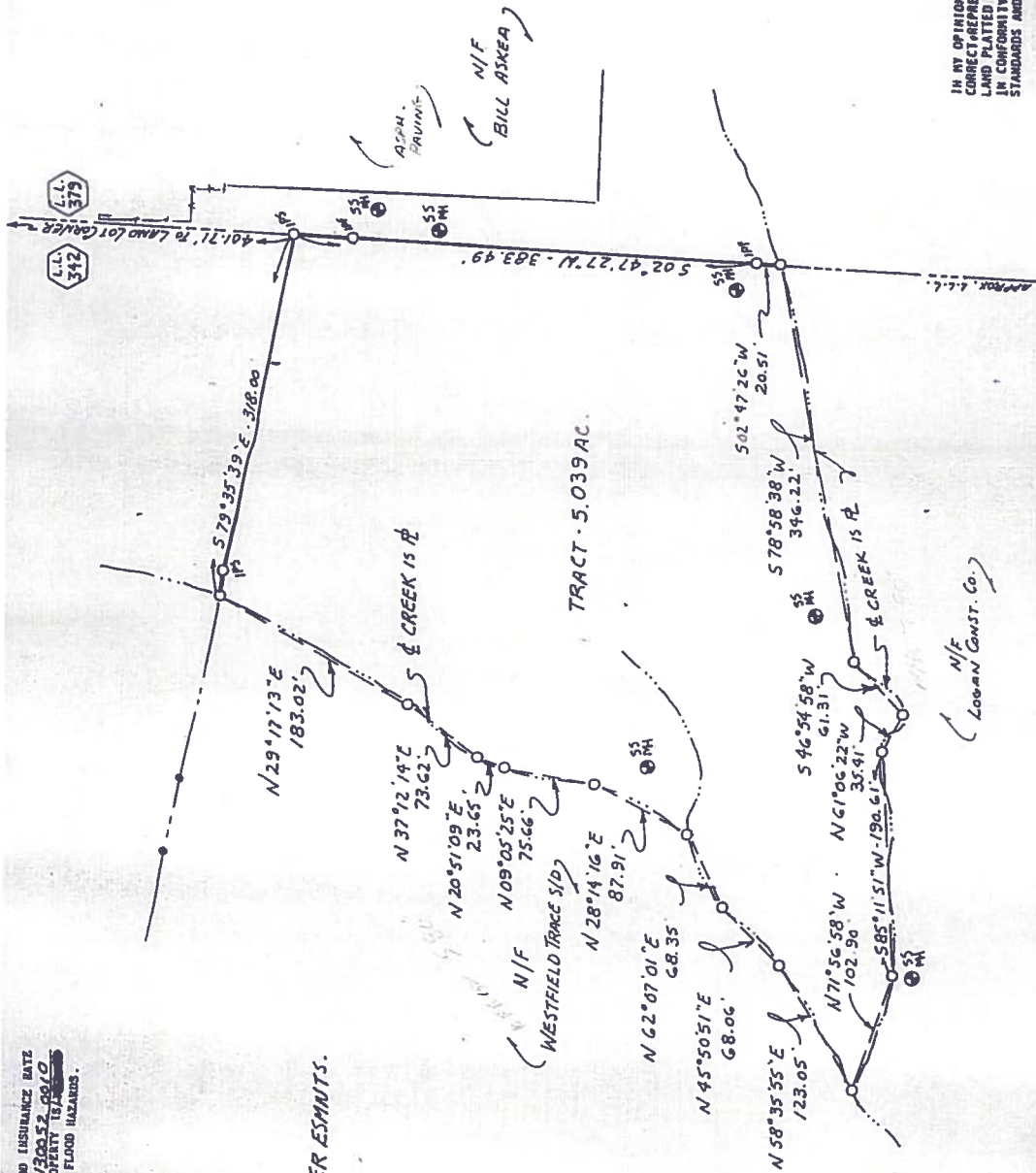
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AS PER THE F.I.R.M. FLOOD INSURANCE RATE
MAP COMMUNITY PANEL NO. 130052
DATED 12-8-85 THIS PROPERTY IS
IN AN AREA HAVING SPECIAL FLOOD HAZARDS.

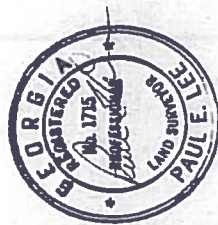
NOTE:
NO SAN SEWER EXHUNTS.
LOCATED.



ALL BEARINGS ARE CALCULATED
FROM ANGLES MEASURED, BASED ON A
SINGLE MAGNETIC OBSERVATION



IN MY OPINION THIS PLAT IS A
CORRECT REPRESENTATION OF THE
LAND PLATTED AND HAS BEEN PREPARED
IN CONFORMITY WITH THE MINIMUM
STANDARDS AND REQUIREMENTS OF LAW.
THE FIELD DATA UPON WHICH THIS PLAT
IS BASED HAS A CLOSURE PRECISION OF
ONE FOOT IN 22,000 FEET AND AN ANGULAR
ERROR OF ONE MINUTE AND HAS
ADJUSTED BY CRANDALL'S METHOD.
THE DATA SHOWN ON THIS PLAT HAS BEEN
CALCULATED FOR CLOSURE AND WAS FOUND
TO BE ACCURATE WITHIN ONE FOOT IN
22,000 FEET.



PLAT OF SURVEY FOR

BILL ASKEA

LAND LOT 342. 379 17th DISTRICT 2nd SECTION
GEORGIA DATE MARCH 21, 1988

COBB COUNTY
SCALE 1" = 100'

PAUL LEE
CONSULTING ENGINEERING ASSOC., INC.
2784 ATLANTA STREET, SUITE A
SMYRNA, GEORGIA 30080

COMP. JOB NO.

This survey only includes objects that are
visible and is not responsible for underground
utilities or other objects that are not apparent by
visual observation. I.E. underground gas lines,
gas lines, water lines, sewer lines, etc.

ATTACHMENT TO APPLICATION FOR REZONING

Application No.:
Hearing Dates: April 13, 2015
 May 18, 2015

**BEFORE THE PLANNING COMMISSION AND THE
MAYOR AND CITY COUNCIL FOR THE
CITY OF SMYRNA, GEORGIA**

**CONSTITUTIONAL CHALLENGE
ATTACHMENT TO APPLICATION FOR REZONING**

COME NOW, Applicant, WILLIAM L. (BILL) ASKEA (hereinafter referred to as “Applicant”), and Titleholders, BILLY ASKEA and GEARLDEAN ASKA (hereinafter collectively referred to as “Titleholders”), and assert the following:

1.

By Application for Rezoning dated and filed March 13, 2015, Applicant and Titleholders applied for rezoning of certain real property, being approximately 5.039 acres, more or less, lying and being located within the City of Smyrna, Cobb County, Georgia, a more particular description and delineation of the subject property being set forth in said Application (hereinafter referred to as the “Property” or the “Subject Property”).

2.

The Application for Rezoning of the Property seeks rezoning from the existing zoning category of RTD to the proposed zoning category of GC, as established by the governing authority of the City of Smyrna, Georgia, under and pursuant to the Zoning and Planning Ordinance of the City of Smyrna, Georgia.

3.

The Zoning and Planning Ordinance of the City of Smyrna is unconstitutional as applied to the Property in that said Ordinance deprives the Applicant and Titleholders of their Property under and pursuant to Art. I, § I, ¶¶ I and II of the Georgia Constitution of 1983, and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of Property without due process violates the constitutional prohibition against the taking of private property without just compensation. The RTD zoning category, as it presently exists, together with any intervening zoning categories between the existing RTD category and the requested category, violates the Applicant's and Titleholders' rights to unfettered use of their property in that said zoning classifications do not bear a substantial relation to the public health, safety, morality, or general welfare and are therefore confiscatory and void. Further, said Ordinance is unconstitutional in that it is arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss on the Applicant and Titleholders.

4.

To the extent the Zoning and Planning Ordinance of the City of Smyrna allows or permits the Mayor and City Council to rezone the Subject Property to any category other than as requested, said Ordinance is further unconstitutional in that same violates the Applicant's and Titleholders' constitutionally guaranteed rights to due process, both substantive and procedural. Furthermore, any such action by the Mayor and City Council, or as allowed by the Zoning and Planning Ordinance of the City of Smyrna, is an unconstitutional use of the zoning power and would constitute an abuse of discretion with no

justification or benefit flowing to the public welfare. Accordingly, said Ordinance or action would likewise represent a taking of private property rights without the payment of just and adequate compensation in violation of the Constitutions of the State of Georgia and the United States of America.

5.

The Zoning and Planning Ordinance of the City of Smyrna is further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with the Zoning Application also violate Art. I, § I, ¶¶ I, II, and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

Respectfully submitted, this 13th day of March, 2015.

MOORE INGRAM JOHNSON & STEELE, LLP

BY: 

J. Kevin Moore
Georgia Bar No. 519728

Attorneys for Applicant and Titleholders

MOORE INGRAM
JOHNSON & STEELE
Limited Liability Partnership
Emerson Overlook
326 Roswell Street
Marietta, GA 30060
(770) 429-1499
FAX (770) 429-8631

MOORE INGRAM JOHNSON & STEELE, LLP

167182



VENDOR:

OUR REF. NO.	CITY OF SMYRNA INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	CHECK NO.	DISCOUNT TAKEN
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304210	150040.1 JKM/cc	03/13/2015	\$1,500.00	\$1,500.00	167182	0.00
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7421 Filing fee for Application for Rezoning
Re: 2970 Ask-Kay Drive

\$1,500.00

MOORE INGRAM JOHNSON & STEELE, LLP OPERATING ACCOUNT EMERSON OVERLOOK 326 ROSWELL STREET SE MARIETTA, GA 30060 (770) 429-1499		 Smyrna, GA 64-1972-611  E-ZCheck® Check Fraud Protection for Business		CHECK NO. 167182	CHECK DATE 03/13/2015	VENDOR NO. SMYRNA
PAY		CHECK AMOUNT \$1,500.00		One thousand five hundred and NO/100*****		
TO THE ORDER OF City of Smyrna, Georgia				AUTHORIZED SIGNATURE 		

⑈ 167182 ⑈ ⑆061119723⑆ 01 27530⑈

MOORE INGRAM JOHNSON & STEELE, LLP

167183

VENDOR:

OUR REF. NO.	CITY OF SMYRNA CHECK NUMBER	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	CHECK NO.	DISCOUNT TAKEN
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304211	150040.1 JKM/cc	03/13/2015	\$500.00	\$500.00	167183	0.00
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7421 Fee for change in Land Use in conjunction with filing of Application for Rezoning
Re: 2970 Ask-Kay Drive

\$500.00

MOORE INGRAM JOHNSON & STEELE, LLP

OPERATING ACCOUNT
EMERSON OVERLOOK
326 ROSWELL STREET SE
MARIETTA, GA 30060
(770) 429-1499



64-1972-611



CHECK NO.

167183

CHECK DATE

03/13/2015

VENDOR NO.

SMYRNA

PAY

CHECK AMOUNT

\$500.00

Five hundred and NO/100*****

City of Smyrna, Georgia

TO THE
ORDER
OF



[Signature]

AUTHORIZED SIGNATURE

167183 061119723 0127530

Security features Details on back

HOLD TO LIGHT TO VIEW WATERMARK IN PAPER HEAT SENSITIVE RED MARKS DISAPPEAR WITH HEAT DETECTION CIRCLE REVEALS A LOCK WHICH TESTED

167183