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RESERVATION OF CONSTITUTIONAL AND OTHER LEGAL RIGHTS

Applicant: Adam Ewing
Owner: Glenda Sells
Subject Property: 38.93 Acres Designated as Walton County Tax Parcel(s):
C1780012X00 & C1780012Y00
Current Zoning: A1 R1 – Rural Estate District Single Family Residential
District
Proposed Zoning: R1OSC – Single-Family Residential Open Space Conservation
Overlay District
Proposed Use: Subdivisions, Residential
Application: Rezoning & Character Area Map Amendment
ROW Access: Locklin Road
Governing Jurisdiction: Walton County

This Reservation of Constitutional and Other Legal Rights (“the Reservation”) is intended to supplement and form a part of the land use application (including any request for zoning, special use permit, site plan approval, and variances) (collectively, the “Application”) of the Applicant and the Owner of the Subject Property (collectively, the “Owner”) and to put the Governing Jurisdiction on notice of the Owner’s assertion of its constitutional and legal rights.

The Owner has filed a timely application, has provided all required information and has submitted the appropriate application fees. The Application meets all judicial and statutory requirements for approval.

The Owner objects to the standing of any opponents who are not owners of land adjoining the Subject Property and to the consideration by the Governing Jurisdiction of testimony or evidence presented by any party without standing in making its decision regarding the Application. The Owner also objects to the consideration of testimony or evidence that is hearsay, violates any applicable rules of procedure or evidence, or that is presented by any party who fails to comply with notice and campaign disclosure requirements.

The Current Zoning (and/or zoning conditions) imposed on the Subject Property is unconstitutional and deprives the Subject Property and all viable economic use thereof. The Proposed Use is the only viable economic use of the Subject Property, and the Governing Jurisdiction has deemed this Application necessary to allow the Proposed Use. As such, the Owner files this Application for the purpose of allowing the Proposed Use to be constructed and operated under the Current Zoning (and/or zoning conditions and requesting variances), and to exhaust administrative remedies in the event the Application is denied. As such, the filing of this Application is not an admission of the need for any such approval of the Owner’s right to develop the Subject Property. The Owner reserves the right to challenge the Current Zoning and any zoning conditions and other restrictions affecting the Subject Property.

Denial of the Application or approval of the Application in any form that is different than as requested by the Owner will impose a disproportionate hardship on the Owner of the Subject Property without benefiting

any surrounding property owners. There is no reasonable use of the Subject Property other than as proposed by the Application and no resulting benefit to the public from denial of or modification to the Application.

Any provisions in the applicable land use, subdivision, and/or zoning ordinances (collectively the “Zoning Ordinance”) that classify, or may classify, the Subject Property into any of the non-requested zoning or use classifications, including the Proposed Zoning District and Proposed Use at a density or intensity less than that requested by the Owner, are unconstitutional in that they constitute a taking of the Owner’s and Owner’s property rights without first paying fair, adequate, and just compensation for such rights in violation of Article I, Section III, Paragraph I of the Georgia Constitution of 1983, as amended and the Fifth and Fourteenth Amendments to the Constitution of the United States.

The Subject Property is suitable for development as proposed in the Application and it is not suitable for development under any other zoning classification, use, or at a density or intensity less than that requested by the Owner. Failure to approve the Application as requested by the Owner would be an unreasonable application of local land use authority, which bears no relationship to the public health, safety, morality or general welfare and would constitute an arbitrary and capricious abuse of discretion in violation of Article I, Section I, Paragraph I of the Georgia Constitution of 1983, as amended and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

A refusal by the Governing Jurisdiction to approve the Application as requested by the Owner will prohibit the only viable economic use of the Subject Property, will be unconstitutional and will discriminate in an arbitrary, capricious and unreasonable manner between the Owner and the owners of similarly situated properties in violation of Article I, Section I, Paragraph II of the Georgia Constitution of 1983, as amended, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

A refusal by the Governing Jurisdiction to approve the Application as requested by the Owner without the consent of persons elected to the governing body of the Governing Jurisdiction will amount to an unlawful delegation of the Governing Jurisdiction’s authority, in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution of 1983, as amended.

Furthermore, the Governing Jurisdiction cannot lawfully impose more restrictive standards on the Subject Property’s development than are presently set forth in the Zoning Ordinance. Any conditions or other restrictions imposed on the Subject Property without the consent of the Owner that do not serve to reasonably ameliorate the negative impacts of the development are invalid and void. The imposition of improvements or design requirements unnecessary to facilitate the proposed development constitute an illegal impact fee, an unconstitutional condemnation, or both. As such, the Owner reserves the right to challenge any such conditions, restrictions, or design requirements.

The Owner asserts that it has expended substantial sums and significantly changed its economic position in reliance upon versions of the Zoning Ordinance that allow the development of the Subject Property as proposed by the Owner. As such, the Owner has acquired vested rights to develop the Subject Property and the filing of this Application shall not constitute a waiver of those vested rights.

Finally, the Owner asserts that the current Zoning Ordinance, Character Area Map, Future Development Map and Comprehensive Plan were not adopted in compliance with the laws or constitutions of the State of Georgia or of the United States, and a denial of the Owner’s request based upon provisions illegally adopted will deprive the Owner of due process under the law.

By filing this Reservation, the Owner reserves all rights and remedies available to it under the United States Constitution, the Georgia Constitution, all applicable federal, state, and local laws and ordinances, and in equity.

The Owner respectfully requests that the Application be approved as requested in the manner shown on the Application, which is incorporated herein by reference. This Reservation forms an integral part of the Application, and we ask that this Reservation be included with the Owner's other Application materials. The Owner reserves the right to amend and supplement this Reservation at any time.

Sincerely,



Joshua A. Scoggins
Attorney for Applicant & Owner