

**Action Requested/Required:**

- ☐ Vote/Action Requested  
☒ Discussion or Presentation Only  
☐ Public Hearing  
Report Date: 11/25/24  
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 - Request to construct 208 townhouse units - Ashton Atlanta Residential, LLC

**Summary:**

The applicant has submitted a Conditional Use Permit (CUP) application seeking approval to construct a 208 unit townhome development. The property recently filed a CUP application seeking approval of a 228 unit apartment complex. This request was denied by the Mayor and City Council. The applicant appealed the City's decision and the judge ruled in the City's favor.

**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:**

Staff recommendations will be furnished in a later staff report.

**Reviews:**

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

**Attachments:**

Application  
Site plan



## 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 18<sup>TH</sup> 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):

- |                                                                |                                                            |
|----------------------------------------------------------------|------------------------------------------------------------|
| <input type="checkbox"/> A Annexation                          | <input type="checkbox"/> I Temporary Use Permit            |
| <input type="checkbox"/> B Rezoning                            | <input type="checkbox"/> J Zoning Ordinance Text Amendment |
| <input type="checkbox"/> C Master Plans                        | <input type="checkbox"/> K Variance : Pre-Construction     |
| <input type="checkbox"/> D Master Plan Revisions               | <input type="checkbox"/> K Variance : Post-Construction    |
| <input checked="" type="checkbox"/> E Conditional Use Permit   | <input type="checkbox"/> Appeal                            |
| <input type="checkbox"/> F Land Use Modification               |                                                            |
| <input type="checkbox"/> G Zoning Condition Amendment          | <input type="checkbox"/> Adjustment                        |
| <input type="checkbox"/> H Density Transfer within Master Plan | <input type="checkbox"/> 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 16<sup>th</sup> 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:

- |                                                              |                                                                |
|--------------------------------------------------------------|----------------------------------------------------------------|
| <input type="checkbox"/> A Annexation                        | <input type="checkbox"/> G Zoning Condition Amendment          |
| <input type="checkbox"/> B Rezoning                          | <input type="checkbox"/> H Density Transfer within Master Plan |
| <input type="checkbox"/> C Master Plans                      | <input type="checkbox"/> I Temporary Use Permit                |
| <input type="checkbox"/> D Master Plan Revisions             | <input type="checkbox"/> J Zoning Ordinance Text Amendment     |
| <input checked="" type="checkbox"/> E Conditional Use Permit | <input type="checkbox"/> K Variance                            |
| <input type="checkbox"/> F Land Use Modification             |                                                                |

Sworn To and Subscribed Before Me This 16<sup>th</sup> 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 16<sup>th</sup> day of October, 2024.

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:

- |                                                              |                                                                |
|--------------------------------------------------------------|----------------------------------------------------------------|
| <input type="checkbox"/> A Annexation                        | <input type="checkbox"/> G Zoning Condition Amendment          |
| <input type="checkbox"/> B Rezoning                          | <input type="checkbox"/> H Density Transfer within Master Plan |
| <input type="checkbox"/> C Master Plans                      | <input type="checkbox"/> I Temporary Use Permit                |
| <input type="checkbox"/> D Master Plan Revisions             | <input type="checkbox"/> J Zoning Ordinance Text Amendment     |
| <input checked="" type="checkbox"/> E Conditional Use Permit | <input type="checkbox"/> K Variance                            |
| <input type="checkbox"/> 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:

- |                                                        |
|--------------------------------------------------------|
| <input type="checkbox"/> Owner                         |
| <input checked="" type="checkbox"/> Option to Purchase |
| <input type="checkbox"/> Lessee                        |
| <input type="checkbox"/> Aren Resident                 |
| <input type="checkbox"/> Other (Explain): _____        |

This Authorization of Applicant Form has been completed and the property owner's signature is Sworn To and Subscribed Before Me This 16<sup>th</sup> Day Of October, 2024.

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*):

2. List the dollar amount/value and description of each campaign contribution made over the past two (2) years by the Applicant/Opponent to the named Canton Official:

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<br>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 14<sup>th</sup> 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

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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

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*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](mailto: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.

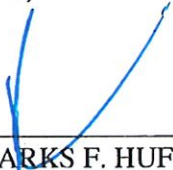
The City of Canton Zoning Ordinances are further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with zoning applications also violates the aforementioned constitutional provisions in that said procedures contain the lack of procedural and 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.

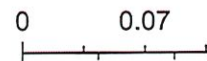
Respectfully submitted, this the 24<sup>th</sup> day of October, 2024.

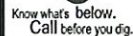
SAMS, LARKIN & HUFF, LLP

By:   
\_\_\_\_\_  
PARKS F. HUFF  
Attorney for Applicant  
Ga. Bar No. 375010

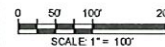


Main Roads  Cherokee County Parcels





**24 HOUR CONTACT INFORMATION:**  
GREGORY HASTY  
(578) 781 4900



- BGE**  
DOWNPARK DRIVE, SUITE 470  
WINNEBAGO, GEORGIA 30144  
WWW.BGEINC.COM  
DIRECT: 470-705-0685 © 2014

ASHTON WOODS  
3570 MANSELL ROAD  
SUITE 300  
ALPHARETTA, GA 30022

**MISTY WAY ASSEMBLAGE**  
PRELIMINARY ENGINEERING

MISTY WAY  
CITY OF CANTON, GA  
LAND 125, DISTRICT 14  
TOWNSHIP, GALLATIN

OVERALL PRELIMINARY  
PLAT

SEAL

NOT ISSUED FOR  
CONSTRUCTION

FILE NUMBER:  
00013413-00

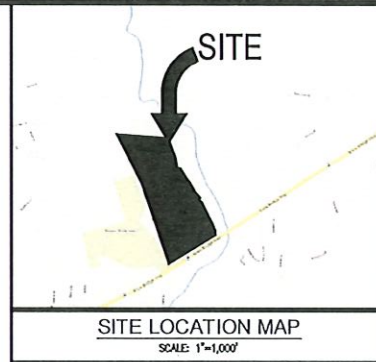
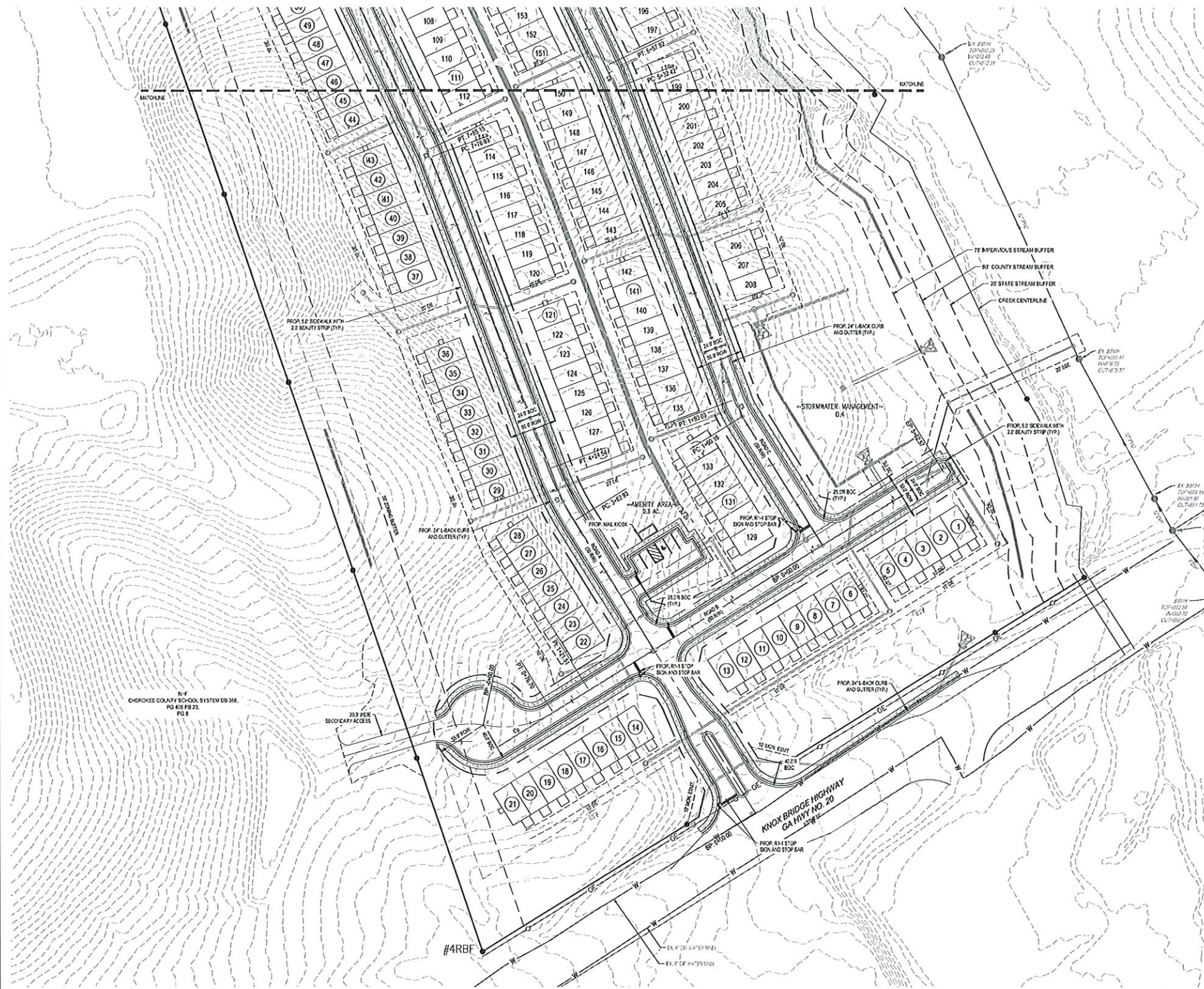
DATE: 08/16/2024

C3.0

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



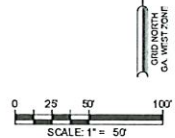
**FLOOD CERTIFICATION**  
SUBJECT PROPERTY IS LOCATED WITHIN A SPECIAL FLOOD HAZARD ZONE. IT IS LOCATED IN ZONE "AE" AS DEFINED BY HUD F.I.R.M. COMMUNITY PANEL NUMBER 130039.0232E, MAP NUMBER 1305700232E WITH AN EFFECTIVE DATE OF JUNE 7, 2019.



- 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°06'10"E     | 74.84          |

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



| REV | DATE | DESCRIPTION |
|-----|------|-------------|
| 1   |      |             |
| 2   |      |             |
| 3   |      |             |
| 4   |      |             |

|              |     |
|--------------|-----|
| DESIGNED BY: | AMM |
| DRAWN BY:    | AMM |
| REVIEWED BY: | DFS |

245 TOWNPARK DRIVE, SUITE 470  
KENNESAW, GEORGIA 30144  
WWW.BCEENGINEERING.COM  
DIRECT: 478-925-0885

ASHTON WOODS  
3820 MANSELL ROAD  
SUITE 300  
ALPHARETTA, GA 30022

MISTY WAY ASSEMBLAGE  
PRELIMINARY ENGINEERING  
MISTY WAY  
CITY OF CANTON, GA  
LAND USE ZONING RM-15

PRELIMINARY PLAT (2)

SEAL

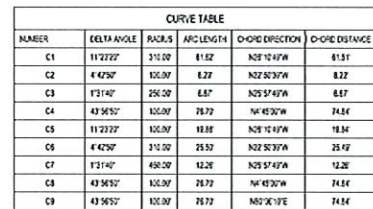
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FILE NUMBER:  
00013413-00  
DATE: 08/16/2024  
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BENCHMARK: BENCHMARK ID DESCRIPTION  
ELEVATION = XXXXXX"

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BENCHMARK DESCRIPTION 1  
BENCHMARK DESCRIPTION 2  
BENCHMARK DESCRIPTION 3



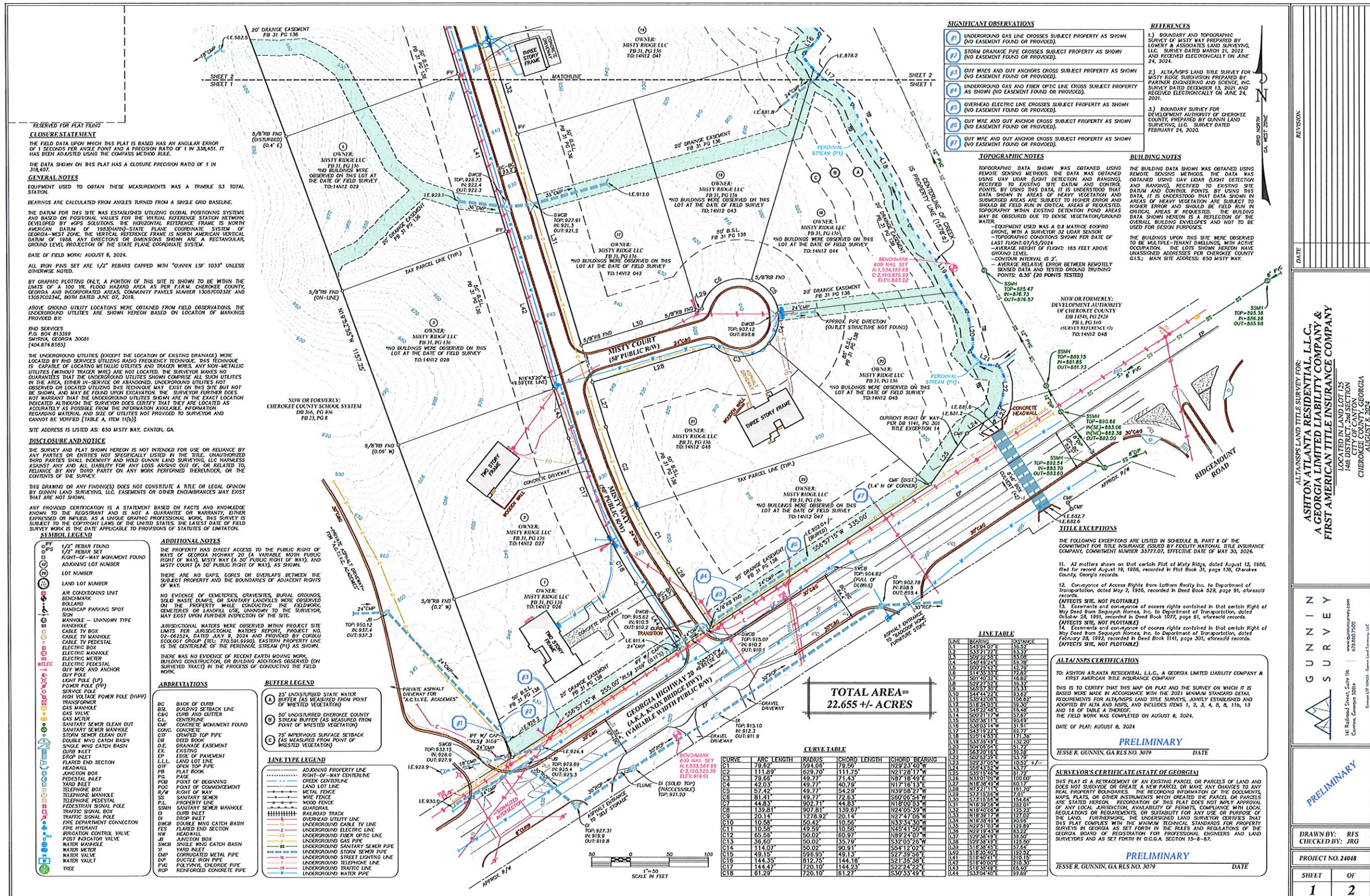
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NOT ISSUED FOR  
CONSTRUCTION

FILE NUMBER:  
00013413-00

DATE: 08/16/2024

C3.1.1



## REVISION

ATE

ANSPS LAND TITLE SURVEY FOR:

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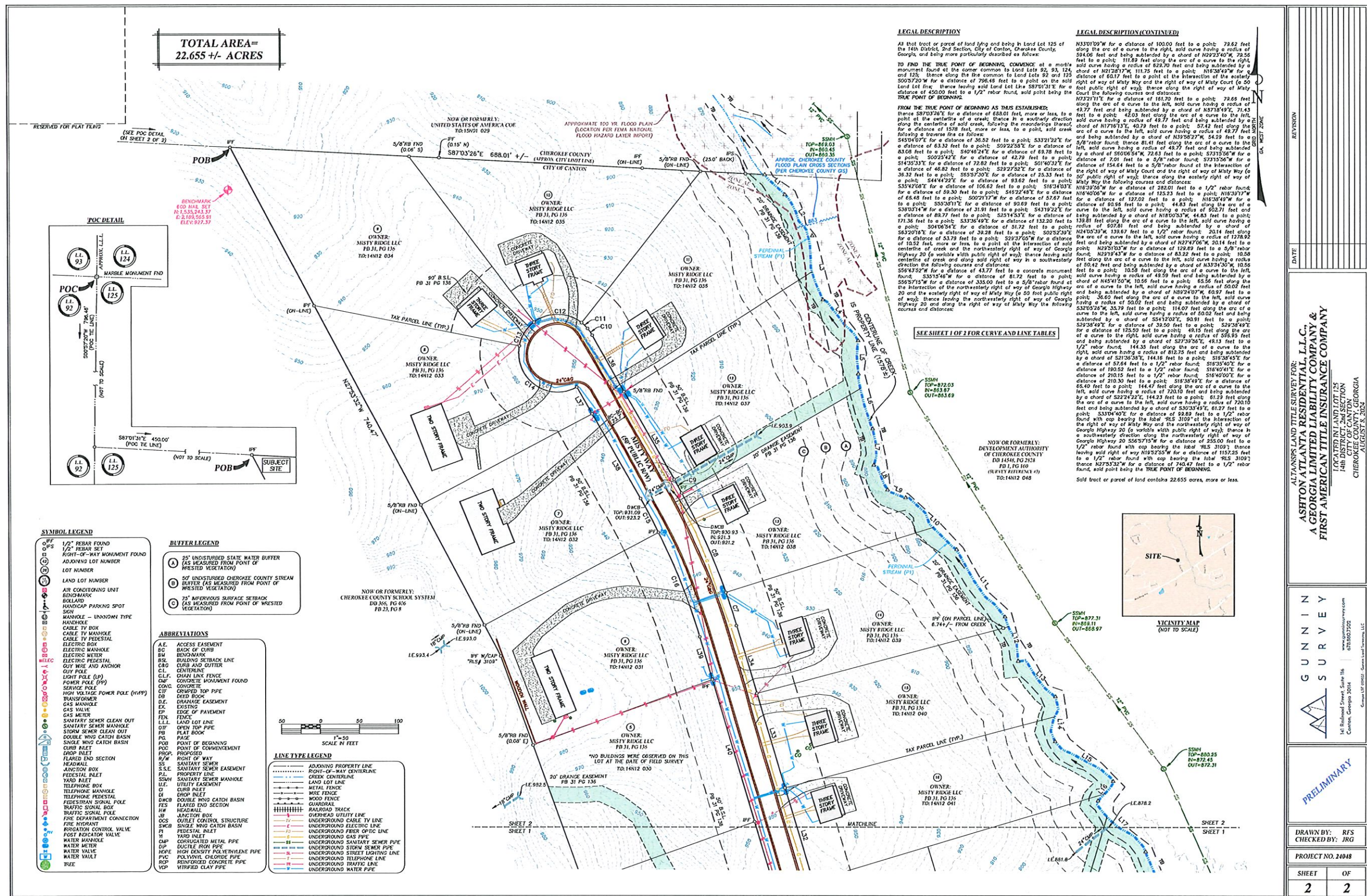
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PRELIMINARY

DRAWN BY: RF

PROJECT NO. 24048

|              |           |
|--------------|-----------|
| <i>SHEET</i> | <i>OF</i> |
| <b>1</b>     | <b>2</b>  |



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

**GUNNIN SURVEY**

141 Railroad Street, Suite 116  
 Canton, Georgia 30144  
 www.gunninsurvey.com  
 404.850.7500

PRELIMINARY

DRAWN BY: RF

PROJECT NO. 2404

|       |    |
|-------|----|
| SHEET | OF |
| 2     | 2  |

|         |              |
|---------|--------------|
| 102 602 | PLCT DATE 01 |
|---------|--------------|