



404.371.2155 (o)
404.371.4556 (f)
DeKalbCountyGa.gov

Clark Harrison Building
330 W. Ponce de Leon Ave
Decatur, GA 30030

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director
Andrew A. Baker, AICP

**APPLICATION TO AMEND COMPREHENSIVE LAND USE PLAN
OF DEKALB COUNTY, GEORGIA**

Application No.: _____ Date Received: _____

Applicant's Name: Joseph Cooley, Esq. (agent for owner) _____ E-Mail: cooleylandlaw@gmail.com

Applicant's Mailing Address: 243 Highland Rose Way, Sugar Hill, GA 30518 _____

Applicant's Daytime Phone #: (770) 778-4776 _____ Fax: _____

(If more than one owner, attach information for each owner as Exhibit "A")

Owner's Name: MH Lithonia Holdings LLC & Neisem Prop LLC E-Mail: mnhabif@habifproperties.com

Owner's Mailing Address 3717 Roswell Rd NE #100 Atlanta, GA 30342.

Owner's Daytime Phone # (404) 522-9358 _____ Fax: _____

Address/Location of Subject Property:

District(s): 16th _____ Land Lot(s): 167, 168 _____ Block(s): 01 _____ Parcel(s): 008

Acreage: 1.224 _____ Commission District(s): District 5, Super-District 7

Current Land Use Designation: SUB _____ Proposed Land Use Designation: LIND _____

Current Zoning Classification(s): RE (concurrent zoning request to M)

PLEASE READ THE FOLLOWING BEFORE SIGNING

- I. **This application form must be completed in its entirety. In addition, any application that lacks any of the required attachments or payment of the filing fee shall be determined to be incomplete and shall not be accepted.**
- II.
- III. **Disclosure of Campaign Contributions:** In accordance with the Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A, the following questions must be answered: Have you, the applicant, made \$250 or more in campaign contributions to a local government official within two years immediately preceding the filling of this application? _____ Yes X No
- IV.

If the answer is yes, you must file a disclosure report with the governing authority of DeKalb County showing:

- 1. The name and official position of the local government official to whom the campaign contribution was made.
- 2. The dollar amount and description of each campaign contribution made during the two years immediately preceding the filing of this application and the date of each such contribution.

The disclosure must be filed within 10 days after the application is first filed and must be submitted to the C.E.O. and the Board of Commissioners, DeKalb County, 1300 Commerce Drive, Decatur, Ga. 30030.

NOTARY

Joseph Cooley, Esq.
SIGNATURE OF APPLICANT

EXPIRATION DATE / SEAL

Check One: Owner _____ Agent X _____ DATE _____

ATTACHMENT "A"

Application to Amend Official Zoning Map
DeKalb County, GA

Owners' Information

Owner(s): **MH Lithonia Holdings LLC — Morris Habif, Managing**

Partner **E-Mail: mnhabif@habifproperties.com**

Owner's Mailing Address: **3717 Roswell Rd. NE #100, Atlanta, GA 30342**

Owner(s) Phone: **(404) 522-9358** Fax: _____

Owner(s): **Neisem Properties LLC — Morris Habif, Managing**

Partner **E-Mail: mnhabifnhabifproperties.com**

Owner's Mailing Address: **3717 Roswell Rd. NE #100, Atlanta, GA 30342**

Owner(s) Phone: **(404) 522-9358** Fax: _____

DEPARTMENT OF PLANNING & SUSTAINABILITY

LAND USE (FUTURE DEVELOPMENT) MAP AMENDMENT APPLICATION
AUTHORIZATION

Completion of this form is required if the individual making the request is not the owner of the property.

DATE: 10/12/20

CHECK TYPE OF APPLICATION:

(X) LAND USE MAP AMENDMENT

(X) REZONE

() MINOR MODIFICATION

() SPECIAL LAND USE PERMIT

TO WHOM IT MAY CONCERN:

(1) / (WE), Morris Habib (mng. member of LLC)

MH Lithonia Holdings LLC & Neisem Properties LLC

being (owner) / (owners) of the property described below or attached hereby delegate authority to

Joseph Cooley, Esq. Cooley Planning and Land Use Law LLC

(Name of Applicant or Agent Representing Owner)

to file and application on (my) / (our) behalf.

Notary Public

[Signature]

Notary Public

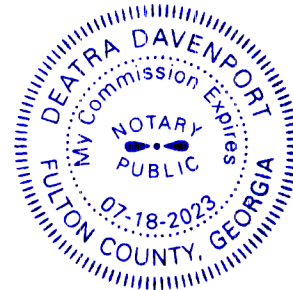
Notary Public

Owner

[Signature]

Owner

Owner



Letter of Intent
Rezoning & Land Use Change

For

2346 Pine Mountain Street (#16 168 01 008) (Subject Property), DeKalb County, Georgia

Rezoning/Land Use Change of the Subject Property from RE (Residential Estate) to M (Light Industrial) and from SUB (Subdivision) to LIND (Light Industrial) was applied for on August 28, 2008. Staff recommendations were for approval of the Land Use Change and approval of the Rezoning with conditions; however, the Land Use Change application was denied by the DeKalb County Board of Commissioners, and the Rezoning Application was not heard. The required two-year timeframe prior to resubmitting Rezoning and Land Use Applications has expired.

The Subject Property consists of approximately 1.224 acres. It is located west of Turner Hill Road; directly north of the City of Lithonia; and approximately 0.15 miles south of the Stonecrest city limits. (*see attachments*). It is currently zoned RE. The parcel is mostly cleared with concrete and gravel areas which are visible in the attached aerial photograph. Past structures on the parcel included a dilapidated mobile home and shed, The mobile home has been antidotally described by neighboring land owners as a "crack house". The structures were demolished and the property has been vacant since.

The Subject Property is completely surrounded to the north, south, east and west with parcels zoned M. The surrounding future land use classification of the properties is primarily LIND.

The parcels immediately to the south, east and northeast also belong to the Owner. Those parcels consist of approximately 8.61 acres, are zoned M, and are designated LIND on the future land use map. The parcels were previously cleared, but remain undeveloped. The parcels have approximately 811 feet of frontage on Turner Hill Road, with direct access to Turner Hill Road via Turn Hill Road N. Combined with the Subject Property the total acreage is approximately 10.25 acres.

The Subject Property has no value as currently zoned Residential Estate and with a Suburban land use designation. By combining the Subject Property with the Owner's adjacent properties, which has direct access to Turner Hill Road, the Subject Property has possibilities for beneficial economic uses. This would ultimately be an economical benefit for the community and DeKalb County.

There was opposition to the application at the Board of Commissioners Land Use Change hearing over two years ago. Person speaking expressed a fear of an increase of illegal activities, such as prostitution and illegal drug sales, increased traffic that might be generated from future redevelopment, and change of character to the area. Some wanted to see a site development plan to know exactly what was to be built there.

As much as it may be desired, a site development plan cannot be realistically determined or prepared until such time that the parcels are consolidated with all having the same zoning and future land use designation. The character of the area surrounding the Subject Property is not Suburban as currently classified. Concept plans, site plans and review/approval of all future development plans will involve working with the community, the Planning and Sustainability Department, the Development Authority of DeKalb County (DADC), and other DeKalb County departments. Some issues, such as potential traffic impacts, cannot be properly addressed until such time as to a development concept is developed.

The Owner (Mr. Morris Habib and Habib Properties) have been consolidating and redeveloping properties in the Atlanta area for many years. He was a key participant in the redevelopment south of Five Points since 1968 and has been featured in the Atlanta Journal Constitution several times regarding the positive work he has been doing for the area. ("Another Chance of a Lifetime awaits South Downtown Area", Torpy, AJC, Oct. 4, 2018; attached). Mr. Habib has successfully consolidated parcels to encourage development and redevelopment throughout his career. His company has a substantial list of successful projects in the Atlanta area (see <https://habifproperties.com> for more detailed information).

The Applicant requests the land use designation of the "Subject Property" be changed from SUB (Suburban) to LIND (Light Industrial). This would bring the Subject Property into consistency with:

- 1) The current uses of surrounding properties and zoning all of said properties which are currently zoned M — Light Industrial;
- 2) the predominate future land use map designation of surrounding properties as LIND – Light Industrial;
- 3) the text and policies of the 2021 DeKalb County Comprehensive Plan Policy;
- 4) and the Owner's right and ability to develop his land to have an economically viable use.

We respectfully request that the DeKalb Board of Commissioners approve the concurrent Land Use and the Rezoning Applications.

Sincerely,

Joseph L. Cooley, Esq.
Cooley Planning & Land Use Law, LLC
Attorney for the Owner

DEPARTMENT OF PLANNING & SUSTAINABILITY

As per Section 27-829 of the Zoning Ordinance of DeKalb County, each applicant seeking an amendment to the official Comprehensive Plan land use maps shall provide a complete written response to each of the following standards and factors for evaluation applications for amendments to the Comprehensive Plan land use maps:

1. Whether the proposed land use change will permit uses that are suitable in view of the use and development of adjacent and nearby property;

Yes. All adjacent properties (except one) are designated as LIND – Light Industrial Use. The one exception (parcel #16 167 08 011; 0.26 ac) is designated as SUB – Suburban, but is zoned M (manufacturing) which is consistent with other surrounding zoning. The parcel is a legal non-conforming lot and non-conforming use due to the fact that it is zoned M which does not allow residential uses. As such the small residence on the property cannot be rebuilt or expanded. All of the surrounding properties (North, East, South, and West) are currently zoned M (manufacturing).

Changing the Subject Property's land use designation to LIND would be consistent with current uses and other future land use designations of property in the area. The current land use designation of SUB is not suitable for the Subject Parcel and not consistent with other land uses in the area. The SUB designation and the current zoning of RE have made the property effectively unusable.

2. Whether the proposed land use change will adversely affect the existing use or usability of adjacent or nearby property;

No, the Subject Property is the only parcel which is not zoned M of all the properties south of Turner Hill Road North, east of Pine Mountain Street, and west of Turner Hill Road. All are zoned M, except for the Subject Property. Also, all property in the block directly west of Pine Mountain Street and the Subject Property is primarily zoned M, with four lots zoned C-1 along Rock Chapel Road, and one individual lot zoned RE. The Owner also owns the 8.5 acre tract adjacent to and south and east of the Subject Property. This application if approved would make the Subject Property's zoning and future land use designation consistent with those on his adjacent parcel and other adjacent parcels.

3. Whether the proposed land use change will result in uses which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;

No. The Owner's adjacent property has direct access to Rock Chapel Road, which directly connects to Turner Hill Road North. That would provide access for the Subject Property. As such, there would be no excess or burdensome impact on existing streets generated by the 1.22 ac parcel. Neither schools or utilities would be negatively affected.

4. Whether the amendment is consistent with the written policies in Comprehensive Plan Text;

Yes. The amendment would make the Subject Property consistent with the written policies in the Comprehensive Plan. The Subject Property currently has a future land use designation of SUB (suburban). The current zoning of the Subject Property is RE (residential estate) requiring a minimum of one acre per lot.

The property's current land use of SUB and the zoning of RE are inconsistent with and contrary to the text of the Comprehensive Plan for all the surrounding properties. In order to have any legal use of the lot, the future land use designation and zoning classification must be changed.

The change in Comprehensive Plan designation and zoning as requested will make the Subject Property consistent with both.

5. Whether there are environmental impacts or consequences resulting from the proposed change;

No. The changes in Land Use and Zoning for the Subject Property would have no negative environmental impacts.

The lot was cleared years ago and the mobile home that was there demolished due to its condition. The Owner wishes to consolidate his properties to have the same land use designation and zoning of this and his adjacent properties to be mutually consistent. Any future development plans would require site development review by DeKalb County prior to any plans being approved and meeting DeKalb County development.

6. Whether there are impacts on properties in an adjoining governmental jurisdiction cases of proposed changes near county boundary lines;

No. The City of Lithonia city limits is across the old RR ROW. The property within the City of Lithonia is undeveloped. The City of Stonecrest is in close proximity to the north and that property is also zoned M.

7. Whether there are other existing or changing conditions affecting the use and development of the affected land areas which support either approval or denial of the proposed land use change;

Yes, all the surrounding properties are zoned M (manufacturing). The area is no longer zoned for residential use, and any zoned M which may be used for residences would be non-conforming. There are still some older residential structures and other properties that have been converted for use as contractor's offices and businesses of the same character.

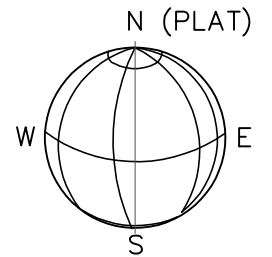
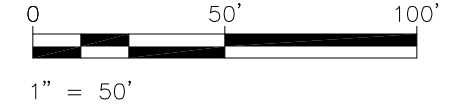
8. Whether there are impacts on historic buildings, sites, districts or archaeological resources resulting from the proposed change.

No. The site is vacant and there are no known archaeological significant features on the site and it is not in an historic district.

GENERAL NOTES:

- 1: This Plat has been prepared without the benefit of a current title report. Easements or encumbrances may exist that are not shown on this plat.
- 2: This plat is subject to any restrictions, easements, covenants or restrictions that may exist either written or unwritten.
- 3: Underground utilities not shown hereon may exist. The Surveyor does not take responsibility for absence or presence of any such utilities.
- 4: No Geodetic monuments were found within 500 feet of this site
- 5: This Plat has been prepared for the exclusive use of the person(s) or entities named hereon.

This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon.
 RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. 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.



| | |
|--|-----------------------|
| IMPERVIOUS CALCULATIONS 2346 PINE MOUNTAIN STEET | |
| CONC. PADS = 3,629 S.F. | |
| GRAVEL = 7,470 S.F. | |
| IMPERVIOUS TOTAL = 11,099 S.F. | |
| LOT COVERAGE | |
| 11,099 S.F. | / 79,361 S.F. = 14.0% |

REFERENCE: DB 21038 PG 155
 DB 23479 PG 198
 DB 19014 PG 250
 SURVEY FOR SHARON ANDERSON BY E.G. DAVIS
 DATED 3-25-2002

FLOOD HAZARD NOTE: THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD AREA AS DEFINED BY FIRM MAP OF DEKALB COUNTY, GEORGIA 13089C0178K EFFECTIVE DATE DECEMBER 8, 2016

SURVEY DATA:

TYPE OF SURVEY: RETRACEMENT
 NORTH PROPERTY LINE IS BEARING BASIS
 FROM SURVEY FOR SHARON ANDERSON BY E.G. DAVIS
 DATED 3-25-2002

TOTAL AREA: 79,361 SQ FT, 1.822 AC

CALCULATED PLAT CLOSURE: 1:237,684

FIELD DATA:

DATE OF FIELD SURVEY 8-8-2018

THE CALCULATED POSITIONAL TOLERANCE BASED ON REDUNDANT LINEAR MEASUREMENTS OF OBSERVED POSITIONS WAS FOUND TO BE 0.015 FEET.

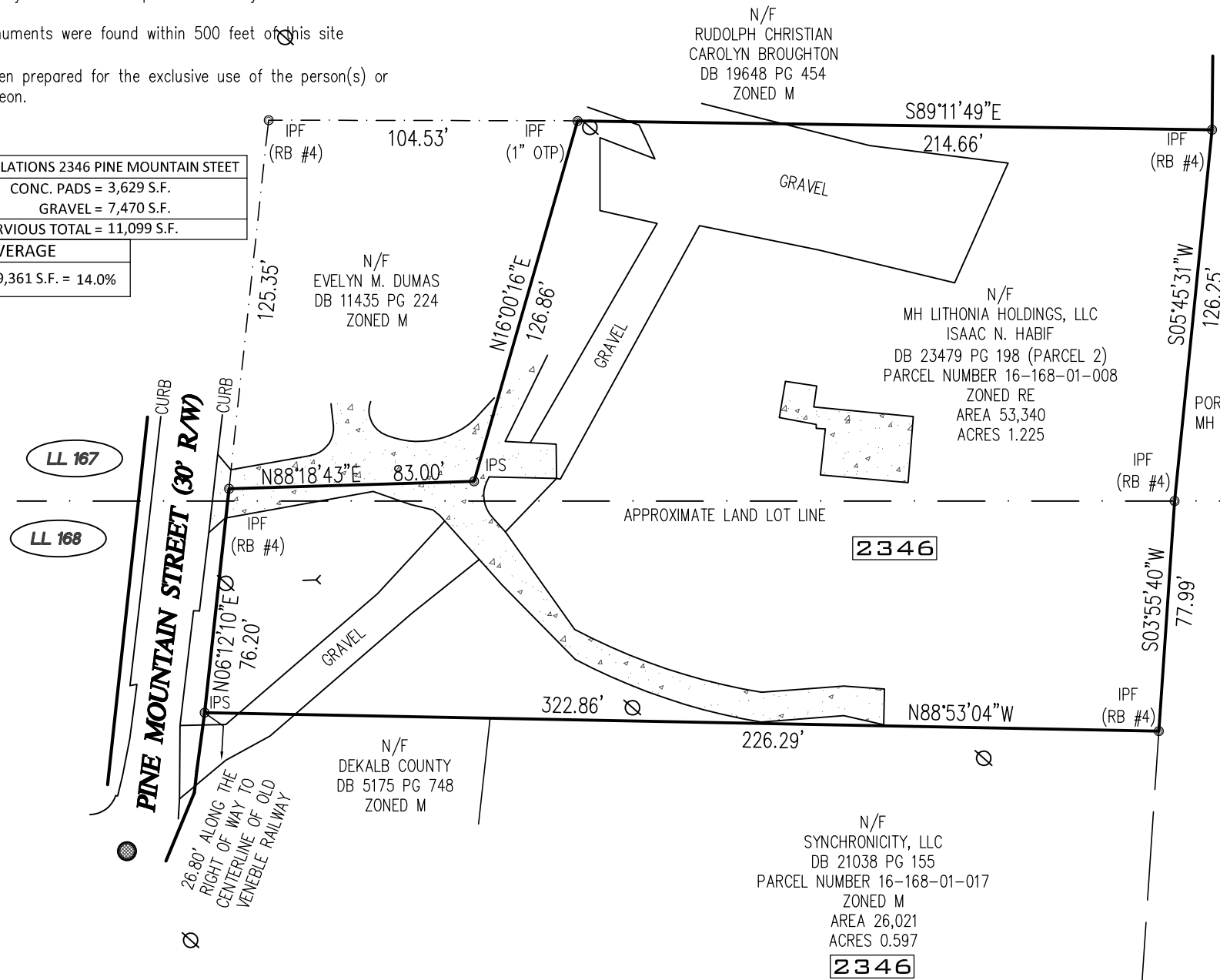
EQUIPMENT:

ELECTRONIC TOTAL STATION

SURVEY FOR
 SHARON ANDERSON

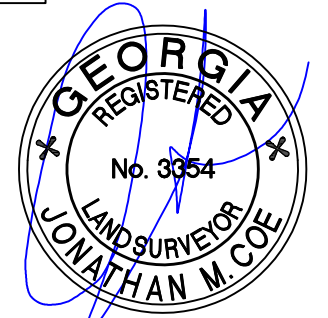
2346 PINE MOUNTAIN STREET

DEKALB COUNTY, GEORGIA
 LAND LOT 167 & 168, DIST 16
 DATE: AUGUST 23, 2018



LEGEND

- EOP EDGE OF PAVEMENT (CURB)
- PP POWER POLE
- R/W RIGHT OF WAY
- IPF IRON PIN FOUND
- IPS 1/2" REBAR SET
- SW SIDE WALK
- BOLLARD
- OHP OVERHEAD POWER
- FH FIRE HYDRANT
- CB CATCH BASIN
- MH MANHOLE
- WM WATER METER
- WV WATER VALVE
- GV GAS VALVE
- GM GAS METER
- LP LIGHT POLE
- CONCRETE PAD



FOR
 DEKALB SURVEYS, INC.
 407 WEST PONCE DE LEON AVENUE
 SUITE B
 DECATUR, GEORGIA 30030
 404.373.9003



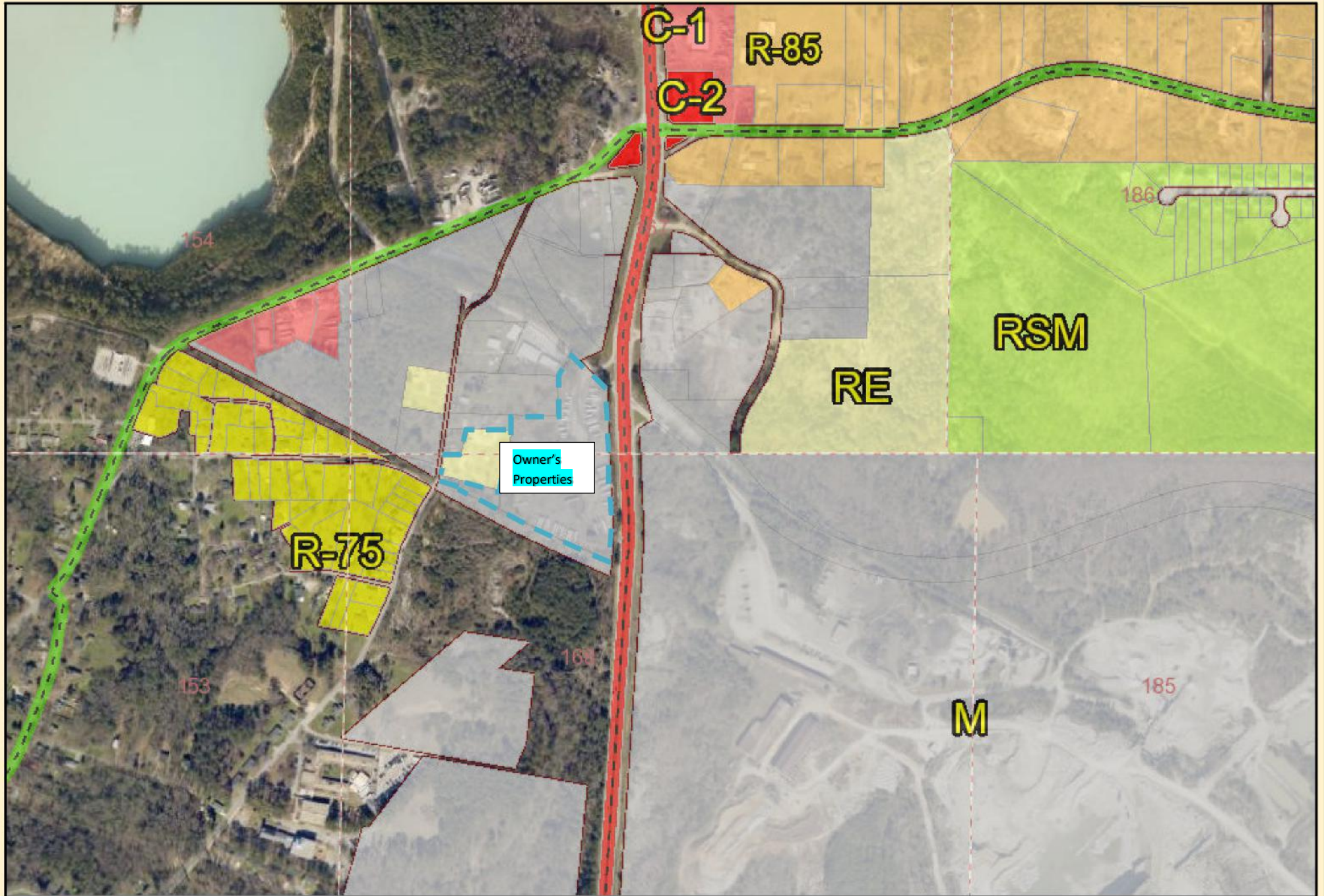
© 2018-2022: THIS 11 X 17 DRAWING AND REPRODUCTIONS ARE THE PROPERTY OF THE SURVEYOR AND MAY NOT BE REPRODUCED, PUBLISHED OR USED IN ANY WAY WITHOUT THE WRITTEN PERMISSION OF THIS SURVEYOR

EXHIBIT "A"

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 167 AND 168 OF THE 16TH DISTRICT OF DEKALB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN SET AT A POINT WHERE THE EASTERLY RIGHT-OF-WAY LINE OF PINE MOUNTAIN STREET (HAVING A 20 FOOT RIGHT-OF-WAY) MEETS THE NORTHERLY RIGHT-OF-WAY LINE OF OLD VENABLE RAILWAY. SAID POINT IS 26.8 FEET FROM THE CENTERLINE OF SAID RAILWAY AND PINE MOUNTAIN STREET; THENCE RUN ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PINE MOUNTAIN STREET NORTH 06 DEGREES 08 MINUTES 00 SECONDS EAST A DISTANCE OF 76.20 FEET TO A NAIL IN A CONCRETE DRIVE; THENCE RUN NORTH 88 DEGREES 16 MINUTES 00 SECONDS EAST A DISTANCE OF 83.00 FEET TO A POINT; THENCE RUN NORTH 16 DEGREES 01 MINUTE 53 SECONDS EAST A DISTANCE OF 126.87 FEET TO A POINT; THENCE RUN SOUTH 89 DEGREES 11 MINUTES 49 SECONDS EAST A DISTANCE OF 214.53 FEET TO AN IRON PIN SET; THENCE RUN SOUTH 05 DEGREES 41 MINUTES 55 SECONDS WEST A DISTANCE OF 126.09 FEET TO A IRON PIN SET ON THE LINE DIVIDING LAND LOTS 167 AND 168; THENCE RUN SOUTH 03 DEGREES 54 MINUTES 01 SECOND WEST A DISTANCE OF 78.00 FEET TO AN IRON PIN SET; THENCE RUN NORTH 88 DEGREES 54 MINUTES 41 SECONDS WEST A DISTANCE OF 322.86 FEET TO AN IRON PIN SET AND THE POINT OF BEGINNING, CONTAINING 1.224 ACRES AS PER SURVEY PREPARED FOR SHARON ANDERSON, BY E. G. DAVIS, GEORGIA REGISTERED LAND SURVEYING NO. 2363, DATED MARCH 25, 2002.

TOGETHER WITH A PERPETUAL EIGHT (8) FOOT WIDE EASEMENT TOGETHER WITH ALL RIGHTS, AND PROVISION NECESSARY FOR THE FULL USE AND ENJOYMENT OF SAID EASEMENT, INCLUDING THE RIGHT OF INGRESS AND EGRESS, PASS AND REPASS, TO AND ACROSS SAID EASEMENT WHICH SAID EASEMENT IS MORE FULLY DESCRIBED IN THAT WARRANTY DEED FROM CHARLES C. FURGERSON TO RANDY LAMAR ANDERSON, DATED FEBRUARY 9, 1978, RECORDED IN DEED BOOK 3747, PAGE 823, DEKALB COUNTY, GEORGIA RECORDS.



Owner's
Properties



DeKalb County Parcel Map

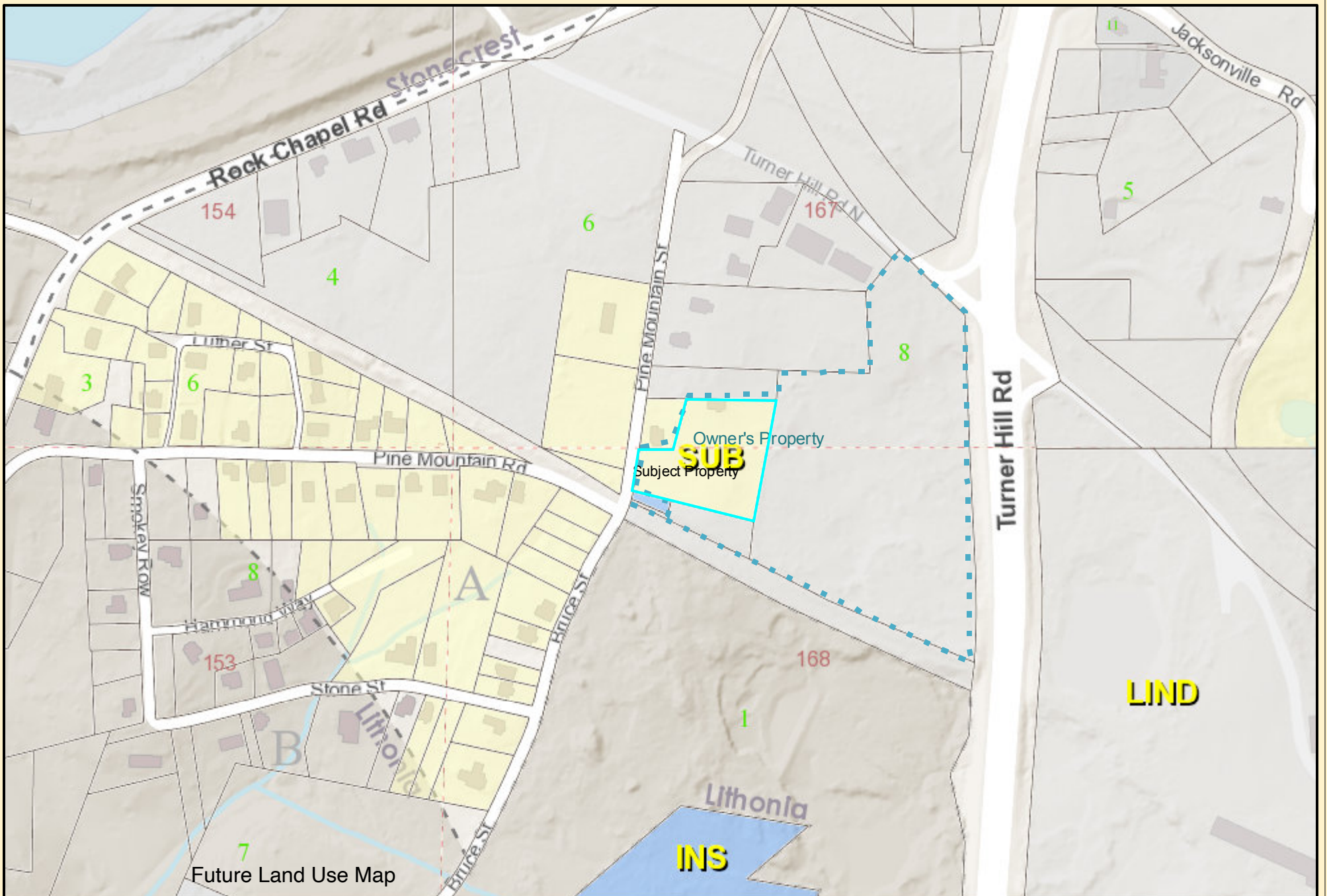


Date Printed: 10/13/2020

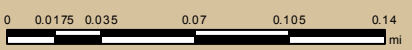


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DeKalb County Parcel Map



Date Printed: 10/13/2020



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2346 Pine Mountain Street
Aerial of 2346 Pine Mountain Street
Parcel # 16 168 01 008

Legend
📍 2346 Pine Mountain St



Google Earth
© 2020 Google

400 ft
N



Joseph L. Cooley AICP RLA JD
Attorney-at-Law
Land Use Planning/Land Use and Zoning Law

DeKalb County Rezoning of Property and Change of Land Use at
2346 Pine Mountain Road, DeKalb County

Appropriateness of Application

and

Constitutional Assertions

The Applicant in order to preserve all rights of appeal and as required by Georgia law for such appeals hereby asserts the following:

The portions of the zoning resolution of DeKalb County and comprehensive land amendment as applied to the Subject Property which classify or may classify the Subject Property so as to prohibit its development as proposed by the Applicant are and would be unconstitutional in that they would destroy the Applicant's property right without first paying fair, adequate and just compensation for such rights in violation of Article I, Section I, Paragraph I of the Constitution of the State of Georgia of 1083, Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the zoning resolution and comprehensive land amendment of DeKalb County to the Subject Property that restricts its use to any classification other than that proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking of the Applicant's property in violation of the Just Compensation Clause of the First Amendment to the Constitution of the United States, Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of Georgia of a983 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 constitute an arbitrary and capricious act by the DeKalb County Board of Commissioners without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I of the Constitution of Georgia of 1083, Article I, 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 by the DeKalb County Board of Commissioners to approve this Application for rezoning and comprehensive plan amendment as proposed by the Applicant would be unconstitutional and discriminate in a arbitrary, capricious and unreasonable manner between the Applicant and owners of similarly situated properties in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 10893 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Any approval of this 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 the Applicant's utilization of the Subject Property would also constitute an arbitrary, capricious, and discriminatory act and would likewise violate the provisions of the State and Federal Constitutions set forth hereinabove.

PUBLIC NOTICE
to
Request for Rezoning of Property

Filed by : Joseph Cooley, Cooley Planning & Land Use Law LLC (agent)
for
MH Lithonia Holdings, LLC and Nessim Properties, LLC (owners)

Located at: 2346 Pine Mountain Street
Lithonia, GA 30058

Current Zoning: RE — Residential estate
Current Future Land Use — SUB (Subdivision)

Proposed Zoning: Light Manufacturing (M)
Proposed Future Land Use — Light Industrial
(LIND)

Current Use: Undeveloped

Proposed Use: Consolidation of parcels to same zoning district as all surrounding properties. Parcels currently owned by the "Owner" will be consolidated for future development and marketing. (not know at this time)

PRE-SUBMITTAL COMMUNITY MEETING TO TAKE PLACE VIA ZOOM:

Date: Wednesday, Feb. 3, 2021 Zoom Mtg #273 3121 2577