

LETTER OF INTENT
and
IMPACT ANALYSIS

and

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

of

TDC JOHNS CREEK, LLC

for

± 41.710 Acres of Land
located on Johns Creek Parkway
Land Lot 398, 399, 400, 403, 404 and 405, 11th District, Fulton County, Georgia

From M1-A to TC-X

Submitted for Applicant by:

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PLANNING & ZONING

I. INTRODUCTION

This Application seeks to rezone ± 41.710 acres of land located in Land Lots 398, 399, 400, 403, 404 and 405, 11th District of Fulton County, consisting of two (2) parcels along the eastern right-of-way of Johns Creek Parkway, the southern right-of-way of McGinnis Ferry Road and the northern right-of-way of Lakefield Drive (“Subject Property”). More particularly the assemblage consists of 11350 Johns Creek Parkway (Parcel ID: 11 106003980408) and 11650 Johns Creek Parkway (Parcel ID: 11 106003990399).¹

The Applicant, TDC Johns Creek, LLC (sometimes referred to as “Toro”)², is a preeminent developer of signature mixed-use projects. Toro’s principals have developed some of the most iconic and well recognized mixed-use communities in the Atlanta area, including Avalon in Alpharetta and the redevelopment of Colony Square in Atlanta, among others. Toro defines itself as a developer who “...acquires underperforming assets and transforms them into vibrant mixed-use environments that achieve coveted “third place” status – inspired places where people come to feel connected and engaged, something the world needs now more than ever.”³ Toro plans to apply its proven experience to transform the Subject Property into a signature mixed-use development for the Johns Creek Town Center.

The Subject Property is currently zoned M-1A (Industrial Park District) and developed

¹ 11350 and 11650 Johns Creek Parkway total ±55.52 acres, however this application only seeks the rezoning of ±41.710 acres of the total area. The remaining ±13.81 acres is not subject to the instant application and is currently being redeveloped by others for the Boston Scientific offices under the current M-1A (Industrial Park) zoning. The Applicant will seek a subdivision of the overall ± 55.52 acre tract to create the ± 41.710 acre Subject Property as a condition of this rezoning. Refer to the ALTA Survey prepared by Technical Survey Services, dated August 12, 2022, and the legal description attached to this Application for a definition of the Subject Property.

² Toro Development Company, LLC is the parent of TDC Johns Creek, LLC.

³ Toro defines third place environments in contrast to first places (home) and second places (work). Third places allow people to put aside their concerns and simply enjoy the company and conversation around them. Refer to The Third Place Effect, published by Mark Toro on Linked In, Sept. 21, 2021 at the following webpage: <https://www.linkedin.com/pulse/third-place-effect-mark-toro/?trackingId=4Mm8V7ZHR5OI24%2Bv65DLPQ%3D%3D> (last visited on Sept. 10, 2022)

with two (2) office buildings totaling ±531,635 square feet (“sf”) and accessory surface parking. The existing buildings previously contained State Farm Insurance’s corporate offices, however these offices have been vacant since State Farm relocated to its new office tower in the City of Dunwoody. The Applicant seeks to rezone the Subject Property to Town Center Mixed-Use (TC-X) to build a vertically integrated mixed-use development consisting of ±80,000 sf of retail, ±60,000 sf of restaurants, ±60,000 sf of entertainment use⁴, ±110,000 sf of existing office, ±750 multifamily rental units, and ±150 fee-simple townhome units (“Proposed Development”). The proposed multifamily units will be a mix of studios (575 sf to 650 sf in size; approximately 5% of the total units), 1 bedroom (650 sf to 950 sf; approximately 55-60% of the total units) and two bedroom units (1,000 sf to 1,300 sf; approximately 35-40% of the total units). The multifamily units will also have a number of amenities, including a pool, fitness center, club room, fire pit, bar-b-que grills, pet spa, and business center. The 150 townhomes will be 3 floors with three and four bedroom units ranging in size from 1,900 sf to 2,700 sf. The townhome development will also include a pool, clubroom, fire pit and dog park. In addition, Toro will consider proposals to incorporate a civic use within the development subject to mutually agreeable terms and conditions. The civic use would be developed at a later date, by others. This use was included in Toro's DRI study for traffic impact purposes.⁵ The Proposed Development will also incorporate extensive open space areas in the form of plazas, pocket parks, and landscaped areas interspersed throughout the development to give residents and visitors a sense of place.

The Subject Property is within the Town Center Overlay and the City of Johns Creek Town

⁴ The specific entertainment use has not been identified as of the date of this application.

⁵ Until such time as a program for the Civic Space is determined, it cannot be shown on the site plan. The civic space and associated parking is not included in the scope of construction for the remaining Proposed Development.

Center Vision and Plan (“Town Center Plan”) targets it for redevelopment. The goal of the Town Center Plan is to transform the area from its current use as an aging industrial office park into a signature downtown center for the City of Johns Creek. The City of Johns Creek 2018 Comprehensive Plan (“Comprehensive Plan”) is the guiding document for the City’s growth. The Comprehensive Plan identifies the Subject Property as being within the Technology Park community area, which the Comprehensive Plan notes as a candidate for future redevelopment into a Town Center. Technology Park is envisioned as a true civic area with City Hall incorporated into the core of the new “downtown.” To guide its vision for the downtown, the City adopted the Town Center Plan in 2021, which specifically addresses land use and transportation strategies, and open space and infrastructure investments. The City then codified the elements of the Town Center Plan in the Town Center Overlay and TC-X zoning district at the Johns Creek City Council meeting on August 29, 2022. The overlay and TC-X district are key to outlining the framework for development so the City can achieve its vision for the Town Center area. The Proposed Development is the realization of this vision.

The Subject Property is in a location well-suited for a mixed-use development of residential, office and commercial. Technology Park has been a prominent employment node that comprises the majority of the city’s office and industrial stock, and sits across Medlock Bridge Road/SR 141 from Emory Johns Creek Hospital. Home to 10,000 employees and several major corporations including Alcon Laboratories, Ebix, and soon Boston Scientific⁶, Technology Park is a key piece of the city’s economic infrastructure.⁷ In fact, over 80% of the city’s office product is

⁶ Boston Scientific is investing \$62.5 million in developing a new facility immediately adjacent to the Subject Property on the 11350 Johns Creek Parkway parcel, which is anticipated to create roughly 340 new jobs. Refer to the online article “Fulton County Lands Major Life Science Research Center: Boston Scientific to Invest \$62.5 Million in Johns Creek”, dated June 29, 2022, at <https://www.fultoncountyga.gov/news/2022/06/29/fulton-county-lands-major-life-science-research-center>

⁷ See the City of Johns Creek Town Center Vision and Plan, pg. 12.

located in the Technology Park campus, yet much of the stock was built in the 1980s and follows an outdated suburban business campus pattern with low-rise, low density buildings surrounded by surface parking.⁸ The Proposed Development seeks to transform the area in furtherance of the City's vision.

The current Town Center is largely office space with residential located further to the east and west away from the Town Center area. This separation of residential outside of walking distance from employment results in a large number of employees commuting to and from the area. The Town Center Plan notes that Johns Creek is primarily a commuter suburb, which leads to increases in traffic and other negative impacts. The Proposed Development will be a step away from the commuter model by introducing new multifamily residences, townhomes, retail, restaurant, and entertainment space, all in proximity to new and existing office. The proposed mixed-use will transform the area into a true live-work-play downtown. The Proposed Development will also incorporate the proposed Town Center Overlay streetscape along the Subject Property's frontage on Johns Creek Parkway, Lakefield Drive and McGinnis Ferry Road, promoting pedestrian and bicycle traffic through the area. In addition, the Proposed Development will also provide ±12.28 acres of both amenity (±2.23 acres) and civic space (±10.05 acres) in the form of plazas, amenity spaces, and landscaping. In all, the Proposed Development is the realization of a long term goal for the City of Johns Creek to create a downtown Town Center.

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 §§ 28.4.1 and 28.4.2.

⁸ See the City of Johns Creek Town Center Vision and Plan, pg. 12.

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 is surrounded by public rights-of-way on three sides and is located in an area that is heavily dominated by office and commercial uses. The proposed mixed-use will introduce a variety of complementary uses into the area including much needed housing in the form of multifamily and townhome units. It will also include an activated central plaza which will serve as a gathering place for community events. In addition, the Applicant has given appropriate attention to scale, buffering, setbacks, and landscaping to ensure that the Proposed Development will fit within the existing community. 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 commercial and office uses. The proposed mixed-use development is harmonious with the adjacent uses and is in step with the City's goals for the Town Center area. Additionally, the individual buildings within the Proposed Development will be comparable in scale and nature to other existing developments in the area. All of the proposed buildings will be limited to a maximum height of 4-stories or 60 feet. An existing office building which will be retained is 75 feet high.

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 M1-A, which limits development to office or light

industrial uses, typical of traditional office parks. However, the City has recognized the need for the redevelopment of the Subject Property for a more vibrant and practical mixed-use development. The M1-A zoning inhibits the practical development of the Subject Property in line with the Town Center vision. The City specifically adopted the TC-X district to guide new redevelopment within the Town Center area. The Applicant's request for a TC-X zoning will allow the type of mixed-use development, such as the Proposed Development, that is envisioned for this property. Absent a rezoning to an appropriate district, the Subject Property is likely to remain as its current office use. In light of the high office vacancy in the area, unless redeveloped this area may stagnate.

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

A Trip Generation Memo detailing the Proposed Development's anticipated vehicular trips is attached to this Application. In addition, the Proposed Development qualifies as a Development of Regional Impact ("DRI"), which requires an extensive study of the impacts on the surrounding roadways and traffic. The recommendations for traffic improvements from the DRI review will be presented to the City prior to the final decision upon the instant rezoning request. Regardless, the Proposed Development's vehicular trips are not anticipated to cause any significant detrimental impacts on the adjacent roadways. McGinnis Ferry Road is classified as a principal arterial, Johns Creek Parkway is classified as a major road, and Lakefield Drive is classified as a local road. *See Johns Creek Transportation Master Plan 2030 Recommended Functional Classification Map.* Principal arterials and major roads are intended for higher volumes of traffic and they are anticipated to adequately serve the Proposed Development. It is also important to note that the Subject Property previously contained a single office use that had most of its trip generation during

weekday peak hours (i.e. employees coming to and from work during the morning and afternoon rush hours). The Proposed Development, however, will have a mix of uses that will have differing peak times, thus spreading out the trip generation more evenly through the day. In addition, there will a further trip reduction from future residents who live and walk to work within the development.

The school children living in the residential portion of the development will attend Shakerag Elementary School, River Trail Middle School, and Northview High School. All of the schools are listed as under capacity and are projected to remain under capacity after construction of the Proposed Development. *See Fulton County Schools Historical and Projected Enrollment 2016-2024.* Additionally, approximately half of the total residential units (± 450 units) will be studios and one bedroom units that are unlikely to generate school-age children. Accordingly, the Proposed Development will not have a negative impact on local schools.

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

As noted in the paragraphs above, the Comprehensive Plan depicts the Subject Property as being within the Technology Park community area. The Proposed Development aligns with the Comprehensive Plan's stated intent for Technology Park:

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.

The core area of Technology Park has been identified as the location of the City's new 'Town Center.'... Importantly, it will be able to accommodate restaurants, entertainment venues, events, and festivals without negatively impacting any residential subdivisions. It is envisioned that by creating a master plan for the Town Center, and rezoning the area to high-intensity mixed-use, the City will enhance its opportunities to attract new corporate

businesses - expanding the City's health, wellness, educational and technology sectors - and create vibrancy and a sense of place for Johns Creek." (See the City of Johns Creek Comprehensive Plan 2018, pg. 152)

In addition to being compatible with the intent of Technology Park, the Subject Property is identified in the Town Center Plan as a potential mixed-use redevelopment and the Comprehensive Plan's future land use for the Subject Property is Mixed-Use High-Intensity. The Proposed Development's mix of townhomes, multifamily residential, retail, restaurant office and entertainment is intended as the amenity-rich, live-work-play area for Johns Creek. The proposed 150 townhome units and 750 multifamily units will provide living space for future residents within easy walking distance of employment, shopping and entertainment. The development will also incorporate the Town Center's 8 to 10-foot wide multiuse trails within the surrounding streetscape to facilitate pedestrian travel to the Proposed Development and through the Town Center area. Additionally, the Applicant is incorporating a highly activated central plaza which will host community events throughout the year, and other open space areas within the development to help create a sense of place and areas for the residents to gather.

In sum, the Proposed Development serves to implement specific goals, objectives and policies of the Johns Creek Comprehensive Plan. In particular, the Proposed Development will "expand the City's health, wellness, educational and technology sectors - and create vibrancy and a sense of place for Johns Creek"⁹ which the Comprehensive Plan envisions for the Subject Property. 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.

⁹ See the City of Johns Creek Comprehensive Plan 2018, pg. 152.

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

The existing office building on the 11350 Johns Creek Parkway parcel was built in the late 1980s and the 11650 Johns Creek Parkway building was constructed in 1999. Since the initial construction of the office buildings, the City of Johns Creek has incorporated and located its City Hall nearby at 11360 Lakefield Drive. The City has planned to transform the area into its new Town Center, which envisions redevelopment of the existing office parks into mixed-use developments with public park space interspersed throughout. The current M1-A district, however, limits development to primarily office or light industrial, neither of which allows new construction in line with the City's plans for the area. The Applicants proposal to rezone to TC-X will bring the Subject Property into alignment with the future development of the area, allowing a signature mixed-use development.

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 developed and contains some trees within landscaped islands and greenspaces. A redevelopment of the Subject Property will inevitably require the removal of trees, as well as other land disturbance activities. That being said, there are no significant natural features on the Subject Property that require special protection. Also, the Applicant has designed a project intended to preserve a number of significant trees. 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.¹⁰

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 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

¹⁰ The stormwater design will be completed prior to issuance of the land disturbance permit.

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 13th day of September, 2022.

Respectfully submitted,



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