

**Action Requested/Required:**

- ☐ Vote/Action Requested
☐ Discussion or Presentation Only
☒ Public Hearing
Report Date: 12/19/24
Hearing Date: 1/2/25
Voting Date: 1/16/25

Department: Community Development **Presenter(s) & Title:** Steve Green, Zoning Administrator

Agenda Item Title:

CUP2410-005 - Misty Way and Misty Court - Applicant seeks approval for a 208 unit townhome project - Ashton Atlanta Residential, LLC

Summary:

The applicant seeks approval of a Conditional Use Permit in order to develop a 208 unit townhome project. The property is currently zoned RM-15 which permits the townhome use. There are two public roads on the subject property which have to be petitioned for abandonment.

There are numerous individual parcels contained within the overall property all owned by the same person under different corporate names.

Budget Implications:

Budgeted? ☐ Yes ☐ No ☒ N/A

Total Cost of Project: Check if Estimated ☐

Fund Source: General Fund ☐ Water & Sewer ☐ Sales Tax ☐ Other:

Staff Recommendations:

Conditions for consideration will be provided for the action meeting staff report.

Reviews:

Has this been reviewed by Management and Legal Counsel, if required? ☐ Yes ☐ No

Attachments:

Application, site plan, survey, staff report



Land Use Petition: CUP2410-005

Date of Staff Report Preparation: 12/11/2024

Mayor and City Council Public Hearing Date: 1/02/2025

Possible action date 1/16/2025

Project Name/Applicant: Ashton Atlanta Residential, LLC

Property Owner: Misty Ridge, LLC

Property Location: Misty Way/Misty Court

Tax Map and Parcel Number: 14N12 026 thru 14B12 035

District/Land Lot: 14th District, Land Lot 125

Acreage: 22.655

Existing Zoning District: RM-15

Requested Zoning: N/A

Existing Land Use: Single family homes

Propose use: 208 unit townhome development

Future Development Map Designation: Neighborhood Living, Oakdale

District Standards:

___ Zoning District Standards (Primary Street)*			
Impervious Surface (max.)	40%	Front Yard Setback (min.)	65'
Open Space (min.)	60%	Side Yard Setback (min.)	25'
Building Height (max.)	4 story/60'	Rear Yard Setback (min.)	40'
Building Height (min.)	N/A	Buffer Planting (min.)	50' and 25'
Zoning Buffer	50' and 25'	Overlay Zone	Yes

Surrounding Land Uses and Zoning:

Cherokee County, AG

North – Undeveloped, Corps of Engineers –

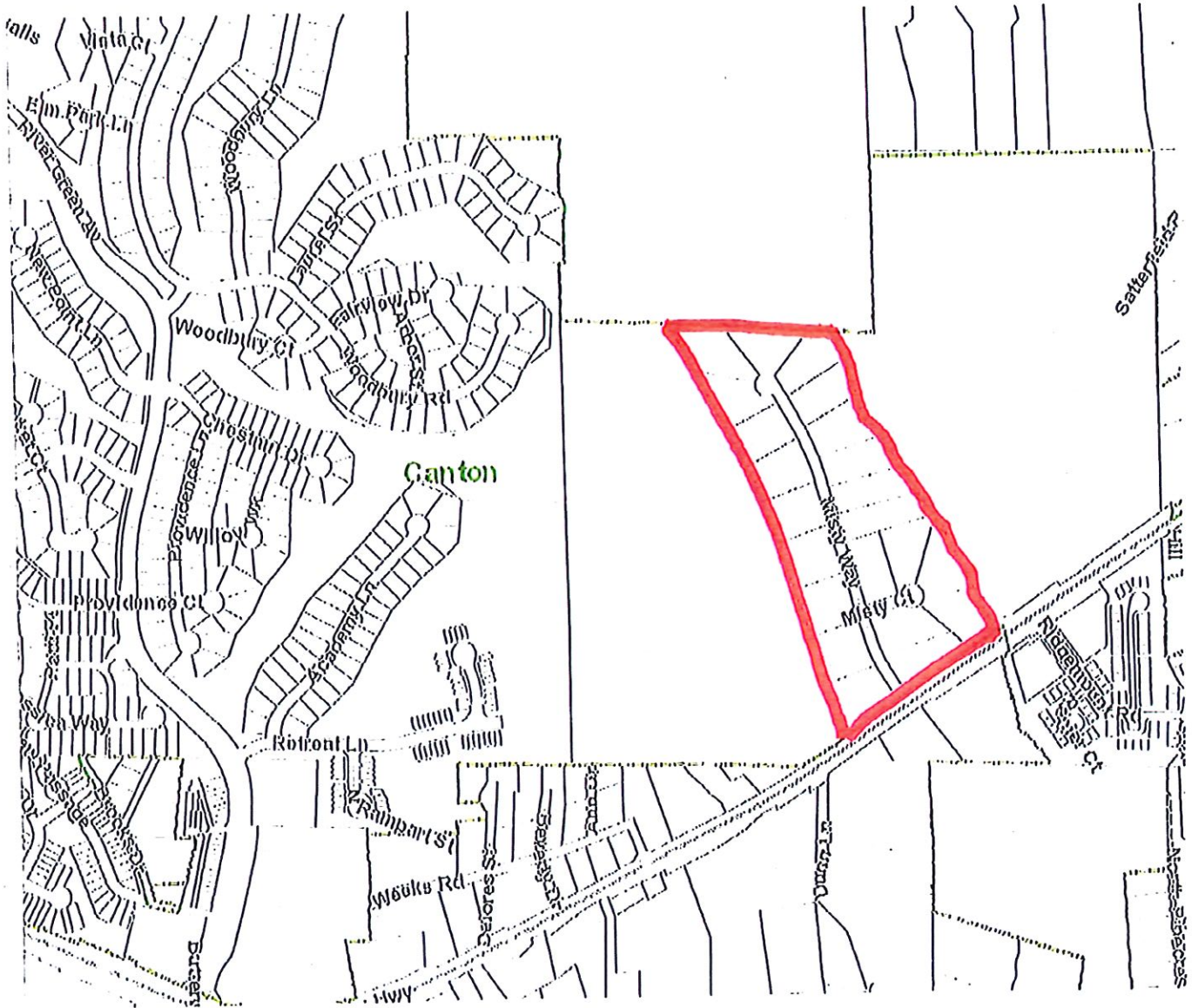
South – Across Knox Bridge Highway, Single family home, business – LI, R-40 and GC, Cherokee County

East – Vacant/Undeveloped - LI

West – School - SU

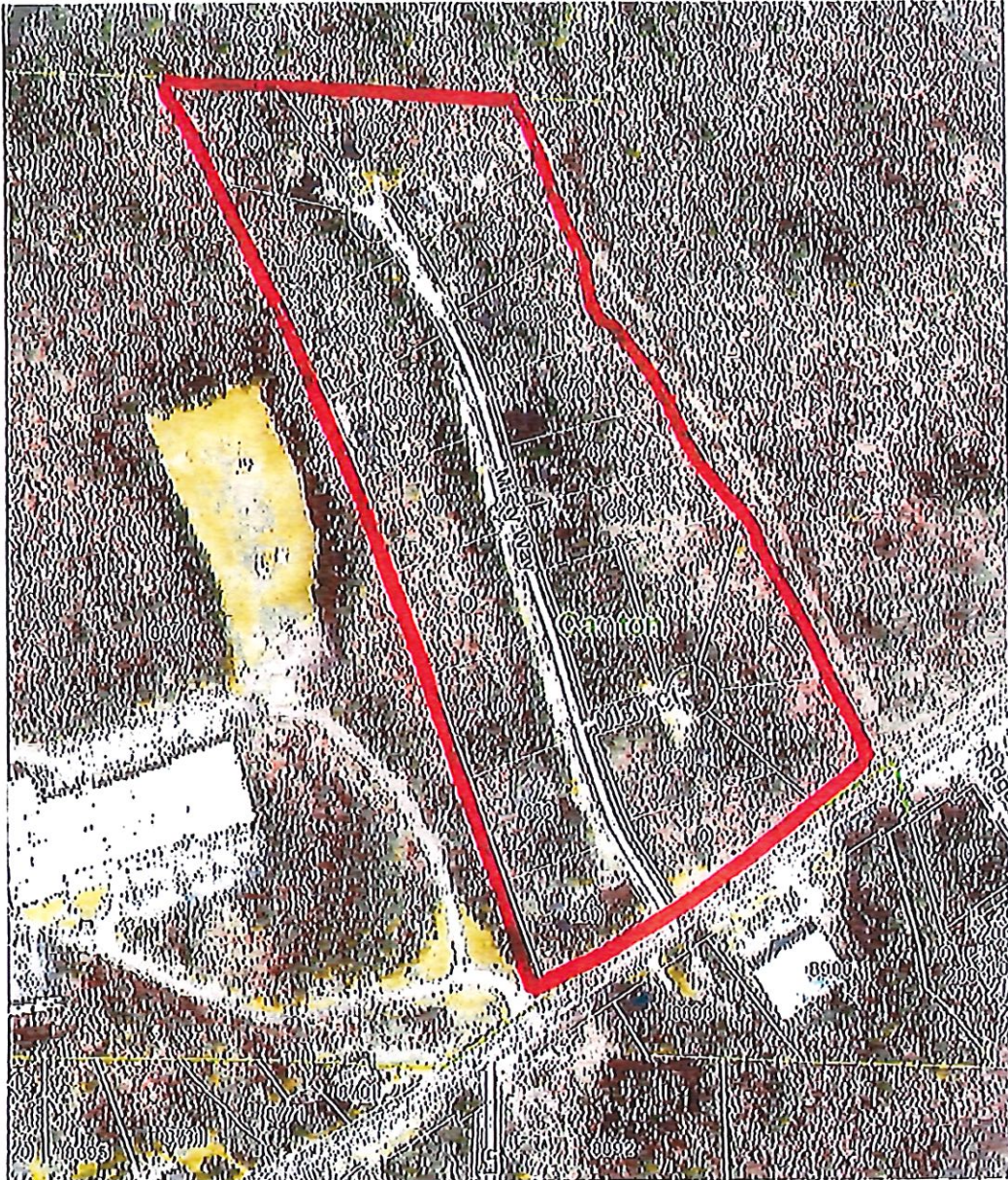
CANTON

Location Map

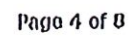


CANTON

Existing Land Use Map



Future Development: Map





Site Description: The subject property currently contains several duplex units and numerous vacant lots. The undeveloped lots contain a mixture of hardwoods and pines.

Site History: In 2022 a Conditional Use Permit application was submitted for the development of a 298 unit apartment complex. The application was denied by the Mayor and City Council. The applicant sued and the judge ruled in favor of the city.

CRITERIA TO BE APPLIED – LAND USE PETITION (REZONING)

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;
2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
4. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
5. Whether the zoning proposal is in conformity with the policy and intent of the Comprehensive Plan and Future Development Map;
6. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.
7. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.
8. Whether the aesthetic and architectural design of the site is compatible with the intent and requirements of the Comprehensive Plan, the Character Areas, and any Overlay Districts.

CRITERIA TO BE APPLIED – CONDITIONAL USE PERMIT

- a. Whether the proposed use is consistent with the comprehensive plan and other adopted policies of the City; The property is located within one of the designated Neighborhood Living Areas within Canton, Oakdale. Compatible land uses within this area



are; 1) Medium density residential (4-6 u/a), 2) Traditional Neighborhood development, 3) Senior housing, 4) Parks, recreation and greenspace and 5) Institutional.

- b. Whether the proposed use complies with the requirements of this zoning ordinance;** The subject property is currently zoned RM-15, which allows for development of a townhome project.
- c. Whether public services, public facilities and utilities are adequate to serve the proposed use;** Water service is adequate. Public services such as fire and police are adequate.
- d. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of:**
 - 1. Noise, smoke, order, dust or vibration generated by the proposed use;** There will be no noise, smoke or odor that would have an adverse impact on any adjacent land.
 - 2. Hours or manner of operation of the proposed use;** No adverse impact and
 - 3. Traffic volumes generated by the proposed use;** Traffic volumes will be typical of a townhouse project of this size. The GDOT will approve all means of ingress and egress.
- e. Whether the proposed use would result in an over-concentration of the subject use type within the area of the proposed use;** Currently there is a townhome project being developed at the entrance to River Green.
- f. Whether the aesthetic and architectural design of the site is compatible with the intent and requirements of the comprehensive plan, the character areas, and all applicable zoning ordinance regulations;** Exterior elevations, color and materials will be approved by the Oversight Committee and
- g. Whether the proposed use is compatible with adjacent properties and land uses, based on consideration of the size, scale and massing of proposed buildings and the overall site design.** The properties immediately adjacent to the subject property are a school, land owned by the Corps of Engineer and a property slated for an industrial park. The proposed development will have no adverse impact on these properties.

DEPARTMENT COMMENTS

BUILDING AND SAFETY SERVICES



- BUILDING SERVICES:
No comments at this time.
- SAFETY SERVICES:
- International Building Code, 2018 Edition, with Georgia Amendments ([2020](#)), ([2022](#)), ([2024](#))
- International Residential Code, 2018 Edition, with Georgia Amendments ([2020](#)), ([2024](#))
- International Fire Code, 2018 Edition (Contact State Fire Marshal Below)
- International Plumbing Code, 2018 Edition, with Georgia Amendments ([2020](#)), ([2022](#)), ([2023](#)), ([2024](#))
- International Mechanical Code, 2018 Edition, with Georgia Amendments ([2020](#)), ([2024](#))
- International Fuel Gas Code, 2018 Edition, with Georgia Amendments ([2020](#)), ([2022](#))
- National Electrical Code, 2020 Edition, with Georgia Amendments ([2021](#))
- International Energy Conservation Code, 2015 Edition, with Georgia Supplements and Amendments ([2020](#)), ([2022](#)), ([2023](#))
- International Swimming Pool and Spa Code, 2018 Edition, with Georgia Amendments ([2020](#))

The City of Canton has an automatic sprinkler system ordinance. All multi-family residential construction (three family dwellings or more) requires an NFPA 13R automatic sprinkler system. For commercial development, any structure over 3,500 square feet shall require an NFPA 13 automatic sprinkler system.

This project may require two or more entrances based on the number of dwelling units constructed. This requirement is in the City of Canton Unified Development Code (UDC), section 109.03.12 - Development access and the 2018 International Fire Code Appendix "D".



The minimum diameter fire main size is 8". Fire hydrant placement is based on both the City of Canton UDC, section 110.02.02 (f)- Design criteria and appendix B and C of the 2018 International Fire Code which has been adopted as law in the City of Canton.

Mail Kiosks shall meet the 2010 Federal ADA standard and USPS-STD-4C. A van accessible handicap parking space and access aisle is required to serve an accessible route to the mail kiosk.

Specific 2018 IFC requirements for civil plans:

1. The 2018 International Fire Code, appendix "D" requires fire apparatus access roads not exceeding 10% grade and for local Cherokee County fire apparatus requirements, access road cross grades may not exceed 5%.
2. Roads throughout the development must be at minimum made of asphalt or concrete capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds.
3. Turn radiuses for all streets shall be 35' minimum for development entrances and 25' for interior streets. Proof of turning radius compliance shall be demonstrated using software analysis such as "AutoTURN" or other clearance/swept path analysis software. For tire curb clearances, bumper swing clearances or inside crimp angles, contact Cherokee County Fire & Emergency Services.
4. Dead end fire apparatus access roads in excess of 150 feet in length shall be provided an approved area for turning around fire apparatus.
5. Aerial fire apparatus streets are required where the vertical distance between the grade plane and the highest roof surface exceeds 30'. The required width of an aerial apparatus road shall be 26' minimum and constructed as noted in note #2 above. One or more of the aerial access routes meeting the building height condition shall be located not less than 15' and not greater than 30' from the building and shall be positioned parallel to one entire side of the building. Overhead utilities and power lines shall not be located over the aerial apparatus road.
6. Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one-half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.



Conditions for Consideration

COMMUNITY DEVELOPMENT

The subject property was annexed in 1999 and rezoned to R-5. The R-5 zoning category was the multi-family district (15 du/a) in the previous Zoning Ordinance. When the current Unified Development Code (UDC) and Zoning Map was adopted in 2014 the property was given the zoning designation of RM-15. The property has zoned for multi-family for 23 years.

The number of proposed units will require two means of ingress/egress by City code and the 2018 International Fire Code (IFC). There has been ongoing dialogue between the city and the school board for a secondary entrance agreement from the former Teasley Middle School property. The IFC determines the required distance between ingress/egress points by measuring the diagonal distance from one corner to the next. Half of this distance is the required separation between ingress/egress points. The subject property is rectangular in size with one side being 1,897' feet long. This means the two points ingress/egress would have to be 948.5' from one another. The property is roughly +/- 700' wide along the road frontage. This will present a problem in meeting the IFC requirements.

Misty Way and Misty Court are also public rights of way. These will need to be abandoned should this application be approved and the townhomes built.

Conditions for Consideration

DEVELOPMENT SERVICES

Conditions for Consideration

POLICE DEPARTMENT

No comment

Conditions for Consideration



PUBLIC WORKS

Conditions for Consideration

UTILITY ENGINEER

Conditions for Consideration

CHEROKEE COUNTY SCHOOL SYSTEM

Conditions for Consideration

CHEROKEE COUNTY (AS NEEDED)

CHEROKEE COUNTY PLANNING AND ZONING DEPARTMENT

Conditions for Consideration

CHEROKEE COUNTY ENGINEER

Conditions for Consideration

CHEROKEE COUNTY FIRE MARSHALL



Conditions for Consideration

STAFF CONDITIONS FOR CONSIDERATION



Community Development Department

110 Academy Street, Canton, Georgia 30114
770-704-1500

CLP2410-005

Public Hearing Application

Project # _____

1. Please check all information supplied on the following pages to ensure that all spaces are filled out completely and accurately before signing this form. State N/A, where Not Applicable
2. Please make your check payable to "City of Canton."
3. If you have questions regarding this form please contact the Department of Planning and Zoning by calling (770) 704-1530.

Bryan Muddiman for

This form is to be executed under oath. I, Ashton Atlanta Residential, LLC, do solemnly swear and attest, subject to criminal penalties for false swearing, that the information provided in the Application for Public Hearing is true and correct and contains no misleading information. I, Bryan Muddiman, have received and thoroughly read the Public Hearing Procedures.

Applicant: [Signature] This 18TH day of OCTOBER, 20 24.
Print Name: Bryan Muddiman for Ashton Atlanta Residential, LLC

Applicant Information:

Name: Ashton Atlanta Residential, LLC
Address: 3820 Mansell Road, Suite 300
City: Alpharetta
State: GA Zip Code: 30022
Telephone: 770 998 9663
Fax Number: _____
Email Address: _____

Owner Information:

Name: Misty Ridge LLC
Address: 2472 Jett Ferry Road PMB 452
City: Dunwoody
State: GA Zip Code: 30338
Telephone: _____
Fax Number: _____
Email Address: _____

This Application For (Check Only One):

- | | |
|--|--|
| ☐ A Annexation | ☐ I Temporary Use Permit |
| ☐ B Rezoning | ☐ J Zoning Ordinance Text Amendment |
| ☐ C Master Plans | ☐ K Variance : Pre-Construction |
| ☐ D Master Plan Revisions | ☐ K Variance : Post-Construction |
| ☒ E Conditional Use Permit | ☐ Appeal |
| ☐ F Land Use Modification | |
| ☐ G Zoning Condition Amendment | ☐ Adjustment |
| ☐ H Density Transfer within Master Plan | ☐ Special Exception |

Fee Schedule:

Application Type _____
Base Fee _____ + (#Acres _____ x \$25.00 = _____) = _____
Advertising Fee _____ + (#Acres _____ x \$50.00 = _____) = _____

Staff Use Only

Amount Due: _____
Amount Due: _____
Total Fee: _____

Received By: _____ Date: _____

Amount Paid: _____

**CERTIFICATE REGARDING CORPORATE AUTHORITY TO PURSUE PUBLIC HEARING
APPLICATION**

1.

My name is Bryan Muddiman. I am the officer who is delegated the responsibility for authenticating records of Ashton Atlanta Residential, LLC (the "Applicant Company"). I am of legal age and suffer from no disabilities which would affect my competence to give this Certificate which is being given on my own personal knowledge for use with respect to the Applicant's Application for Public Hearing regarding certain real property located in the City of Canton, Cherokee County, Georgia.

2.

In accordance with the Requirements for completing a City of Canton Application, I hereby attest on behalf of the Applicant Company that an authorized representative of Applicant Company has reviewed the Application and related documents which are being filed simultaneously therewith on behalf of the Applicant Company (collectively, the "Application") to which this Certificate is attached and hereby certify:

- (a) That corporate seal or facsimile affixed to the Application is in fact the seal of the Applicant Company or a true facsimile thereof; and
- (b) That the officer or other representative of the Applicant Company who executed the Application does in fact occupy the official position indicated, that the position that the signer occupies has the authority to execute the Application on behalf of the Applicant Company, and that the signature of said officer or other representative is genuine; and
- (c) That the execution of the Application and the filing of the Application on behalf of the Applicant Company by the officer or other representative of the Applicant Company has been duly authorized by the Applicant Company.

ASHTON ATLANTA RESIDENTIAL, LLC

Signed: _____

Bryan Muddiman, Authorized Signatory for the Applicant



Signature of Notary Public

Date _____

10/15/24



Community Development Department

110 Academy Street, Canton, Georgia 30114

770-704-1500

Authorization Of Property Owner

This form is to be executed under oath. I, Daniel Miles, do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the owner of the property, which is the subject matter of the attached application, as is shown in the records of Cherokee County, Georgia. I hereby authorize the City of Canton and its representatives to inspect the property, which is the subject of this application, and post any notices required thereon.

This 16th day of October, 2024.

Owner Signature:

Print Name: Daniel Miles for Misty Ridge LLC

I, the above signed legal owner of the subject property, do hereby authorize the following application to be submitted to the City of Canton:

- | | |
|--|--|
| ☐ A Annexation | ☐ G Zoning Condition Amendment |
| ☐ B Rezoning | ☐ H Density Transfer within Master Plan |
| ☐ C Master Plans | ☐ I Temporary Use Permit |
| ☐ D Master Plan Revisions | ☐ J Zoning Ordinance Text Amendment |
| ☒ E Conditional Use Permit | ☐ K Variance |
| ☐ F Land Use Modification | |

Sworn To and Subscribed Before Me This 16th Day Of October, 2024.

Notary Signature:



(Seal)

CERTIFICATE REGARDING CORPORATE AUTHORITY TO PURSUE A PUBLIC HEARING APPLICATION

1.

My name is Daniel Miles. I am the authorized signatory who is delegated the responsibility for authenticating records of *Misty Ridge, LLC*. I am of legal age and suffer from no disabilities which would affect my competence to give this Certificate which is being given on my own personal knowledge for use with respect to the Applicant's Public Hearing Application ("Application") regarding certain real property owned by the Titleholder Company located in the City of Canton, Cherokee County, Georgia.

2.

In accordance with the Requirements for completing an Application for Public Hearing, I hereby attest on behalf of the Titleholder Company that I have reviewed the Application and related documents which are being filed simultaneously therewith on behalf of the Applicant and Titleholder to which this Certificate is attached and hereby certify:

- (a) That corporate seal or facsimile affixed to the Application is in fact the seal of the Titleholder Company or a true facsimile thereof; and
- (b) That the officer or other representative of the Titleholder Company who executed the Application does in fact occupy the official position indicated, that the position that the signer occupies has the authority to execute the Application on behalf of the Titleholder Company, and that the signature of said officer or other representative is genuine; and
- (c) That the execution of the Application and the filing of the Application on behalf of the Titleholder Company by the officer or other representative of the Applicant Company has been duly authorized by the Titleholder Company.

Misty Ridge, LLC

Signed: _____

[Handwritten Signature]

By: Daniel Miles, Authorized Signatory for the Titleholder

[Handwritten Signature]
Signature of Notary Public

10/16/2024
Date





Community Development Department

110 Academy Street, Canton, Georgia 30114
770-704-1500

Authorization Of Applicant

This form is to be executed under oath. I, Daniel Miles, do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the owner of the property, which is the subject matter of the attached application, as is shown in the records of Cherokee County, Georgia. I hereby authorize the City of Canton and its representatives to inspect the property, which is the subject of this application, and post any notices required thereon.

This 16th day of October, 20 24.

Owner Signature: [Signature]

Print Name: Daniel Miles for Misty Ridge LLC

I, the above signed legal owner of the subject property, do hereby authorize the person named below to act as applicant in the pursuit of a request for:

- | | |
|--|--|
| ☐ A Annexation | ☐ G Zoning Condition Amendment |
| ☐ B Rezoning | ☐ H Density Transfer within Master Plan |
| ☐ C Master Plans | ☐ I Temporary Use Permit |
| ☐ D Master Plan Revisions | ☐ J Zoning Ordinance Text Amendment |
| ☒ E Conditional Use Permit | ☐ K Variance |
| ☐ F Land Use Modification | |

Name of Authorized Applicant: Ashton Atlanta Residential, LLC

Signature: [Signature]

Mailing Address: 3820 Mansell Road

Suite 300

City: Alpharetta

State: GA Zip Code: 30022

Telephone: (770) 998-9663

Fax Number: _____

E-mail: _____

Applicant Status:

- | |
|--|
| ☐ Owner |
| ☒ Option to Purchase |
| ☐ Lessee |
| ☐ Aren Resident |
| ☐ Other (Explain): _____ |

This Authorization of Applicant Form has been completed and the property owner's signature is Sworn To and Subscribed Before Me This 16th Day Of October, 20 24.

Notary Signature: [Signature]





Community Development Department

110 Academy Street, Canton, Georgia 30114
770-704-1500

Disclosure Form

O.C.G.A. § 36-67A-2 / O.C.G.A. § 36-67A-3 requires disclosure of campaign contributions to government officials by an applicant or opponent of a public hearing petition. Applicants must file this form with the Department of Community Development.

1. Name of Applicant/Opponent: ASHTON ATLANTA RESIDENTIAL, L.L.C.

Section 1

If the answer to any of the following questions is "Yes," complete Section 2.

- A) Are you, or anyone else with a property interest in the subject property, a member of the City of Canton Planning Commission or the City of Canton Mayor and Council?
☐ YES ☒ NO
- B) Does an official of such public bodies have any financial interest in any business entity which has a property interest in the subject property?
☐ YES ☒ NO
- C) Does a member of the family of such officials have an interest in the subject property as described in (A) and (B)?
☐ YES ☒ NO
- D) Within Two (2) years of immediately preceding this application have you made campaign contributions(s) or given gifts to such public officials aggregating \$250 or more?
☐ YES ☒ NO

Section 2

1. Name and the official position of the Canton Official to whom the campaign contribution was made *(Please use a separate form for each official to whom a contribution has been made in the past (2) years):*

	Description
\$	
\$	
\$	

Note: Complete a separate form for each authorized applicant.



Community Development Department
110 Academy Street, Canton, Georgia 30114
770-704-1500

Property Information:

Address: All parcels located in the Misty Ridge subdivision located on Misty Way and Misty Court

Land Lot(s): 125 District: 14 Section: 2nd Map #: 14N Parcel #: Multiple

☒ City
☐ County

Existing Zoning Of Property: RM-15 Total Acreage Of Property: 22.655

Proposed Zoning Of Property: RM-15 Existing Use(s) Of Property: Residential

Directions to property from Main Street in downtown Canton:

Marietta Street (which turns into Marietta Road south to Marietta Highway (2.9 miles); left on Hwy 20; .6 miles
subject property is on the right

Adjacent Property/Owner Information: Please provide the following information for all adjacent properties, including property connected by public rights-of-way. Attach additional sheets as necessary.

	<u>OWNER NAME/ADDRESS</u>	<u>CURRENT ZONING</u>	<u>CURRENT LAND USE</u>
NORTH	US GSA 1138 GA HWY SPUR 20 CARTERSVILLE GA 30121	AG	undeveloped (park)
	L AND S DUNN INC; 8900 Knox Br. Hwy.	GC	retail
	BRUSSO ENTERPRISES LLC; 8896 Knox Br. Hwy.	R-40	residential
SOUTH	BOARDWALK STORAGE 8892 Knox Br. Hwy.	LI	self storage
EAST	Cherokee Development Authority 100 Innovation Way LI		undeveloped
WEST	Cherokee County School Dist 8871 Knox Br. Hwy. SU		school
OTHER			

UTILITY INFORMATION

How is sewage from this development to be managed? City

Proposed managing jurisdiction: City

How will water be provided to the site? City of Canton

Proposed managing jurisdiction: City of Canton Size Limit: _____



Community Development Department

110 Academy Street, Canton, Georgia 30114
770-704-1500

PUBLIC SCHOOL POLICY STATEMENT

The Mayor and Council of the City of Canton hereby recognize that growth and development can, at times, have an effect on school capacity within the county and therefore recognize the need to share information on developments that have regional impact. In an effort to cooperate with the Cherokee County School Board and share information on residential rezoning requests, master plan applications, and land use modifications to the comprehensive land use plan, the Mayor and Council hereby encourage open dialogue and meeting between the applicant and the appropriate school board representative. Therefore, developers whose projects consist of 25 or more residential units shall contact the Cherokee County School Board and communicate with a school board representative to discuss their intent. The applicant should be prepared to address such communication if requested by the Mayor and Council at the meeting in which final action is to be taken. (Section 8-8-B-37) (Amended: 12/07/00)

County Schools serving this development:

HIGH _____ Cherokee _____
MIDDLE _____ Teasley _____
ELEMENTARY _____ Knox _____

TRAFFIC INFORMATION

Road/Street providing access: _____ Highway 20 (Knox Bridge Highway) _____

*Width at property: (Road) _____ variable _____ (Right-of-way) _____ variable _____ * subject to GDOT widening/improvement project

Distance to nearest major thoroughfare: _____ 0.0 miles _____ Thoroughfare Name: _____ Highway 20 (Knox Bridge Hwy.) _____

Description of Road accessing property (Classification): _____ Principal Arterial _____

In support of this request, I submit the following items, which are attached and made a part of this application:

☒ Boundary Survey

☒ Legal Description

☒ Letter of Intent

☐ Traffic Analysis Report

☒ Master Plan / Site Plan

☒ Location Map

☐ Hydrology Study

(Guidelines available from Planning & Zoning Dept.)

☐ Board of Appeals Review Criteria Response

☐ Elevation Plans

☐ Petition Requesting Annexation

☐ Other (please explain) _____ Constitutional Challenge _____



Community Development Department
110 Academy Street, Canton, Georgia 30114
770-704-1500

SEE ATTACHED LETTER OF INTENT

Review Criteria

(Applications Type A – J : ONLY)

How will this proposal be compatible with surrounding properties? _____

How will this proposal affect the use and value of surrounding properties? _____

Can the property be developed for a reasonable economic use as currently zoned? Please explain why or why not.

What would be the increase to population and traffic if the proposal were approved? _____

What would be the impact to schools and utilities if the proposal were approved? _____

How is the proposal consistent with the Comprehensive Land Use Plan, particularly the Future Land Use Map?

Are there existing or changing conditions which affect the development of the property and support the proposed request? _____

Provide a Letter of Intent, which provides the necessary information to support your application.



GARVIS L. SAMS, JR.
(RETIRED)
JOEL L. LARKIN
PARKS F. HUFF

SAMS, LARKIN & HUFF
A LIMITED LIABILITY PARTNERSHIP
SUITE 100
376 POWDER SPRINGS STREET
MARIETTA, GEORGIA 30064-3448

770•422•7016
TELEPHONE
770•426•6583
FACSIMILE

October 24, 2024

VIA ONLAMA ONLINE PORTAL

Mr. Steve Green, Zoning Administrator
City of Canton
110 Academy Street
Canton, GA 30114

RE: Application of Ashton Atlanta Residential, LLC for a Conditional Use Permit for properties located in Land Lot 125 of the 14th District; Cherokee County, Ga.

LETTER OF INTENT

Dear Steve:

Ashton Atlanta Residential, LLC proposes to build a neighborhood with 208 for sale, single-family townhomes on approximately 22.655 acres in the City of Canton. The Subject Property is zoned RM-15, the city's apartment zoning allowing up to 15 units per acre. The property is currently several properties owned by one entity that includes multiple rental duplexes on Misty Way. Previous proposals to redevelop the property for a 286 unit apartment complex were denied by the city council. The current proposal is to redevelop the property for townhomes.

The totality of the Subject Property is situated in the City of Canton. The property to the north of the subject property is owned the US Government is zoned AG in Cherokee County. East of the Subject Property is an undeveloped parcel zoned LI that is being developed by the Cherokee County Development Authority for an industrial park. South of the Subject Property and across Highway 20 are three parcels in Cherokee County zoned LI, R-40 and GC. The property contiguous to the west is owned by the Cherokee County School District and houses the ACTIVE campus. Under the City of Canton's 2045 Comprehensive Plan, the Subject Property is in the Neighborhood Living (NL) Future Land Use Character Area.

The Applicant's parent company, Ashton Woods, is a premier Atlanta homebuilder and design studio headquartered in Alpharetta. Ashton Woods was awarded the 2023 Builder of the Year award by Builder Magazine and is renowned for its construction and design. The Applicant proposes to redevelop the existing subdivision and create a new development with 208 townhomes and 29 buildings for an attractive and livable community.

Access to the proposed development will be from Highway 20 (Knox Bridge Highway). Georgia Department of Transportation is currently improving Highway 20 (GDOT Project ID # 0007836) in a multi-year project between I-75 in Bartow County to I-575 in Cherokee County.



October 24, 2024

Page 2

The proposed development will have a full access driveway that will be permitted by Georgia DOT and comply with all their engineering requirements such as deceleration lanes and potential left-turn lane.

REVIEW CRITERIA

How will this proposal be compatible with the surrounding properties?

The Applicant's proposed neighborhood will further diversify the City's housing inventory with a much needed for sale option. Adding a townhome community in this area of Highway 20 will complement the existing Canton Heights Townhouse District to the north of the Subject Property.

How will this proposal affect the use and value of the surrounding properties?

The Conditional Use Permit will not adversely affect adjacent or nearby properties' existing use, usability, or value. The housing which will target first-time homebuyers is needed in Canton and will provide housing for nurses, teachers and young people just entering the workforce. The city denied the previous apartment proposal in part because it was rental which this proposal addresses.

Can the property be developed for a reasonable economic use as currently zoned? Please explain why or why not.

The Subject Property has little to no reasonable economic use if it cannot be developed as proposed by the Applicant. The Misty Ridge subdivision was established in 1986 for 22 lots and presently only 14 lots have been built out. The Subject Property is currently zoned RM-15 which allows up to fifteen (15) units per acre.

What would be the increase to population and traffic if the proposal were approved?

The 208 proposed residential units would cause an increase in both population and trip generation. The increase in population and traffic is consistent with current growth trends throughout Cherokee County and the metro area and as outlined in the City's *Impact Fee Program Capital Improvements Element* (p.48). The streets within the proposed development will be public and will adhere to the City's transportation engineering standards. The Applicant is willing to work with the Department of Transportation with respect to the access and improvements on Highway 20. The Applicant has initiated conversation with the Cherokee County School District to allow an emergency secondary access to the ACTIVE campus driveway to the west of the Subject Property. The Applicant will also work with the City to ensure standards for right of ways are met in residential developments as outlined in the *Canton Roadmap for Success*. All internal streets will be private.



October 24, 2024

Page 3

What would be the impact to schools and utilities if the proposal were approved?

The proposed development is keeping with growth trends throughout Cherokee County and new housing is likely to add new students to the school population. The City of Canton has made recent upgrades to its wastewater system and water lines. Public utility service capacity is adequate to serve the Applicant's proposal. The applicant will work with the school system on any capacity concerns, but the proposed homes will cater to smaller families which often do not have many school-age children.

How is the proposal consistent with the Comprehensive Land Use Plan, particularly the Future Land Use Map?

The Subject Property lies within the Neighborhood Living (NL) Future Land Use Character Area. Townhomes will provide a transition from the educational and commercial uses in the area and will provide a complementary use to the nearby developments. As outlined in the *Canton Roadmap for Success*, the Applicant's proposal will increase variety of housing through varied price-points, design and construction.

Are there existing or changing conditions which affect the development of the property and support the proposed request.

The City's 2022 Updated Housing Study has revealed the need for an increase in the number of housing units and specifically the need for additional for-sale housing options. The development strategies outlined in the City of Canton's 2045 Comprehensive Plan Neighborhood Living Character Area, include: "redevelopment in appropriate areas in order to allow for denser housing types and smaller lot sizes" and "Allow new types of development which have been successfully implemented in other communities in order to promote an attractive and livable community." (p.70)

I look forward to working with you and the Community Development Department regarding this application. Should you or your staff have any questions, please let me know.

Sincerely,

SAMS, LARKIN & HUFF, LLP

A handwritten signature in black ink, appearing to read "Parks F. Huff".

Parks F. Huff

phuff@samslarkinhuff.com

PFH/jcc

All that tract or parcel of land lying and being in Land Lot 125 of the 14th District, 2nd Section, City of Canton, Cherokee County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, COMMENCE at a marble monument found at the corner common to Land Lots 92, 93, 124, and 125; thence along the line common to Land Lots 92 and 125 S00°57'20"W for a distance of 796.46 feet to a point on the said Land Lot line; thence leaving said Land Lot Line S87°01'31"E for a distance of 450.00 feet to a 1/2" rebar found, said point being the **TRUE POINT OF BEGINNING**.

FROM THE TRUE POINT OF BEGINNING AS THUS ESTABLISHED;

thence S87°03'26"E for a distance of 688.01 feet, more or less, to a point at the centerline of a creek; thence in a southerly direction along the centerline of said creek, following the meanderings thereof, for a distance of 1578 feet, more or less, to a point, said creek following a traverse line as follows:

S45°04'07"E for a distance of 36.52 feet to a point; S33°21'22"E for a distance of 63.32 feet to a point; S09°22'58"E for a distance of 83.08 feet to a point; S40°46'24"E for a distance of 69.78 feet to a point; S00°25'42"E for a distance of 42.79 feet to a point; S14°35'33"E for a distance of 72.82 feet to a point; S01°40'32"E for a distance of 46.82 feet to a point; S29°27'52"E for a distance of 36.32 feet to a point; S65°57'30"E for a distance of 25.33 feet to a point; S44°44'22"E for a distance of 93.62 feet to a point; S35°42'08"E for a distance of 106.62 feet to a point; S16°34'03"E for a distance of 59.30 feet to a point; S46°22'48"E for a distance of 66.48 feet to a point; S00°21'17"W for a distance of 57.67 feet to a point; S55°38'11"E for a distance of 90.69 feet to a point; S38°03'14"W for a distance of 31.91 feet to a point; S43°19'22"E for a distance of 89.77 feet to a point; S25°14'53"E for a distance of 171.36 feet to a point; S33°36'49"E for a distance of 132.20 feet to a point; S04°06'54"E for a distance of 51.72 feet to a point; S63°20'16"E for a distance of 39.28 feet to a point; S02°52'39"E for a distance of 53.79 feet to a point; S29°37'05"W for a distance of 10.52 feet, more or less, to a point at the intersection of said centerline of creek and the northwesterly right of way of Georgia Highway 20 (a variable width public right of way); thence leaving said centerline of creek and along said right of way in a southwesterly direction the following courses and distances:

S56°43'52"W for a distance of 43.77 feet to a concrete monument found; S35°15'46"W for a distance of 81.72 feet to a point; S56°57'15"W for a distance of 335.00 feet to a 5/8" rebar found at the intersection of the northwesterly right of way of Georgia Highway 20 and the easterly right of way of Misty Way (a 50 foot public right of way); thence leaving the northwesterly right of way of Georgia Highway 20 and along the right of way of Misty Way the following courses and distances:

N33°01'09"W for a distance of 100.00 feet to a point; 79.62 feet along the arc of a curve to the right, said curve having a radius of 594.06 feet and being subtended by a chord of N29°23'40"W, 79.56 feet to a point; 111.89 feet along the arc of a curve to the right, said curve having a radius of 629.70 feet and being subtended by a chord of N21°28'17"W, 111.75 feet to a point; N16°38'49"W for a distance of 60.17 feet to a point at the intersection of the easterly right of way of Misty Way and the right of way of Misty Court (a 50 foot public right of way); thence along the right of way of Misty Court the following courses and distances:

N73°21'11"E for a distance of 161.70 feet to a point; 79.66 feet along the arc of a curve to the left, said curve having a radius of 49.77 feet and being subtended by a chord of N87°18'49"E, 71.43 feet to a point; 42.03 feet along the arc of a curve to the left, said curve having a radius of 49.77 feet and being subtended by a chord of N17°16'13"E, 40.79 feet to a point; 57.42 feet along the arc of a curve to the left, said curve having a radius of 49.77 feet and being subtended by a chord of N39°58'27"W, 54.29 feet to a 5/8" rebar found; thence 81.41 feet along the arc of a curve to the left, said curve having a radius of 49.77 feet and being subtended by a chord of S60°06'54"W, 72.63 feet to a point; S73°15'56"W for a distance of 7.01 feet to a 5/8" rebar found; S73°15'56"W for a distance of 154.64 feet to a 5/8" rebar

found at the intersection of the right of way of Misty Court and the right of way of Misty Way (a 50' public right of way); thence along the easterly right of way of Misty Way the following courses and distances:

N16°39'56"W for a distance of 282.01 feet to a 1/2" rebar found; N16°40'06"W for a distance of 125.23 feet to a point; N16°39'17"W for a distance of 127.02 feet to a point; N16°38'49"W for a distance of 90.96 feet to a point; 44.83 feet along the arc of a curve to the left, said curve having a radius of 902.71 feet and being subtended by a chord of N18°00'53"W, 44.83 feet to a point; 139.81 feet along the arc of a curve to the left, said curve having a radius of 907.81 feet and being subtended by a chord of N24°05'39"W, 139.67 feet to a 1/2" rebar found; 20.14 feet along the arc of a curve to the left, said curve having a radius of 1278.92 feet and being subtended by a chord of N27°47'06"W, 20.14 feet to a point; N29°51'03"W for a distance of 129.89 feet to a 5/8" rebar found; N29°19'43"W for a distance of 83.22 feet to a point; 10.58 feet along the arc of a curve to the left, said curve having a radius of 50.42 feet and being subtended by a chord of N33°34'30"W, 10.56 feet to a point; 10.58 feet along the arc of a curve to the left, said curve having a radius of 49.59 feet and being subtended by a chord of N45°41'50"W, 10.56 feet to a point; 65.56 feet along the arc of a curve to the left, said curve having a radius of 50.02 feet and being subtended by a chord of N89°24'07"W, 60.97 feet to a point; 36.60 feet along the arc of a curve to the left, said curve having a radius of 50.02 feet and being subtended by a chord of S32°05'26"W, 35.79 feet to a point; 114.07 feet along the arc of a curve to the left, said curve having a radius of 50.02 feet and being subtended by a chord of S54°12'02"E, 90.91 feet to a point; S29°38'49"E for a distance of 39.50 feet to a point; S29°38'49"E for a distance of 125.50 feet to a point; 49.15 feet along the arc of a curve to the right, said curve having a radius of 596.95 feet and being subtended by a chord of S27°39'56"E, 49.13 feet to a 1/2" rebar found; 144.35 feet along the arc of a curve to the right, said curve having a radius of 812.75 feet and being subtended by a chord of S21°36'38"E, 144.16 feet to a point; S16°38'45"E for a distance of 57.64 feet to a 1/2" rebar found; S16°35'40"E for a distance of 190.52 feet to a 1/2" rebar found; S16°40'41"E for a distance of 210.15 feet to a 1/2" rebar found; S16°40'00"E for a distance of 210.30 feet to a point; S16°38'49"E for a distance of 66.40 feet to a point; 144.47 feet along the arc of a curve to the left, said curve having a radius of 720.10 feet and being subtended by a chord of S22°24'22"E, 144.23 feet to a point; 61.29 feet along the arc of a curve to the left, said curve having a radius of 720.10 feet and being subtended by a chord of S30°33'49"E, 61.27 feet to a point; S33°04'40"E for a distance of 99.89 feet to a 1/2" rebar found with cap bearing the label "RLS 3109" at the intersection of the right of way of Misty Way and the northwesterly right of way of Georgia Highway 20 (a variable width public right of way); thence in a southwesterly direction along the northwesterly right of way of Georgia Highway 20 S56°57'15"W for a distance of 255.00 feet to a 1/2" rebar found with cap bearing the label "RLS 3109"; thence leaving said right of way N19°52'55"W for a distance of 1157.25 feet to a 1/2" rebar found with cap bearing the label "RLS 3109"; thence N27°53'32"W for a distance of 740.47 feet to a 1/2" rebar found, said point being the **TRUE POINT OF BEGINNING**.

Said tract or parcel of land contains 22.655 acres, more or less.

TO THE CITY OF CANTON MAYOR AND COUNCIL
CITY OF CANTON, GEORGIA

CONSTITUTIONAL CHALLENGE

COMES NOW, ASHTON ATLANTA RESIDENTIAL, L.L.C., hereinafter referred to as the Applicant, and asserts the following, to-wit:

1.

By application to which this exhibit relates, Applicant has applied for a Conditional Use Permit ("CUP") for certain real property lying and being in the City of Canton, Georgia, a more particular description and delineation of the subject property, hereafter referred to as the "property", being set forth in said application.

2.

The application for a CUP for the property seeks to use the existing RM-15 zoning which would allow for a proposed 208 lot development.

3.

The denial of the CUP would be unconstitutional in that it would deprive the Applicant under and pursuant to Article 1, Section I, Paragraph I and II of the Georgia Constitution of 1983 and the Equal Protection and Due Process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States. This deprivation of property without due process violates constitutional prohibitions against the taking of private property without just compensation.

4.

It would be unconstitutional to deny the CUP because the denial would not have any relation to the public health, safety, morality or general welfare and is, therefore, confiscatory and void. Further, said adherence to the original master plan is unconstitutional in that it is arbitrary and unreasonable, resulting in no gain or benefit to the public, while inflicting serious injury and loss upon the Applicant.

5.

The City of Canton Zoning Ordinances are further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with zoning applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issues at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law.

6.

Pursuant to O.C.G.A. §§ 36-11-1 and 36-33-5, please consider this your notice that as of today's date the Applicant is contending that the denial by the City of Canton of the proposed Conditional Use Permit would cause damage to the Owner and Applicant. As a direct and proximate result of the unconstitutional denial of the CUP, the Applicant would suffer monetary damages in the nature of attorneys' fees and costs, interest and other expenses on pending loans on the property, loss of income from the property and other related damages. This amount cannot be calculated to an exact certainty, however, the Applicant will assist the City by providing whatever additional information, if any, the City feels is necessary to adequately investigate this claim. If the Applicant does not receive a timely request for additional information, it will be presumed that the City does not require any additional information and can make a determination within the allowed statutory period.

Respectfully submitted, this the 24th day of October, 2024.

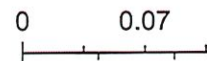
SAMS, LARKIN & HUFF, LLP

By: _____

PARKS F. HUFF
Attorney for Applicant
Ga. Bar No. 375010



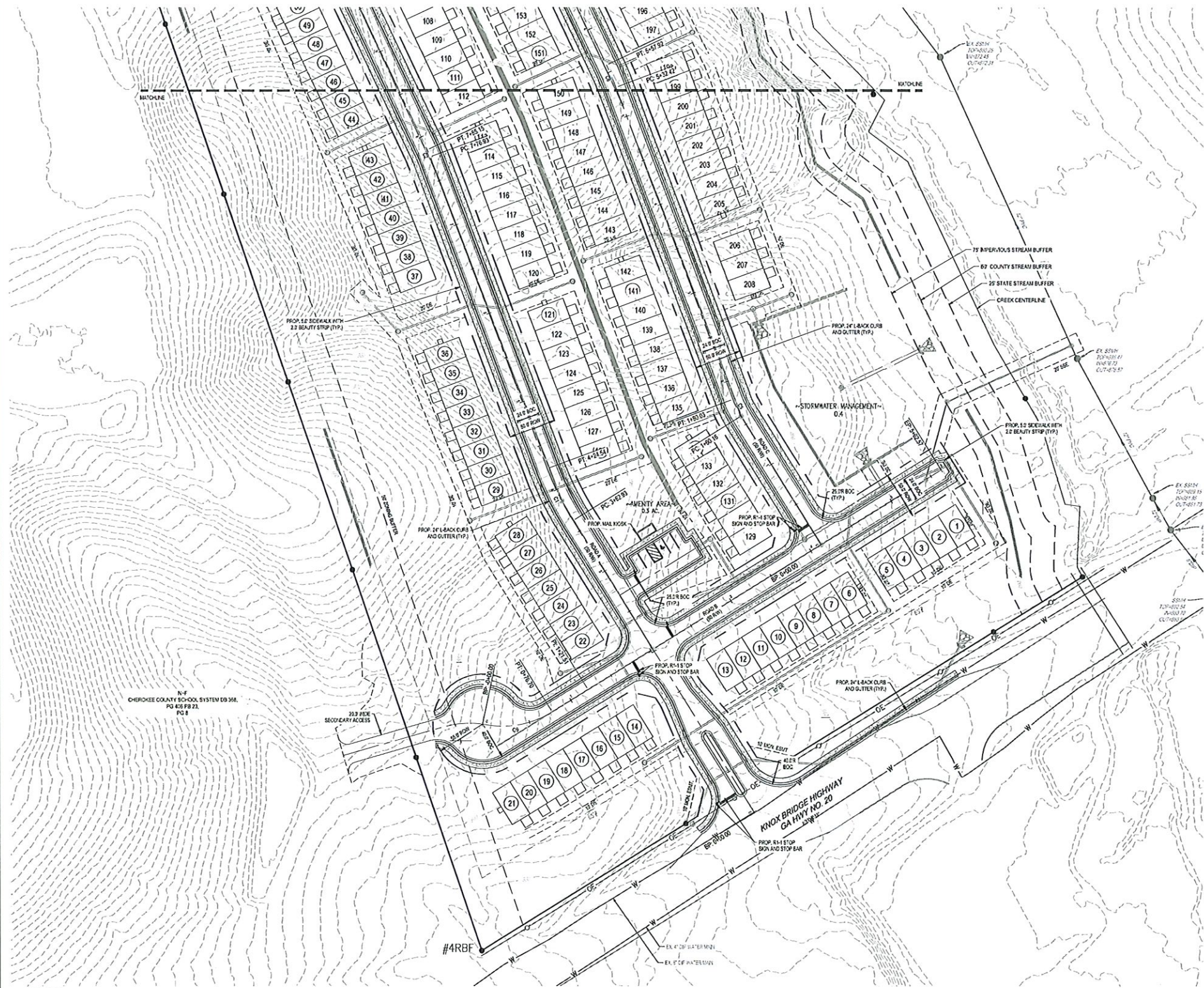
Main Roads  Cherokee County Parcels



C:\0001\31-13-01\31-13-01-Engineers\5. Plan_Sheets\Misty Way - PRELIM.dwg Layout: PRELIMINARY PLAT (2) Plotted: 10/22/2024 1:18:12 PM



FLOOD CERTIFICATION
SUBJECT PROPERTY IS LOCATED WITHIN A SPECIAL FLOOD HAZARD ZONE. IT IS LOCATED IN ZONE "AE" AS DEFINED BY HUD F.I.R.M. COMMUNITY PANEL NUMBER 130039.0232E, MAP NUMBER 1305700232E WITH AN EFFECTIVE DATE OF JUNE 7, 2019.



- GENERAL SITE NOTES:**
1. TOTAL AREA = 24.65 ACRES
 2. TOTAL DISTURBED AREA = 21.00 ACRES
 3. TOTAL NUMBER OF PROPOSED LOTS = 2X6 LOTS
 4. OWNER: ASHTON WOODS
3820 MANSELL ROAD
SUITE 300
ALPHARETTA, GA 30022
 5. 24-HOUR CONTACT: GREGORY HASTY
(878) 781 4300
 6. ZONING = RM-15
 7. BUILDING SETBACKS: FRONT = 65';
REAR = 40';
SIDE (MAJOR) = 25';
SIDE (MINOR) = 25';
 8. NO STREET PARKING IS PROPOSED FOR THIS DEVELOPMENT. EACH UNIT IS TO HAVE A 1 CAR GARAGE AND 1 GUEST SPACE LOCATED IN THE DRIVEWAY
 9. ALL ON-SITE WETLANDS AND BUFFERED STATE WATERS LOCATED ON OR WITHIN 200 LINEAR FEET OF THE PROJECT SITE HAVE BEEN DELINEATED.
 10. NO CLEARING DEMO SHALL OCCUR UNTIL EROSION CONTROL PHASE I PERIMETER BMP'S ARE INSTALLED AND APPROVED, (SEE DETAIL SHEETS).
 11. NO CONSTRUCTION EQUIPMENT SHALL BE PARKED IN RIGHT-OF-WAY AND SHALL BE STORED WITHIN THE JOB SITE.
 12. NOTIFY COUNTY INSPECTOR 24 HOURS PRIOR TO ANY WORK ON SITE.

CURVE TABLE					
NUMBER	DELTA ANGLE	RADIUS	ARC LENGTH	CHORD DIRECTION	CHORD DISTANCE
C1	111.2727	310.00	81.82	N89°10'47"W	81.81
C2	4.4296	100.00	8.77	N22°50'37"W	8.22
C3	131.140	250.00	6.87	N25°57'47"W	6.87
C4	43.9632	100.00	78.72	N4°43'30"W	74.84
C5	111.2727	100.00	18.88	N28°10'47"W	18.84
C6	4.4296	310.00	25.52	N22°50'37"W	25.42
C7	131.140	480.00	12.26	N25°57'47"W	12.26
C8	43.9632	100.00	78.72	N4°43'30"W	74.84
C9	43.9632	100.00	78.72	N82°06'17"E	74.84

24 HOUR CONTACT INFORMATION:
GREGORY HASTY
(878) 781 4300

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DRAWN BY:	AMM	
REVIEWED BY:	DFS	
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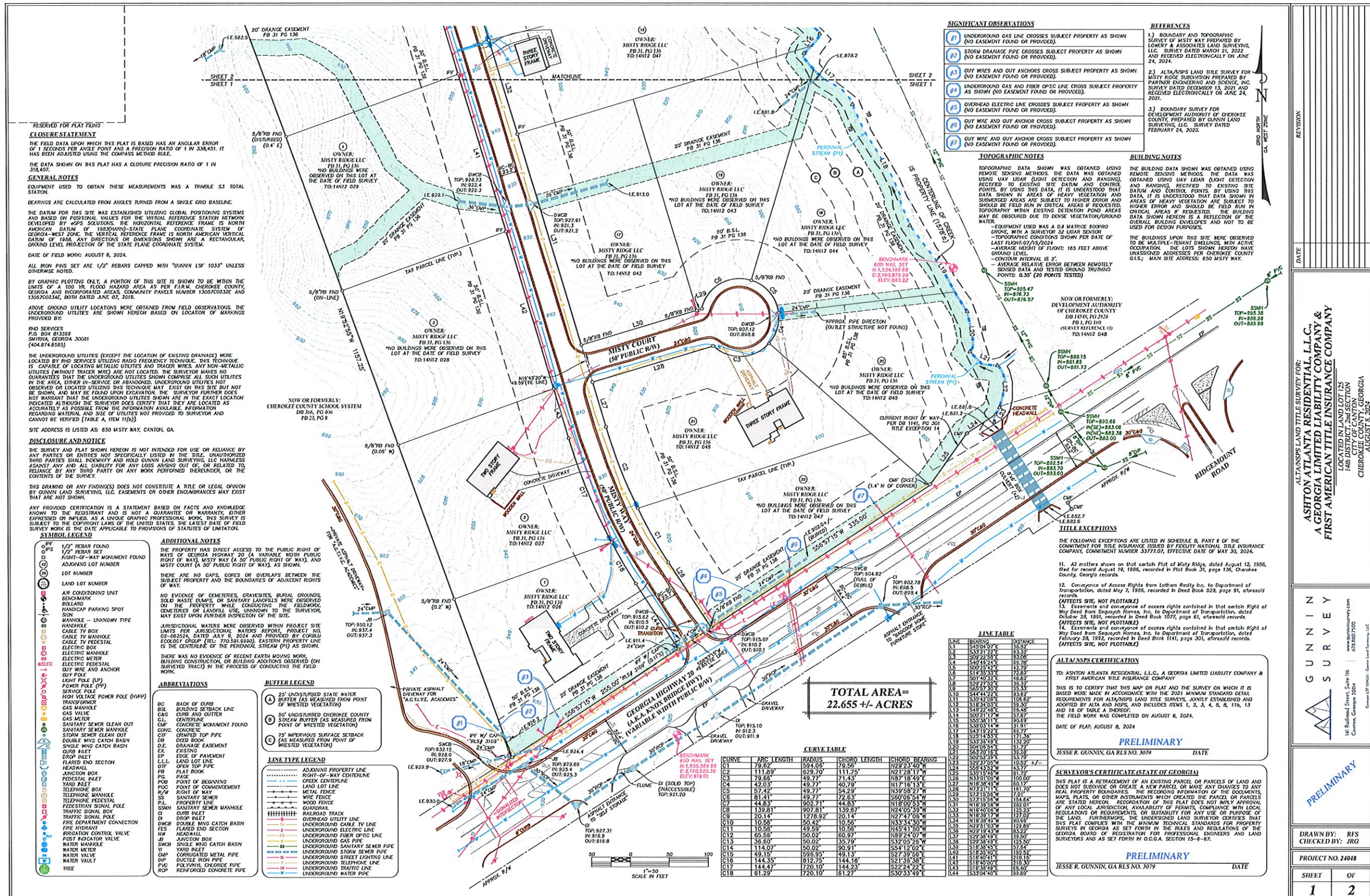
ASHTON WOODS
3820 MANSELL ROAD
SUITE 300
ALPHARETTA, GA 30022

MISTY WAY ASSEMBLAGE
PRELIMINARY ENGINEERING
MISTY WAY
CITY OF CANTON, GA
LAND ACRES: 24.65
ZONED: RM-15

PRELIMINARY PLAT (2)

SEAL

NOT ISSUED FOR CONSTRUCTION
FILE NUMBER:
00013413-00
DATE: 08/16/2024
C3.1.2



REVISION

DATE:

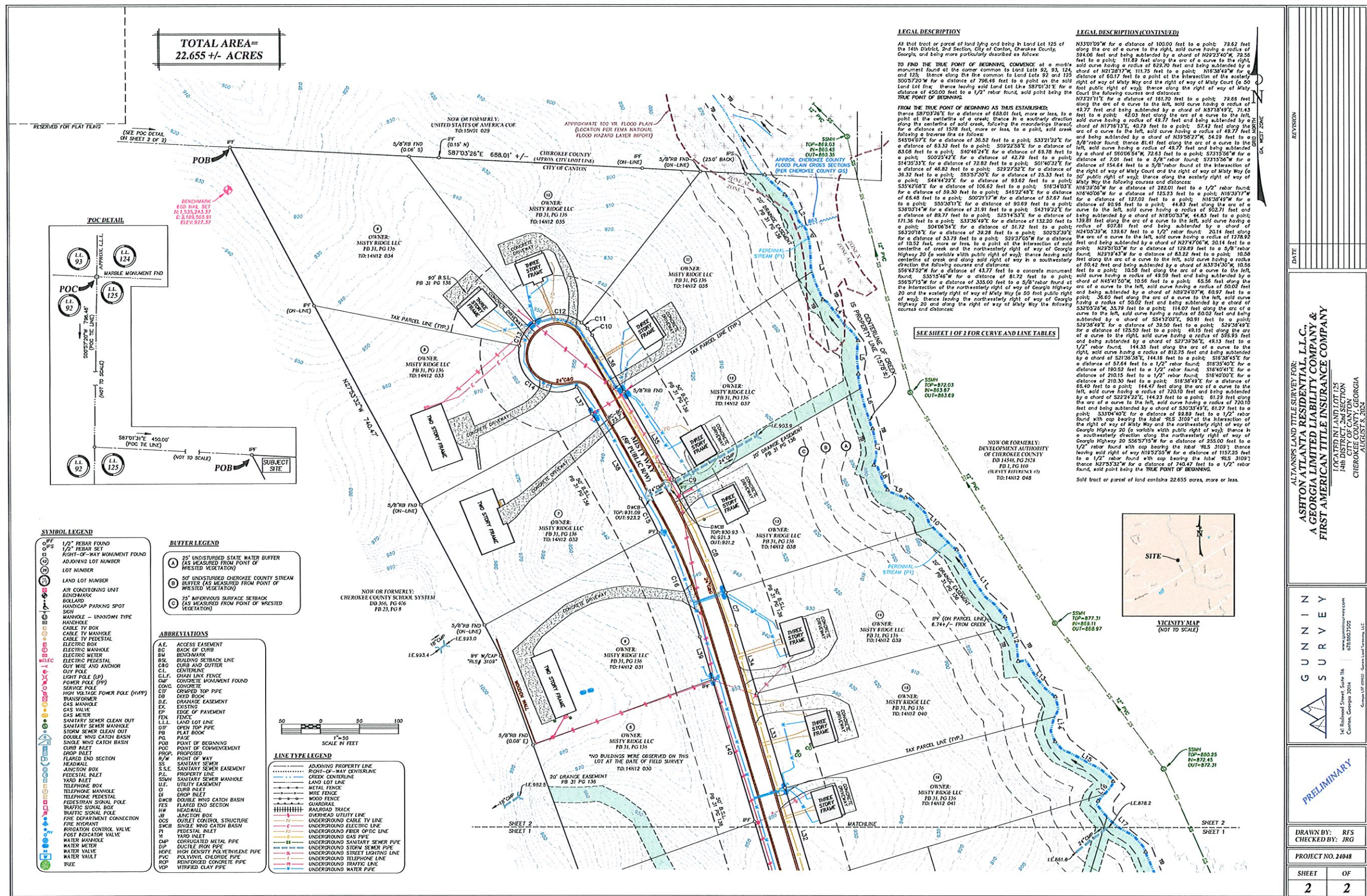
TANSPS LAND TITLE SURVEY FOR:

PRELIMINARY

DRAWN BY: RF
CHECKED BY: JR

PROJECT NO. 24048

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ALTANSPS LAND TITLE SURVEY FOR:
ASHTON ATLANTA RESIDENTIAL, L.L.C.,
A GEORGIA LIMITED LIABILITY COMPANY &
FIRST AMERICAN TITLE INSURANCE COMPANY



GUNIN SURVEY
141 Railroad Street, Suite 116
www.guninsurvey.com

PRELIMINARY

DRAWN BY: RA

PROJECT NO. 2404

SHEET	0
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CH	ENGLISH	SPANISH	ENGLISH	SPANISH
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