

DEPARTMENT OF PLANNING & SUSTAINABILITY

MAJOR MODIFICATION APPLICATION

Existing Conditional Zoning No.: _____

APPLICANT NAME: BE3 Holdings, LLC c/o Battle Law, P.C.

Daytime Phone#: 404.601.7616 Fax #: _____ E-mail: mlb@battlelawpc.com

Mailing Address: One West Court Square, Suite 750 Decatur, GA 30030

OWNER NAME: Timothy Starks/The Klondike Group, LLC (If more than
one owner, attach contact information for each owner)

Daytime Phone#: 404.281.2024 Fax #: _____ E-mail: tos2@bellsouth.net

Mailing Address: 3015 Klondike Road, Lithonia, GA 30038

SUBJECT PROPERTY ADDRESS OR LOCATION: 4155 Briarglade Way, Atlanta, GA 30340 &
4575 Chamblee Tucker Road, Tucker, DeKalb County, GA, 30084

District(s): 18 Land Lot(s): 261 Block(s): 01 Parcel(s): 006 & 062

Acreage or Square Feet: 1.23 Commission District(s): 1 & 7 Existing Zoning: RSM

I hereby authorize the staff of the Planning and Development Department to inspect the property that is the subject of this application.

Have you, the applicant, made a campaign contribution of \$250.00 or more to a DeKalb County government official within the two year period that precedes the date on which you are filing this application?

____ Yes X No If "yes", see page 4. (Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A)

Owner: _____ Agent: X
(Check One)

BATTLE LAW, P.C>

Signature of Applicant: By: 

Printed Name of Applicant: Michele L. Battle Major Modification Application

Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director
Andrew A. Baker, AICP

PRE-APPLICATION FORM
REZONE, SPECIAL LAND USE PERMIT, MODIFICATION, AND LAND USE
(Required prior to filing application: signed copy of this form must be submitted at filing)

Applicant Name: BE3 Holdings, LLC c/o Battle Law.P.C. Phone: 404.601.7616 Email: mlb@battlelawpc.com

Property Address: 4155 Briarglade Way, Atlanta, GA 30340 & 4575 Chamblee Tucker, GA 30084

Tax Parcel ID: 18 261 01 006 & 062 Comm. District(s): 1 & 7 Acreage: 1.23

Existing Use: R-100 Proposed Use 4 Single Family Res. Lots

Supplemental Regs: _____ Overlay District: _____ DRI: _____

Rezoning: Yes _____ No X

Existing Zoning: _____ Proposed Zoning: _____ Square Footage/Number of Units: 4

Rezoning Request: _____

Land Use Plan Amendment: Yes _____ No X

Existing Land Use: _____ Proposed Land Use: _____ Consistent _____ Inconsistent _____

Special Land Use Permit: Yes _____ No X Article Number(s) 27- _____

Special Land Use Request(s) _____

Major Modification:

Existing Case Number(s): CZ-15-20076

Condition(s) to be modified:

See attached SOI Conditions 1, and 3-7

DEPARTMENT OF PLANNING & SUSTAINABILITY

AUTHORIZATION

The property owner should complete this form or a similar, signed and notarized form if the individual who will file the application with the County is not the property owner.

Date: 04/13/2020

TO WHOM IT MAY CONCERN:

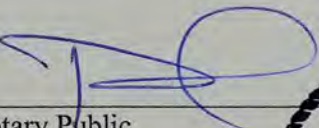
(I), (WE), Timothy Starks as the Managing Member of The Klondike Group, LLC
Name of Owner(s)

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

BE3 Holdings, LLC c/o Battle Law, P.C.


Name of Applicant or Representative

to file an application on (my), (our) behalf.


Notary Public

THE KLONDIKE GROUP, LLC

By:


Owner Timothy O. Starks, its Managing Member

Notary Public

Owner

Notary Public

Owner

Notary Public

Owner



LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 261 of the 18th District of DeKalb County Georgia and being more particularly described as follows:

BEGINNING on the westerly side of the Chamblee-Tucker Road at an iron pin set 543.40 feet southwesterly from where the south side of Menlo Drive intersects with the west side of Chamblee Tucker Road; thence continuing along the west side of Chamblee Tucker Road South 30 degrees 04 minutes 09 seconds East a distance of 168.80 feet to a solid rod; thence leaving said right of way and running North 89 degrees 31 minutes 36 seconds West a distance of 395.19 feet to a 1 inch open top pipe found; then North 08 degrees 05 minutes 32 seconds East a distance of 20.77 feet to a iron pin found; then North 46 degrees 37 minutes 22 seconds West a distance of 35.21 feet to an iron pin found on Briarglade Way (60 foot right-of-way as said right of way forms a cul-de-sac); thence continuing along BriargladeWay right of way the arc of a curve to the left 90.88 feet said curve having a radius of 60.00 feet and being subtended by a chord bearing North 00 degrees 37 minutes 37 seconds East, a distance of 82.44 feet to an iron pin found; thence leaving said right of way and running North 68 degrees 35 minutes 49 seconds East a distance of 44.13 feet to an iron pin found; thence North 07 degrees 38 minutes 07 seconds a distance of 10.23 feet to an iron pin found; thence South 87 degrees 54 minutes 26 seconds East a distance of 290.11 feet to an iron pin set, the POINT OF BEGINNING.

Said tract contains 1.230 acres/53,588 sq. ft., as shown on that Survey for The Klondike Group, LLC prepared by Ricky C. Busbee, G.R.L.S.# 2497, Busbee & Poss Land Surveying Company dated 6/17/2015.

STATEMENT OF INTENT AND JUSTIFICATION

and

Other Material Required by
DeKalb County Zoning Ordinance
for the
Application to Amend Official Zoning Map in connection with
a Major Change of Condition for CZ-15-20076
of

**BE3 HOLDINGS, LLC
c/o BATTLE LAW, P.C.**

For

4155 Briarglade Way and 4575 Chamblee Tucker Road,
DeKalb County, GA

Commission Districts 1 & 7

Submitted for Applicant by:

Michèle L. Battle, Esq.
Battle Law, P.C.
One West Court Sq., Suite 750
Decatur, Georgia 30030
404-601-7616

I. STATEMENT OF INTENT

Pursuant to CZ 15-20076 the properties at 4155 Briarglade Way and 4575 Chamblee Tucker Road (the “Subject Property”) were rezoned from R-100 to RSM to allow for the development of four (4) single family residential lots with a minimum lot size of 5,000 sq. ft., including the construction of a public right of way. For the past 4 years the owner of the Subject Property, The Klondike Group, LLC, has had the property listed for sale. Unfortunately, no developer/builder has been interested in acquiring the Subject Property based upon the approved site plan, a copy of which is attached hereto as Exhibit “A” and by this reference incorporated herein. The primary issue with the site plan is the installation of the road which constricts the size of the lots, and significantly increase the development costs for the development of the Subject Property. Constructing a new public right of way is cost prohibitive and would result in a significant increase in the impervious surface, thereby requiring a significant detention facility to be built onsite. Additionally, the right of way would have to be reduced in width in order to allow for the four lots to have sufficient depth to have a buildable envelope that would allow for a house that would be consistent with the surrounding homes, and market demands.

The Applicant, BE3 Holdings, LLC, currently has the Subject Property under contract for purchase, subject, in part, to the approval of this Major Change of Condition Application. The Applicant has developed the site plan attached hereto as Exhibit “B” and by this reference incorporated herein, that will allow for the development of four single family lots, with a minimum of lot size of 12,346 sq. ft., which is more consistent with the surrounding lots sizes. The proposed lot configuration eliminates the need for the construction of an extension to Briarglade Way. Additionally, the Applicant is proposing that the lots will drain into the Briarglade Way and Chamblee Tucker right of ways naturally, or with the addition of a berm and swale for Lot 3, which

eliminates the need for a detention pond. See Exhibit "C" attached hereto and by this reference incorporated herein. There is no question that this site plan is a better fit for the surrounding community.

In order to achieve the proposed new lot layout, the Applicant is asking for the following modifications to the zoning conditions:

April 12, 20202
November 12, 2015

Proposed Revised Conditions
RECOMMENDED CONDITIONS
Z-15-20076

1. Maximum of four single-family lots as shown on conceptual site plan dated March 12, 2020.
2. Building facades shall be 70% brick.
3. Minimum unit size of ~~1,200 square feet~~ 2,400 sq. ft. and a maximum of 3,500 sq. ft.
4. A ten-foot wide landscape strip shall be provided along the northern, southern, and eastern property lines. The existing mature vegetation within the landscape strip shall be undisturbed and supplemented with additional vegetation to provide an effective visual screen as approved by the County Arborist. Provide an 8-foot tall opaque fence along the north, east, and south external property lines.
5. No access shall be provided from Chamblee Tucker Road. ~~Access shall be from an extension of Briarglade Way.~~ Access shall be from an extension of Briarglade Way to Briarglade Way
6. ~~Provide internal public road subject to approval of the Transportation Division of Public Works.~~
7. ~~Comply with Sketch Plat requirements prior to the issuance of a Land Disturbance Permit.~~
8. The approval of this rezoning application by the Board of Commissioners has no bearing on the requirements for other regulatory approvals under the authority of the Historic Preservation Commission, the Zoning Board of Appeals, or other entity whose decision should be based on the merits of the application under review by such entity.
9. No more than 1 driveway per house fronting on Briarglade Way. The two homes on Briarglade Way may share a joint driveway, but the joint driveway shall not extend to the two homes having frontage on Chamblee Tucker Road.
10. The lot coverage ratio shall not exceed 35%
11. The front setback shall be a minimum of 35ft for the lots having frontage on Briarglade Way, and a minimum of 30 ft for the lots having frontage on Chamblee Tucker Road.

It is the Applicant's position that there are currently two existing lots, which can each be subdivided into two lots. This eliminates the need to go through the Sketch Plat process, which

was only required previously due to zoning condition requiring the provision of an internal public road, with lots coming off of the new road.

On February 27, 2020, the Applicant held a community meeting with all residents within 500 ft of the Subject Property to notify them of the proposed revision to the site plan. There was universal agreement that the site plan was a better site plan, and significantly reduced the amount of stormwater drainage that would be generated by the proposed lots. Yet, despite these agreements, concerns were still raised regarding stormwater run off due to the issues that community is having with the property located at 4557 Chamblee Tucker Road. It is the Applicant's belief that the proposed site plan will lessen the amount of stormwater runoff currently being generated by the Subject Property onto the property at 4144 Briarglade Way, which then flows to the low point behind that property, and continues behind the homes located at 4136, 4128 and 4120 Briarglade Way which are currently experiencing significant flooding due in large part to the conditions that have been allowed to exist at 4557 Chamblee Tucker Road. Currently, .71 acres of the Subject Property drain onto 4144 Briarglade Way. The new plan shows only .24 acre draining in the direction of 4144 Briarglade Way, and it is the Applicant's intent to construction a berm and swale to direct the water towards the Briarglade Way right of way into the public sewer system that runs along Briarglade Way.

Based upon the foregoing, it is the Applicant's belief that the current field conditions, and drainage issues in the surrounding area, support the approval of this Application. Therefore, the Applicant is requesting the approval of this Application, subject to the modified conditions set forth above, which include additional conditions requested by the surrounding community.


IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that this Major Change of Condition Application be approved. Please note that the Applicant's Notice of Constitutional Allegations and Preservation of Constitutional Rights have been submitted with this Application and are attached hereto and by this reference incorporated herein.

This 12th day of April, 2020.

Respectfully submitted,

BATTLE LAW, P.C.

By: 

Michèle L. Battle, Esq.
Attorney For Applicant

NOTICE OF CONSTITUTIONAL ALLEGATIONS
AND PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that the Zoning Ordinance and Development Regulations of DeKalb County, Georgia, as amended from time to time, to the extent that they are construed so as to preclude the use and development of the Subject Property, as per this Application, will be unconstitutional as a taking of property, a denial of equal protection, an arbitrary and capricious act, and an unlawful delegation of authority under the specific constitutional provisions later set forth herein; deprive the current owner(s) of any alternative reasonable use and development of the Subject Property; and deprive the current owner(s) of any reasonable use and development of the Subject Property.

Accordingly, Applicant submits that denial of this Application would constitute an arbitrary and unreasonable use of police powers because it would bear no substantial relationship to the public health, safety, morality, or general welfare of the public and substantially harm the Subject Property's owner(s). Further, it would constitute a taking of the owner's(s') private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, 1983, and the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Further, the Applicant respectfully submits that DeKalb County Board of Commissioner's failure to approve this Application would be unconstitutional and would discriminate in an arbitrary, capricious, and unreasonable manner between the Subject Property's owner(s) and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the

Constitution of the State of Georgia, 1983, and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

Campaign Contribution Disclosure Statements

CAMPAIGN CONTRIBUTIONS DISCLOSURE STATEMENT

Pursuant to the provisions of 36 O.C.G.A. 67(A), please find below a list of those contributions made by Michèle L Battle or Battle Law, P.C. in the past two years, aggregating \$250.00 or more, to local government officials who will consider this application.

NAME OF GOV'T OFFICIAL	OFFICIAL POSITION	AMOUNT OF CONTRIBUTION
Kathie Gannon	Commissioner	\$350
Mereda Davis Johnson	Commissioner	\$500
Larry Johnson	Commissioner	\$700
Lorraine Cochran-Johnson	Commissioner	\$500

By: 
Printed Name: Michele L. Battle



SITE DATA

OWNER/DEVELOPER: THE KLONDIKE GROUP
3015 KLONDIKE ROAD
LITHONIA, GA 30058

ENGINEER: SOUTHEASTERN ENGINEERING, INC.
2470 SANDY PLAINS ROAD
MARIETTA, GA 30066
PHONE: 770.321.3936

BOUNDARY : BOUNDARY SURVEY BY BUSBEE & POSS DATED JUNE 16, 2015

TOPOGRAPHY: DEKALB COUNTY GIS

PARCEL ID: 18 261 01 006

SITE ADDRESS: 4575 CHAMBLEE TUCKER ROAD

SITE AREA: 53,588SF / 1.23 ACRES

NUMBER OF LOTS: 4

DENSITY: 4 LOTS / 1.23 ACRES = 3.25 UNITS PER ACRE

OPEN SPACE: N/A LESS THAN 5 ACRES

FLOOD INFO: THIS SITE NOT LOCATED WITHIN THE 100 YEAR FLOOD ZONE PER FEMA FLOOD PANEL # 13089C0076J, DATED 5/16/2013

EXISTING ZONING: R-100

PROPOSED ZONING: RSM

DEVELOPMENT STANDARDS: MIN. LOT SIZE: 5,000 S.F.
MAX. DENSITY: 4-8 UNITS PER ACRE
MIN. LOT WIDTH: 50'
MIN. FRONT BUILDING SETBACK: 20'
MIN. SIDE BUILDING SETBACK: 3' (WITH NO LESS THAN 10' BETWEEN STRUCTURES)
MIN. REAR BUILDING SETBACK: 20'
MAX BUILDING HEIGHT: 35'
MAX LOT COVERAGE: 50%
HEATED LIVING AREA: 1,200 SF

NOTE: SITE TO BE SERVICED BY PUBLIC WATER AND SEWER

SITE TO BE DEVELOPED WITH SINGLE FAMILY DETACHED HOMES, NO TRANSITIONAL BUFFER REQUIRED. (5.4.5 TRANSITIONAL BUFFERS)

SEI
SOUTHEASTERN ENGINEERING, INC.
2470 Sandy Plains Road, Marietta, Georgia 30066
tel: 770-321-3936 fax: 770-321-3955
www.seengineering.com

DATE	ISSUED DESCRIPTION
No	

THE KLONDIKE GROUP, LLC
3015 KLONDIKE ROAD
LITHONIA, GA 30058

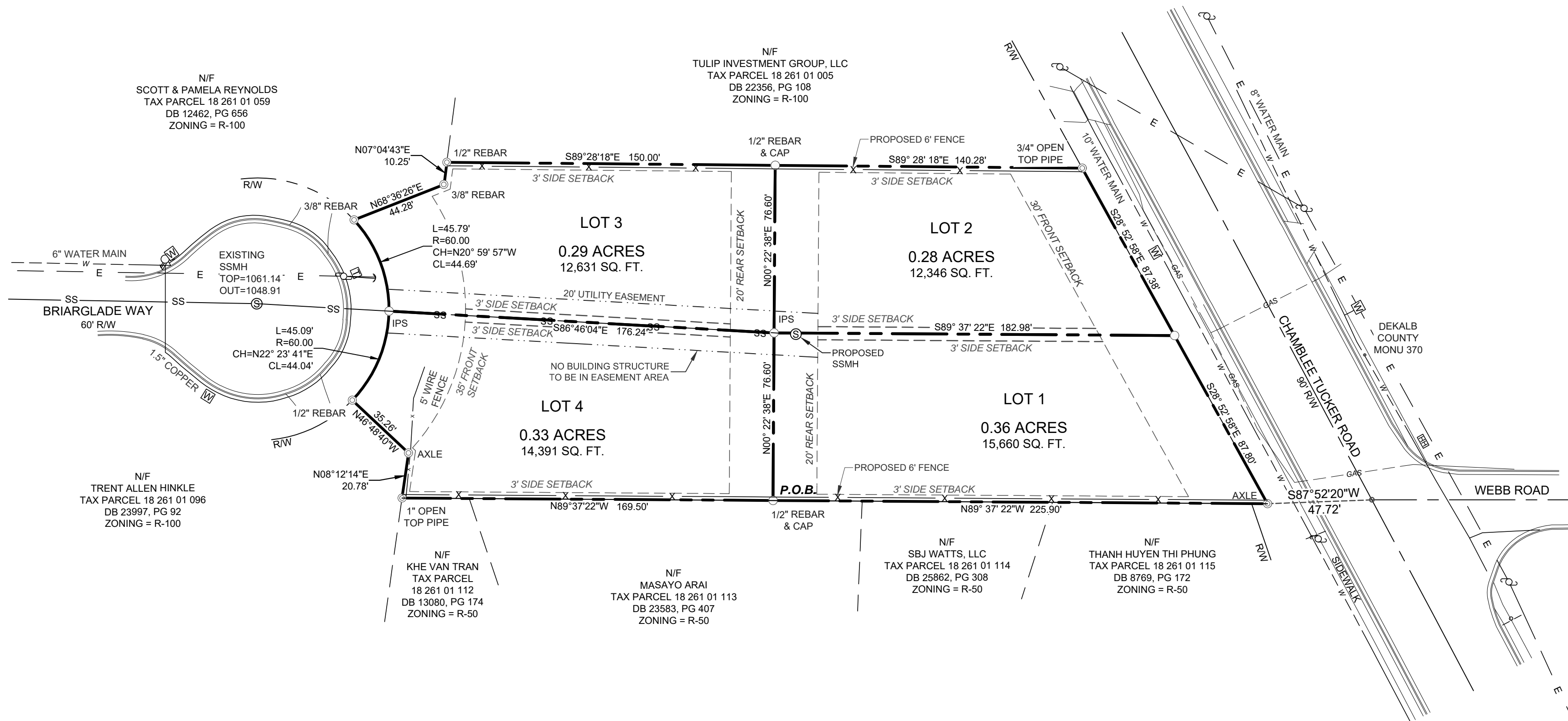
ZONING SITE PLAN
PROJECT LOCATED AT:
4575 CHAMBLEE TUCKER ROAD
LL 261 OF THE 18TH DISTRICT
2ND SECTION
DEKALB COUNTY, GEORGIA

GEORGIA
REGISTERED
NO. 31277
PROFESSIONAL
ENGINEER
WAYNE MATTHEWS JR.

Project No.:
Designed By: NRA
Issue Date: 9/17/15

811
Know what's below.
Call before you dig.

THIS BLOCK RESERVED FOR CLERK OF COURT



KEVIN M. BROWN
FALCON DESIGN CONSULTANTS, LLC
235 CORPORATE CENTER DRIVE
STOCKBRIDGE, GEORGIA 30281


 KEVIN M. BROWN
 REGISTERED LAND SURVEYOR #2960

3/12/2020
DATE

STOCKBRIDGE OFFICE
235 CORP. CT. DR. STE 200
STOCKBRIDGE, GEORGIA 30281
Ph (770) 389-8666 - Fax (770) 389-8656

CUMMING OFFICE
500 PIRKLE FERRY RD., STE C
CUMMING, GEORGIA 30040
Ph. (678) 807-7100

NEWNAN OFFICE
40 GREENWAY CT., STE A
NEWNAN, GEORGIA 30265
Ph. (770) 755-7978

www.fds-llc.com

PROPOSED LOT CONFIGURATION
FOR
BE3 HOLDING, LLC
4155 BRIARGLADE WAY & 4575 CHAMBLEE TUCKER
LOCATED IN:
LAND LOT 261, 18TH DISTRICT
DEKALB COUNTY, GEORGIA

REVISIONS	
1.	
2.	
3.	
4.	

DATE:	3-12-2020
SCALE:	1" = 40'
FILE NUMBER:	258.001
DRAWN BY:	A MURDAUGH
REVIEWED BY:	K. BROWN

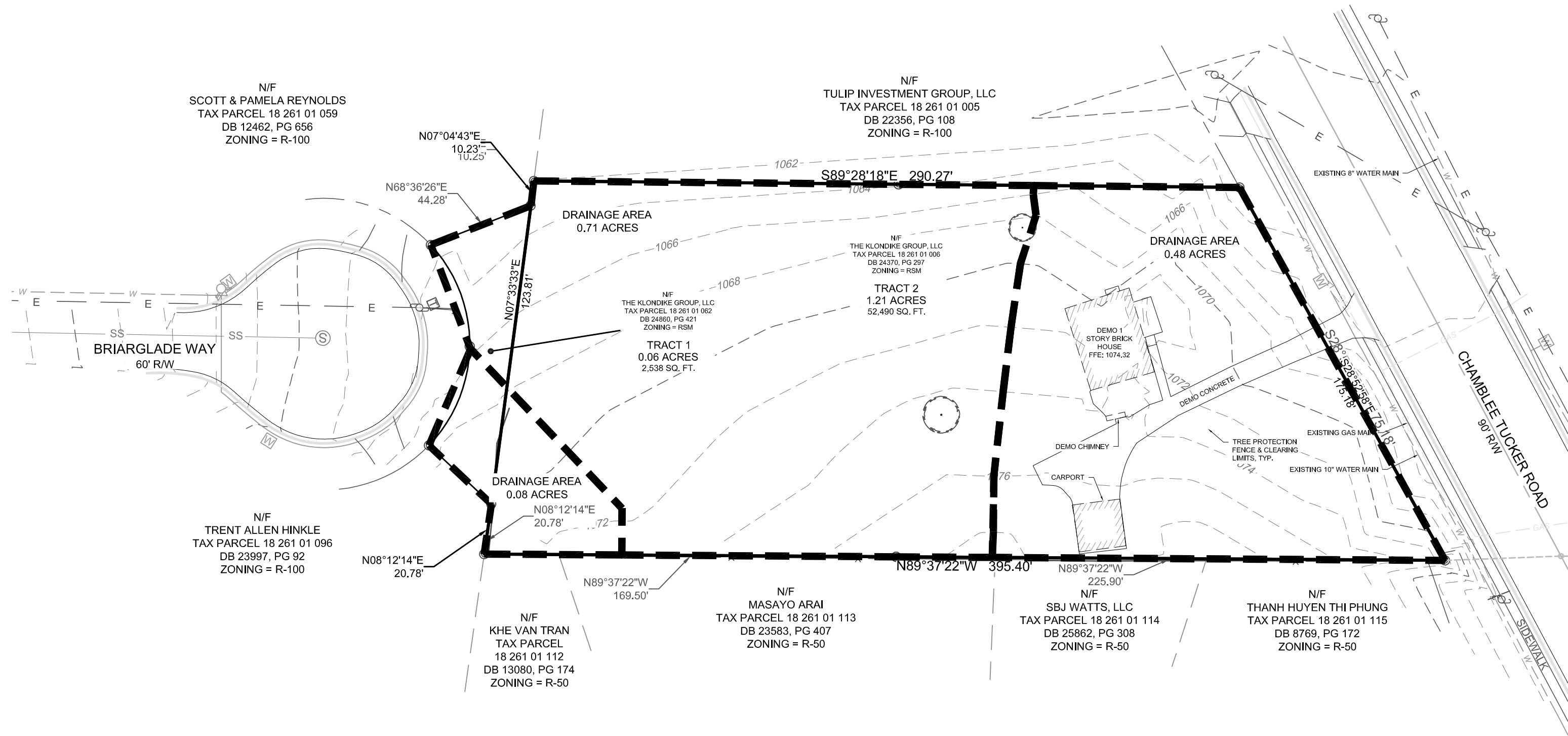


THIS DOCUMENT IS NOT VALID UNLESS IT
BEARS THE
ORIGINAL SIGNATURE OF THE REGISTRANT
ACROSS THE REGISTRANT'S SEAL.

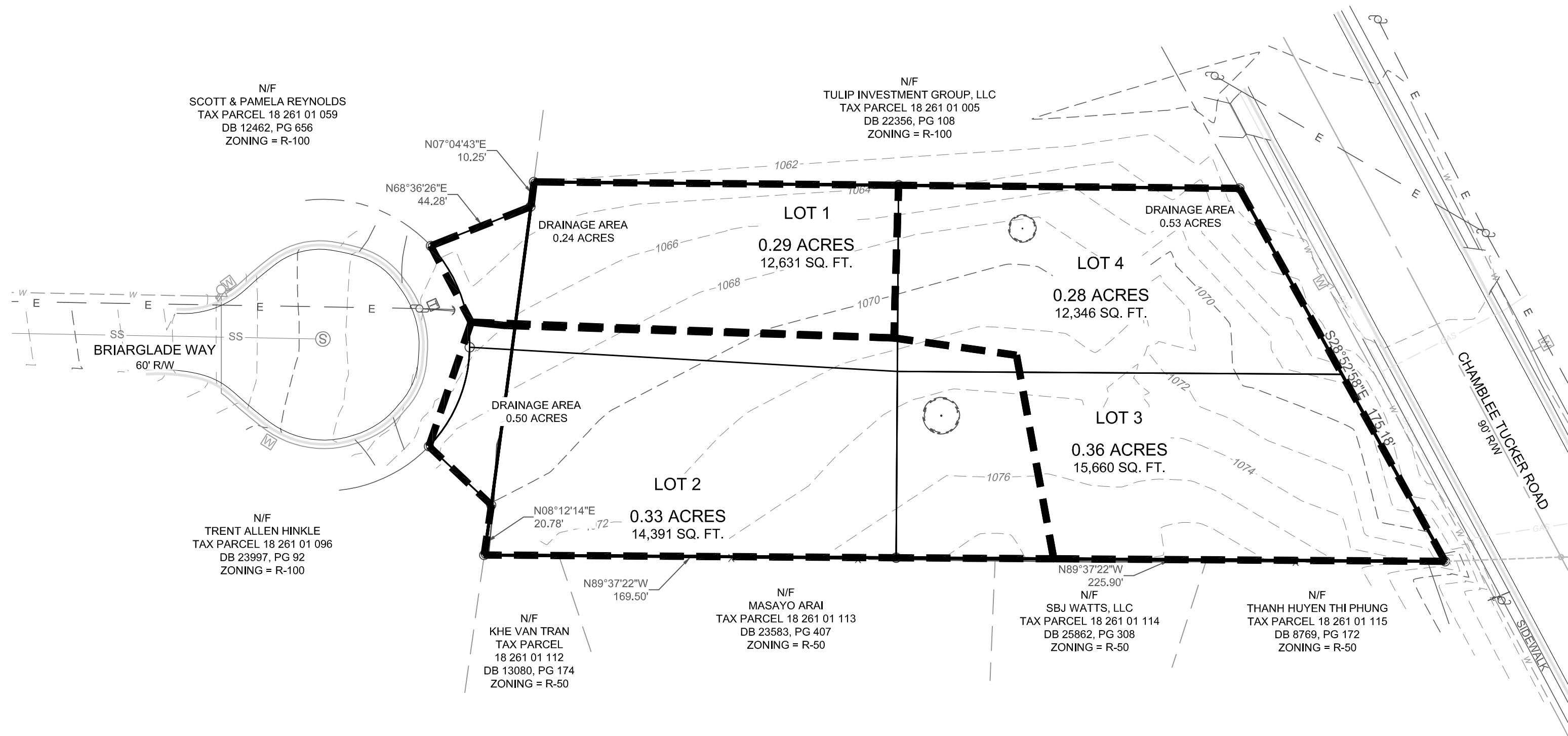
SHEET NUMBER

1 of 1

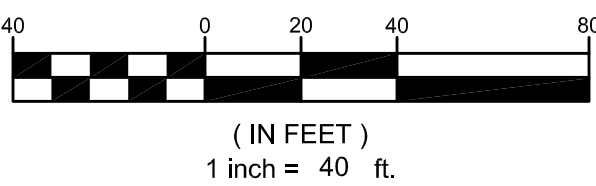
PRE DEVELOPED DRAINAGE BASINS



POST DEVELOPED DRAINAGE BASINS



GRAPHIC SCALE



CIVIL ENGINEERING
CONSTRUCTION MANAGEMENT
LAND SURVEYING
LANDSCAPE ARCHITECT
LAND PLANNING

FALCON DESIGN CONSULTANTS

STOCKBRIDGE OFFICE
215 CORY CTR. DR. SUITE 200
STOCKBRIDGE, GEORGIA 30281
PH: (770) 389-6666 • Fax: (770) 389-6666

NEWMAN OFFICE
20 GREENWAY CT. STE. A
NEWMAN, GEORGIA 30255
PH: (770) 752-2978

CUMMING OFFICE
550 PEARCE STREET, SUITE 111
CUMMING, GEORGIA 30040
PH: (770) 897-1100

www.fdc-llc.com

DRAINAGE EXHIBIT
FOR
4575 CHAMBLEE TUCKER RD

LOCATED IN:
**LAND LOT 261, DISTRICTS 18
DEKALB COUNTY, GA**

REVISIONS

DATE	REVISED PER COUNTY COMMENTS
1. 2/20/20	
2.	
3.	
4.	
5.	
6.	
7.	
8.	

Know what's below
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1 (800) 362-7469 • 404 (404) 521-1000

811

DATE: 2/4/20
SCALE: 1" = 40'
PROJ NUMBER: 258.001
DRAWN BY: CMK
REVIEWED BY: TP
REVISED BY:

THIS DOCUMENT IS NOT VALID UNLESS IT BEARS THE ORIGINAL SIGNATURE OF THE REGISTRANT ACROSS THE REGISTRANT'S SEAL.

SHEET NUMBER
1.0