

**LETTER OF INTENT**  
**and**  
**IMPACT ANALYSIS**

and

Other Material Required by  
City of Johns Creek Zoning Ordinance  
for the  
Rezoning Application

of

**TOLL BROTHERS, INC.**

for

± 6.74 Acres of Land  
located on Hospital Parkway  
Land Lot 377, 11th District, Fulton County, Georgia

**From MIX to TR**

Submitted for Applicant by:

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## I. INTRODUCTION

This Application seeks to rezone ± 6.74 acres of land located along the northern right-of-way of Hospital Parkway in Land Lot 377, 11th District of Fulton County (“Subject Property”) from Mixed Use District (MIX) to Townhouse Residential District (TR) for a townhome development. The Subject Property is more particularly located at 6350 Hospital Parkway, Johns Creek, Georgia (Parcel ID: 11 098003770022) and is currently undeveloped. The Applicant seeks to develop the property for 60 single family attached townhome residences with appurtenant site improvements (“Proposed Development”).

The applicant and developer, Toll Brothers., Inc. (“Toll Bros.” or “Applicant”), is an award-winning FORTUNE 500 company founded in 1967, and is the nation's leading builder of luxury homes. Toll Bros. currently builds in twenty-four states and has developed many communities in the metro Atlanta area. Its stated goal is to build to the highest standards that each market allows, which it seeks to apply to the Proposed Development. The Subject Property presents a great opportunity for high-quality residential development.

The property was rezoned to MIX in 2002 as part of a larger 42.4 acre tract for a mixed use development pursuant to Fulton County Rezoning Case 2001Z-0133 (“2002 Rezoning”). The 2002 Rezoning envisioned a true mixed-use development with commercial uses, office uses, a 120-room hotel, and 75 multi-family residential units.<sup>1</sup> The office and commercial components were built, however, the hotel and multi-family residential components were not. The Proposed Development is envisioned as the residential component of the mixed-use project and is intended

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<sup>1</sup> The conditions of 2001Z-0133 restricted the retail and office density to 14,150.95 square feet per acre or a maximum of 600,000 square feet; the hotel was limited to 120-rooms or 75,000 square feet; and the multi-family residential was limited to 75 units of residential. Note that when 2001Z-0133 was approved by the Fulton County Board of Commissioners March 6, 2002, the condition regarding the residential density was omitted. Zoning condition 1.e to 2001Z-0133, which limited multi-family residential to a maximum of 75-units, was later added and adopted by consent agenda on July 15, 2002.

to replace the 75 apartments that are already approved with 60-owner-occupied townhome units. The Subject Property borders to the north a property containing the Terraces of Johns Creek, a retail shopping center zoned MIX. To the east is the Johns Creek Village shopping center containing a mix of restaurant and retail uses, zoned MIX. To the west, the Subject Property abuts the Johns Creek Medical Pavilion office building, zoned MIX. To the south is the right-of-way of Hospital Parkway and across Hospital Parkway is the Emory Johns Creek Hospital and the Ebix offices. The Subject Property is the last remaining tract from the 2002 Rezoning that remains undeveloped.

The Proposed Development, however, cannot be constructed under the current MIX zoning. The Johns Creek Code of Ordinances § 8.2.2 requires at least two different types of uses, which is not viable given the surrounding development.<sup>2</sup> The two most prominent uses in the area are commercial office and retail, which comprise 26% and 6% of the total land area, respectively.<sup>3</sup> In contrast, single-family housing only makes up 5.9% of the land, multifamily housing comprises 5.8%, and 1.2% of the land is undeveloped.<sup>4</sup> Hence, the commercial uses far outweigh the residential, creating an imbalance. Consequently, adding more commercial retail or office space to meet the requirements of the MIX district is not practical, while the residential component is sorely needed. The Applicant's proposal to rezone the Subject Property to the TR district will allow upscale, owner-occupied housing in a location that is within walking distance to many employers, restaurants and retail, thus achieving a true mix of uses in the overall area and meeting the residential component originally envisioned by the 2002 Rezoning.

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<sup>2</sup> It should be noted that, although many of the surrounding properties are zoned MIX, which requires at least two different uses, they were developed with only one use (e.g., Johns Creek Medical Pavilion offices). These properties were developed under the original 2002 Rezoning conditions and now exist as separate parcels with non-conforming, singular uses.

<sup>3</sup> See the *City of Johns Creek Comprehensive Plan 2018*, pg. 152.

<sup>4</sup> *Id.*

The Proposed Development’s single family, attached residences will have a minimum floor area of ±1,900 square feet and be three stories in height. The development will offer onsite amenities to attract the future residents, including nature trails and landscaped open space areas throughout. The Applicant is also preserving a significant portion of the property in its natural state to serve as a buffer to protect the existing stream. In addition to the site features, the design of the structures themselves will add to the community’s appeal. The Applicant has paid close attention to the design, scale, materials and façade elements to create an aesthetically pleasing structure. Moreover, the Proposed Development will comply with or exceed the site dimensional requirements of the TR district. In sum, the Applicant is proposing an attractive and well thought development that will complement the existing development in the surrounding area.

This document is submitted as a Statement of Intent with regard to this Application, a preservation of the Applicant’s constitutional rights, and an impact analysis as required by the City of Johns Creek’s Zoning Ordinance § 28.4.2.

**II. IMPACT ANALYSIS**

1.

**THE ZONING PROPOSAL WILL PERMIT A USE THAT IS SUITABLE IN VIEW OF THE USE AND DEVELOPMENT OF ADJACENT AND NEARBY PROPERTY**

The Subject Property has already been approved for 75-apartments, so the suitability of residential use has been sanctioned. It also is surrounded by office, restaurant and retail uses which are compatible with the Proposed Development. The proposed townhomes are in close proximity to supporting restaurant, retail and employment centers, thus promoting walkability in the area and reduce vehicular dependence. The Applicant has also given appropriate attention to scale, buffering, setbacks, and landscaping to ensure that the Proposed Development will fit within the existing community. Furthermore, the Proposed Development will incorporate open spaces and

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landscape strips along the adjacent property lines to buffer any potential impacts. Accordingly, the Proposed Development will be suitable in view of the use and development of the nearby properties.

2.

THE ZONING PROPOSAL WILL NOT ADVERSELY AFFECT THE EXISTING USE OR USABILITY OF ADJACENT OR NEARBY PROPERTY

The Proposed Development will not adversely affect the surrounding uses. As stated in previous paragraphs, the proposed single-family townhomes are consistent with the original mixed-use development approved by the 2002 Rezoning, are harmonious with the adjacent commercial retail and office and will incorporate appropriate buffers to mitigate impacts, if any. The primary goal of land use planning is to eliminate or minimize the potential adverse effect of the dissimilar uses of adjacent tracts of land by establishing a harmonious transition between them. The traditional method of achieving this goal is through both “off-site” and “on-site” transition. Off-site transition consists of avoiding the placement of dissimilar uses next to each other by placing uses of intermediate density between them. On-site transition, which might either supplement or replace off-site transition, consists of measures imposed on a particular property to protect neighborhoods from adverse effects. To achieve the onsite transition, the proposed site design will incorporate landscape buffers along the eastern and western property lines adjacent to MIX districts. The Applicant is also preserving open space to the rear of the property that will act as a buffer against the property to the north. The result is a development that is compatible and will exist harmoniously with the surrounding development.

3.

THE PROPERTY TO BE AFFECTED BY THE ZONING PROPOSAL DOES NOT HAVE A REASONABLE ECONOMIC USE AS CURRENTLY ZONED

The Subject Property is currently zoned MIX, which allows the proposed townhome use,

but only as part of a mixed use development consisting of a minimum of two different uses. As noted in the paragraphs above, the 2002 Rezoning envisioned mixed use development spread over 42.4 acres, however only the commercial and office components were built. The Subject Property is the last 6.74 acre portion of the original 42.4 acre tract that has not been developed. There is already an abundance of commercial and office uses in the area and additional commercial space is not practical. As a result, development of residential along with another use, as required by the current MIX zoning, is unlikely to occur and the Subject Property is likely to remain vacant absent a rezoning to a viable district.

4.

THE ZONING PROPOSAL WILL NOT RESULT IN A USE WHICH WILL OR COULD CAUSE AN EXCESSIVE BURDENSOME USE OF EXISTING STREETS, TRANSPORTATION FACILITIES, UTILITIES, OR SCHOOLS

The Applicant does not anticipate any significant impact to the vehicular traffic from the minor amount of trips that the Proposed Development will generate. The Applicant used the Institute of Traffic Engineers (ITE) Trip Generation Manual (Tenth Edition), to calculate vehicle trips for the Proposed Development. The Applicant anticipates that the sixty (60) townhomes (ITE category 230) will generate  $\pm 348.6$  total trips on a weekday,  $\pm 26.4$  trips during the A.M. peak hour, and  $\pm 31.2$  trips during the P.M. peak hour. The Proposed Development's vehicular trips are not anticipated to cause any significant detrimental impacts on the adjacent roadways. Hospital Parkway is classified as a Local Road. That roadway, however, serves as a connector between nearby McGinnis Ferry Road and Medlock Bridge Road, which are both classified as a Principal Arterials. See *Johns Creek Transportation Master Plan 2030 Recommended Functional Classification Map*. These types of roadways are intended for higher volumes of traffic, and they are anticipated to adequately serve the Proposed Development. It is important to note that the Proposed Development will result in a dramatic decrease in the amount of traffic over what could

be generated by a development under the current MIX zoning. The 2002 Rezoning anticipates 75 residential units over commercial space. When the 2002 Rezoning development is compared the Applicant's proposal, the Proposed Development is projected to generate approximately 362.89 less daily trips (51% less gross daily trips), 44.68 less AM peak hour trips (63% reduction), and 39.40 less PM peak hour trips (56% reduction).<sup>5</sup> Consequently, the Proposed Development will be less impactful to the roadways than what is currently allowed on the Subject Property.

The type of development proposed does not typically generate many school age children, but any that might live in the development will attend Findley Oaks Elementary School, River Trail Middle School, and Northview High School. All the schools are currently listed as under capacity and are projected to have declining enrollment through 2026.<sup>6</sup> Accordingly, the Proposed Development will not have a negative impact on local schools. Again, and as noted above, the issue of school impact is relative given that the site is already approved for 75 apartment units.

As for utilities, the Subject Property has access to water and sewer.

5.

THE ZONING PROPOSAL IS IN CONFORMITY WITH THE POLICIES AND INTENT OF THE LAND USE PLAN

The City of Johns Creek Comprehensive Plan 2018 ("Comp Plan") depicts the Subject Property as being within the Technology Park character area (also referred to as "Tech Park" in the Comp Plan). The Comp Plan also notes the Subject Property's future land use as "Commercial – Multi-Family".<sup>7</sup> The Comp Plan defines the Commercial – Multi-Family land use as "[p]roperty

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<sup>5</sup> Development under the existing zoning assumes approximately 4,800 square feet of retail space (ITE category 826 – Specialty Retail) and 75 multi-family units (ITE category 220 - Apartments). This is comparable to a 2013 zoning modification application for the Subject Property (RZ-13-013) which sought to develop the property for 250 multifamily units, 1,800 square feet of restaurant space, and 3,000 square feet of office space (total of 4,800 sf of non-residential space). For simplicity, we have calculated trips assuming 4,800 square feet of commercial/retail and the 75 multifamily units allowed per the 2002 Rezoning.

<sup>6</sup> See *Fulton County Schools Historical and Projected Enrollment 2018-2026*.

<sup>7</sup> See the *Comp Plan*, pg. 153, Map 68: Future Land Use in Tech Park.

containing housing units with more than 4 dwelling units/building (i.e., townhomes, apartments, condos, 4-plexes, live-work lofts, etc.).”<sup>8</sup>

The Comp Plan’s build-out analysis for Tech Park notes that the area has the capacity for 75 additional residential units and specifically references the 2002 Rezoning. The Subject Property is the only large undeveloped tract remaining from the overall tract subject to the 2002 Rezoning and one of the few undeveloped parcels within Tech Park. As a result, the Subject Property is a prime candidate for the Comp Plan’s proposed additional residential units.

In addition, the Proposed Development meets the Comp Plan’s stated policies for the Tech Park area:

- The vision for Technology Park is to redevelop this suburban office park into a live-work-play destination for business owners who want to live in a premier residential community, have a short commute to their offices, and have an amenity-rich park at their business’ front door.<sup>9</sup>
- The build-out analysis shows that the Tech Park Community Area (outside the Town Center) has the capacity for 75 additional residential units. \*This reflects the approved zoning conditions pursuant to Fulton County zoning case Z-01-133.<sup>10</sup>

In sum, the Proposed Development serves to implement specific goals, objectives and policies of the Johns Creek Comprehensive Plan. The project at issue represents a consistent use commensurate with other existing uses on adjacent and nearby properties. The proposed use, therefore, is suitable *vis-a-vis* the policies of the Comprehensive Plan.

6.

THERE ARE OTHER EXISTING OR CHANGING CONDITIONS AFFECTING THE USE AND DEVELOPMENT OF THE PROPERTY WHICH GIVE SUPPORTING GROUNDS FOR APPROVAL OF THE ZONING PROPOSAL

As noted in previous paragraphs, the property is currently zoned for a mix of residential units and commercial/office. The area is characterized primarily by commercial retail/restaurant

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<sup>8</sup> See the Comp Plan, pg. 52.

<sup>9</sup> See the Comp Plan, pg. 154.

<sup>10</sup> See the Comp Plan, pg. 156.

and a significant amount of office space. The development of more commercial and/or office space on the Subject Property is viable, particularly given its location away from major roadways. Instead, the Applicant seeks to rezone the Subject property to TR to allow its development for solely residential townhomes, without a mix of uses. The 2002 Rezoning envisioned a mixed-use development, however the residential portion was never developed, thus the true mix of uses was never realized. The addition of townhome residential will create a true mixed use by placing residential within walking distance of the surrounding office and retail.

7.

**THE ZONING PROPOSAL WILL PERMIT A USE WHICH WILL NOT BE CONSIDERED ENVIRONMENTALLY ADVERSE TO THE NATURAL RESOURCES, ENVIRONMENT AND CITIZENS OF THE CITY OF JOHNS CREEK**

The existing tract is currently undeveloped and any construction on the Subject Property will inevitably require the removal of trees and other land disturbance activities. That being said, there are no significant natural features on the Subject Property that require special protection, except for the stream to the north. The stream will be buffered as required by law. Further, the applicant will replant trees, grass, and other landscaping materials as part of its redevelopment of the site. In addition, the Applicant will provide stormwater management, including runoff reduction and/or water quality measures as required by the City of Johns Code of Ordinances.<sup>11</sup>

**III. NOTICE OF CONSTITUTIONAL CHALLENGE TO UNDERLYING ZONING AND PRESERVATION OF CONSTITUTIONAL RIGHTS**

The Applicant respectfully submits that the current zoning classification of the Subject Property and any proposed intervening district is unconstitutional and that rules relative to the

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<sup>11</sup> The stormwater design will be completed prior to issuance of the land disturbance permit.

Subject Property owner's right to use the Property established in the John Creek Zoning Ordinance, to the extent they prohibit this use, constitute an arbitrary, irrational abuse of discretion and unreasonable use of the zoning power because they bear no substantial relationship to the public health, safety, morality or general welfare of the public and substantially harm the Applicant in violation of the due process and equal protection rights guaranteed by the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia. Further, the failure to allow this use would constitute a taking of private property without just compensation and without due process in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section I, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia, and would be in violation of the Commerce Clause, Article I, Section 8, Clause 3 of the Constitution of the United States.

The Applicant respectfully submits that the City Council's failure to approve the requested rezoning would be unconstitutional and would discriminate in an arbitrary, capricious and unreasonable manner between the Subject Property's owner and owners of similarly situated property in violation of Article I, Section III, Paragraph I of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

A refusal to allow the development in question would be invalid inasmuch as it would be denied pursuant to an ordinance which is not in compliance with the Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq., due to the manner in which the Ordinance as a whole and its map(s) have been adopted.

Opponents to this request, if any, lack standing; have failed to exhaust administrative remedies; and have waived their rights to appeal by failing to assert legal and constitutional objections.

**IV. CONCLUSION**

For the foregoing reasons, the Applicant respectfully requests that the proposed rezoning be approved. The Applicant also invites and welcomes any comments from Staff or other officials of the City so that such recommendations or input might be incorporated as conditions of approval of this Application.

This 2<sup>nd</sup> day of January, 2023.

Respectfully submitted,

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