



DeKalb County Department of Planning & Sustainability

330 Ponce De Leon Avenue, Suite 500

Decatur, GA 30030

(404) 371-2155 / plandev@dekalbcountyga.gov

Michael Thurmond
Chief Executive Officer

Planning Commission Hearing Date: November 2, 2017, 6:30 P.M.
Board of Commissioners Hearing Date: November 26, 2017, 6:30 P.M.

STAFF ANALYSIS

Case No.: CZ-17-21828 **Agenda #:** N. 3

Location/Address: 4226 Loveless Drive and 4280 and 4358 Loveless Place **Commission District:** 3 **Super District:** 6

Parcel ID: 15-011-01-044, 15-011-01-045, 15-011-01-062

Request: Major Modification to change or remove eight of 17 conditions of zoning approved pursuant to CZ-05024 for a 376-unit single-family residential development known as "The Preserve at Conley".

Property Owner: Paran Homes, LLC

Applicant/Agent: Linda Dunlavy for Paran Homes, LLC

Acreage: 120.88

Existing Land Use: Partially developed subdivision with road infrastructure only.

Surrounding Properties: To the north, northeast, east, southeast, south, southwest, and west: Single-family residential and undeveloped, wooded properties.

Adjacent Zoning: **North:** R-100 **South:** R-100 **East:** R-100 **West:** RSM **Northeast:** R-100 **Northwest:** R-100 **Southeast:** R-100 **Southwest:** R-100

Comprehensive Plan: Suburban **Consistent** **Inconsistent**

Proposed Density: 3.07 units/acre	Existing Density: None
Proposed Units: 371	Existing Units/Square Feet: None
Proposed Lot Coverage: 40%	Existing Lot Coverage: Estimated 5% (streets)

Zoning History:

The property was rezoned in 2005 from R-100 (Single-Family Residential) to PC-1 (Planned Community – 1) for a 376-unit single-family residential subdivision on land north and south of Conley Creek. (PC-1 was converted to MR-1 in 2015.) The Board of Commissioners approved 17 conditions, summarized as follows: 1) The site plan dated June 22, 2005; 2) 1.5 acres shall be set aside for a day care center as well as ten specified commercial uses; 3) units north of

Conley Creek that abut R-100 shall be a minimum of 15,000 square feet. 4) No vinyl or aluminum siding; exterior materials specified; and variation in front facades required. 5) A homeowners' association shall be established. 6) A prohibition in the covenants for the property against more than 10% of the units being rented at any given time and certain other restrictions on rentals. 7) Utilities shall be underground. 8) The developer shall install streetlights within the development. 9) The developer shall install at least six picnic tables along paths within the development; 10) The developer shall install at least one historical marker within the development. 11) At least 15% of the single-family residences shall be marketed as work force housing. 12) The developer shall install a manhole at the northern end of the property for a future sewer connection. 13) The developer shall enter into a project improvement agreement with DeKalb County regarding improvements to Loveless Drive. 14) The developer shall convey to the County approximately 42 acres of greenspace along Conley Creek. 15) Paths within the development shall be eight feet wide and shall be constructed of asphalt. 16) The developer shall enter into an agreement with the PATH Foundation, which shall construct and maintain the paths. 17) The developer shall construct paths and/or greenspace to connect the subdivision to Bouldercrest Park and the residences in the adjoining Clayton County subdivision to the south.

The property is included in Tier 5 of the Bouldercrest Overlay District. The Overlay, which was approved in 2013, does not allow any commercial uses in Tier 5.

SITE ANALYSIS

The subject property is a 120.88 acre tract located in southwest DeKalb County, approximately ½ mile southeast of the intersection of Bouldercrest Road and Cedar Grove Road. Bouldercrest Park adjoins the property to the east. Conley Creek traverses the center of the tract. A 351 – 995-foot area through which the creek runs is classified as wetlands, and would remain undeveloped. The development is proposed in three phases, called “pods”. Pods A and C are located south of the wetlands, and Pod B is located north of the wetlands. Vehicular access is provided at two locations on the north border of the property: at the dead end of Loveless Drive, a two-way local street, and at the dead end of Loveless Place, a two-way local street with curb and gutter. The site plan shows two potential vehicular connections on the south side of the property, although they do not appear to connect to existing streets in Clayton County. The property has been cleared and graded, and most of the streets and stormwater infrastructure have been installed, in accordance with the layout depicted on subdivision plats approved by the County on April 6, 2006.

The character of the surrounding area is single-family residential with primarily R-100 zoning. Homes to the northwest, north, and northeast were constructed in the late 1950s through the late 1960s. A residential subdivision to the southeast was constructed around 1994, and a subdivision to the southwest, zoned RSM, was constructed around 2005. The latter is the only residential neighborhood in the area that is not zoned R-100.

The property is located within the Bouldercrest Overlay District, Tier 5, and the Soapstone Ridge Historic District. The application states that the previous applicant performed a cultural resources assessment prior to the 2005 rezoning and identified one prehistoric archeological site and four historic home sites. The approved layout enabled these sites to remain undisturbed.

The previous zoning classification of PC-1 (converted to MU-1 in 2015) for a mixed single-family residential and non-residential development was considered, in 2005, to be suitable in the context of surrounding land uses. The application now under consideration does not request a change in the zoning classification; however, it requests that some of the 2005 conditions be deleted or modified to reflect current conditions.

PROJECT ANALYSIS

The proposal is to develop the property in substantial accordance with the layout that was approved in 2006, using the streets that have already been constructed. The purpose of the application for a Major Modification is to modify the conditions approved in 2005 as follows:

- Modify Condition No. 1, which conditions the development to a 2005 conceptual site plan, to acknowledge that the development was started and will proceed in accordance with the 2006 subdivision plat.
- Remove Condition No. 2, which required day care and commercial uses.
- Modify Condition No. 6 regarding renting of homes to remove the language that describes the circumstances under which a home may be rented and the maximum duration of a lease.
- Modify Condition No. 11 regarding workforce housing to reflect current median incomes and current workforce housing prices.
- Modify Condition No. 13 regarding improvements to Loveless Drive, to require the developer to temporarily widen Loveless Drive but require DeKalb County to make permanent improvements to Loveless Drive. The developer would be obligated to pay to DeKalb County an unspecified amount for the permanent road improvements, but no more than \$350,000.
- Modify Condition No. 15 to allow the paths within the development to be made of “materials best suited for their location, the topography, and environmental features present within the confines of the path” rather than solely of asphalt.
- Remove Condition No. 16 because the Path Foundation has not shown any interest in constructing or maintaining the paths within the development.
- Modify Condition No. 17 to propose a tentative location for the path near the eastern border of the property.

The applicant proposes that all other conditions remain as approved in 2005.

LAND USE AND ZONING ANALYSIS

Section 27-832 of the Zoning Ordinance, “Standards and factors governing review of proposed amendments to the official zoning map” states that the following standards and factors shall govern the review of all proposed amendments to the zoning maps.

A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan:

The policies of the 2035 Comprehensive Plan for the Suburban character area tend to support residential developments that follow traditional neighborhood principals such as a grid street pattern and pedestrian access to retail and other services. The curvilinear street pattern has already been established by initial construction of the street infrastructure. With the adoption of the Bouldercrest Overlay District, the opportunity to provide small-scale convenience goods and services within the development was eliminated, since non-residential uses are not allowed in Tier 5.

The density of the development, 3.1 units per acre, appears to be higher than the older residential areas along Bouldercrest Road but lower than newer neighborhoods to the west and southwest such as Grant Forest. The development establishes an appropriate development pattern at the middle of the range of densities found in surrounding areas.

Installation of trails to connect the development with Bouldercrest Park is consistent with the following policy of the 2035 Comprehensive Plan: “Wherever possible, connect to a regional network of greenspace and trails, available to pedestrians.” (Suburban Character Area Policy No. 10)

B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties:

The proposed changes to the 2006 conditions will not change the essential character of the development, which will remain a predominantly single-family residential development. As such, it is suitable in view of the use and development of adjacent and nearby properties.

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

Due to adoption of the Bouldercrest Overlay District, which does not allow non-residential uses in Tier 5, it is not possible to develop the property in accordance with Condition No. 2. In addition, some of the conditions impose outdated or impractical obligations on the developer. Thus, the property does not appear to have reasonable economic use as currently zoned (i.e., with the conditions approved in 2006).

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

The proposed modifications to the 2006 conditions would not cause the development to create adverse effects on adjacent or nearby property. Homeowners on Loveless Drive would experience moderate increases in traffic along that street. The eventual widening and installation of curbs and gutters on the street might compensate, to some extent, for traffic increases.

E. 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:

Market conditions have changed since initial adoption of the zoning conditions in 2006. In addition, the Bouldercrest Overlay District was adopted. The modifications are necessary to reflect current market conditions and zoning restrictions.

F. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources:

When the rezoning application was filed in 2005, one prehistoric archaeological site and four historic home sites were identified in a cultural resources assessment. However, the layout of the proposed development enables new construction to avoid these sites.

G. 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: Improvements to Loveless Drive will be necessary to ensure vehicular access to the site. In addition, the developer will need to provide a street connection in Clayton County to Pods A and C. The school district has commented, "The new development is expected to significantly affect enrollment at Cedar Grove ES. Additional capacity may be needed at Cedar Grove ES, including portable classrooms."

Compliance with District Standards:

Because the development was approved in 2006 with PC-1 zoning that was replaced in 2015 with the MU-1 district, elements of the site plan might or might not comply with the MU-1 district standards. However, since no changes are being proposed to the approved site plan, it is not necessary to review it for compliance with the district standards. In addition it would be impractical to require any changes that might bring the site layout into conformity with MU-1 standards, because the streets have already been constructed.

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

The density of the development, 3.1 units per acre, appears to be higher than the older residential areas along Bouldercrest Road but lower than newer neighborhoods to the west and southwest. The development establishes an appropriate development pattern at the middle of the range of densities found in surrounding areas. Installation

of trails to connect the development with Bouldercrest Park is consistent with the following policy of the 2035 Comprehensive Plan: "Wherever possible, connect to a regional network of greenspace and trails, available to pedestrians." (Suburban Character Area Policy No. 10) The proposed changes to the 2006 conditions will not change the essential character of the development, which will remain a predominantly single-family residential development that is suitable in view of the use and development of adjacent and nearby properties. The proposed changes are appropriate, given the history of the development, the changing housing market, and the adoption of the Bouldercrest Overlay District. Therefore, the Department of Planning and Sustainability recommends "Approval" with the following conditions:

1. With the exception of the path locations and the provision for a day care facility and retail depicted, the development of the Property shall be in substantial compliance with the Conceptual Plan prepared for the Preserve at Conley Creek by Moore Bass Consulting dated June 22, 2005 (the "Conceptual Plan"). In lieu of the day care facility and the retail depicted the developer shall provide an amenities package comprised of a club house, playground and multi-use playing field.
2. All lots located north of Conley Creek that abut existing R-100 lots shall be a minimum of 15,000 square feet.
4. There shall be no vinyl or aluminum siding used within the development. All townhomes shall have exteriors of brick, stucco, stone or other masonry, "Hardi-Plank" clapboards, cedar shake or shingles, or some combination of these materials. The design of the front facades shall vary such that two adjacent homes will not be the same.
5. There shall be a mandatory homeowners' association to own and control all common areas and green space not conveyed to the County. The developer shall establish an additional mandatory homeowners association for the townhouses built within the development to maintain the yards and facades of all townhouses.
6. The mandatory homeowners' association shall contain provisions that cap rental units within the development. The covenants for the Property, shall be provided to DeKalb County for review prior to issuance of the final plat. The recorded covenants shall restrict no more than ten percent of the lot owners from being rental units at any given time, except in instances of demonstrable hardship, to be determined by the Homeowners Association, as may be amended from time to time by the Homeowners Association.
7. All utilities shall be underground.
8. The developer shall install streetlights within the development.
9. The developer shall install at least six (6) picnic tables along paths or open space within the development.
10. The developer shall install at least one (1) historical marker within the proposed development that identifies the archeological site in and the cemetery adjacent to the northern portion of the development.
11. At least 15% of the single-family residences shall be marketed as work force housing. Work force housing is defined as a home that is affordable to very low to moderate income households. A moderate income household is defined as a household whose gross income is 120 percent of the county's median income or less. The sales price of the home shall follow the HUD formula of three (3) times gross income. For example, the median income of DeKalb County according to HUD's FY 2017 Income Limits Summary is \$69,700. A work force household would earn 120 percent or less of \$69,700, which is \$83,640 or less. An affordable home for this household would cost \$250,920 or less.
12. Villages of Ellenwood, LLC, shall install a manhole for the development's sewer lines at the northern entrance to the subdivision to accommodate the future connection to the sewer system of lots outside of, and to the north of the development at a later date. Villages of Ellenwood, LLC, or its successors in interest shall have no liability of any kind for the payment of any costs associated with such connection.
13. The developer shall enter into a project improvement agreement with DeKalb County. Under the terms of this agreement, the developer shall be responsible for the temporary widening of Loveless Drive to a pavement width of 20' along with any necessary new drainage swales and driveway pipes as a temporary measure to allow

for the commencement of construction within the northern section of the Subject Property. DeKalb County shall be responsible for the permanent widening of the pavement and installation of curbs and gutters to DeKalb County DOT standards on the approximately 1800 linear feet of Loveless Drive, from its intersection with Bouldercrest Road to its southern terminus. The developer shall pay to DeKalb County an amount to be determined in the project improvement agreement by the County DOT, with full credit for the cost of the temporary improvements made by the developer, commensurate with the proportionate impact of the subdivision on the northern section of the Subject Property but in no event more than \$350,000 for expenses incurred by the County for the permanent widening of Loveless Drive. The amount agreed upon shall not be paid until such time as the permanent improvements are complete and said permanent improvements must be made within two (2) years from the date of the approval of these conditions. In the event DeKalb County fails to make the permanent improvements prior to the expiration of the two years, the developer shall have no further liability in connection with the widening of Loveless Drive.

14. The developer shall convey to the County simultaneously with the recording of the final plat for the proposed development, approximately 42 acres of greenspace along Conley Creek, as shown on the Conceptual Plan. The exact amount of acreage conveyed to the County shall be determined prior to the recording of the final plat. All property conveyed to the County shall count towards the open space required by the MU-1 zoning classification for the proposed development.
15. Any paths within the development shall be at a width and comprised of materials best suited for their location, the topography and the environmental features present within the confines of the path.
17. The Developer will be responsible for the site work related to the paths and where feasible will install paths or clear and dedicate right of way within greenspace or open space within the Subject Property along and near the eastern property line of the Subject Property to enable the connection of all pods of the subdivision to Bouldercrest Park to the north and the Villages of Ellenwood residential housing community in Clayton County to the south. The exact location, width and materials for the paths will be dictated by topography and environmental features.

Attachments:

1. Department and Division Comments
2. Board of Education Comments
3. Application
4. Site Plan
5. Zoning Map
6. Land Use Plan Map
7. Aerial Photograph
8. Site Photographs

NEXT STEPS

Following an approval of this zoning action, one or several of the following may be required:

- ✔ • **Land Disturbance Permit** *(Required for of new building construction on non-residential properties, or land disturbance/improvement such as storm water detention, paving, digging, or landscaping.)*
- ✔ • **Building Permit** *(New construction or renovation of a building (interior or exterior) may require full plan submittal or other documentation. Zoning, site development, watershed and health department standards will be checked for compliance.)*
- ✔ • **Certificate of Occupancy** *(Required prior to occupation of a commercial or residential space and for use of property for a business. Floor plans may be required for certain types of occupants.)*
- **Plat Approval** *(Required if any parcel is being subdivided, re-parceled, or combined. Issued “administratively”; no public hearing required.)*
- **Sketch Plat Approval** *(Required for the subdivision of property into three lots or more. Requires a public hearing by the Planning Commission.)*
- ✔ • **Overlay Review** *(Required review of development and building plans for all new construction or exterior modification of building(s) located within a designated overlay district.)*
- ✔ • **Historic Preservation** *(A Certificate of Appropriateness is required for any proposed changes to building exteriors or improvements to land when located within the Druid Hills or the Soapstone Geological Historic Districts. Historic Preservation Committee public hearing may be required.)*
- **Variance** *(Required to seek relief from any development standards of the Zoning Ordinance. A public hearing and action by the Board of Appeals are required for most variances.)*
- **Minor Modification** *(Required if there are any proposed minor changes to zoning conditions that were approved by the Board of Commissioners. The review is administrative if the changes are determined to be minor as described by Zoning Code.)*
- **Major Modification** *(Required submittal of a complete zoning application for a public hearing if there are any proposed major changes to zoning conditions that were approved by the Board of Commissioner for a prior rezoning.)*
- **Business License** *(Required for any business or non-residential enterprise operating in Unincorporated DeKalb County, including in-home occupations).*
- **Alcohol License** *(Required permit to sell alcohol for consumption on-site or packaged for off-site consumption. Signed and sealed distance survey is required. Background checks will be performed.)*

Each of the approvals and permits listed above requires submittal of application and supporting documents, and payment of fees. Please consult with the appropriate department/division.

September 7, 2017

SEP , 7 2017

VIA HAND DELIVERY TO:

DeKalb County Department of Planning and Sustainability
330 West Ponce de Leon Avenue, 2nd Floor
Decatur, GA 30030

**RE: Letter of Application---Modification of Zoning Conditions for the Preserve at Conley
CZ-05-24 (September 13, 2005)**

To whom it may concern:

I represent Paran Homes, LLC (“Paran”), the current owners of property at 4226 Loveless Drive (15-011-01-044), 4280 Loveless Place (15-011-01-045), and 4358 Loveless Place (15-011-01-062). I submit this Letter of Application in support of Paran’s request to modify some of the zoning conditions originally imposed in 2005 when the DeKalb County Board of Commissioners rezoned the Subject Property. The Board of Commissioners rezoned the approximate 120 acres from R-100 to PC-1¹ to allow for the development of a mixed use subdivision comprised of townhome units (71), single family detached units (305), a day care (4000 square feet), neighborhood shopping (11000 square feet), and approximately 42 acres of open space with planned multi-use trails connecting the two phases of the development. The approved list of conditions, site plan, survey, legal description, impact analysis and other materials required by the Zoning Ordinance are filed contemporaneously with this Letter of Application.

Since the conditional rezoning of the Subject Property in September of 2005, the ownership of the Subject Property, the economics and the physical characteristics of the Subject Property have changed. Specifically, the original developer installed the proposed streets for the development and installed storm water facilities with a slightly different layout from that of the conceptual site plan; the County acquired right of way for and made improvements to Loveless Drive pursuant to a “Project Improvement Agreement” with the original developer in 2011; the original developer endeavored unsuccessfully to secure a commitment from the PATH Foundation to construct paths within the subdivision; a final plat for the subdivision was submitted to DeKalb County but never approved; several years after the economic down turn of 2008-2009 the original developer lost control and ownership of the development; the Subject Property was foreclosed on; and Paran purchased the Subject Property in March of 2017 from the bank. Due to changing conditions over the 12 years since the Subject Property was originally rezoned, Paran seeks to modify some of the original 17 conditions imposed, as follows:

- Modify Condition #1 such that the changes in street lay out (which needed to be changed due to field conditions) and unit orientation as reflected in the approved development plans dated April 6, 2006,

¹ With the adoption of the new zoning ordinance in 2015, the effective zoning classification for the Subject Property became MU-1. See zoning verification package included herewith.

be approved and acknowledged. Applicant suggest that Condition #1 be modified to read as follows: “The development of the Property shall be in substantial conformance with the site plans (North and South) for the Preserve at Conley Creek by Southeastern Engineering dated April 6, 2006².”

- Remove the requirement in Condition #2 for a daycare and replace the daycare with an amenity package such as a playground. A multi-use field or other recreation facility to serve Pod A and C as depicted on the approved site plan.
- Remove Condition #6 setting rental limits and disallowing the rental of lots/units only in emergencies and then only for periods of less than twelve (12) months within a thirty-six (36) month period. Such limits are arbitrary and should be left to the builder or to the HOA through the crafting of targeted covenants and restrictions which take into account the totality of the development.
- Remove or substantially modify Condition #11 as it pertains to “workforce housing”. The numbers and income levels within that condition are outdated and inconsistent with the County’s Zoning Ordinance, which does not contain any workforce housing requirements, except in the Tucker Compatible Use Overlay.
- Remove Condition #13 pertaining to improvements to Loveless Drive from its intersection with Bouledercrest Road to its southern terminus. The County has acquired the needed right-of-way, completed a full set of engineered plans and improved Loveless Drive to its southern terminus but for approximately 100 to 150 feet of pavement. Due to the passage of time and poor record keeping, it is unclear to the Applicant whether the County has been paid the sum contemplated in Condition #13. However, it would seem logical that the County would not spend money on right of way acquisition, design and construction of improvements without having been paid.
- Modify Condition #15 which requires the paths within the development to be eight foot wide asphalt paths. Paran proposes to install paths that are environmentally more sensitive and proposes that Condition #15 read as follows: “The developer will provide natural mulch paths within the designated open space connecting Pod B to Pods A and C. ”
- Conditions #16 and #17 be deleted in light of the Path Foundation’s lack of interest in assuming responsibility for the paths within the development.
- Conditions 3, 4,5,7,8,9,10, 12 and 14 shall remain as originally drafted.

Applicant submits that modification of the conditions as requested , and as more fully set forth in the Impact Analysis, meets the standards and factors specified in the Zoning Ordinance at Section 7.3.5 and requests approval of its Application.

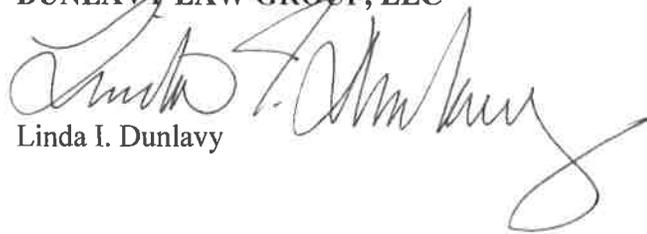
² It should be noted that the maximum number of acres will be slightly less than originally approved. There will be no more than 371 units for the entire development.

Page Two
Letter of Application
September 7, 2017

I look forward to working with staff and residents in connection with this request and ask that you please contact me directly with any questions, concerns, feedback or requests regarding this application as it moves through the process.

Sincerely yours,

DUNLAVY LAW GROUP, LLC

A handwritten signature in black ink, appearing to read "Linda I. Dunlavy", written over the printed name.

Linda I. Dunlavy

LID: ppl
cc: Mike Embry
Ann DeLorenzo



Chief Executive Officer
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Director
Andrew A. Baker, AICP

**PRE-APPLICATION
REZONES, LAND USE AND SPECIAL LAND USE**

(Pre-application required by appointment prior to filing-submit copy at filing)

Property Frontage/Address: 4226 R Loveless Dr., 4280 + 4358 Loveless Pl
Parcel I.D.: 15-011-01-44, 45 + 62 Acreage: 119.3
Proposed Development Name: Preserve at Conley Creek DRI Yes No
Existing Development/Use: Single family Dist 3,6
Proposed Use: _____ Proposed Density/#Units: 368 Bouldercrest OVD
Existing Zoning: MU-1 Existing Proposed Zoning: C205024 Tier 5
Existing Plan Designation: _____ Consistent Inconsistent
Proposed Land Use Plan: _____ Proposed Access: _____
SLUP Request: _____ Art. 27: _____

Contact Person: Mike Embry Phone: 404 569 9756
Address: PO Box 2789 Suwanee Ga 30024 Email: mike@embrycompanies.co

- Reviewed Required Submittals/ Schedule/DRI
- Reviewed Zoning Standards/Reference Chapter 14
- Reviewed Site Plan Check list
- Discussed Consistency with Plan and Surrounding Zoning/uses
- SLUP Requirements/Supplemental Regs
- Staff Comments: _____

MSE
Planner

8/8/17
Date



DeKalb County

404.371.2155 (o)
404.371.4556 (f)
DeKalbCountyGa.gov

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

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: 9.5.2017

TO WHOM IT MAY CONCERN:

(I), (WE), Paran Homes, LLC
Name of Owner(s)

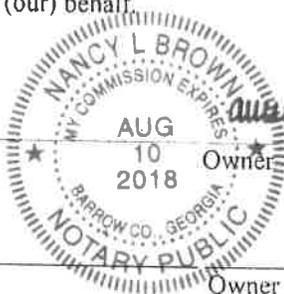
being (owner) (owners) of the subject property described below or attached hereby delegate authority to

Anne DeLorenzo

Name of Applicant or Representative

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

Nancy L. Brown
Notary Public



Anne DeLorenzo
Owner

Administrative Vice President
Authorized Officer

Notary Public _____ Owner

Notary Public _____ Owner

Notary Public _____ Owner

DEPARTMENT OF PLANNING & SUSTAINABILITY

MAJOR MODIFICATION APPLICATION

2-17-21828

Existing Conditional Zoning No.: CZ 05 024

APPLICANT NAME: Paran Homes, LLC

Daytime Phone#: 678-726-9646 Fax #: 770-545-8533 E-mail: anne@paranhomes.com

Mailing Address: 3005 Breckinridge Boulevard, Suite 200, Duluth, GA

OWNER NAME: Same as above

one owner, attach contact information for each owner)

(If more than

Daytime Phone#: _____ Fax #: _____ E-mail: _____

Mailing Address: _____

SUBJECT PROPERTY ADDRESS OR LOCATION: South of Bouldercrest Road and East of Loveless Lane

DeKalb County, GA,

District(s): 15th Land Lot(s): 11 Block(s): 1 Parcel(s): 44,45, and 62

Acreage or Square Feet: 120.88 Commission District(s): 3 and 6 Existing Zoning: MU-1

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

Owner: Agent:
(Check One)

Signature of Applicant: 

Printed Name of Applicant: Paran Homes, LLC

Major Modification Application

IMPACT ANALYSIS

And

Other Material Required by
DeKalb County Zoning Ordinance

For

The Major Modification Application

Of

PARAN HOMES, LLC

For

+/- 120.8 acres of Land

Located in

Land Lot 11, 15th District, DeKalb County

4226 Loveless Drive (15-011-01-044)

4280 Loveless Drive (15-011-01-045)

4358 Loveless Place (15-011-062)

Submitted for Applicant by:

Linda I. Dunlavy

Dunlavy Law Group, LLC

1026 B Atlanta Avenue

Decatur, Georgia 30030

(404) 371-4101 Phone

(404) 371-8901 Facsimile

ldunlavy@dunlavylawgroup.com

I. INTRODUCTION

This Application seeks to a major modification of conditions for conditions imposed in 2005 when the Board of Commissioners rezoned the Subject Property from R-100 to PC-1¹. At the time of the rezoning, the Subject Property was completely undeveloped. Since the original rezoning in September of 2005 conditions have change on and around the Subject Property such that application of the original 17 conditions would seem inappropriate and unnecessary.

A. SUBJECT PROPERTY

The Subject Property is comprised of +/- 120.88 acres. It is traversed by one large stream (Conley Creek) running northeast through the center of the site to Bouldercrest Park. The center of the Subject Property is wetlands. The Subject Property is within the Soapstone Ridge Historic District. One prehistoric archeological site and four historic home sites were identified in a cultural resources assessment performed prior to the original rezoning. The Subject Property borders unincorporated Clayton County to the south. To the immediate northeast is Bouldercrest Park. To the west of Pods A and C of the proposed development is a large single family detached residential subdivision known as Grant Forest comprised of over 200 homes marketing below \$200,000. Further to the north and west are more single family developments such as Conley Trace and Cedar Walk. To the east is a Walmart Supercenter and varied industrial uses south of Bouldercrest Road.

B. APPLICANT'S PROPOSAL

Currently, the Subject Property is partially developed. Since the conditional

¹ With adoption of a new zoning ordinance in 2015, PC-1 properties such as the Subject Property became MU-1 districts.

rezoning of the Subject Property in September of 2005, the ownership of the Subject Property, the economics and the physical characteristics of the Subject Property have changed. Specifically, the original developer installed the proposed streets for the development and installed storm water facilities with a slightly different layout from that of the conceptual site plan; the County acquired right of way for and made improvements to Loveless Drive pursuant to a “Project Improvement Agreement” with the original developer in 2011; the original developer endeavored unsuccessfully to secure a commitment from the PATH Foundation to construct paths within the subdivision; a final plat for the subdivision was submitted to DeKalb County but never approved; several years after the economic downturn of 2008-2009 the original developer lost control and ownership of the development; the Subject Property was foreclosed on; and Paran purchased the Subject Property in March of 2017 from the bank. Due to changing conditions over the 12 years since the Subject Property was originally rezoned, the Applicant proposes to modify some of the original conditions imposed in conjunction with the original zoning of the Subject Property in 2005. As noted in the Letter of Application submitted contemporaneously with this Impact Analysis, the Applicant seeks modification of Conditions 1, 2, 11², and 15. Applicant further seeks deletion of Conditions 13, 15, 16 and 17.

II. IMPACT ANALYSIS

Pursuant to Section 7.3.5 of the Zoning Ordinance, approval of major modification requests such as that of the Applicant are governed by consideration of certain factors and standards by the Board of Commissioners. These standards and factors for review along with their application to the Applicant’s request are as follows:

² Applicant actually seeks removal or major modification of Condition #11.

Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.

The modifications of conditions remains consistent with the comprehensive plan—intent and policies. It promotes new communities with greenspace, neighborhood parks and an appropriate mix of uses and housing types. It promotes pedestrian connectivity between residential and park spaces. It clusters housing in order to preserve and maintain important environmental features such as Conley Creek and its associated wetlands and mature vegetation. It provides for small scale neighborhood retail compatible with residential development.

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

The vast majority of uses in the immediate vicinity of the Subject Property are residential. There are numerous subdivisions of similar design and caliber to that contemplated by the Applicant. While the Applicant proposes to eliminate the daycare originally proposed on site, there are sufficient day care facilities within the immediate vicinity of the Subject Property to cater to the needs of families within the proposed development. There are at least six daycares within less than three miles of the Subject Property, one Lillie's L'il Lamb Daycare with a capacity of 225 children. There does not appear to be a need for additional day care. Moreover, the layout of streets within the subdivision is not advantageous for the safety of children who might use the day care and finally, a day care on site would be negatively impact marketing of the dwelling units within the development whereas an amenity such as a playground or multi use field would actually positively impact marketing efforts and the resulting community of homeowners within the development by providing active recreational space for children and residents.

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

The Subject Property has a reasonable economic use as zoned but the conditions may, in some instances, have a negative impact on the economics of the development project.

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

While considered by the DeKalb County Zoning Ordinance to be “major” modifications, the modifications sought by the Applicant will not adversely affect use or usability of adjacent or nearby properties. The changes proposed are internal to the development only. The large area of open space (42acres)

will remain; it will be dedicated to the County for use as a park. The County will be better stewards of the open space than the Homeowner's Association and by dedicating this open space to the County, enjoyment of this environmentally significant area will be expanded to all.

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.

The economics and the physical layout of the Subject Property have changed in the 12 years since it was originally rezoned. The street layout is slightly different; the County did not (as expected in 2005) adopt a work force housing ordinance with the requirements set forth in Condition 11. There are a large number of units within the immediate vicinity of the property on the market that are within the HUD guidelines for "work force housing".

Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.

The cultural resources identified by the survey done prior to the 2005 rezoning will be preserved and respected as originally proposed and will not be impacted by any of the conditions the Applicant seeks to modify or delete.

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 original zoning proposal was found not to cause excessive or burdensome impacts. The number of units will be slightly less under the proposed modified plan so the impacts will be even less than originally determined.

Whether the zoning proposal adversely impacts the environment or surrounding natural resources.

As noted above, the request for modification does nothing to alter the commitment to preserve approximately 39 acres of open space, to improve it with walking trails and to dedicate it to the County for parkland. The environmental sensitive features on site (wetlands, creek and vegetation) will be preserved through the conditions imposed and through the future stewardship of the County.

Based on the foregoing, the Applicant submits that the Application meets all of the relevant standards to modify the conditions as proposed and asks for Board approval of same.

Due to financing and timing contingencies, the Applicant was unable to identify and meet with the Bouldercrest Homeowners Association prior to the filing of this application but will reach out immediately to this association and any other identified groups immediately after the filing of this application.

III. PRESERVATION OF CONSTITUTIONAL RIGHTS

The Applicant respectfully submits that the current conditional zoning classification, to the extent that it prohibits the use proposed, constitutes an arbitrary, irrational abuse of discretion and unreasonable use of the zoning power because it bears no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Property owners in violation of the due process and equal protection rights of the property owner guaranteed by 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. Further, the failure to allow this use would constitute a taking of the owner'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.

Further, the Applicant respectfully submits that the Board's failure to approve the requested major modification of conditions application would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Property owner and owners of similarly situated property in violation of Article I, Section

III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

IV. CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the application for a major modification of conditions of zoning for the Subject Property be approved. The Applicant also invites and welcomes any comments from Staff or other officials of County and community so that such recommendations or input might be incorporated as this application undergoes further review.

This 7th day of September, 2017.

Respectfully submitted,



Linda I. Dunlavy
Attorney for Applicant

Dunlavy Law Group, LLC
1026 B Atlanta Avenue
Decatur, Georgia 30030
(404) 371-4101 Telephone
(404) 371-8901 Facsimile

**LEGAL
DESCRIPTION**

OVERALL LEGAL DESCRIPTION

ALL THAT TRACT or parcel of land lying and being in Land Lot 15 of the 15th District, DeKalb County, Georgia, and being more particularly described as follows:

COMMENCING at a point and 1-inch solid bar found on the line dividing DeKalb County and Clayton County at the corner common to Land Lots 10 and 11 of DeKalb County and Land Lots 248 and 247 of Clayton County and proceeding along said County Line and line dividing said Land Lots 11 and 248 NORTH 89 DEGREES 11 MINUTES 35 SECONDS WEST a distance of 70.00 feet to a concrete monument found and POINT OF BEGINNING; THENCE continuing along said County Line and Land Lot Line NORTH 89 DEGREES 11 MINUTES 35 SECONDS WEST a distance of 2018.56 feet to a point and three-quarter inch open-top pipe found; THENCE departing said Land Lot Line and proceeding NORTH 02 DEGREES 27 MINUTES 57 SECONDS EAST a distance of 1512.91 feet to a point; THENCE proceeding NORTH 84 DEGREES 29 MINUTES 26 SECONDS WEST a distance of 157.05 feet to a point and one-inch open-top pipe found; THENCE proceeding NORTH 02 DEGREES 30 SECONDS EAST a distance of 450.71 feet to a point; THENCE proceeding SOUTH 87 DEGREES 26 MINUTES 19 SECONDS EAST a distance of 207.50 feet to a point on the Westerly right-of-way of Loveless Place having an apparent 60-foot right-of-way; THENCE proceeding along said right-of-way SOUTH 02 DEGREES 31 MINUTES 41 SECONDS WEST a distance of 49.32 feet to a point; THENCE proceeding SOUTH 87 DEGREES 26 MINUTES 41 SECONDS EAST a distance of 269.93 feet to a point; THENCE proceeding NORTH 02 DEGREES 41 SECONDS EAST a distance of 630.00 feet to a point and one-inch open-top pipe found; THENCE proceeding NORTH 77 DEGREES 23 MINUTES 56 SECONDS EAST a distance of 200.19 feet to a point; THENCE proceeding NORTH 19 DEGREES 57 MINUTES 40 SECONDS EAST a distance of 115.39 feet to a point; THENCE proceeding NORTH 76 DEGREES 06 MINUTES 04 SECONDS EAST a distance of 68.41 feet to a point and one-inch open-top pipe found; THENCE proceeding NORTH 59 DEGREES 42 MINUTES 26 SECONDS EAST a distance of 288.75 feet to a point and re-bar found; THENCE proceeding SOUTH 65 DEGREES 16 MINUTES 05 SECONDS EAST a distance of 287.70 feet to a point and fence corner; THENCE proceeding SOUTH 87 DEGREES 22 MINUTES 59 SECONDS EAST a distance of 420.43 feet to a point; THENCE proceeding NORTH 76 DEGREES 25 MINUTES 08 SECONDS EAST a distance of 120.56 feet to a point and one-inch open-top pipe found at the Southwesterly corner of Cedar Grove Cemetery; THENCE proceeding SOUTH 89 DEGREES 05 MINUTES 10 SECONDS EAST a distance of 259.56 feet to a point on the said line dividing Land Lots 10 and 11; THENCE proceeding along said Land Lot Line SOUTH 00 DEGREES 10 MINUTES 25 SECONDS EAST a distance of 453.95 feet to a point; THENCE departing said Land Lot Line and proceeding SOUTH 88 DEGREES 40 MINUTES 00 SECONDS WEST a distance of 17.00 feet to a point; THENCE proceeding SOUTH 01 DEGREES 08 MINUTES 21 SECONDS WEST a distance of 2313.35 feet to a point and POINT OF BEGINNING.

Sold parcel contains 120.88 acres or 5,265,535 square feet.

Original Zoning Minutes

DEKALB COUNTY

ITEM NO. **H9**

BOARD OF COMMISSIONERS

ZONING AGENDA / MINUTES

MEETING DATE: September 13, 2005

HEARING TYPE
PUBLIC HEARING

ACTION TYPE
ORDINANCE

SUBJECT: **Rezone** -- Villages of Ellenwood, LLC

COMMISSION DISTRICTS: 5 & 6

DEPARTMENT: Planning

PUBLIC HEARING: YES NO

ATTACHMENT: YES No

PAGES: **61**

INFORMATION CONTACT: Sabrina Freney/Kevin Hunter

PHONE NUMBER: (404) 371-2155

Deferred from 4/28/05, 6/28/05, & 8/23/05 for decision only.

PURPOSE:
Z-05-24

Application of Villages of Ellenwood, LLC to rezone property located at the southern terminus of Loveless Drive, south of its intersection with Bouldercrest Road, from R-100 to PC-1. The property has approximately 60 feet of frontage along the width of Loveless Drive, and contains approximately 119.3 acres.

Subject Property: 15-011

RECOMMENDATION(S):

PLANNING DEPARTMENT (Revised 8/18/05):

Deferral. Based on the revised conceptual site plan and information, it cannot be determined whether the proposed zoning amendment and mixed-use development meets the criteria of the zoning ordinance for approval to the PC-1 zoning classification, at this time. Although revised plans and detailed information has been submitted by the project applicant to address requirements as contained in Section 27-649.1 of the Pedestrian Community (PC) District Regulations of the DeKalb County Zoning Ordinance, additional information and the submittal of conceptual building elevation design for the proposed the single family residences, town homes units and commercial structures within the project are still outstanding. Additional information is also outstanding relating to the all important access and circulation points to and from the project site. Therefore, it is the recommendation of the Planning Department that the application be "Deferred".

PLANNING COMMISSION:

Full cycle deferral.

COMMUNITY COUNCIL:

Other - Abstain.

**FOR USE BY COM
MISSION OFFICE/CLERK ONLY**

ACTION: H9

MOTION was made by Commissioner Hank Johnson(discussion), seconded by Commissioner Gannon, to defer for two weeks, the rezoning application of Villages of Ellenwood, LLC.

After discussion, Commissioner Hank Johnson changed his MOTION, seconded by Commissioner Gannon to approved as conditioned by the Project Improvement agreement and listed conditions submitted by Commissioner Hank Johnson for the record, to be kept on file in the Clerk's office. Commissioner Walldorff was absent and not voting.

ADOPTED: SEP 13 2005
(DATE)

Burrell Ellis
PRESIDING OFFICER
DEKALB COUNTY BOARD OF COMMISSIONERS

CERTIFIED: SEP 13 2005
(DATE)

[Signature]
CLERK,
DEKALB COUNTY BOARD
OF COMMISSIONERS

FOR USE BY CHIEF EXECUTIVE OFFICER ONLY

APPROVED: SEP 20 2005

Vernon Jones
CHIEF EXECUTIVE OFFICER
DEKALB COUNTY

VETOED: _____

CHIEF EXECUTIVE OFFICER
DEKALB COUNTY

VETO STATEMENT ATTACHED: _____

MINUTES:

	FOR	AGAINST	ABSTAIN	ABSENT
DISTRICT 1 - ELAINE BOYER	<u>X</u>	_____	_____	_____
DISTRICT 2 - GALE WALLDORFF	_____	_____	_____	<u>X</u>
DISTRICT 3 - LARRY JOHNSON	<u>X</u>	_____	_____	_____
DISTRICT 4 - BURRELL ELLIS	<u>X</u>	_____	_____	_____
DISTRICT 5 - HANK JOHNSON	<u>X</u>	_____	_____	_____
DISTRICT 6 - KATHIE GANNON	<u>X</u>	_____	_____	_____
DISTRICT 7 - CONNIE STOKES	<u>X</u>	_____	_____	_____

Rezoning Application Z-05-24
Villages of Ellenwood, LLC
Zoning Conditions

1. The development of the Property shall be in substantial conformance with the Conceptual Plan prepared for the Preserve at Conley Creek by Moore Bass Consulting dated June 22, 2005 (the "Conceptual Plan").
2. The Conceptual Plan includes a daycare facility of 0.4 acres and an area of commercial development of 1.1 acres. By these conditions of zoning an area of 1.5 acres shall be set aside for a daycare facility with adjacent commercial uses in the development. The following will be permitted commercial uses: Book, greeting card, and stationery store; Convenience store; Florist; Food stores including bakeries; Gift, novelty, and souvenir store; Hobby, toy and game store; News dealers and newsstand; Laundry and dry-cleaning establishment and pickup station; Art galleries and art supply store; Restaurant, including ice cream, coffee or sandwich shops, but not including drive-through restaurants.
3. All lots located north of Conley Creek that abut existing R-100 lots shall be a minimum of 15,000 square feet.
4. There shall be no vinyl or aluminum siding used within the development. All townhomes shall have exteriors of brick, stucco, stone or other masonry, "Hardi- Plank" clapboards, cedar shake or shingles, or some combination of these materials. The design of the front facades shall vary such that two adjacent homes will not be the same.
5. There shall be a mandatory homeowners' association to own and control all common areas and green space not conveyed to the County. The developer shall establish an additional mandatory homeowners association for the townhouses built within the development to maintain the yards and facades of all the townhouses.
6. The covenants for the Property shall prohibit more than ten percent of the lot owners from being rental units at any given time. A lot may be rented only in the event of an emergency and no individual lot or house may be rented for more than twelve (12) months during any thirty-six (36) month period.
7. All utilities shall be underground.
8. The developer shall install streetlights within the development.
9. The developer shall install at least six (6) picnic tables along the paths located within the development.
10. The developer shall install at least one (1) historical marker within the proposed development that identifies the archeological site in and the cemetery adjacent to the northern portion of the development.

11. At least fifteen percent (15%) of the single-family residences shall be marketed as work force housing. Work force housing is defined as a home that is affordable to very low to moderate-income households. A moderate-income household is defined as a household whose gross income is 120% of the county's median income or less. The sale price of the home shall follow the HUD formula of three (3) times gross income. For example, the median income of DeKalb County according to the 1999 census was \$49,000. A work force household would earn 120% or less of 49,000, which is \$58,500 or less. An affordable home for this household would cost \$176,400 or less.
12. Villages of Ellenwood, LLC shall install a manhole for the development's sewer lines at the northern entrance to the subdivision to accommodate the future connection to the sewer system of lots outside of, and to the north of the development at a later date. Villages of Ellenwood, LLC or its successors in interest shall have no liability of any kind for the payment of any costs associated with such connection.
13. Villages of Ellenwood, LLC shall enter into a project improvement agreement with DeKalb County. Under the terms of this agreement, DeKalb County shall be responsible for the widening of and installation of curbs and gutters to DeKalb County DOT standards on the approximately 1,800 linear feet of Loveless Drive, from its intersection with Bouldercrest Road to its southern terminus, including the acquisition of the right-of-way. DeKalb County shall file a declaration of taking in order to acquire the right of way for the widening of this road, unless it can acquire the right of way for said Loveless Drive by private treaty. Villages of Ellenwood, LLC shall pay to DeKalb County a maximum of \$350,000 for expenses incurred by the County for the widening of Loveless Drive.
14. The developer shall convey to the County simultaneously with the recording of the final plat for the proposed development, approximately 42 acres of green space along Conley Creek, as shown on the Conceptual Plan. The exact amount of acreage conveyed to the County shall be determined prior to the recording of the final plat. All property conveyed to the County shall count towards the open space required by the PC-1 zoning classification for the proposed development.
15. The paths in the development will be eight feet wide and will be constructed with asphalt.
16. The developer will endeavor to enter into an agreement with the Path Foundation, Inc. ("the Foundation") in which the Foundation would be responsible for the cost of constructing the paths to Foundation standards and their maintenance thereafter.
17. If such an agreement is reached, the Developer will be responsible for the site work related to the paths and will pay to the Foundation an amount that is the equivalent to the cost of installing an eight (8) foot wide asphalt trail system within the development as depicted on the Conceptual Plan.

11. At least fifteen percent (15%) of the single-family residences shall be marketed as work force housing. Work force housing is defined as a home that is affordable to very low to moderate-income households. A moderate-income household is defined as a household whose gross income is 120% of the county's median income or less. The sale price of the home shall follow the HUD formula of three (3) times gross income. For example, the median income of DeKalb County according to the 1999 census was \$49,000. A work force household would earn 120% or less of 49,000, which is \$58,500 or less. An affordable home for this household would cost \$176,400 or less.
12. Villages of Ellenwood, LLC shall install a manhole for the development's sewer lines at the northern entrance to the subdivision to accommodate the future connection to the sewer system of lots outside of, and to the north of the development at a later date. Villages of Ellenwood, LLC or its successors in interest shall have no liability of any kind for the payment of any costs associated with such connection.
13. Villages of Ellenwood, LLC shall enter into a project improvement agreement with DeKalb County. Under the terms of this agreement, DeKalb County shall be responsible for the widening of and installation of curbs and gutters to DeKalb County DOT standards on the approximately 1,800 linear feet of Loveless Drive, from its intersection with Bouldercrest Road to its southern terminus, including the acquisition of the right-of-way. DeKalb County shall file a declaration of taking in order to acquire the right of way for the widening of this road, unless it can acquire the right of way for said Loveless Drive by private treaty. Villages of Ellenwood, LLC shall pay to DeKalb County a maximum of \$350,000 for expenses incurred by the County for the widening of Loveless Drive.
14. The developer shall convey to the County simultaneously with the recording of the final plat for the proposed development, approximately 42 acres of green space along Conley Creek, as shown on the Conceptual Plan. The exact amount of acreage conveyed to the County shall be determined prior to the recording of the final plat. All property conveyed to the County shall count towards the open space required by the PC-1 zoning classification for the proposed development.
15. The paths in the development will be eight feet wide and will be constructed with asphalt.
16. The developer will endeavor to enter into an agreement with the Path Foundation, Inc. ("the Foundation") in which the Foundation would be responsible for the cost of constructing the paths to Foundation standards and their maintenance thereafter.
17. If such an agreement is reached, the Developer will be responsible for the site work related to the paths and will pay to the Foundation an amount that is the equivalent to the cost of installing an eight (8) foot wide asphalt trail system within the development as depicted on the Conceptual Plan.

STATE OF GEORGIA
COUNTY OF DEKALB

PROJECT IMPROVEMENT AGREEMENT

This Development Agreement (the "Agreement") is made and entered into this ____ day of _____, 2005, by and between DEKALB COUNTY, GEORGIA, a political subdivision of the State of Georgia (hereinafter the "County"), and VILLAGES OF ELLENWOOD, LLC, a Georgia limited liability company, and its successors and assigns, and the developer of the property described on Exhibit A, which is attached hereto and incorporated herein by reference (hereinafter "Villages of Ellenwood").

PREAMBLE

WHEREAS, Villages of Ellenwood owns or has contracted to purchase the property described on Exhibit A, which is approximately 119.3 acres of land located in Land Lots _____ in the ___th District of DeKalb County, Georgia, and which is known as The Preserve at Conley Creek (hereinafter "The Preserve at Conley Creek"); and

WHEREAS, Villages of Ellenwood, as Applicant, filed a petition for rezoning seeking to change the zoning of The Preserve at Conley Creek from R-100 to PC-1 under the Zoning Ordinance of the County, Application No. Z-05-24; and

WHEREAS, the pod north of Conley Creek in The Preserve at Conley Creek will be accessed by Loveless Drive, which is approximately 1,800 linear feet long from its intersection with Bouldercrest Road to the boundary of The Preserve at Conley Creek; and

WHEREAS, DeKalb County is responsible for maintaining a safe transportation system for the traveling public and recognizes that Loveless Drive is in poor physical condition and inadequate to handle any increased traffic demands; and

WHEREAS, DeKalb County is authorized to condemn property for the widening of public roads; and

WHEREAS, it is the desire of all parties to receive assurances from the other that certain essential events will occur in order to facilitate the development of The Preserve at Conley Creek and to ensure that The Preserve at Conley Creek will be developed according to the zoning requirements of the County and according to the terms of this Agreement, and that Loveless Drive will be widened and improved subject to the terms of this Agreement; and

WHEREAS, it is the desire of the parties hereto to coordinate and to cooperate with one another in such efforts.

NOW THEREFORE, for and in consideration of the covenants and agreements hereinafter stated and for the sum of ONE and NO/100THS DOLLAR (\$1.00) in hand paid, the

receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

1.

The County will file a declaration of taking in order to condemn any additional right-of-way along Loveless Drive that is necessary in order to widen and improve Loveless Drive to DeKalb County Department of Transportation ("DOT") standards, unless it can acquire the additional right-of-way necessary for the widening and improvement of Loveless Drive by private agreements. Villages of Ellenwood, wherever possible, will assist the County in securing the cooperation of property owners in connection with obtaining the right-of-way. The DeKalb County will obtain the right-of-way necessary for the widening and improvement of Loveless Drive within one (1) year after the date of the rezoning of The Preserve at Conley Creek.

2.

Villages of Ellenwood shall grade, pave, and install curb and gutter and storm water pipe along and on Loveless Drive up to a maximum contribution of \$350,000. DeKalb County shall be responsible for all engineering costs, acquisition of right-of-way, relocation of utilities, acquisition of storm water pipe and all other storm water management items, and any expense over the \$350,000 contribution by the Developer. Loveless Drive will remain a public local residential street and will be maintained by the County upon completion.

3.

Loveless Drive, a local residential street maintained by the County, will be widened from, but not including, its intersection with Bouldercrest Road to its southern terminus, a distance of approximately 1,800 linear feet. Loveless Drive will be widened to a width no greater than twenty-six (26) feet, including the installation of curbs, gutters and storm water facilities, and shall be built to County standards.

4.

This Agreement shall be effective between the parties, their successors and assigns, immediately upon execution of this Agreement by all parties hereto.

5.

All previously written or transcribed plans, documents, letters, notes, minutes, and memorandums, together with all oral representations and agreements concerning all matters set forth in this Agreement have been incorporated herein, and the terms and conditions of this Agreement shall supersede any previous agreements between the parties.

6.

This Agreement represents the entire understanding of the parties hereto, and any amendments, changes, additions, or deletions shall be made in writing upon the mutual agreement of the parties, executed by the County and Villages of Ellenwood or its assigns or successors in title to The Preserve at Conley Creek.

7.

This Agreement shall be binding upon the undersigned, their heirs, administrators, executors, successors, and assigns.

8.

This Agreement constitutes the sole and entire agreement between and among the parties hereto pertaining to the subject matter hereof and shall be controlled in all respects by the laws of the State of Georgia.

9.

Should any part of this Agreement be declared invalid or void by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion or portions hereof, and such remaining portion or portions shall be deemed to be in full force and effect.

10.

In the event of a default of this Agreement by any party, or any parties successors or assigns, the other party or parties, or their legal representatives, successors or assigns, shall have the right to exercise their respective rights of enforcement of this Agreement by all legal and equitable means available and shall be entitled to recover reasonable attorneys' fees, legal expenses and other costs and fees in the event it prevails in such legal or equitable action or in the event of a settlement between or among the parties prior to the entry of a judgment against such party from whom relief has been sought.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands and affixed their seals this _____ day of _____, 2005.

ATTEST:

DEKALB COUNTY, GEORGIA

County Clerk

By: _____ (L.S.)

[SEAL]

ATTEST:

VILLAGES OF ELLENWOOD, LLC

Secretary

By: _____ (L.S.)

Title:

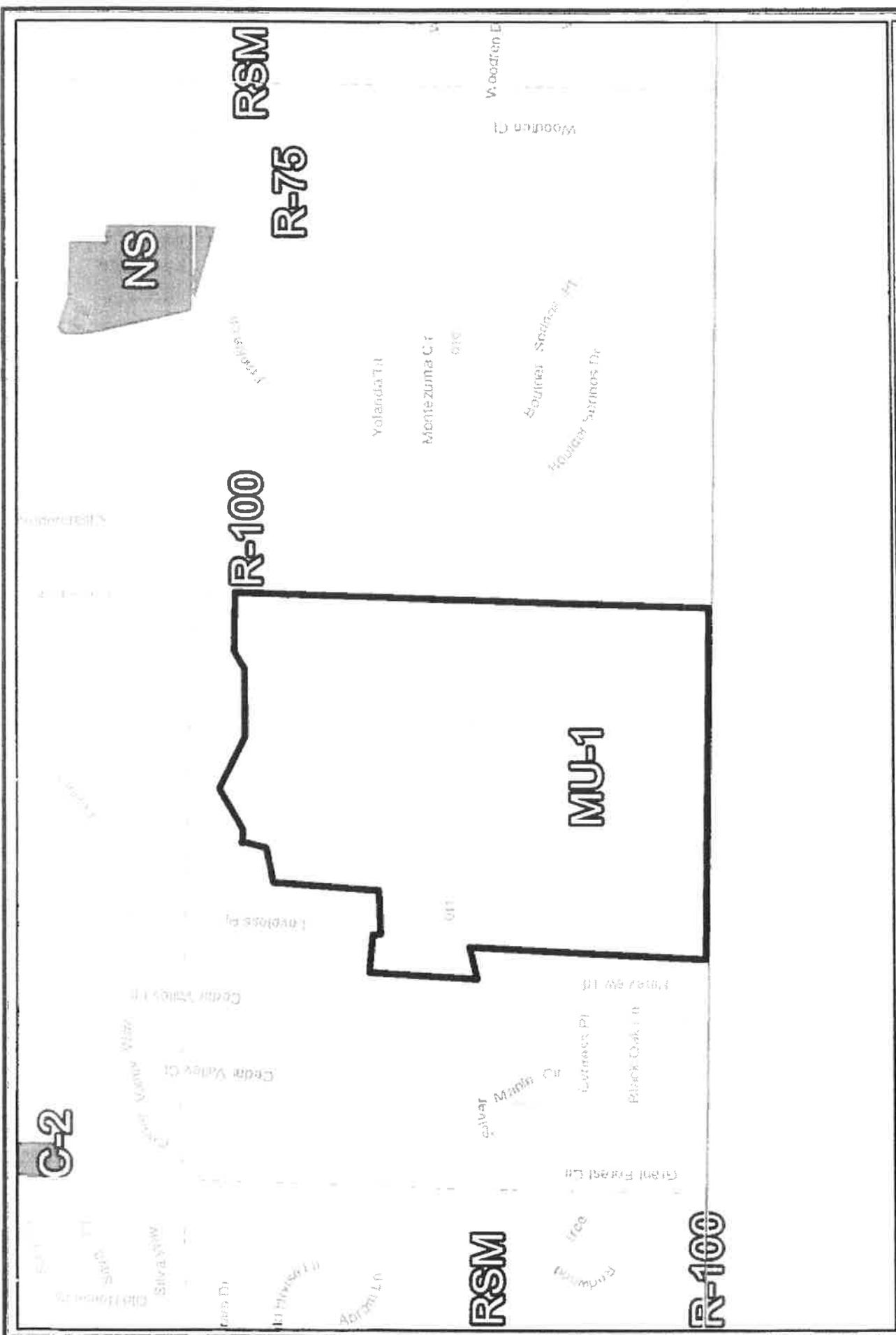
[SEAL]

Exhibits To Follow

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Exhibit "A"

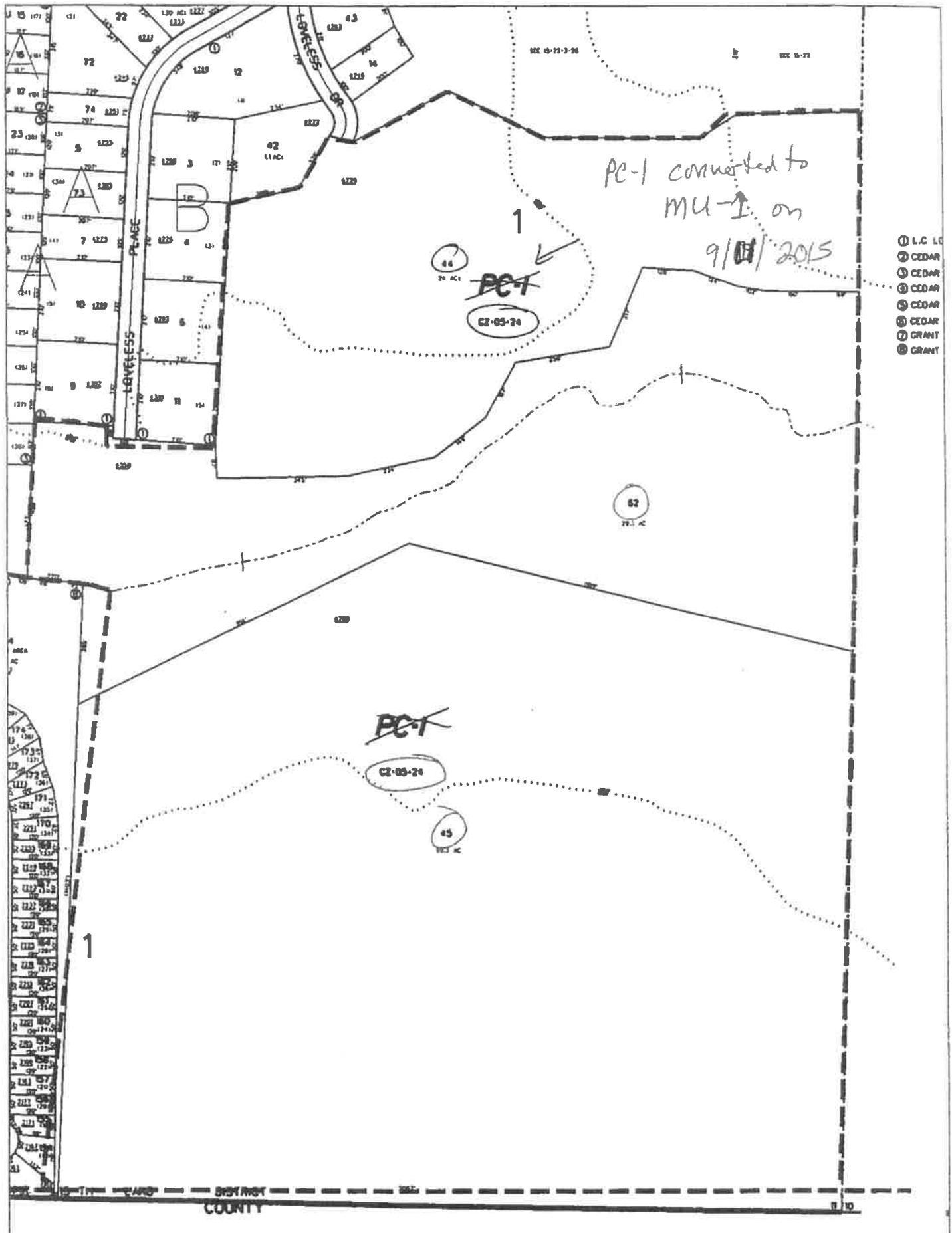
Legal Description



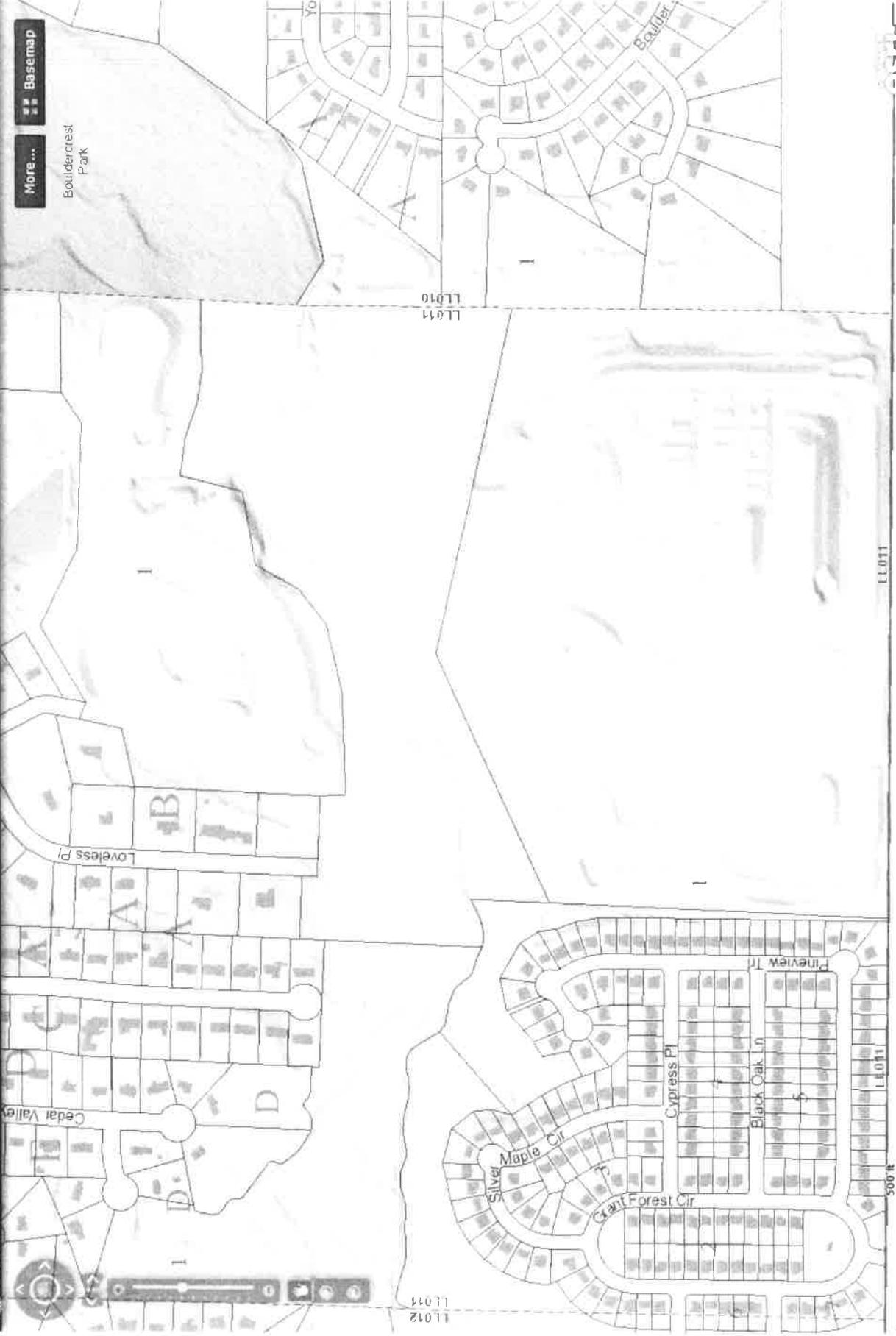
DeKalb County GIS Disclaimer:
 DeKalb County's Geographic Information System (GIS) is subject to constant change. While DeKalb County strives to provide accurate and up-to-date information, the maps and data are provided "as is" without warranty, representation or guarantee of any kind as to the content, accuracy, timeliness or completeness of any of the database information provided herein. DeKalb County explicitly disclaims all representations and warranties, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. In no event shall DeKalb County be liable for any special, indirect, or consequential damages whatsoever resulting from the use, data, or results, whether in an action of contract, negligence, or other actions, arising out of or in connection with the use of the maps and/or data herein provided. The maps and data are for illustration purposes only and should not be relied upon for any reason. The maps and data are not suitable for site-specific decision-making nor should be construed or used as a legal description. This area depicted by maps and data are approximate, and are not necessarily accurate to surveying or engineering standards.

CZ-05024

Date Printed: 6/2/2017



Tax and Aerial Maps





Google earth



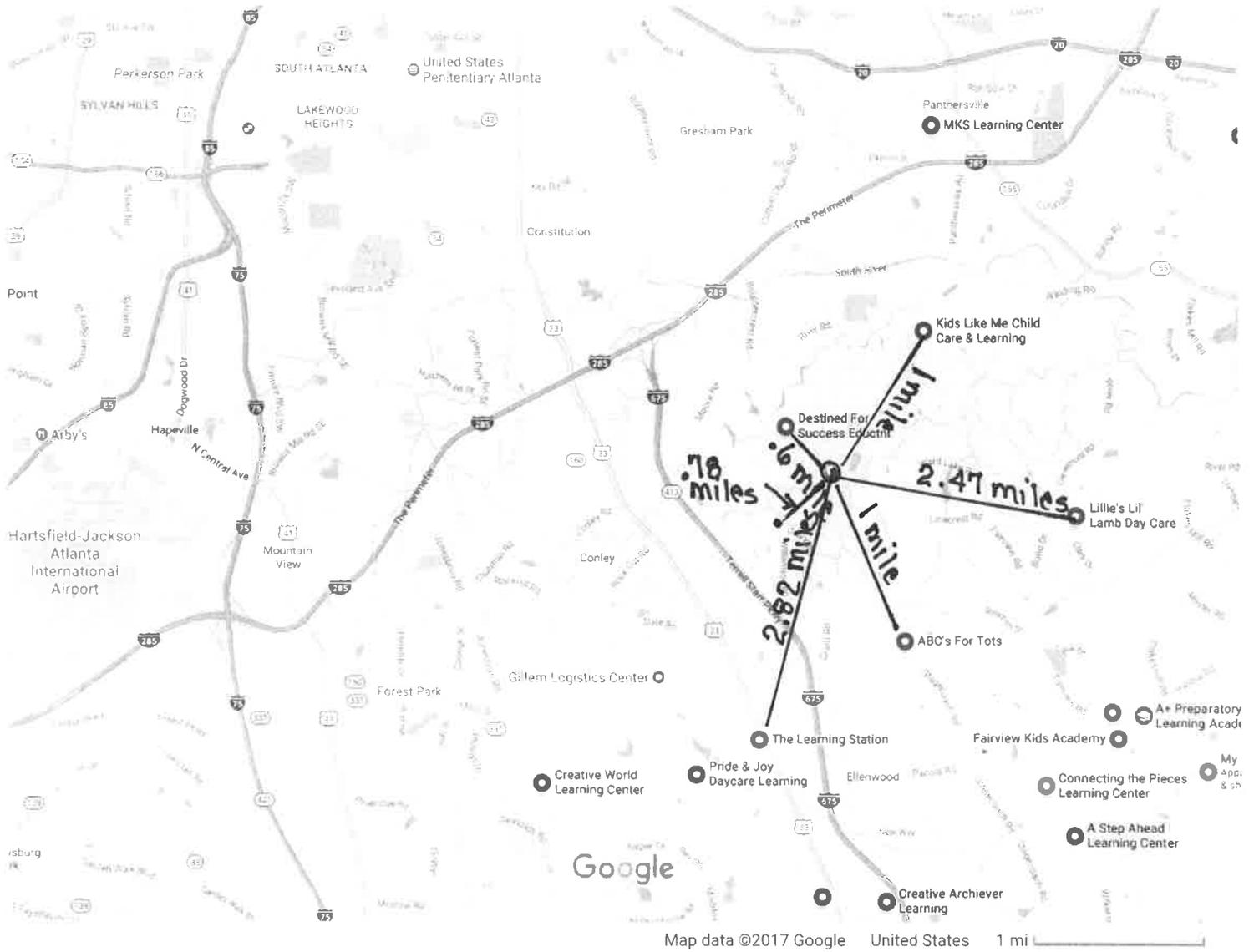
**REDUCED
SITE PLAN**

REDUCED SURVEY

**APPROVED
DEVELOPMENT PLANS**

Daycare Centers in Vicinity of Subject Property

Google Maps daycare



Rating

★★★★★

Lillie's Lil' Lamb Day Care

4.4 ★★★★★

Day Care Center 2376 Linecrest Rd

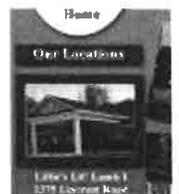
M & S Magical Stars Daycare

5.0 ★★★★★

Day Care Center 2870 Rex Rd

Kids Like Me Child Care & Learning

4.2 ★★★★★



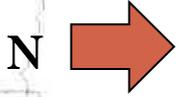
Clayton County

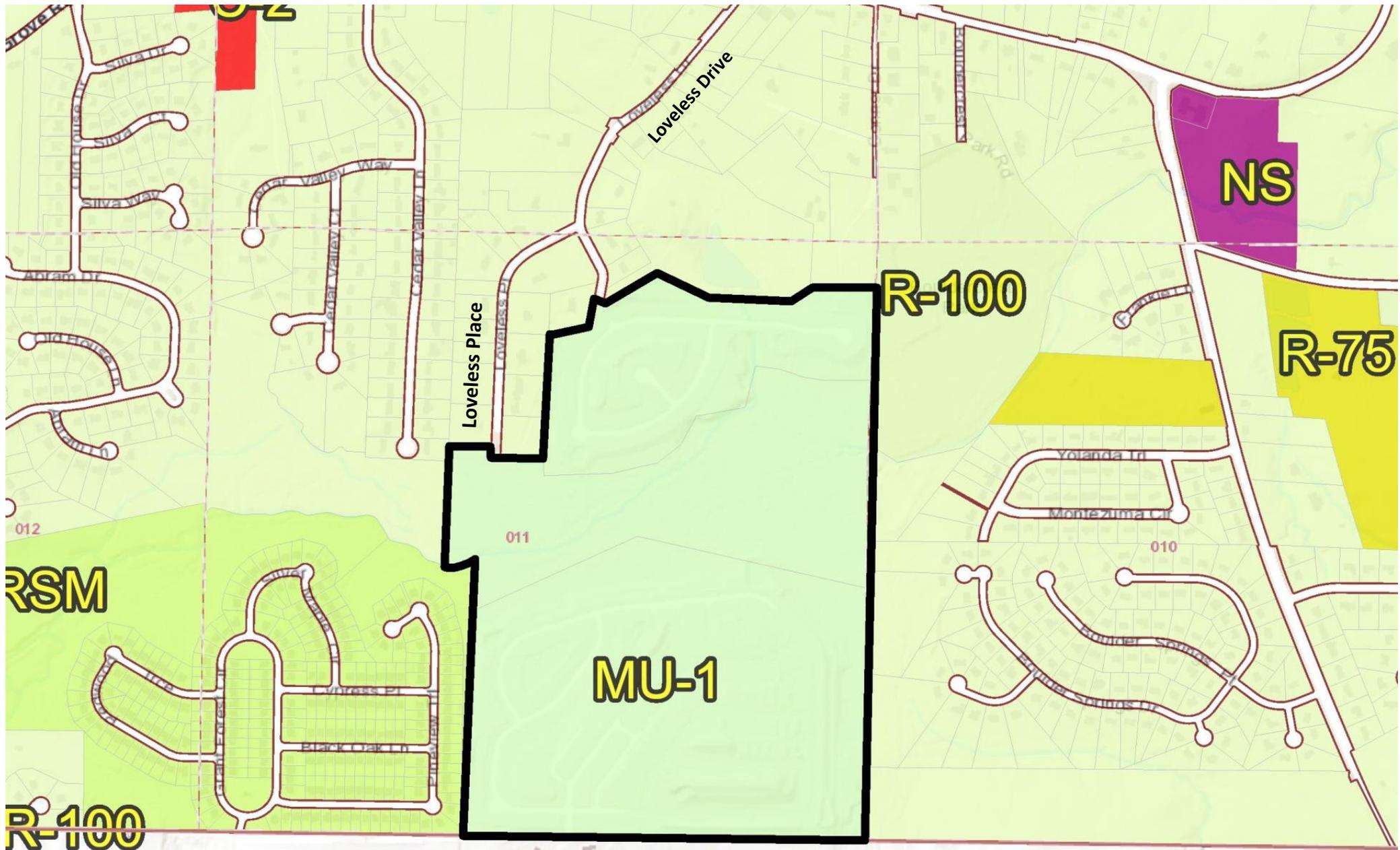


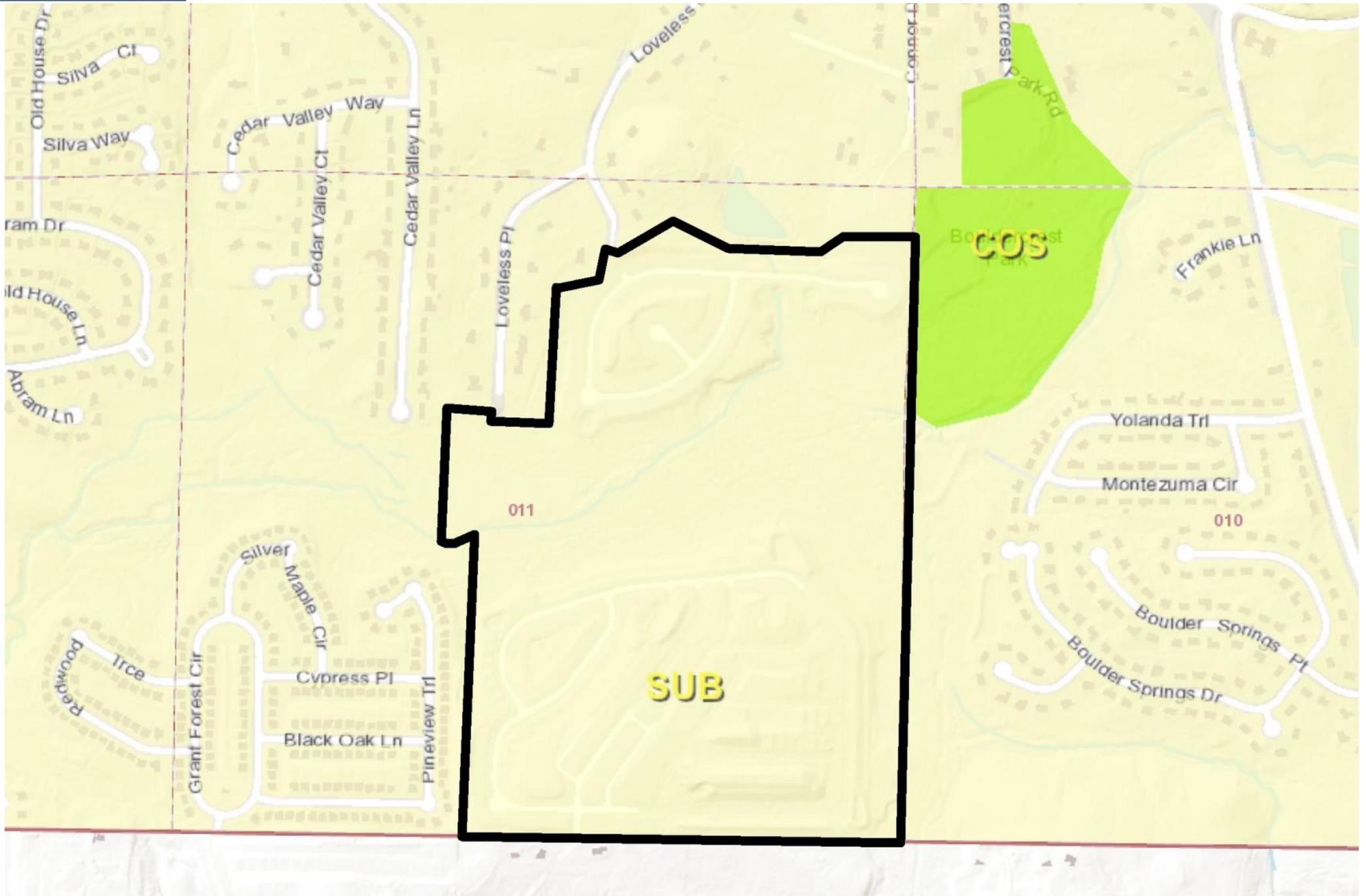
Scale: 1" = 20'
North Arrow
Date: 11/15/2023
Sheet: 11 of 11

EMF Real Estate Services
1100 Peachtree Street, N.E.
Atlanta, Georgia 30309
404.525.1234

NATIONAL RETIRED
Home Based Business
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View of property at terminus of Loveless Drive.



Loveless Drive.