

### CITY COUNCIL MEETING

Donna Pittman-Mayor

Robert J. Patrick-District 1 Trudy Jones Dean – District 2 Karen Pachuta – District 3

Pam Fleming – District 1 Brian Bates – District 2 Maria Alexander – District 3 Mayor Pro-Tem

### **AGENDA**

December 2, 2013. 6:30PM

- 1. CALL TO ORDER
- 2. ROLL CALL
- 3. PLEDGE OF ALLEGIANCE
- 4. APPROVAL OF MINUTES
- 5. APPROVAL OF MEETING AGENDA
- 6. PUBLIC COMMENT
- 7. CONSENT AGENDA
- 8. ORGANIZATIONAL AND PROCEDURAL ITEMS
- 9. REPORTS AND PRESENTATIONS
  - a) City Manager
  - b) Facilities Director
  - c) Stormwater

#### 10. UNFINISHED BUSINESS

a) Resurfacing 2014

#### 11. NEW BUSINESS

- a) Resolution for Annexation- Councilmember Maria Alexander
- b) Appeal of Administrative Zoning Determination Regarding Property at 5597 Buford Hwy- Joe Cooley
- c) 2013 LWCF Grant Resolution- Luke Howe

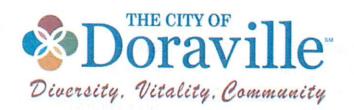
#### 12. OTHER BUSINESS



#### 13. COUNCIL COMMENTS

**Executive Session** 

#### 14. ADJOURNMENT



#### AGENDA ITEM REQUEST SHEET November 8, 2013

Subject: 2014 Resurfacing

Date of Meeting: November 18, 2013

Budget Impact: □Yes ■ N/A

Budget Impact Amount: \$ 37,387.13

Regular

Work Session

Recommendation

Policy/Discussion

Report

Ceremonial

Other

. .

□ Annual

■ Capital

■ Grant(s)/ Technical Assistance

□ N/A

Department: Economic Development Dept.

Department Head: Economic Development Director

Action Requested:

Staff recommends offering a 2-mile priority list for FY2014 resurfacing

Background: Each year the City receives a Local Government Maintenance and Improvement Grant (LMIG) allocation from the Georgia Department of Transportation. The funding originates from the state gas tax and is typically used for resurfacing needs. Each local jurisdiction is given an allocation based on a formula that factors in total population and centerline miles. The City's allocation for FY2013 is \$55,251.62. The allocation for FY2014 will be \$69,372.16. The local matching requirement is 30%. Because the 2013 allocation was not used, it can be carried over into 2014. The total amount available for 2014 will be \$124,623.78 with a \$37,387.13 required (\$162,010.91 total). If the work is bid out on a competitive basis, the City could resurface approximately 1.6 miles. For a 2-lane (48 ft width) street, It typically costs between \$10-30 per linear foot to resurface. The proposed CIP takes into account this matching contribution. An attached spreadsheet of 2013 ratings is attached. The ratings reflect streets that rate as fair, poor or bad. A score of 30 or above is considered bad.

**Recommendation:** Staff recommends that Council select a 2-mile priority list for 2014. Under the new LMIG rules, local jurisdictions are not required to submit the worst ratings, but it is highly recommended that only 30+ streets be offered. The length of the street section receiving the rating is listed in the far right column.

Respectfully,

S/Luke Howe Economic Development Director

CTD1145	CAACTO	TOSTR	RATING 2013	SEGLEN
STRNME	FMSTR	TOSTR	-	+
DRURY CT	MCCLAVE DR	CUL DE SAC	35	0.09
NORTH CARVER DR	CARVER CIR CONNECTOR	CUL DE SAC TO D. E. SCHOOL PROP S OF	34	0.2
PINE ST DORAVILLE	STEWART RD	AZTEC	34	0.42
SCARLET OAK CT	SCARLET OAK DR	ISLAND CUL DE SAC	34	0.09
STEWART RD	BUFORD HWY	NEW PEACHTREE RD	34	0.18
STRAIT ST	RAYMOND DR	DEAD END	34	0.06
KING AVE	NEW PEACHTREE RD	CHURCH DR	33	0.04
SCHOOL DR	FLOWERS RD	PRIV PROP	33	0.09
TIMBER OAK DR	PIN OAK CIR	PARK PROPERTY	33	0.08
AUTUMN DR	RAYMOND DR	MCCLAVE DR	32	0.27
CLEARVIEW PKWY	CLEARVIEW PL	CUL DE SAC	32	0.25
CLEARVIEW PL	CLEARVIEW AVE	PRIV PROP	32	0.14
HARBER VALLEY DR	TILLY MILL RD	DORAL DR	32	0.15
PEACHTREE SQ	PEACHTREE IND BLVD	PEACHTREE IND BLVD	32	0.39
PINELAND AVE	STEWART RD	DEAD END	32	0.37
EULA CT	EULA CIR	EULA CIR	31	0.05
GLENDA WAY	CHICOPEE DR	DEAD END	31	0.29
PIN OAK CIR	OAKCLIFF RD	E TO DEAN END	31	0.22
SHADY OAK CT	SHADY OAK DR	ISLAND CUL DE SAC	31	0.07
VALMAR DR	AUTUMN DR	ALISON DR	31	0.11
AZTEC RD	CHESTNUT DR	STEWART RD	30	0.82
GARRETT CIR	GENTILLY PL	CLAY DR	30	0.15
GREEN OAK DR	PIN OAK CIR	WINDSOR OAK DR	30	0.55
HICKORY LN	GLENDA WAY	HICKORY WOOD LN	30	0.11
ALISON DR	RAYMOND DR	MCCLAVE DR	29	0.23
ALLEN DR	MCCLAVE DR	RAYMOND DR	29	0.26
BUENA VISTA AVE	OAKMONT AVE	CHESTNUT DR	29	0.15
CHEROKEE CT	CHEROKEE RD	CUL DE SAC	29	0.07
DORAL CIR	DORAL DR	CUL DE SAC	29	0.25
GENTILLY PL	TILLY MILL RD	GARRETT CIR	29	0.23
POPLAR ST DORAVILLE	WILTON AVE	CHEROKEE RD	29	0.19
VALLEY STREAM DR	TILLY MILL RD	DEAD END	29	0.21
BARRYLYN DR	VALLEY STREAM DR	VALLEY STREAM DR	28	0.15
ENGLISH OAK DR	BUFORD HWY	PIN OAK CIR	28	0.9
WILTON AVE	CLEARVIEW PL	DEAD END	28	0.38
ADDISON DR	SHALLOWFORD RD	WHEELER DR	27	0.59
BAGLEY DR	CHAMBLEE TUCKER RD	RAYMOND DR	27	0.2
CARVER CIR	CARVER CIR CONNECTOR	DEAD END	27	0.33
HAVALYN LN	CHESTNUT DR	RAYMOND DR	27	0.24

MCCLAVE DR	BUFORD HWY	CHESTNUT DR	27	0.84
NEW PEACHTREE RD	SHALLOWFORD RD	OAKCLIFF RD	27	1.43
WINDSOR OAK DR	ENGLISH OAK DR	OAKCLIFF RD	27	0.39
WOODWIN CT	WOODWIN RD	CUL DE SAC	27	0.19
CARVER DR	CITY LIMIT (DORAVILLE)	UNPAVED PRIV SEC	26	0.29
OAKMONT AVE	BUFORD HWY	PINELAND AVE	26	0.26
CHURCH DR	STEWART RD	CENTRAL AVE	25	0.14
JESS NORMAN WAY	BUFORD HWY	STEWART RD	25	0.09
LONGMIRE WAY	BUFORD HWY	FLOWERS RD	25	0.23
CRESTON RD	NEW PEACHTREE RD	PRIV PROP	24	0.09
WATEROAK WAY	PIN OAK WAY	PIN OAK CIR	24	0.15
WINTERS CHAPEL RD	FLOWERS RD	CITY LIMIT (DORAVILLE)	24	0.53
CLAY DR	FLOWERS RD	GENTILLY PL	23	0.29
TILLY MILL RD	DUNWOODY CITY LIMITS	WOODWIND RD	22	0.5
WHEELER DR	RAYMOND DR	CHESTNUT DR	22	0.2
BEACON DR	TILLY MILL RD	2728 AT JOHNNY'S LN	21	0.24
DORAL DR	FLOWERS RD	MILL CT	21	0.55
MOSS OAK DR	ENGLISH OAK DR	WINDSOR OAK DR	21	0.4
PARK AVE DORAVILLE	BUFORD HWY	NEW PEACHTREE RD	21	0.19
TURNER ST	TILLY MILL RD	PRIV PROP	21	0.09
CHESTNUT DR	AZTEC RD	BUFORD HWY	20	1.09
DORAL CT	DORAL DR	ISLAND CUL DE SAC	20	0.09
HOMELAND DR	WINTERS CHAPEL RD	PEACHTREE IND BLVD	20	0.56
JOHNNYS LN	WOODWIN RD	BEACON DR	20	0.23
MCELROY RD	NEW PEACHTREE RD	BUFORD HWY	20	0.14
PIN OAK CIR	CITY LIMIT	N&E TO OAKCLIFF RD	20	0.43
OAKCLIFF RD	WINTERS CHAPEL RD	BUFORD HWY & CITY	18	0.59
HOMELAND DR	PEACHTREE IND BLVD	CUL DE SAC	17	0.19
PIN OAK CIR	OAKCLIFF RD	S TO CITY LIMIT	17	0.27
DARLINGTON OAK DR	WINDSOR OAK DR	ENGLISH OAK DR	16	0.28
NEW PEACHTREE RD	OAKCLIFF RD	BUFORD HWY	16	0.46
SOUTH PEACHTREE RD	NEW PEACHTREE RD	PRIV PROP	16	0.11
BROOK PARK WAY	RAYMOND DR	RAYMOND DR	15	0.31
REDWOOD ST	CHICOPEE DR	HICKORY WOOD LN	15	0.44
PIN OAK WAY	PIN OAK CIR	PIN OAK CIR	14	0.16
PONTIAC CIR	TILLY MILL RD	WOODWIN RD	14	0.26
CHICOPEE DR	WINTERS CHAPLE RD			0.4
LAUREL OAK CT	ENGLISH OAK DR	3323/CO LINE(GWIN)	13 13	0.07
HICKORY WOOD LN	CHICOPEE DR	DEAD END	12	0.44
LAMBETH LN	COLQUITT DR	LAMBETH CIR	12	0.07
LAMBETH CIR	RAYMOND DR	RAYMOND DR	10	0.25





# THE CITY OF DORAVILLE AGENDA ITEM SHEET

Subject: Resolution For Annexation	Regular Meeting Work Session	X
Date of Meeting: Monday, December 2, 2013	Policy/Discussion	
Budget Impact: X Yes □No	Report Other	
Budget Impact Amount: \$ To Be Determined	Other	_
Funding Source:		
☐ Annual ☐ Capital		
CITYOFDORAVILLE CITYOFDORAVILLE CITYOFDORAVILLE CITYOFD	ORAVILLE CITYOFDORA	MILLE
Action Requested: To inform the State Legislature that we of certain areas to even up our borders with neighboring potential future jurisdictions. To instruct staff to perform danalysis of annexing areas south to Chamblee-Tucker Road the Gwinnett County line.	g existing jurisdictio lue diligence and fe	ns and asibility
History, Facts, Issues: In November 2013, select vote annexation that brought the city limits of Chamblee to of Chamblee-Tucker Road. Currently there are multiple efforts east across the natural boundary of I-85. Georgia Title 36 unincorporated islands via annexation, however does unincorporated islands by incorporation of cities (i.e. the Doraville/Dunwoody upon Dunwoody's incorporation). We further grow our city, even up our borders; and improve the citizenry as well as for citizens in the currently unincorpo opportunity to "piggy-back" our annexation on the same billegislation.	ur southernmost bo to create a new city 5-36-4 prohibits creat not prohibit creat e island created b e have an opportu e quality of life for e rated areas. We h	rder of y to the ation of tion of etween unity to existing ave an
Options:		
Recommended Action: Vote on Resolution		
Department: Council/Mayor		
Action Taken By Board:		

#### RESOLUTION NO. 2013 - \_\_\_\_

A RESOLUTION TO SEEK SPONSORSHIP BY THE 2014 GENERAL ASSEMBLY'S DORAVILLE LEGISLATIVE DELEGATION TO ADOPT A LOCAL LAW TO ANNEX CERTAIN UNINCORPORATED PROPERTIES INTO THE CITY OF DORAVILLE, AND FOR OTHER PURPOSES ALLOWED BY LAW

WHEREAS, the Mayor and Council of the City of Doraville are duly elected governing authority of the City of Doraville, Georgia; and

WHEREAS, the Mayor and Council, at a regularly noticed City Council Meeting on December 2, 2013, determined that it would be in the best interest of the City and DeKalb County, to seek annexation into the City of a certain unincorporated area in DeKalb County adjacent to the City via Legislative Action; and

WHEREAS, due to the potential incorporation of additional new municipalities in north DeKalb County, the Mayor and City Council find that an annexation would be in the best interest of all parties to avoid the potential creation of an unincorporated island in the area east of Doraville, south of Gwinnett County and north of the City of Chamblee if a new City is created to the east of this area thereby diminishing the level of service to the residents of the remaining potential unincorporated area; and

WHEREAS, the Mayor and Council respectfully request that the Doraville delegation of the Georgia General Assembly adopt a Local Act making the following changes to the City Charter of the City of Doraville, Georgia through the requested annexations, to become effective on 12:01 a.m., December 31, 2014.

## THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DORAVILLE HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Georgia Legislature, through the City of Doraville Legislative Delegation, is hereby requested to amend the City of Doraville, Georgia, Charter by Local Act, by annexing the unincorporated area of DeKalb County surrounded by the City of Chamblee, Gwinnett County, the City of Doraville and a proposed new municipality in DeKalb County, which annexation area would, with the creation of such municipality, be an unincorporated island, into the geographic boundaries of the City of Doraville, Georgia.

Section 2: That the Mayor, City Attorney and/or staff be authorized and directed to transmit this Resolution to the City of Doraville, Georgia, Legislative Delegation, and, more

### STATE OF GEORGIA COUNTY OF DEKALB CITY OF DORAVILLE

specifically, Representative Tom Taylor, in order to proceed with the drafting and introduction of the Local Act requested herein.

2014.	Section 3: That this Legislative Annexation be made effective on 12:01 a.m., December 31			
	SO RESOLVED, this	day of	, 2013.	
			Approved:	
			Donna Pittman, Mayor	
Attest	:			
Sandra (Seal)	a Bryant, City Clerk	•		



Subject: Appeal of Administrative Zoning Determination Regarding Property at 5597

Buford Highway

Regular Meeting Work Session Recommendation Policy/Discussion Policy/Discussion Report Other

Budget Impact Amount: \$ n/a

Funding Source: N/A

## CITYOFDORAVILLE CITYOFDORAVILLE CITYOFDORAVILLE CITYOFDORAVILLE

**Action Requested:** Appeal of Zoning Determination made by the Community Development Director as to classification of proposed use at 5597 Buford Highway (aka Mercado Plaza)

#### History, Facts, Issues:

On October 16, 2013 a letter of determination was sent from the City to Mr. Gary Furrow, MuleDeer Financial, as the representative of Mercado Plaza LLC. Mercado Plaza LLC is proposing the redevelopment of an existing structure and a use of property located at 5597 Buford Highway, Doraville, GA (formerly Kmart Shopping Center). The letter notified Mr. Furrow of the Community Development Director's determination that the proposed development was considered a "flea market" under City of Doraville code partially based upon a flier published and distributed publicly describing the proposed development and uses, and marketing and solicitation of tenants based upon the uses described therein ("Flier"). Mercado Plaza LLC was notified that if developed as described and advertised in the Flier it would be inconsistent with the City's Code of Ordinances in numerous ways. (copies of the Flier and letter attached). They were also notified that all construction would be required to meet City of Doraville building code regulations. That determination was appealed by Mercado Plaza LLC and subsequently the owner of the property, Buford Plaza LLC, joined the appeal. Both are being represented by the law firm of Smith, Gambrell & Russell, LLP.

City staff has met with the owner and owner's representative numerous times regarding possible uses of the old Kmart site. Amongst others, the owner has explored grocery market uses (the site was under contract for a grocery store at one point), a large retail jewelry store with gold processing on premises, a combination grocery market/ropes course/retail stores, and an as indoor flea market. Many of the ideas explored for use were not allowed in the C-2 zoning district including flea markets. The concept of a "Mercado" (Spanish for "market) was discussed.

It was explained that retail stores in an interior mall would be an allowed use. In an August 12, 2013 meeting with Mr. Furrow he was told that we had been receiving numerous calls from persons wishing to know when the "flea market" would be opening and reiterated to Mr. Furrow that flea markets are not an allowed use in the C-2 zoning district. I explained that any construction and internal layout must meet all building and health/safety code; only uses allowed in the C-1 or C-2 zoning districts as allowed uses will be allowed without a conditional use permit, if allowed as such; every business will be considered a separate business and will be required to have an Occupational Tax Certificate, which requires, in part, submittal of the businesses lease; each business could not be a temporary or occasional business and should be open as a full-time business; and that the sale of used and secondhand goods is not allowed.

While the decision under appeal is the determination that the proposed use as portrayed is not allowed in the C-2 zoning district, actual permit activity has occurred.

An application was submitted by Tidewater Builder, LLC for an interior demolition permit for 7,500 square feet of area (8/23/12). The Applicant obtained the required hazardous materials inspection/report, submitted a completed applications and Permit Number 130033 was approved, paid for and issued on 8/9/13. Demolition permits do not require review and approval by the DeKalb County Fire Marshal.

An application for an **electrical permit** for demolition and installation of a 600+ amp service, a combination range unit, water heater, clothes dryer, dishwasher and disposal unit was submitted on 9/12/13 and permit number 130142 **was issued**. Electrical permits do not require review and approval by the DeKalb County Fire Marshal.

An application for an interior build-out permit was submitted by Tidewater Builder, LLC on 8/21/13. As per DeKalb County requirements for Fire Marshal review, the applicant was given a preliminary permit number to allow review and approval by the Fire Marshal. The applicant was instructed to take any plans to the DeKalb County Permitting Department to obtain Fire Marshal review and approval prior to submittal for review by the City. No construction plans have been received by the City. Upon approval of plans by the DeKalb County Fire Marshal the applicant will pick approved copies of plans from DeKalb County and submit them for review by the City. Upon submittal of plans for City review, assuming all other permit application requirements are met, the application is considered complete and the City review process will begin. Upon review, corrections being made to bring the plans up to all applicable code requirements, and approval of the City Building Official, a building permit would be issued. To date the Applicant has not submitted any construction plans for review by the City and the City has not received notice of plan approval by the DeKalb County Fire Marshal. No building permit has been issued for this application.

The City's letter of determination only concerns the proposed use of the property and whether that use as determined is an allowed use in the C-2 zoning district. It is noted for informational purposes that all plans submitted will be required to meet all applicable current building and health/safety code requirements. Whether those code requirements are met cannot be made at this time or until a complete application with full sets of plans approved by the Fire Marshal have been received and approved by the City.

Concern over the type of use is based in part upon representation of the marketing material (the Flier) distributed to the public and claims to the City by persons inquiring into opening flea market businesses in the proposed project stating that the developer had told them that flea market booths were available and they were taking pre-lease deposits for such spaces.

Specifically the Flier states, in part, the following:

"in brief, MERCADO PLAZA will have:

- 377 spaces, including Booths, Kiosks, Retails Spaces, Food Court Restaurants
- Huge Gaming and Playground area for "kinds of all ages"
- Conference/Party/Concert space, with amazing sound and all that is necessary for a great celebration.
- More than 600 parking spaces.
- A supermarket.
- AND MORE! MUCH MORE!

BOOTHS WILL BE RENTED FIRST COME FIRST SERVE: BUFORD HIGHWAY FLEA MARKET TENANTS WILL HAVE THE EXCLUSIVITY DURING TWO WEEKS (UNTIL AUGUST 25) TO CHOOSE A BOOTH. FROM THERE YOU WILL BE ABLE TO CHOOSE ON WHAT IS AVAILABLE AT THE MOMENT. RESERVATIONS WILL BE MADE UPON RECEIVIDING SECURITY DEPOSIT."

The Flier has the contact number 478-361-8213 with the name Lee hand written at the bottom. This phone number corresponds to the contact information listed on a site sign installed by the developer listing the following contact number for Lease Information:

Ly Phillips (404) 663-4858;

Bo Lee (478) 361-8213 (emphasis added);

Gary Furrow (404) 428 428-7084;

and for Leasing and Construction: Reny Nguyen (770) 294-3051

The Flier advertises a number of uses, some of which are not allowed within the C-2 zoning district:

- It specifically states that "BOOTHS" will part of the 377 spaces provided, along with kiosks, retails spaces and food court restaurants. It further offers the BOOTHS to be rented, not leased, exclusively until August 25 on a first come first served basis to tenants of the Buford Highway Flea Market, which is in another jurisdiction is closing for redevelopment. While the City Code does not define "booths", the Merriam-Webster Dictionary defines "booth" as a "small and usually temporary" area "where things are sold or displayed or services are provided." As per Sec. 23-402: "Flea market means an occasional or periodic sales activity held within a building, structure, or open area where groups or individual sellers offer goods, new and used, for sale to the public, not to include private garage sales." The Merriam-Webster definition of "booth" comports with the City's definition of Flea market as both contemplate either an "occasional or periodic" or "temporary" sales activity. Flea markets are an allowed use in the M-1 Light Manufacturing District by Conditional Use Permit. They are not an allowed use in the C-2 zoning district in which the subject property is located. If used as described by the marketing Flier, it would in clear violation of the City Code.
- It advertises "Conference/Party/Concert space, with amazing sound and all that is
  necessary for a great celebration." Conference or convention facilities not associate with
  hotels, motels, concert halls, or event facilities, are only allowed in the M-1 zoning district
  by a Conditional Use Permit (§ 23-911). Such facilities are not allowed in the C-2 zoning
  district.
- It advertises "Huge **Gaming** and Playground area for "kids of all ages" (emphasis added). As per Sec. 11-10(3) assembly for purposes of gaming is prohibited.

Regarding the Building Permits Issued:

On October 23, 2013 the City Code Compliance Officer inspected the site to review the status of the two open permits for which no inspections had been called for by the contractor. Additional inspections have followed. The following was determined:

- The scope of the demolition permit was for 7,500 s.f. The actual scope of demolition was much more extensive. Work had been done throughout the 115,000 s.f. building including demolition of plumbing along the majority of the building's interior perimeter and demo of walls and fixtures throughout the entire 115,000 s.f. exceeding the scope of the demolition permit.
- The contractor had dug trenches for plumbing, some up to approximately 8 feet deep, around the majority of the building's interior perimeter and installed plumbing without a permit. It was noted by the Code Compliance officer that the joints installed were not up to code requirements.
- The permit for electrical work was for residential level appliances only. No permit was
  applied for or issued for any other construction or trade. Site inspection found that a
  living area on the upper level has been constructed including framing, plumbing,
  installation of toilet and shower, and electrical work exceeding the electrical permit
  issued by the City.
- There were people occupying the building in the front entry area conducting leasing activities without a certificate of occupancy being issued for the structure. It appeared that the space upstairs was also being used.

A stop work order was placed upon the building on October 23, 2013 by Code Compliance.

It is the Community Development Director's determination that based upon the uses portrayed in the development advertisement and conveyed to prospective tenants as noted above, such uses would be contrary to the City of Doraville Code of Ordinances and not allowed within the C-2 zoning district.

Department: Community Development	Department Head: <u>Joe Cooley</u>
Action Taken By Council:	

Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592

Main: 404 815-3500 Fax: 404 815-3509 www.sgrlaw.com

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October 25, 2013

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
VIA E-MAIL

Joseph L. Cooley Director of Community Development City of Doraville 3725 Park Avenue Doraville, GA 30340 10,25,13 803:32 14

Re:

RESPONSE TO LETTER OF OCTOBER 16, 2013 AND APPEAL PURSUANT TO § 23-1401 OF THE DORAVILLE CODE OF ORDINANCES

Dear Joe:

As you know, this firm represents Mercado Plaza, LLC, the lessee of ±11.81 acres of improved real property located at 5597 Buford Highway, Doraville, Georgia 30340 (hereafter "Mercado Plaza"), upon which it plans to operate a discount mall. We write to respond to your letter of October 16, 2013 and to formally appeal the interpretations and decisions in that letter to the Mayor and City Council pursuant to §23-1401 of the Doraville Code of Ordinances.

In your correspondence, you attach a copy of a flier (the "Flier") which you presume persons affiliated with Mercado Plaza, LLC authored and state that "if the property is developed as the Flier advertises, it would be inconsistent with the City's Code of Ordinances." Specifically, you state that the Flier establishes that (1) Mercado Plaza qualifies as a "Flea Market" as defined in §23-402 of the



Doraville Code of Ordinances; and (2) that Mercado Plaza does not qualify as a "Shopping Center". As demonstrated below, your conclusions lack a proper foundation and are legally inaccurate.

First, your conclusions hinge on misinformation and words in a Flier that the owners of Mercado Plaza did not create or distribute. As the attached affidavits show, an unauthorized third-party named Oscar Sinisterra generated that document. The owners of Mercado Plaza did not ask Mr. Sinisterra to write the Flier, did not review it after it was written and did not sanction its distribution. They were completely unaware of it. Further, once they learned of its existence, the owners of Mercado Plaza insisted that Mr. Sinisterra stop distributing the Flier because it did not accurately describe the proposed development. Hence, the words, descriptions and "intent" expressed in that document are those of a third-party and his alone and your assumption that they are attributable to the owners is incorrrect. It is worth noting, however, that Mr. Sinisterra never uses the words "Flea Market" to describe Mercado Plaza, a point your letter fails to mention.

Second, the actual facts show that Mercado Plaza does not qualify as a "Flea Market" under the express language of the Doraville Code of Ordinances. The City defines a "Flea Market" as an "occasional or periodic sales activity held within a building, structure, or open area where groups or individual sellers offer goods, new and used, for sale to the public..." (Doraville Code of Ordinances, §23-402). As such, the definition has two operative phrases:

- 1. The sales activity must be "occasional or periodic"; and
- 2. The goods sold must be "new and used".

The attached affidavits confirm that neither criteria is met in this instance.

The sales activity proposed at Mercado Plaza is not "occasional or periodic." Merriam-Webster Dictionary defines "occasional" as "happening or done sometimes but not often: not happening or done in a regular or frequent way" (See Exhibit "5", attached hereto). To further explain the term, the dictionary cites an example: "She receives occasional phone calls from her mother" (See Exhibit "5") (emphasis original). Similarly, the dictionary defines "periodic" as "happening regularly over a period of time" and "occurring or recurring at regular intervals", as in, "[h]e takes the car in for periodic oil changes" (See Exhibit "6", attached hereto) (emphasis original).

Mercado Plaza will have regular business hours and will be open to the public five (5) days per week: 11:00 a.m. to 8:00 p.m. Wednesday through Friday

and 10:00 a.m. to 9:00 p.m. Saturday thru Monday. <sup>1</sup> Equally important, operators at Mercado Plaza are required by contract to remain open during these business hours and, if they fail to do so, are deemed in "immediate default" of their tenant agreements and subject to, among other things, a fine. These facts alone prevent the City from declaring Mercado Plaza a "Flea Market" under the plain language of the definition it adopted.

As alluded to above, Mercado Plaza falls outside of the definition for an additional reason: It will not allow the sale of "used" goods. Mercado Plaza's agreements with its retailers explicitly forbid any one from "operat[ing] any type of business from the following categories: ... resale store or second-hand goods."

Third, your conclusion that Mercado Plaza does not qualify as a "Shopping Center" because it will not meet the terms of § 5-80 of the City Code is misplaced. That provision states, among other things, that "any...retail service... business shall have a minimum of 1,000 square feet of gross floor space." (Doraville Code at §5-80). The City did not adopt that Ordinance until September 9, 2013. By then Mercado Plaza had made applications for four permits and received three; had met on multiple occasions with you and others and received assurances it could develop the mall; and had expended over \$475,000.00 on developing its plans and making renovations. As a result, it has a vested right to continue this project and is not bound by the new ordinance. The City is estopped by law from applying the new ordinance against it.

Under these circumstances, a refusal to reverse the administrative decisions in question would be unlawful, arbitrary, capricious, irrational and a manifest abuse of discretion; all in violation of the Fifth Amendment and Fourteenth Amendment of the Constitution of the United States, and Article I, Section II, Paragraph I and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

A refusal to reverse the administrative decisions in question would discriminate unfairly between these owners and others similarly situated, 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 of 1983.

<sup>&</sup>lt;sup>1</sup> The mall will also be accessible to retail workers and mall staff one hour prior to these times and one hour after them.

A refusal to reverse the administrative decisions in question would amount to a taking of property, in violation of the Fifth and Fourteenth Amendment of the Constitution of the United States, and Article I, Section II, Paragraph I, and Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.

A refusal to reverse the administrative decisions in question would be invalid inasmuch as the appeal 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 was adopted.

A refusal to the reverse the administrative decisions in question would be unjustified from a fact-based standpoint and instead would result only from constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Georgia Constitution.

The Doraville Code of Ordinances lacks adequate standards for the City Council to exercise its power to review this appeal. The standards are not sufficient to contain the discretion of the City Council and to provide the Courts with a reasonable basis for judicial review. Because the stated standards (individually and collectively) are too vague and uncertain to provide reasonable guidance, the Doraville Code of Ordinances is unlawful and violates, among other things, the Fifth and Fourteenth Amendments of the Constitution of the United States and Article I, Section III, Paragraph 1; and Article I, Paragraphs 1 and 2 of the Constitution of State of Georgia, 1983.

We enclose the \$400 appeal fee with this correspondence. Affidavits supporting the facts in this Letter are attached:

- 1. Exhibit "1" Affidavit of Gary T. Furrow, October 24, 2013
- 2. Exhibit "2" Affidavit of Ly Phillips, October 24, 2013
- 3. Exhibit "3" Affidavit of Michael A. Thomas, October 24, 2013
- 4. Exhibit "4" Affidavit of Reny Quoc Nguyen, October 24, 2013
- 5. Exhibit "5" Definition of "occasional," Merriam-Webster Dictionary
- 6. Exhibit "6" Definition of "periodic," Merriam-Webster Dictionary

Sincerely,

Kathryn M. Zickert

Attorney-At-Law

Dennis J. Webb, Jr.

Attorney-At-Law

cc: Gary Furrow KMZ/DJW/tnw

COUNTY OF GWINNETT

STATE OF GEORGIA

#### Affidavit of Gary T. Furrow

COMES NOW GARY FURROW and after first being duly sworn, deposes and states as follows:

1.

I am over the age of eighteen, am <u>sui juris</u>, and I give this Affidavit freely and voluntarily based upon my personal knowledge.

2

I am a Manager of Mercado Plaza, LLC ("Mercado"). There are two other managers of Mercado: Reny Quoc Nguyen and Ly Phillips. Mercado is a Georgia limited liability company. Mercado is owned in part by National Discount Markets, LLC, RL Group, LLC, and Steinberg Investments, LLC, Mercado is the lessee of certain real property located at 5597 Buford Highway, Doraville, Dekalb County, Georgia, 30340, which is the site of a former Kmart store. Mercado leases this property from Buford Plaza, LLC. It has been Mercado's intent to redevelop the Kmart for a Latino discount mall consisting of individual retail spaces, a food court, and a playground.

3.

In March 2013, I became actively involved in the project as an investor and started looking for financing to allow its development. Mercado engaged an architect, Mike Thomas, to make minor changes to the architectural design of the Plaza discussed with the City in January of 2013. These changes included the enlargement of the food court and the addition of a supermarket. On June 30, 2013, Thomas finalized these changes to the architectural plans. The

total cost for the interior plans was \$8,500. Additionally, Mercado paid Ngineers \$10,000 for the acquisition of a demolition permit. A demolition permit was issued on August 9, 2013 (City of Doraville Permit No. 130033). The cost of the permit was \$152.00.

4

In July 2013, Thomas and I met with Joe Cooley, the Community Development Director for the City of Doraville. We again expressly described the project as a "Latino discount mall" with over 200 12 foot by 12 foot retail spaces with roll-up metal doors, a 10 space food court and other small retail spaces. Also in July 2013, Phillips and I again met with Cooley and discussed the uses that we would be putting in at the Plaza. Cooley advised us to read the zoning regulations for C-2 because "not all uses are allowed in C-2 in the City of Doraville." For example, Cooley pointed out that under C-2 zoning, automotive tires can be sold but they cannot be installed. Cooley also informed us that flea markets are not permitted in Doraville in C-2. We assured him that the Plaza was not a flea market as it would only sell new items and would have operating covenants requiring that all retailers be open for business on an established schedule, either five (5) or seven (7) days per week.

5,

On August 6, 2013, Mercado opened bank accounts and began taking security deposits from prospective retailers. On August 12, I met with Cooley and told him about the specific uses that had been leased at the property. Cooley made no objections to the uses other than expressing concern that the users will not pay business license fees and sales tax. To address this issue, I agreed to give Cooley's staff person a copy of the rent roll and phone numbers of all retailers in the mall. Cooley appeared satisfied with this arrangement.

It is my understanding that our architect, Mike Thomas, submitted the architectural plans for Mercado to the City of Doraville on August 14, 2013. Thomas returned the following day, August 15, and was given a City of Doraville permit number (City of Doraville Permit No. 130089) and was told that he must route the plans to the Dekalb County Fire Marshal for review prior to the City's review. It is my understanding that Thomas took the plans, along with the City of Doraville permit number, to the Dekalb County Fire Marshal that same day.

7.

On August 20, 2013, demolition began at the site. On that same day, Thomas and I met with Cooley to provide him with an update on the project. Cooley did not mention any dissatisfaction with the plans for the Plaza. I again stated that this is not a flea market but a Latino discount mall. We discussed how Mercado Plaza would be similar to Plaza Fiesta, a Latino discount mall in Atlanta at 4166 Buford Highway. Cooley did not indicate that there were any concerns about the project by the City.

8.

On August 23, 2013, I submitted an application for a sign permit for the Plaza, which advertised leasing opportunities in a 120,000 square foot Latino discount mall with over 350 retail spaces. On August 30, the sign permit was received (City of Doraville Permit No. 130097), and the sign was posted on August 31. The cost of the permit was \$275.00, which was paid to the City of Doraville.

9.

Shortly after posting the sign, Mercado learned that a flier was being circulated by Oscar Sinisterra, the manager of the Buford Highway Flea Market. The flier was directed to the then-current tenants of the Buford Highway Flea Market and incorrectly represented that Mercado

Plaza would also be a flea market. Sinisterra is not an employee or owner of Mercado. Further, neither I nor any other manager at Mercado authorized Sinisterra to make such representations regarding Mercado Plaza. Mercado did not review or have notice of the contents of the flier until after it had been distributed. Immediately upon learning of the flier, Mercado demanded that Mr. Sinisterra cease distribution of the flier.

10.

Mercado Plaza is not a "flea market." At all times during its planning and development, Mercado Plaza has been represented as a Latino discount mall. The businesses that will operate in Mercado Plaza will not be "occasional or periodic." In accordance with the terms of the standard agreement between Mercado and its retailers, each one is required to operate its business during the hours of not less than 11:00 am to 8 pm, Wednesday through Friday, and 10:00 am to 9:00 pm on Saturday through Monday. Failure to open for business at any point is a default under the Agreement and will result in a fine. Further, used goods will not be sold at Mercado Plaza; the Agreement provides that no tenant shall operate a "pawn shop, resale store or [store selling] secondhand goods" unless specifically allowed by Mercado. Mercado is aware that it must obtain conditional use permits from the City in order to allow any such uses by its retailers.

11

On September 3, 2013, the Doraville City Council considered an amendment to its Code to implement a minimum square footage requirement of at least 800 square feet per business. As of the September 3rd meeting, Mercado had leased approximately 70 retail spaces and received approximately \$35,000 in security deposits. The total expenditures on the project up until

September 3 amounted to \$363,911.00, including its security deposit, lease payments, demolition, and purchase of construction materials.

12.

On September 6, I met with Cooley to talk about conditional use permits for tire installation, an antique store, a pawn shop, precious metal dealers, coin-operated amusement, and furniture sales. Cooley informed me that we definitely could not have a pawn shop. Cooley also told me for the first time that there might be a problem with building the Plaza because the City was considering increasing the minimum square footage of retail space in C-2 zoning. Cooley also told me that the City did not consider our permit to be officially submitted because we had only submitted it to the Dekalb County Fire Marshal.

13.

On September 9, 2013, I attended a specially called meeting of the Doraville City

Council. No court reporter was present. The Council considered the amendment to the Code
regarding minimum square footage for businesses. During the discussion, Councilwoman Trudy

Jones Dean suggested that the minimum square footage be increased from 800 to 1,000 square
feet. No public comment was received. The Council passed the amendment and the meeting was
adjourned. Between September 3 and September 9, Mercado spent an additional \$1,927.70 in
development costs, for a total of \$477.896.34.

14.

On September 12, 2013, an electrical permit issued (City of Doraville Permit No. 130142) to allow Mercado to do interior electrical work in the Kmart. The permit cost was \$100.00.

### Further Affiant sayeth not,

Sworn and subscribed before me, this

HANG KI TONG.
Notary Public
Gwinnett County
State of Georgia
My Commission Expires Oct 29, 2016

### COUNTY OF DEKALB

#### STATE OF GEORGIA

#### Affidavit of Ly Phillips

COMES NOW LY PHILLIPS who after first being duly sworn, deposes and states as follows:

ĺ

I am over the age of eighteen, am <u>sui juris</u>, and I give this Affidavit freely and voluntarily based upon my personal knowledge.

2

I am a Manager of Mercado Plaza, LLC ("Mercado"). There are two other managers of Mercado: Gary T. Furrow and Reny Quoc Nguyen. Mercado is a Georgia limited liability company. Mercado is owned in part by National Discount Markets, LLC, RL Group, LLC, and Steinberg Investments, LLC. Mercado is the lessee of certain real property located at 5597 Buford Highway, Doraville, Dekalb County, Georgia, 30340, which is the site of a former Kmart store. Mercado leases this property from Buford Plaza, LLC, of which I am a 30% owner. It has been Mercado's intent to redevelop the Kmart for a Latino discount mall consisting of individual retail spaces, a food court, and a playground.

3.

In January of 2013, Ly Phillips and Doug McMurrain, a potential investor, and I met with Joe Cooley, the Community Development Director for the City of Doraville, to discuss our plan to develop a Latino discount mall on the former Kmart site to be called "El Mercadito Plaza". We showed him a plan and described the Plaza as similar to Plaza Fiesta, a Latino discount mall in Atlanta located at 4166 Buford Highway. Further, we explained that the Plaza would have

hundreds of individual retail spaces that would be leased to merchants. We showed Cooley a layout of the mall which had individual retail bays of 12 feet x 12 feet. Cooley was receptive to the plan and said that the City would "Like it." We then scheduled a meeting for McMurrain to meet with the Mayor of Doraville, Donna Pittman.

4

It is my understanding that in February of 2013, McMurrain met with Mayor Pittman to present our project. I understand that Mayor Pittman was receptive to the plan, but suggested we name it "Mercado Plaza." Mayor Pittman also suggested that we include a large playground area in our plans. We incorporated both of these suggestions into our plans, and we began calling the mall "Mercado Plaza."

5.

In March of 2013, McMurrain left the project, and was replaced by Gary Furrow of MuleDeer Financial. Gary and I continued with the planning and development of Mercado Plaza.

6.

Throughout 2013, Gary, Mike and I met with Cooley on several occasions regarding Mercado Plaza. Cooley never mentioned that there was opposition to the project nor did he raise any concerns that the project was in violation of any City ordinances. The last time I met with him was in July of 2013. During this meeting, I told Cooley that the project would be like Plaza Fiesta or Better. Cooley said, "that if that is the case, then the City would love it". Relying on these assurances, Mercado continued to make substantial expenditures to further development of the Plaza.

In August of 2013, Mercado began leasing its individual retail spaces. Around this same time, I learned that a flier was being circulated by Oscar Sinisterra, the manager of the Buford Highway Flea Market. The flier was directed to the then-current tenants of the Buford Highway Flea Market and incorrectly represented that Mercado Plaza would also be a flea market. Sinisterra is not an employee or owner of Mercado. Further, neither I nor any other manager at Mercado authorized Sinisterra to make such representations regarding Mercado Plaza. Mercado did not review or have notice of the contents of the flier until after it had been distributed. Immediately upon learning of the flier, Mercado demanded that Mr. Sinisterra cease distribution of the flier. To my knowledge he did so immediately.

Further Affiant sayeth not.

v Phillins

Sworn and subscribed before me, this

the \_\_\_\_ day of October, 2013.

HANG KI TONG

Gwinnett Count

My Commission Expires Oct 29, 2016

COL	INT	Y	OF	

#### STATE OF GEORGIA

### Michael A. Thomas Affidavit

COMES NOW MICHAEL A. THOMAS and after first being duly sworn, deposes and states as follows:

1.

I am over the age of eighteen, am sui juris, and I gave this Affidavit freely and voluntarily based upon my personal knowledge.

2.

I am a licensed architect in the State of Georgia. I was retained on June 6, 2013 by Mercado Plaza, LLC to make architectural plans for Mercado Plaza. I was paid \$5,300 to make minor changes to the existing architectural plans for the Plaza. I was not involved with the development of any plans for the Plaza prior to this date.

3.

On August 14, 2013, I took the revised architectural plans to the City of Doraville Inspection Department to apply for a building permit. I returned the following day, August 15, and was told that I must route the plans to the Dekalb County Fire Marshal for a life safety review prior to the City's review. I was also told that I must submit the contractor's license of the contractor, Tidewater Builders, LLC, to the City and obtain a permit number prior to giving the plans to the Dekalb County Fire Marshal.

5.

Accordingly, on August 21, 2013 I submitted Tidewater Builders, LLC's contractor's license and business license to the City. A City of Doraville permit number was issued (No.

130089). On August 22, I submitted the plans and the permit application to the Dekalb County Fire Marshal. The application fee was \$200.00.

Further Affiant sayeth not.

Michael A. Thomas

Sworn and subscribed before me, this

the <u>25<sup>th</sup></u> day of <u>OCtober</u>, 2013.

Notary Public

SGR/11472964.1

COUNTY OF DEKALB
STATE OF GEORGIA

### Affidavit of Reny Quoc Nguyen

COMES NOW RENY NGUYEN who after first being duly sworn, deposes and states as follows:

1.

I am over the age of eighteen, am <u>sui juris</u>, and I give this Affidavit freely and voluntarily based upon my personal knowledge.

2.

I am a manager of Mercado Plaza, LLC ("Mercado"). There are two other managers of Mercado: Gary T. Furrow and Ly Phillips. Mercado is a Georgia limited liability company.

Mercado is owned in part by National Discount Markets, LLC, RL Group, LLC, and Steinberg Investments, LLC. Mercado is the lessee of certain real property located at 5597 Buford Highway, Doraville, Dekalb County, Georgia, 30340, which is the site of a former Kmart store. Mercado leases this property from Buford Plaza, LLC. It has been Mercado's intent to redevelop the Kmart for a Latino discount mall consisting of individual retail spaces, a food court, and a playground.

3.

In August of 2013, Mercado began leasing the individual retail spaces which will exist within the mall. Around this same time, Mercado learned that a flier was being circulated by Oscar Sinisterra, the manager of the Buford Highway Flea Market. The flier was directed to the then-current tenants of the Buford Highway Flea Market and incorrectly represented that Mercado Plaza would also be a flea market. Sinisterra is not an employee or owner of Mercado.

Further, neither I nor any other manager at Mercado authorized Sinisterra to make such representations regarding Mercado Plaza. Mercado did not review or have notice of the contents of the flier until after it had been distributed. Immediately upon learning of the flier, Mercado demanded that Mr. Sinisterra cease distribution of the flier.

Further Affiant sayeth not.

Reny Quoc Nguyen

Sworn and subscribed before me, this

the 24th day of October, 2013.

HANG KI TONG
Notary Public
Gwinnett County
State of Georgia
My Commission France

My Commission Expires Oct 29, 2016

D







Quizzes & Games

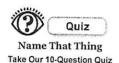
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occasional

Subm





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2 ENTRIES FOUND:

occasional occasional cause





adjective \-'kāzh-nəl, -'kā-zhə-nəl\

: happening or done sometimes but not often : not happening or done in a regular or frequent way

: sometimes doing a particular job or activity

#### WHAT WOULD YOUR BUSINESS DO WITH A \$250K **GRANT?**

Application Deadline is October 31.

#### Full Definition of OCCASIONAL

Like

- 1 a: of or relating to a particular occasion <a budget able to meet occasional demands as well as regular ones>
  - b: created for a particular occasion < occasional verse>
- 2: acting as the occasion or contributing cause of something
- 3 : encountered, occurring, appearing, or taken at irregular or infrequent intervals <occasional visitors> <an occasional vacation>
- 4 : acting in a specified capacity from time to time <an occasional lecturer>
- 5 : designed or constructed to be used as the occasion demands < occasional furniture>
  - ☑ See occasional defined for English-language learners » See occasional defined for kids »



**APPLY NOW** 

#### Examples of OCCASIONAL

She receives occasional phone calls from her mother.

There will be occasional showers during the morning.

Most mornings, we'll see deer or the occasional bear walking past our house.

He tells an occasional joke to keep his students interested.

I need to take occasional breaks from work.

Sure, I drink an occasional glass of wine from time to time.

She's an occasional lecturer at the university.

#### First Known Use of OCCASIONAL

circa 1631





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#### Synonyms

aperiodic, casual, catchy, choppy, discontinuous, episodic (also episodical), erratic, intermittent, irregular, fitful, spasmodic, spastic, sporadic, spotty, unsteady

#### Antonyms

constant, continuous, habitual, periodic, regular, repeated, steady  $% \left( 1\right) =\left( 1\right) \left( 1\right)$ 

#### Related Words

convulsive, sudden, violent; broken, disconnected, fragmentary, interrupted; aimless, arbitrary, desultory, haphazard, hit-and-miss, hit-or-miss, odd, random, scattered, slapdash, stray; capricious, changeful, changing, flickery, fluctuating, fluid, inconstant, mercurial, mutable, temperamental, uncertain, unpredictable, unsettled, unstable, varying, wavering; changeable, fickle, variable, volatile

#### Near Antonyms

changeless, equable, even, stable, stationary, uniform; unchanging, unvarying, unwavering; methodical (*also* methodic), orderly, systematic; unrelenting, unremitting

more

#### Rhymes with OCCASIONAL

equational

#### Learn More About OCCASIONAL

Thesaurus: All synonyms and antonyms for "occasional" Spanish Central Translation: "occasional" in Spanish

#### Browse

Next Word in the Dictionary: occasional cause Previous Word in the Dictionary: occasion (transitive verb) All Words Near: occasional

#### 64 Seen & Heard 39

What made you want to look up *occasional?* Please tell us where you read or heard it (including the quote, if possible).

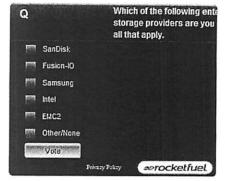
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periodic acid

periodic comet

pe·ri·od·ic

adjective \pir-ē-'ä-dik\

: happening regularly over a period of time

#### Full Definition of PERIODIC

Like

1 a: occurring or recurring at regular intervals

b: occurring repeatedly from time to time

2 a: consisting of or containing a series of repeated stages, processes, or digits: CYCLIC < periodic decimals > < a periodic vibration>

b: being a function any value of which recurs at regular

3 : expressed in or characterized by periodic sentences

☑ See periodic defined for English-language learners » See periodic defined for kids »

#### Examples of PERIODIC

He takes the car in for periodic oil changes.

<sent out periodic reminders about the office dress code>

#### First Known Use of PERIODIC

1642

#### Related to PERIODIC

#### Synonyms

constant, frequent, habitual, regular, periodical, repeated, steady

#### Antonyms

inconstant, infrequent, irregular

#### Related Words

continual, intermittent, recurrent, recurring; cyclic (or cyclical); around-the-clock, hourly, round-the-clock, 24-7 (or 24/7); chronic, confirmed, inveterate; expected, usual

#### Near Antonyms

episodic (also episodical), occasional; unexpected, unusual







**APPLY NOW** 

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abscissa, denominator, divisor, equilateral, exponent, hypotenuse, logarithm, oblique, radii, rhomb

#### pe·ri·od·ic Dictionary)

adjective \pir-ē-'ād-ik\ (Medical

#### Medical Definition of PERIODIC

: occurring or recurring at regular intervals <periodic epidemics>

#### Learn More About PERIODIC

Thesaurus: All synonyms and antonyms for "periodic" Spanish Central Translation: "periodic" in Spanish

#### Browse

Next Word in the Dictionary: periodic acid Previous Word in the Dictionary: period (adjective) All Words Near: periodic

#### 66 Seen & Heard 33

What made you want to look up periodic? Please tell us where you read or heard it (including the quote, if possible).



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Reply · Like · Follow Post · September 16 at 12:31pm



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Lijuan Wang · Follow · Noble Park Secondary College what is the difference between periodic and periodical. Reply · Like · Follow Post · June 5 at 4:39pm



#### Jeremiah Polite

well its one of ny vocab words. Reply · Like · Follow Post · May 22, 2012 at 6:22pm



#### Hunter D. McClellan

For my homework.

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### SMITH, GAMBRELL & RUSSELL, LLP

Attorneys at Law

Kathryn M. Zickert

Direct Tel: 404-815-3704
Direct Fax: 404-685-7004
diwebb@sgrlaw.com

1046AC26 039IN

Dennis J. Webb, Jr.

Direct Tel: 404-815-3620
Direct Fax: 404-685-6920
diwebb@sgrlaw.com

October 30, 2013

10-30-13 PO4:21 IN

10:239029-A28038RC

#### VIA HAND-DELIVERY

Joseph L. Cooley Director of Community Development City of Doraville 3725 Park Avenue Doraville, GA 30340

10:239028 A28009EF

Re:

RESPONSE TO LETTER OF OCTOBER 16, 2013 AND APPEAL PURSUANT TO § 23-1401 OF THE DORAVILLE CODE OF ORDINANCES

#### Dear Joe:

This firm represents Buford Plaza, LLC, the owner of  $\pm$  11.81 acres of improved real property located at 5597 Buford Highway, Doraville, Georgia 30340 (hereafter "Mercado Plaza"). On or about October 25, 2013, the lessee of Mercado Plaza, Mercado Plaza, LLC, responded to a letter you had written dated October 16, 2013 and formally appealed the interpretations and decisions in that letter to the Mayor and City Council pursuant to § 23-1401 of the Doraville Code of Ordinances. Buford Plaza, LLC writes this letter to formally join that appeal and hereby adopts, restates and incorporates by reference Mercado Plaza, LLC's letter of October 25, 2013 in its entirety including, but not limited to, all legal and constitutional objections stated therein.



Joseph L. Cooley October 30, 2013 Page 2

Sincerely,

Kathryn M. Zickert Attorney At-Law

Dennis J. Webb, Jr. Attorney-At-Law

Gary Furrow cc: KMZ/DJW/tnw



October 16, 2013

Mr. Gary Furrow MuleDeer Financial 6050 Peachtree Industrial Blvd. Norcross, GA 30071

Via: USPS Certified Mail

RE: MERCADO PLAZA

Dear Mr. Furrow;

Ority |

Vail.

COVE

Juit

It has come to the City of Doraville's attention that you may be intending to develop the Mercado Plaza, formerly a K-Mart, in a manner which would be inconsistent with the City's Ordinances, Rules and Regulations. The City's determination is partially based on the Mercado Plaza flier (hereinafter "Flier"), a copy of which is attached hereto and incorporated herein. Please take this letter as notice that if the property is developed as the Flier advertises, it would be inconsistent with the City's Code of Ordinances in numerous ways, as described below.

The Zoning Ordinance for the City of Doraville is explicit, in that "any use not specifically permitted or uses not permitted upon approval of a conditional use shall be prohibited" in each of the respective zoning districts. Each zoning district exhaustively lists all of the permitted uses and conditional use allowances.

First, Flea Markets are not allowed in the C-2 zoning district. According to Section 23-402 of the City's Zoning Code, a Flea Market is defined as an "occasional or periodic sales activity held within a building, structure, or open area where groups or individual sellers offer goods, new and used, for sale to the public..." Flea Markets are only allowed in M-1 zoning districts by Conditional Use Permits. § 23-911. The Mercado Plaza property is located in the C-2 zoning district.

As per your Flier, which in part forms the basis for the City's determination herein, indicates, you plan on renting booths to other business owners to operate as a flea market or as a flea market-like business. Your Flier states, "BOOTHS WILL BE RENTED FIRST COME FIRST SERVE; BUFORD HIGHWAY FLEA MARKET TENANTS WILL HAVE THE EXCLUSIVITY DURING TWO WEEKS ... TO CHOOSE A BOOTH ..." Merriam-Webster's Dictionary defines "booth" as a "small and usually temporary" area "where things are sold or displayed or services are provided." This definition comports with the City's definition of Flea Markets, as both contemplate either an "occasional or periodic" or "temporary" sales activity. Your advertising to rent booths first to those individuals relocating form the Buford Highway Flea Market and then to others, clearly indicates an intent to operate and function as a Flea Market. As stated above, such use would clearly be in violation of the City's Code.

Second, the as-advertised property does not fit within the classification of a Shopping Center. As defined in Section 23-402, a Shopping Center is defined as, "a group of commercial establishments having a building composition that is an architectural unit and not a miscellaneous assemblage of stores..." Additional City adopted codes which address requirements of Shopping Centers can be found referenced in Section 5-7 of the Code of Ordinances.

Per Section 5-80 of the City Code, "any single retail, service or wholesale business shall have a minimum of 1,000 square feet of gross floor space, which shall be fully enclosed on all sides and contain a ceiling that is fully enclosed and separated from any other business or common public space ... Co-location of any such businesses into an existing business space or building ... shall require the minimum 1,000 square feet and required enclosed space for each business." The identification of the commercial space as "booths" in your Flier would be inconsistent with this Building Code provision. Except for accessory structures or uses as explicitly contemplated in the Code, for instance a food court or limited kiosks, all plans and site drawings submitted to the City shall be required to show all individual businesses adhering to the minimum 1,000 square foot requirement. If such plans do not show compliance with the City's Code, the City would not approve them for construction and, if not built in accordance with that requirement, the City would not grant certificates of occupancy.

In addition, the C-2 zoning district allows for a myriad of different types of businesses, all such types requiring the sale of "new" merchandise with few exceptions (antique stores, consignment furniture stores). Merriam-Webster defines "new," in part, as "not used by anyone else previously." This coincides with the everyday meaning of "new" merchandise that the citizens of Doraville expect to find in C-2 districts which are, by definition, "appropriate for community and regional commercial areas as opposed to locations that serve primarily local neighborhoods." § 23-910.

Third, in addition to advertising for flea market-like booths, your Flier also advertises other additional uses and businesses will be operating Mercado at the Plaza. The advertisement "CONFERENCE/PARTY/CONCERT SPACE, WITH AMAZING SOUND AND ALL THAT IS NECESSARY FOR A GREAT CELEBRATION," would be inconsistent with a number of City Code sections. Conference or convention facilities not associated with hotels, motels, concert halls, or event facilities, are only authorized in the M-1 zoning district by a Conditional Use Permit. § 23-911. Such facilities are not allowed in C-2 zoning districts, the zoning district in which the subject property is located. Also, please be advised that it is unlawful to frequent any place where gaming is practiced, allowed or tolerated.

Pursuant to Section 23-1401, this determination may be appealed directly to the Doraville City Council within ten (10) days of receipt of this letter. Please feel free to contact me with any questions.

Sincerely.

Joseph L. Cooley

Director of Community Development

Attachment.

cc:

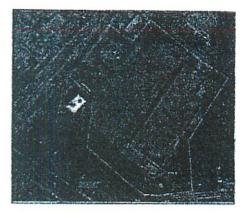
Shawn Gillen – City Manager Sandra Bryant – City Clerk Cecil McLendon – City Attorney Leonid Felgin – Assistant City Attorney

# MERCADO PLAZA

## Welcome!!!!!!!!!!

Finally it is a reality it is here! MERCADO PLAZA will open its doors on October 31<sup>st</sup>, 2013 with a grand opening party that will be the sensation of the City!

Not only what you were waiting for: MORE THAN YOU WERE WAITING FOR! It's been a long journey but every effort has been worth it. MERCADO PLAZA will become very soon in the most visited place not only for Hispanics; for everybody! It will be so fun and complete that the shopping experience will blow everybody's mind! It will open five days a week, from Thursday to Monday, closing on Tuesday and Wednesday. It will be a fun place!



## in brief, MERCADO PLAZA will have:

- 327 spaces, including Booths, Kiosks, Retail Spaces, Food Court Restaurants
- Huge Gaming and Playground area for "kids of all ages"
- Conference/Party/Concert space, with amazing sound and all that is necessary for a great celebration.
- More than 600 parking spaces.
- · A supermarket.

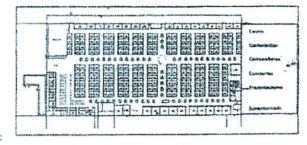
AND MORE! MUCH MORE!

BOOTHS WILL BE RENTED FIRST COME FIRST SERVE: BUFORD HIGHWAY FLEA MARKET TENANTS WILL HAVE THE EXCLUSIVITY DURING TWO WEEKS (UNITIL AUGUST 25) TO CHOOSE A BOOTH. FROM THERE ON YOU WILL BE ABLE TO CHOOSE ON WHAT IS AVAILABLE AT THE MOMENT. RESERVATIONS WILL BE MADE UPON RECEIVING SECURITY DEPOSIT.

### IBienvenidos a MERCADO PLAZA!

Finalmente es una realidad! Ya llego! MERCADO PLAZA abrirá sus puertas el 31 de Octubre, 2013, con una sensacional fiesta de inauguración!

iiii Lo que esperábamos.... Y MUCHO MASIIIIII Ha sido una larga jornada pero el esfuerzo ha valido la pena. MERCADO PLAZA se convertirá muy pronto en el sitio más visitado, no solo por los Hispanos:



POR TODOS! Sera un sitio divertido y completísimo; ileno de diversión y con una gran diversidad de alternativas para comprar, y además 10 restaurantes para satisfacer los paladares de nuestros visitantes. Se abrirá cinco días a la semana, de Jueves a Lunes, y estará cerrado Martes y Miércoles. HISERA EL SITIO MÁS DIVERTIDO DE ATLANTA!!!

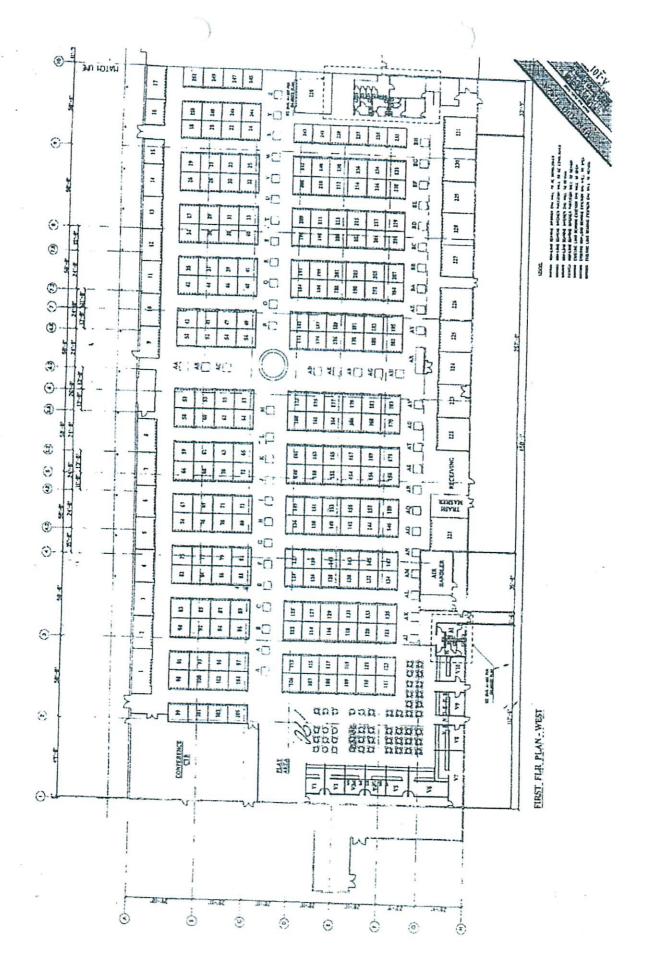
## En breve, MERCADO PLAZA ofrecerá:

- 372 espacios, incluyendo Booths, Kioskos, Restaurantes en la zona de Comidas, etc.
- El espacio más increíble para juegos, con los diseños más innovadores, para que se diviertan los "chicos de todas las edades".
- Centro de Conferencias/Fiestas/Quinceañeras/Conciertos, para más de 500 personas.
- Más de 600 parqueaderos.
- Un supermercado

THE DIE HILL Y MÁSHMENNING THE HILL MUCHO MASHMENNINGHENNING

LOS ESPACIOS SE RENTARAN EN EL ORDEN EN QUE LLEGUEN. LOS ARRENDATARIOS DEL BUFORD HIGHWAY FLEA MARKET TENDRAN LA EXCLUSIVIDAD SOLO HASTA AGOSTO 25 PARA SEPARAR SU ESPACIO. DEBERAN DEJAR UN DEPOSITO DE SEGURIDAD PARA ASEGURAR EL ESPACIO. 478 – 361 – 3213 – 2213 – 2213

FLIER Pa. 1



FUER Pa.2



Latino Discount Mall Coming Fall, 2013

120,000 Square Feet Over 350 Spaces

Leasing Information
Ly Phillips (404) 663-4858
Bo Lee (478) 361-8213
Gary Furrow (404) 428-7084

Leasing & Construction Reny Nguyen (770) 294-3051



# City of Doraville Community Development Department — Planning and Zoning/Building & Inspections/Storm water Application for Building Permit

Interior Bour Cur

		; · ,		7					
DATE (Month/Date/Year)_	8-2	21-1	3 L	Resid	11/21	on- esidential			2
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SANITARY FACILITIES	PURPOSE	OF PERMIT	,			- 1			
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No. Stories				<del></del>		Caste	To	tel Area	\$15,000 saft
	No. R	goms		P	o. Baths		No. Kitchens		
Type of Construction (Materials)						Roofing Materia	ls		
OWNER Mercado PI	479,	110		c	ontractor Tide	water	Builder	110	·
Address 5597 Bu	ford	140	U/	_ A	idres 2500	1		Pharan	1 H:11 Pl
city Doravilly	Sta	10 GA	Zip 3	0 <b>9</b> 00	y Duly+	1		State A	ZD 30096
Telephone (Area Code/Number) (4	04)	428.	7084	L To	lephone (Area Code)	Number) 7	7911-3051	Bus. Lic. No.	1. 50070
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Ch. M	1		APPROVATA	DATE	SUED	DEMAL	VERIFIED BY:		DATE
City Planner:	1		APPROVAL:	UMIER	SUED	DENIAL:	VERIFIED BY:		DAYE:  DAYE:

ivvoru systems inc.



# City of Doraville

3725 Park Avenue Doraville, GA 30340-0000

Phone: (770)451-8745 Fax: (770)936-3862

# **Permit**

Permit Status: Issued

Electual peniel

Issue Date: 9/12/2013

Expires: 9/12/2014

Permit Number: 130142

Applicant Name: Andelynn Cummings Phone: 30296 **Applicant Company: Tidewater Builders LLC** Parcel #: Permit Type: Trade Permit - Electrical Work Classification: Commercial Total Square Feet: 0 Sq. Ft. Job Address: 5597 Buford Hwy. Total Valuation: \$0.00

Doraville, GA 30340

Contractor(s)	Phone	Primary Contractor
Tidewater Builders LLC		YES or NO
•		Yes or No

**APPLICANT'S AFFIDAVIT:** I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning. Furthermore, I authorize the above-named contractor to do the work stated.

# **Project Description:**

Demolition .	& reinstallation	
Domontion .	x Tombianation	
i		
l .		

For inspections call: (770) 451-8745 or Login at <a href="http://www.doravillega.us/inspections-request/">http://www.doravillega.us/inspections-request/</a>

# FEE INFORMATION

Fees Due	Amount
Administration Fee	\$50.00
Electrical Trade Permit plus Inspection Fee	\$50.00
Total:	\$100.00

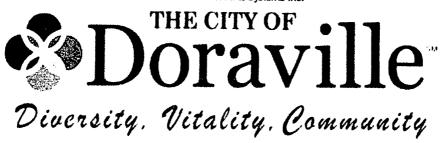
	PAYMENT INFORMATION	
ID Number		Amt Paid
Check		\$50.00
Visa		\$50.00
	_	\$100.00
•	Remaining Balance:	\$0.00

WARNING: Permit will expire if no work is completed within a twelve(12) month period. After this period, new permits may need to be issued.

Building Department File Copy

Applicant Signatute

NOTICE: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county.



**Payment** 

Date 9/12/2013 Paid By Andelynn Cummings Description\*8176 Payment TypeVisa Accepted By Jane Keegan

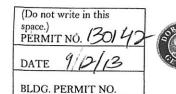
Fees Paid

Fee Fee Description

**Administration Fee** 

Permit # Amount 130142 50.00

Total Payment: 50.00



# City of Doraville, Georgia Inspection Department Application for Electrical Permit

Minimum Inspection Fee \$50.00

AVAILABLE **FAULT** CURRENT

RESIDENTIAL 0

COMMERCIAL

**NEW BUILDING** 

ADDITION TO BUILDING

ELECT. SYSTEM EXPAN.

REWIRE (Replace or Change) TEMPORARY SERV. POLE

**OTHER** 

RE-INSPECTION FIRE DAMAGE

TOTAL CALCULATED LOAD

- READY

Xwill Call

ADDRESS OF JOB ELECTRICAL Mercado Plaza LLC CONTRACTOR GEN. CONTRACTOR ADDRESS 6050 Plachtree Indus ZIP 30043 ZIP 30296 STATE GA TENANT (If known) SERVICE AREA: \_\_\_\_GA. POWER THIS IS TO CERTIFY THAT I WILL PERSONAL Y SUPERVISE THIS INSTALLATION SIGNATURE MASTER ELECTRICIAN 7017011/21

FEE	FEE FOR ALL PERMITS CLASSIFICATION	NO.	AMOUNT	FEE	CLASSIFICATION	I NO.	ASS 1 CL	ASS 2 FEE	CLASSIFIC	MOITA	NO.	AMOUNT
	LOOPS	1110.	741100111		RMERS, ELECTRIC HEA		AMOUNT	OTHER		TION	I NO.	ANIOUNT
20.00	Temp. Serv. Pole				FURNACES & APPLIAN			.03/A	Sub Feeds			
3.00	30 Amps	+		3.00	Less than 1 KW	T		5.00	Gas Disp. P	umn		+
5.00	60 Amps	-		4.00	1.0 to 3.5 KW	-		10.00	X-Ray Mach		ļ	-
6.00	100 Amps	-		6.00	4.0 to 10 KW			20.00		illes	<del> </del>	
8.00				10.00	10.5 to 25 KW	-		25.00	Signs	)aala		<del> </del>
	125 Amps	-		15.00					Swimming F			
8.00	150 Amps			1.00.000.000	Over 25 KW			25.00	Mobile Hom			
8.00	200 Amps	-			CIAL LIGHTING FIXTURE	:5		(1)	Re-inspection	on Fee		
12.00	400 Amps			.50	Flores. Fixtures			4.00	T.V. Circuit		-	
20.00	401 to 599 Amps			.50	Comm. Fixtures			4.00	Communica Circuit	55.551.1.55		
.05/A	600 Amps & over	30	1.50	OTHER				4.00	Low Voltage	Circuit		
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4.00	Overrom					111	VOLIG	THACE	SIZE	CUR	110.	AMOUNT
6.00	Comb. Unit	1	6.00	Air Conditi	oner							
RESIDI	ENTIAL APPLIANCES		•	Attic Fan								
4.00	Water Heater	1	4:00	Bath Fan								
4.00	Clothes Dryer	1	4:00	Vent Hood								
2.00	Dishwasher	1	3.00	Roof Venti	lator							
2.00	Disposal Unit	17	3.00									
3.00	Fumace (Gas)				EES IN HP			TOTAL	ALL FEES			
	& AREA LIGHTING				1\$2.00 20 ½ to 59.				100	`		
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**INSPECTOR** DATE INSPECTOR DATE PARTIAL **ROUGH IN** FINAL SLAB

NO. OF METERS OLD CUT-IN CHANGE FROM MOVE TO NEW LOCATION APPROVAL NUMBER DATE APPROVAL NUMBER ISSUED A10:3



# PERMIT/PLAN REVIEW FEE INVOICE THE PERMIT IS NOT YET ISSUED

DATE: September 12, 2013

**REFERENCE NUMBER: 130142** 

Fees Invoice					
Fee	Fee Description	Fees Invoice			
Administration Fee		\$50.00			
Electrical Trade Permit plus Inspection Fee	This fee covers the minimum permit fee plus the first inspection.	\$50.00			
	Total Due:	\$100.00			

City of Doraville Use

Check No.:

**Amount Paid:** 

Payment Received By:

Date:

1/1



# Gwinnett Connty Mans

Dain Lismade July 1 1915

DISPLANTING ON THE STREET

MAIL TO:



construction and zoning.

contractor to do the work stated.

# City of Doraville

DEMOCRAL

3725 Park Avenue Doraville, GA 30340-0000

Phone: (770)451-8745 Fax: (770)936-3862

**Permit** 

Issue Date: 8/9/20	013	Expires:	8/8/14		Permit Status: Issued ermit Number: 130033
Owner's Name:	Reny Nguyen			Phone:	
Applicant Contac	ct Name: [Applicant Cont	act Name]		Parcel #:	18 321 08 002
Permit Type:	Demolition Permit				
Work Classificati	ion: Commercial			Total Square Feet:	7500 Sq. Ft.
Job Address:	5597 Buford Hwy.			Total Valuation:	\$25500.00
	Doraville, GA 30340		_		
				Work Description:	
Contractor(s)	Phone	Prin	nary Contractor	[Description]	
Tidewater Builder	LLC		YES or NO		
	AVIT: I certify that all the for				•

Furthermore, I authorize the above-named

FEE INFORMATION				
Fees Due		Amount		
Administration Fee		\$50.00		
Commercial Minor General Building Permit - Minor Plan Review	•	\$102.00		
Demolition Permit Fee		\$0.00		
Т	otal:	\$152.00		

	PAYMENT INFORMATION	
ID Number		Amt Paid
Cash		\$504.00
		\$504.00
	Remaining Balance:	\$-352.00

request/

WARNING: Permit will expire if no work is completed within a six(6) month period. After this period, new permits may need to be issued.

**Building Department File Copy** 

NOTICE: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county.

Application for Building Permit

Annoiofollii Malel

# **Permit and Plan Review Fees**

Date 8 / 23 / / 2	Rev 5/22/12
Project Name OLd	K-MAR 7
Address: 5597 Butor	of Huy
Scope of work: <u>InTERIOR</u> & Ex	TERIOR DemoLITION
Construction Type: 2/3, Occupancy type:	
Building Valuation Data (BVD) Table cost per Sq. foot:	
Doraville Fee Schedule (DFS) amount 150 - X Sq. foo	ot $\underline{AA}$ linear foot $\underline{AA} = \frac{4}{150}$
New construction Addition Renovation She	ell Building Demo Interior Exterior
Tenant Improvement: Minor, Major	
BVD_ DFS Estimate, cost	$000 = 25.5 \times 8 = 4204$
X 20% (minor) =	X 40% (major) =
Permit Fee total:	\$ 354-
Plan Review	
Residential Plan Review Fee: Permit fee X 25% or \$100-	minimum.
Minor Commercial Plan Review Fee: Permit fee X 50% o	
Major Commercial Plan Review Fee: Permit fee X 50% o	, in the second of the second
Re-submittal fee: 50% of original fee =X	
Plan review total:	~
Permit fee:	#354-
Admin and Application fees:	\$50-
Plan Review fees:	# 250 - 123
Re-submittal fees:	CC D'S AM
Total food	# 0000
Total fees:	150°CRCd 504 pal 5/9/1 600 CRCd 504 pal 5/9/1 Cash
	" \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \

# Receipt City of Doraville

3725 Park Avenue Doraville, GA 30340-0000 Phone: (770)451-8745 Fax: (770)936-3862

Permit Number: DEM-8-12-8204

Invoice Number: DEM-8-12-20184

**Applicant: CALI SUPERMARKET** 

**Company Name: CALI SUPERMARKET** 

**Owner Address:** 

5597 BUFORD HIGHWAY

DORAVILLE, GA 30340-

**Job Address:** 

5597 BUFORD HIGHWAY CALI S/M

**DORAVILLE, GA 30340-0000** 

Date	Payment Type	Check Number	Amount	Change
Wednesday, A	August 15, 2012			
08/15/2012	Credit Card		\$150.00	\$0.00

Total Payment: \$150.00

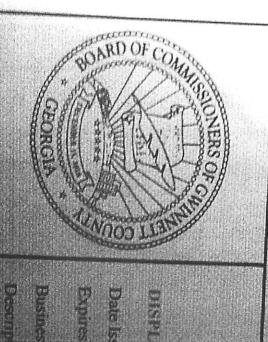


**Payment** 

Date 8/9/2013
Paid By Reny Nguyen
Description
Payment Type Cash
Accepted By Jane Keegan

Fees Paid

Fee	Fee Description	Permit#	Amount
Administration Fee		130033	50.00
Commercial Minor General Building Permit - Minor Plan Review		130033	102.00
Demolition Permit Fee		130033	0.00
		Total Payr	nent: 504.00



Gwinnett County Licensing and Ro

DISPLAY THUS CUPTIFICATE AT B

Date Issued: July 1, 2013

Expires March 31, 70%

Business Names - Fiblish Violandia Des

MAIL TO:

PHDEWAYER BUILDING



## STATE OF GEORGIA

Brian P. Kemp, Secretary of State
Board for Residential and General Contractors
General Contractor Company

License No. GCCO000016

Status: Active

Tidewater Builder, LLC 2300 Carlysle Cove Drive Lawrenceville GA 30044

Expires: 6/30/2014 Issued: 4/25/2008



Real-time license verification is available at sos.georgia.gov/PLB

Above is your license issued by the Georgia State Board of Residential and General Contractors. A pocket-sized license card is below. Please make note of the expiration date on your license. It is your responsibility to renew your license before it expires. License renewals may be completed prior to the expiration date via the Board's website or by obtaining a paper renewal from the Board office.

Reminder: It is your responsibility to keep your insurance current. Please provide the Board with a copy of your Certificate of Insurance each time your insurance is renewed. The Board does receive copies of cancellation notices which will affect the status of your license.

It is the licensee's responsibility to notify the board office immediately of any change of name or address. You may update your address online at the board's website at www.sos.ga.gov/plb/contractors/.

You may contact the Board at:

GEORGIA STATE BOARD FOR RESIDENTIAL & GENERAL CONTRACTORS 237 COLISEUM DRIVE, MACON, GEORGIA 31217-3858

478-207-2440 (phone) website: www.sos.ga.gov/plb/contractors/



## STATE OF GEORGIA Brian P. Kemp, Secretary of State

Board for Residential and General Contractors General Contractor Company License No. GCCO000016 - Active

Tidewater Builder, LLC 2300 Carlysle Cove Drive Lawrenceville GA 30044

Issued: 4/25/2008 Expires 6/30/2014

Real-time license verification is available at sos.georgia.gov PLB



# Gwinnett County Licensing and Revenue 446 W. Crogan Street - Suite 125 Lawrenceville, GA 30046

Not Transferable

2013

DISPLAY THIS CERTIFICATE AT BUSINESS LOCATION FOR PUBLIC VIEW

Date Issued:

July 1, 2013

Certificate Number: 2013014399

Expires:

March 31, 2014

Fee Paid:

\$ 160.00

**Business Name:** 

TIDEWATER BUILDERS LLC

Description:

**GENERAL CONTRACTOR** 

MAIL TO:

TIDEWATER BUILDERS LLC 2300 CARLYSLE COVE DR

C/O Reny Nguyen

LAWRENCEVILLE, GA 30044-2278

**Business Location** 

2300 CARLYSLE COVE DR

LAWRENCEVILLE, GA 30044-2278

Only valid at this location and when location conforms to Gwinnett County Ordinance



# CORPORATE ENVIRONMENTAL RISK MANAGEMENT Client-Centered Solutions

July 15, 2012

# via email(renyatl26@yahoo.com)

Mr. Reny Nguyen **Southeastern Construction Design** 2180 Pleasant Hill Road, Suite B-1 Duluth, Georgia 30096

RE: BULK SAMPLING OF CINDER BLOCK WALLS FOR ASBESTOS ANALYSIS

FORMER K-MART SPACE 5597 BUFORD HIGHWAY DORAVILLE, GA 30340

C.E.R.M. Project No. 11-1281-001

Dear Mr. Nguyen:

Corporate Environmental Risk Management, L.L.C. (C.E.R.M.) was retained by Southeastern Construction Design (SCD) to conduct bulk sampling of suspect asbestos-containing materials (ACM) within the former K-Mart Space at 5597 Buford Highway in Doraville, GA 30340. Mr. Lorenzo Gates of C.E.R.M. conducted the bulk sampling investigation on July 6, 2012. He was escorted during the sampling event by Mr. Reny Nguyen of SCD. C.E.R.M. understands that renovation construction is planned for the space.

The Scope of Work consisted of collecting bulk samples of cinder block wall material. The asbestos sampling was performed in accordance with EPA guidelines.

#### 2.0 SAMPLING METHODOLOGY

Sampling of the suspect ACM was conducted by manually obtaining a small piece (sample) of the suspect material with a hammer and chisel, placing it in a zip-lock plastic container, and assigning it a unique sample number.

The samples were transported, under chain-of-custody, to Analytical Environmental Services, Inc. (AES) of Atlanta, Georgia for analysis for total asbestos content.

2296 Henderson Mill Road Suite 200 Atlanta, Georgia 30345

Tel: 678.999.0173 Fax: 678.999.0186 www.cerm.com

## 3.0 PHYSICAL CONDITION

During C.E.R.M.'s on-site survey, the space was in fair condition, but not in use. The condition of the building materials was observed to range from poor to good.

## 4.0 FIELD AND LABORATORY RESULTS

The bulk suspect ACM samples collected consisted of cinder block masonry wall. The samples were analyzed by Polarized Light Microscopy (PLM) coupled with dispersion staining techniques in accordance with the EPA "Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116, July 1993".

EPA/NESHAP regulations define asbestos-containing material as any material containing greater than 1 percent asbestos in bulk samples. C.E.R.M. collected 3 samples of the suspect ACM. The results of the laboratory analysis of the suspect ACM are summarized in the following table. The laboratory analytical report and completed Chain of Custody are attached.

## SUSPECT ACM SUMMARY TABLE

SAMPLE ID	MATERIAL DESCRIPTION	LOCATION	QUANTITY	RESULTS
706-01	Cinder Block Material	Service Area Interior Wall	N/A	ND
706-02	Cinder Block Material	Interior Wall, South	N/A	ND
706-03	Cinder Block Material	Interior Wall, North	N/A	ND
Note: N/A-	Not applicable ND - None detecte	ed Chr - Chrysotile	TBD - To be	Determined

Laboratory analysis did not detect any asbestos in the suspect ACM sampled.

## 5.0 RECOMMENDATIONS

Based on this assessment, no asbestos-containing materials were present in the Former K-Mart Space at the time this sampling was conducted. SCD can proceed with its it's work that impacts the cinder block walls without asbestos-related concerns.

Mr. Nguyen July 15, 2012 C.E.R.M. Project No. 11-1281-001

## LIMITATIONS

This assessment was conducted on behalf of, and for the exclusive use of, the Southeastern Construction Design. The findings of C.E.R.M.'s asbestos sampling event are based on observations of existing interior conditions at the time of our site visit.

Topics not explicitly discussed within this document should not be assumed to have been investigated. The data reported and the findings, observations, conclusions, and recommendations expressed in the report are limited by the Scope of Services. The Scope of Services was defined by the requests of the Client, the time and budgetary constraints imposed by the Client, and the availability of access to the subject property.

Because of the limitations stated above, the findings, observations, conclusions, and recommendations expressed by C.E.R.M. in this report are limited to the information obtained and the investigation undertaken should not be considered an opinion concerning the compliance of any past or current owner or operator of the subject property with any federal, state, or local laws or regulations. No warranty or guarantee, whether expressed or implied, is made with respect to this report.

C.E.R.M. appreciates the opportunity to have provided this service to the Southeastern Construction Design. Should you have any questions or concerns regarding this project, please contact us at (678) 999-0173.

Sincerely,

Corporate Environmental Risk Management, L.L.C.

Prepared by:

Lorenzo Gates

Senior Environmental Scientist

Attachment: Asbestos Analytical Results

Cc: Marcus Reese, C.E.R.M.

Project File

1207289 Page \_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_

Project Name	Former K-Ma	rt Bidg	CERM P	roject#: //p-c	212-17	Sample Date 7-6	-/2
Project Locat	Former K-Ma ion: 5597 Buford		Sampler:	roject#: 11p-1 L, Gate	<i>چ</i>		
	Doraville, GA Suspect Material Desc						
SAMPLE I D		RIPTION		ESTIMATED QUANTITY	FRIABLE (YES/NO)	PHYSICAL CONDITION	POTENTIAL FOR
N1	MATERIAL LOCATION			(SF/Each)			DISTURBANCE
706-01	Cinder Block M Interior Wall Cinder Block Exterior Wall	Service	Area				
02	Cinder Block	materia					
	Cindor Hall	Materia				11	
V -03	Exterior Wall	North			P /		
				1	-	•	
		***************************************					
							-
}							
Relinquished by	Threns Later	Date/Time 7-6-12	Rec	eived by:	, , , , , , , , , , , , , , , , , , , ,	Date	/Time
	throng Falos					4	
Laboratory Rec Received by:	eipt:	Date/T	ime		Requested Re	Same Day	
	///	4/2		10-35		24 Hour	
//du/	<i>,</i> ~ ~	716	116	0	V	48 Hour Standard	
<del></del>	<del></del>	· · · · · · · · · · · · · · · · · · ·				Paci	-1 of 2

# asbestos bulk sample log PLM

Project Name: Farmer K-Mort	CERM Project#: [1-1281-00]	Sample Date: 7-24-/2
Project Location: Doraville, GA	Sampler: L. Gates	

Sample I D	SUSPECT MATERIAL DESCRIPTION	ESTIMATED	FRIABLE	PHYSICAL	POTENTIAL
=1 . M	MATERIAL LOCATION	Quantity (SF/Each)	(YES/NO)	CONDITION	FOR DISTURBANCE
-	12" x 12" Floor Tile, Beige W Tan Sales Floor	Spekks,			
-KM-01	Sales Floor	79,000 7			ļ
-02					
-03	brywall/tape/Jointlompound West Wall at Checkout.				
-04	Drywall /Joint Compound Dressing Room Entrance.				
705	12"x 12" Floor Tite, Beige w/To	n Specks			On Paise Word Floo
-06	Drywall / tape / Joint Compoun Pharmaci	d			
-07	2'X4' Ceiling Tile Sales Floor South				į
-08	2'x 4' Ceiling Tile Sales Floor Southwest				
-09	2'x4' Ceiling Tile Sales Floor Central				
-10	2'x4' Ceiling Tile Sales Floor Worth				
-11	1×1 Ceiling Tile	•			also in b
-12	Coat Room				
-13	12"x12" Floor Tile, Off-whi Check-out Area	he w/Speck			
~#	12" X 12" Floor Tile, Red Wheeks Sales Floor Southeast				
V -15	Viryl Cove base				

Relinquished by: Lake	Date/Time 7-24-/2	Received by:	Date/Time .
Laboratory Receipt:		Rec	quested Results Turnaround Time
Received by:	Date/Time		Same Day Rush

7/24/12 6:25

Same Day Rush
24 Hour
48 Hour
Standard

Cer



MA(VÕ

Lab ID# 102082-0

10-Jul-12

Client Name:

Corporate Environmental Risk Management, LLC.

AES Job Number:

1207289

**Project Name:** 

FORMER K-MART BLDG.

Project Number:

11P-0212-17

Client ID	AES ID	Location		shesto	s Mine	ral Pe	rcenta	ge	Comments
	_		СН	AM	CR	AN	TR	AC	
706-01	1207289- 001A	Cinder Block Material Interior Wall Service Area	ND	ND	ND	ND	ND	ND	
Layer: 1									
706-02	1207289- 002A	Cinder Block Material Exterior Wall South	ND	ND	ND	ND	ND	ND	
Layer: 1									
706-03	1207289- 003A	Cinder Block Material Exterior Wall North	ND	ND	ND	ND	ND	ND	
Layer: 1									

Note: CH=chrysotile, AM=amosite, CR=crocidolite, AC=actinolite, TR=tremolite, AN=anthophylite

Filhflos.

Svetlana Arkhipov

For comments on the samples, see the individual analysis sheets.

ND = None Detected

PLM is not consistently reliable in detecting small concentrations of asbestos in floor tiles and similar nonfriable materials. Quantitative TEM is currently the only method that can be used to determine the conclusive asbestos content.

It is certified by the signatures below that the laboratory identified is accredited by the National Institute of Standards and Technology for Polarized Light Microscopy (PLM) analysis under the EPA Interim Asbestos Bulk Sample Quality Assurance Program, Laboratory ID 102082-0. All percentages given are by visually estimated volume. All analyses are performed in accordance with the EPA "Niethod for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116, July 1993." This report must not be reproduced except in full without the approval of Analytical Environmental Service, Inc. These test results apply only to the samples actually tested.

Microanalyst:

QC Analyst:

Yelena Khanina

Page 2 of 2

# ASBESTOS BULK SAMPLE LOG

P	1_M
\ . I	

					7.0		
Project Name	Former K-Mort	CER	M Project #: //-/28/-	001	Sample Date	12	
Project Locat	ion: Doraville, BA	Samp	oler: L. Gacte				
		<del></del>					
SAMPLE I D	SUSPECT MATERIAL DESCRIPTION	•		Friable (Yes/No)	PHYSICAL CONDITION	POTENTIAL FOR	
	MATERIAL LOCATION	·	(SF/Each)	(120110)	·	DISTURBANCE	
FKM-16	Glue Dot Material Back Office	brea					
, -17	Stair Tread Cove		1/0 1		<u> </u>	Vinglu	
W 17	Back office Ar	ear	60 #			Speaks	
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Relinquished	ens tates 7-24-	12	Received by:		Date/	I Alue	
	0 7						
Laboratory Rec	eipt:		R	equested Res	ults Turnaroun	d Time	
Received by:	.//	Date/Time	/		Same Day R	lush	
/		7/24	1/2 6:25		48 Hour		
	<i>T</i>	• •	•	V	Standard		





Lab ID# 102082-0

31-Jul-12

Client Name: Corporate Environmental Risk Management, LLC. AES Job Number: 1207G20

Project Name: FORMER K-MART Project Number: 11-1281-001

Client ID	AES ID	Location		Ashestos Mineral Percentage				Comments	
			СП	AM	CR	AN	TR	AC	
FKM-01	1207G20- 001A	12"x12" Floor Tile, Beige w / Tan Sales Floor	ND	ND	ND	ND	ND	ND	Floor Tile
Layer: 1	_								
FKM-01	1207G20- 001A	12"x12" Floor Tile, Beige w/ Tan Sales Floor	3	ND	ND	ND	ND	ND	Black Mastic
Layer: 2			<u> </u>						
FKM-02	1207G20- 002A	12"x12" Floor Tile, Beige w / Tan Sales Floor	ND	ND	ND	ND	ND	ND	Floor Tile
Layer: 1									
FKM-02	1207G20- 002A	12"x12" Floor Tile, Beige w / Tan Sales Floor	3	ND	ND	ND	ND	ND	Black Mastic
Layer: 2									
FKM-03	1207G20- 003A	Drywall / Tape / Joint Compound West Wall at Checkout	ND	ND	ND	ND	ND	ND	Point included as binder
Layer: 1			<u> </u>						
FKM-03	1207G20- 003A	Drywall / Tape / Joint Compound West Wall at Checkout	ND	ND	ND	ND	ND	ND	
Layer: 2			<u> </u>						<del></del>
FKM-03	1207G20- 003A	Drywall / Tape / Joint Compound West Wall at Checkout	ND	ND	ND	ND	ND	ND	
Layer: 3	]					ŀ			

Note: CH-chrysotile, AM-amosite, CR-crocidolite, AC-actinolite, TR-tremolite, AN-anthophylite

irakus

For comments on the samples, see the individual analysis sheets.

ND = None Detected

PLM is not consistently reliable in detecting small concentrations of asbestos in floor tiles and similar nonfrieble materials. Quantitative TEM is currently the only method that can be used to determine the conclusive asbestos content.

It is certified by the signatures below that the laboratory identified is accredited by the National Institute of Standards and Technology for Polarized Light Microscopy (PLM) analysis under the EPA Interim Asbestos Bulk Sample Quality Assurance Program, Laboratory ID 102082-0. All percentages given are by visually estimated volume. All analyses are performed in accordance with the EPA "Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116, July 1993." This report must not be reproduced except in full without the approval of Analytical Environmental Service, Inc. These test results apply only to the samples actually tested.

Microanalyst:

QC Analyst:

Yelena Khanina

Page 3 of 7





31-Jul-12

Client Name:

Corporate Environmental Risk Management, LLC.

AES Job Number:

1207G20

Project Name:

FORMER K-MART

**Project Number:** 

11-1281-001

Client ID	AES ID	Location	A	shesto	s Mine	ral Pe	rcenta	ge	Comments	
		200	СН	AM	CR	AN	TR	AC		
FKM-04	1207G20- 004A	Drywall / Joint Compound Dressing Room Entrance	ND	ND	ND	ND	ND	ND	Paint included as binder	
Layer: 1										
FKM-04	1207G20- 004A	Drywall / Joint Compound Dressing Room Entrance	ND	ND	ND	ND	ND	ND		
Layer: 2	_									
FKM-04	1207G20- 004A	Drywall / Joint Compound Dressing Room Entrance	ND	ND	ND	ND	ND	ND		
Layer: 3										
FKM-05	1207G20- 005A	12"x12" Floor Tile, Beige w / Tan Specks Pharmacy	3	ND	ND	ND	ND	ND	Floar Tile	
Layer: 1										
FKM-05	1207G20- 005A	12"x12" Floor Tile, Beige w/ Tan Specks Pharmacy	2	ND	ND	ND	ND	ND	Black Mastic	
Layer: 2										
FKM-06	1207G20- 006A	Drywall / Tape / Joint Compound Pharmacy	⊽	ND	ND	ND	ND	ND		
Layer: 1										
FKM-06	1207G20- 006A	Drywall / Tape / Joint Compound Pharmacy	ND	ND	ND	ND	ND	ND		
Layer: 2										

Note: CH=chrysotile, AM=emosite, CR=crocidolite, AC=actinolite, TR=tremalite, AN=anthophylite

For comments on the samples, see the individual analysis sheets.

ND = None Detected

PLM is not consistently reliable in detecting small concentrations of asbestos in floor tiles and similar nonfriable materials. Quantitative TEM is currently the only method that can be used to determine the conclusive asbestos content.

It is certified by the signatures below that the laboratory identified is accredited by the National Institute of Standards and Technology for Polarized Light Microscopy (PLM) analysis under the EPA Interim Asbestos Bulk Sample Quality Assurance Program, Leboratory ID 102082-0. All percentages given are by visually estimated volume. All analyses are performed in accordance with the EPA "Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116, July 1993." This report must not be reproduced except in full without the approval of Analytical Environmental Service, Inc. These test results apply only to the samples actually tested.

Microanalyst:

QC Analyst:

Yelena Khanina

Page 4 of 7



NV(A) Lab ID# 102082-0

31-Jul-12

Client Name:

Corporate Environmental Risk Management, LLC.

AES Job Number:

1207G20

Project Name:

FORMER K-MART

Project Number:

11-1281-001

Client ID	AES ID	Location	Λ	sbesto	Mine	ral Pa	rcento	9.0	Comments
Chent 1D	AESID	Location	CH	AM		AN	TR		
FKM-06	1207G20- 006A	Drywall / Tape / Joint Compound Phannacy	ИD	ND	ND	ND	ND	ND	
Layer: 3									
FKM-07	1207G20- 007A	2'x4' Ceiling Tile Sales Floor South	ND	ND	ND	ND	ND	ND	Paint included as binder
Layer: 1									
FKM-08	1207G20- 008A	2'x4' Ceiling Tile Sales Floor Southwest	ND	ND	ИD	ND	ND	ND	Paint included as binder
Layer: I									
FKM-09	1207G20- 009A	2'x4' Ceiling Tile Sales Floor Central	ND	ND	ND	ND	ND	ND	Paint included as binder
Layer: 1									
PKM-10	1207G20- 010A	2'x4' Ceiling Tile Sales Floor North	ND	ND	ND	ND	ND	ND	Paint included as binder
Layer: 1									
FKM-11	1207G20- 011A	l'x1' Ceiling Tile Coat Room	ND	ND	ND	ND	ND	ND	Paint included as binder
Layer: 1									·
FKM-12	1207G20- 012A	Glue Dots Coat Room	ND	ND	ND	ND	ND	ND	Glue
Layer: 1									

Note: CH=chrysotile, AM=amosite, CR=crocidolite, AC=actinolite, TR=tremolite, AN=anthophylite

For comments on the samples, see the individual analysis sheets.

ND - None Detected

PLM is not consistently reliable in detecting small concentrations of asbestos in floor tiles and similar nonfriable materials. Quantitative TEM is currently the only method that can be used to determine the conclusive asbestos content.

It is certified by the signatures below that the laboratory identified is accredited by the National Institute of Standards and Technology for Polarized Light Microscopy (PLM) analysis under the EPA Interim Asbestos Bulk Sample Quality Assurance Program, Laboratory ID 102082-0. All percentages given are by visually estimated volume. All analyses are performed in accordance with the EPA "Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116, July 1993." This report must not be reproduced except in full without the approval of Analytical Environmental Service, Inc. These test results apply only to the samples actually tested.

Microanalyst:

QC Analyst:

Yelena Khanina

Page 5 of 7



NVLAP

Lab 1D# 102082-0

31-Jul-12

Client Name:

Corporate Environmental Risk Management, LLC.

**AES Job Number:** 

1207G20

Project Name:

FORMER K-MART

Project Number:

11-1281-001

Client ID	AES ID	Location	A	Asbestos Mineral Percentage				Comments	
			СН	AM	CR	AN	TR	AC	
FKM-12	1207G20- 012A	Glue Dots Coat Room	ND	ND	ND	ND	ND	ND	Paint included as binder
Layer: 2									
FKM-13	1207G20- 013A	12"x12" Floor Tile, Off - White w / Specks Check - Out Area	ND	ND	ND	ND	ND	ND	Floor Tile with glue
Layer: 1				<u> </u>					
FKM-13	1207G20- 013A	12"x12" Floor Tile, Off- White w / Specks Check - Out Area	2	ND	ND	ИD	ND	ND	Black Mastic
Layer: 2	_			<u> </u>					
FKM-14	1207G20- 014A	12"x12" Floor Tile, Red w / Specks Sales Floor Southeast	ND	ND	ND	ND	ND	ND	Floor Tile
Layer: 1									
FKM-14	1207G20- 014A	12"x12" Floor Tile, Red w / Specks Sales Floor Southeast	3	ND	ND	ND	ND	ND	Black Mastic
Layer: 2				<u> </u>					
FKM-15	1207G20- 015A	Vinyl Cove Base West Wall at Checkout	ND	ND	ИD	ND	ND	ND	
Layer: 1			1						
PKM-15	1207G20- 015A	Vinyl Cove Base West Wall at Checkout	ND	ND	ND	ND	ND	ND	
Layer: 2				ŀ					

Note: CH=chrysotile, AM=amosite, CR=crocidalite, AO-actinolite, TR=tremolite, AN=anthophylite

For comments on the samples, see the individual analysis sheets.

ND = None Detected

PLM is not consistently reliable in detecting small concentrations of asbestos in floor tiles and similar nonfitiable materials. Quantitative TEM is currently the only method that can be used to determine the conclusive asbestos content.

It is certified by the signatures below that the laboratory identified is accredited by the National Institute of Standards and Technology for Polarized Light Microscopy (PLM) analysis under the EPA Interim Asbestos Buik Sample Quality Assurance Program, Laboratory ID 102082-0. All percentages given are by visually estimated volume. All analyses are performed in accordance with the EPA "Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116, July 1993." This report must not be reproduced except in full without the approval of Analytical Environmental Service, Inc. These test results apply only to the samples actually tested.

Microanalyst:

QC Analyst:

Yelena Khanina

Page 6 of 7





Lab 1D# 102082-0

31-Jul-12

Client Name: Corporate Environmental Risk Management, LLC.

AES Job Number: 1207G20

Project Name: FORMER K-MART

Project Number: 11-1281-001

Client ID	AES ID	Location	A	shesto	Mine	ral Pe	rcenta	ge	Comments
	][		СН	AM	CR	AN	TR	AC	
FKM-15	1207G20- 015A	Vinyl Cove Base West Wall at Checkout	ND	ND	ND	ND	ND	ND	
Layer: 3									
FKM-16	1207G20- 016A	Glue Dot Material Back Office Area	ND	ND	ND	ND	ND	ND	Glue
Layer: I	İ								
FKM-16	1207G20- 016A	Glue Dot Material Back Office Area	ND	ND	ND	ND	ND	ND	Paint included as binder
Layer: 2									
FKM-17	1207G20- 017A	Stair Tread Covering Back Office Area	ND	ND	ND	ND	ND	ND	
Layer: 1									

Note: CH-chrysotile, AM-amosite, CR-crocidolite, AC-actinolite, TR-tremolite, AN-anthophylite

For comments on the samples, see the individual analysis sheets.

ND = None Detected

PLM is not consistently reliable in detecting small concentrations of asbestos in floor tiles and similar nonfitable materials. Quantitative TEM is currently the only method that can be used to determine the conclusive asbestos content.

It is certified by the signatures below that the laboratory identified is accredited by the National Institute of Standards and Technology for Polarized Light Microscopy (PLM) analysis under the EPA Interim Asbestes Bulk Sample Quality Assurance Program, Laboratory ID 102082-0. All percentages given are by visually estimated volume. All analyses are performed in accordance with the EPA "Method for the Determination of Asbestes in Bulk Building Materials, EPA/600/R-93/116, July 1993." This report must not be reproduced except in full without the approval of Analytical Environmental Service, Inc. These test results apply only to the samples actually tested.

Microanalyst:

QC Analyst:

Yelena Khanina

Page 7 of 7

# ANALYTICAL ENVIRONMENTAL SERVICES, INC 3785 Presidential Parkway Atlanta, GA 30340

## **SUMMARY OF PLM POINT COUNTING**

Company Name:	Corporate Enviro	nmental Risk Management, LLC.	AES Job#	1208163-	
Project Name:	Former K-mart		Date Received:	8/2/2012	
Project Number:	11-1281-001	Aпalyst:	Yelena Khanina		
				Date Analyzed:	8/3/2012
04 /54/5	1	T		T	
CLIENT I.D.	AES LAB NUMBER	SAMPLE LOCATION	% OF CHRYSOTILE	ASBESTOS POINTS COUNTED	TOTAL POINTS COUNTED
I IIV.	1 RUMBER	1 LUCATION 1	CHRYSUILE	IPUM IN LAUNIEID	CARRIMITED 1
		]			000111,25

\*- For 1st Layer

Approved By: Date: 8/3/2012

it is certified by the signature above that the point counting analysis was performed according to the methods described on EPA/600/R-93/116,"Method for Octermination of Aebestos in Bufk Building Materials".

"%Asbestos = (Asbestos Points / Total Points ) x 100%



# C + E - R + M

# CORPORATE ENVIRONMENTAL RISK MANAGEMENT Client-Centered Solutions

August 8, 2012

## via email(renyatl26@yahoo.com)

Mr. Reny Nguyen
Southeastern Construction Design
2180 Pleasant Hill Road, Suite B-1
Duluth, Georgia 30096

RE: BULK SAMPLING OF SUSPECT ASBESTOS-CONTAINING MATERIALS

FORMER K-MART SPACE 5597 BUFORD HIGHWAY DORAVILLE, GA 30340 C.E.R.M. Project No. 11-1281-001

Dear Mr. Nguyen:

Corporate Environmental Risk Management, L.L.C. (C.E.R.M.) was retained by Southeastern Construction Design (SCD) to conduct bulk sampling of suspect asbestos-containing materials (ACM) within the former K-Mart Space at 5597 Buford Highway in Doraville, GA 30340. Mr. Lorenzo Gates of C.E.R.M. conducted the bulk sampling investigation on July 24, 2012. He was permitted access to the space by Mr. Reny Nguyen of SCD. C.E.R.M. understands that renovation construction is planned for the space.

The Scope of Work consisted of collecting representative bulk samples of suspect asbestos-containing materials (ACM) within the former K-Mart Space. The materials sampled included 12" x 12" floor tiles and associated mastic, drywall system materials, 2' x 4' ceiling tiles, 1' x 1' ceiling tiles, ceiling tile glue, cove-base material, and stair tread covering. The asbestos sampling was performed in accordance with EPA guidelines. No roof samples were collected.

## 2.0 SAMPLING METHODOLOGY

Sampling of the suspect ACM was conducted by manually obtaining a small piece (sample) of the suspect material with the appropriate sampling tools, placing it in a zip-lock plastic container, and assigning it a unique sample number.

The samples were transported, under chain-of-custody, to Analytical Environmental Services, Inc. (AES) of Atlanta, Georgia for analysis for total asbestos content.

2296 Henderson Mill Road Suite 200 Atlanta, Georgia 30345

Tel: 678.999.0173 Fax: 678.999.0186 www.cerm.com

# 3.0 PHYSICAL CONDITION

During C.E.R.M.'s on-site survey, the space was in fair condition, but not in use. The condition of the building materials was observed to range from poor to good.

# 4.0 FIELD AND LABORATORY RESULTS

Seventeen suspect ACM samples were collected within the Former K-Mart Space. The samples were analyzed by Polarized Light Microscopy (PLM) coupled with dispersion staining techniques in accordance with the EPA "Method for the Determination of Asbestos in Bulk Building Materials, EPA/600/R-93/116, July 1993".

EPA/NESHAP regulations define asbestos-containing material as any material containing greater than 1 percent asbestos in bulk samples. The results of the laboratory analysis is summarized in the following table. The laboratory analytical report and completed Chain of Custody are attached.

## SUSPECT ACM SUMMARY TABLE

	MATERIAL DESCRIPTION	LOCATION	QUANTITY (SF)	RESULTS
	12" x12" Floor Tile/Mastic,			ND/3%
FKM-01	Beige w/Tan Specks	Sales Floor	82,000	Chr.
	12" x12" Floor Tile/Mastic,		(see	ND/3%
FKM-02	Beige w/Tan Specks	Sales Floor	FKM-01)	Chr.
	Drywall/Tape/Joint		N/A	ND
FKM-03	Compound	West Wall @ Checkout		
			N/A	ND
FKM-04	Drywall/Joint Compound	Dressing Room Entrance		
	12" x12" Floor Tile/Mastic,		(see	3%Chr./
FKM-05	Beige w/Tan Specks	Pharmacy	FKM-01)	2% Chr.
	Drywall/Tape/Joint			
FKM-06	Compound	Pharmacy	N/A	*(0.5%)
FKM-07	2' x 4' Ceiling Tile	Sales Floor South	N/A	ND
FKM-08		Sales Floor Southwest	N/A	ND
1.17141-00	2' x 4' Ceiling Tile	Sales Floor Southwest	21/4	NID.
FKM-09	2' x 4' Ceiling Tile	Sales Floor Central	N/A	ND
FKM-10	2' x 4' Ceiling Tile	Sales Floor North	N/A	ND
FKM-11	1' x 1' Ceiling Tile	Coat Room	N/A	ND

SAMPLE ID	MATERIAL DESCRIPTION	LOCATION	QUANTITY (SF)	RESULTS
			N/A	ND
FKM-12	Glue Dots	Coat Room		
	12" x 12" Floor Tile/Mastic,		(see	ND/2%
FKM-13	Off-white w/ Specks	Check-out Area	FKM-01)	Chr.
	12" x 12" Floor Tile/Mastic,		(see	ND/3%
FKM-14	Red w/ Specks	Sales Floor Southeast	FKM-01)	Chr.
]			N/A	ND
FKM-15	Vinyl Cove Base	West Wall @ Checkout		
			N/A	ND
FKM-16	Glue Dot Material	Back Office Area		
			N/A	ND
FKM-17	Stair Tread Covering	Back Office Area		

Note: N/A - Not applicable ND - No Asbestos detected Chr - Chrysotile TBD - To be Determined \*(0.5 %) - Result of sample analyzed by PLM Point Count Method

Further analysis of sample FKM-06 was requested via PLM Point Count Method. The EPA National Emission Standard for Hazardous Air Pollutants (NESHAP) allows confirmation (by PLM Point Count Method) of results from <u>friable</u> materials that had an initial result of less than 10% asbestos. According to this rule, unless confirmed by Point Count, any such material must be treated as asbestos-containing material (>1%). This method is typically used secondarily for particular samples because it is more involved and therefore, more expensive. The Point Count analysis confirmed that sample FKM-06 was <1% asbestos.

Laboratory analysis detected greater than one percent asbestos in black mastic associated with 12" x 12" floor tiles throughout the sales floor space, former pharmacy area and back office areas.

## 5.0 RECOMMENDATIONS

Based on this assessment, asbestos-containing materials in the form of black mastic associated with 12" x 12" floor tiles throughout the sales floor space, former pharmacy area and back office areas were present in the Former K-Mart Space at the time this sampling was conducted. C.E.R.M. recommends removal of these materials (by an asbestos contractor licensed in the State of Georgia) prior to them being impacted by renovation or demolition activities.

It is also worth noting that these materials are also regulated under the OSHA Asbestos Standard for Construction (29 CFR 1926.1101). This includes the drywall/tape/joint compound with 0.5% chrysotile asbestos in the pharmacy area. Special construction practices and/or personal protective equipment may be warranted.

## LIMITATIONS

This assessment was conducted on behalf of, and for the exclusive use of, the Southeastern Construction Design. The findings of C.E.R.M.'s asbestos sampling event are based on observations of existing interior conditions at the time of our site visit.

Topics not explicitly discussed within this document should not be assumed to have been investigated. The data reported and the findings, observations, conclusions, and recommendations expressed in the report are limited by the Scope of Services. The Scope of Services was defined by the requests of the Client, the time and budgetary constraints imposed by the Client, and the availability of access to the subject property.

Because of the limitations stated above, the findings, observations, conclusions, and recommendations expressed by C.E.R.M. in this report are limited to the information obtained and the investigation undertaken should not be considered an opinion concerning the compliance of any past or current owner or operator of the subject property with any federal, state, or local laws or regulations. No warranty or guarantee, whether expressed or implied, is made with respect to this report.

C.E.R.M. appreciates the opportunity to have provided this service to the Southeastern Construction Design. Should you have any questions or concerns regarding this project, please contact us at (678) 999-0173.

Sincerely,

Corporate Environmental Risk Management, L.L.C.

Prepared by:

Norenzo Gates

Senior Environmental Scientist

Attachment: Asbestos Analytical Results

Cc: Marcus Reese, C.E.R.M.

**Project File** 



# AGENDA ITEM REQUEST SHEET November 22, 2013

Dogular

Subject: 2013 LWCF Grant Resolution

		Work Session	-
Data of Mantings	Danambar 2, 2042		
Date of Meeting:	December 2, 2013	Recommendation	
		Policy/Discussion	
Budget Impact:	□Yes ■ N/A	Report	
		Ceremonial	
		Other	
<b>Budget Impact Amou</b>	nt: \$25,000.00		
Funding Source:			
□ Annual			
■ Capital			
	chnical Assistance		
□ N/A			

**Department:** Economic Development Dept./ Parks & Recreation

Department Head: Economic Development Director/ Facilities Department Director

Action Requested: Adoption of the resolution committing to the required 50% match (\$25,000)

**Background:** The Land & Water Conservation Fund grant cycle opens every two years. The City has prepared a pre-application for Phase 2 of the Halpern Park Renovation Project. If the pre-application is approved, the City will be asked to prepare a formal application in February. The LWCF program is administered by the State Parks Division of the Georgia Department of Natural Resources. Grant awards range from \$25,000-\$100,000. For this year's cycle, only renovation projects are being accepted. The City is requesting \$50,000 in total funding, therefore, a \$25,000 local match is required.

**Recommendation:** Halpern Park's renovation has consistently ranked as a top Council priority for the last six years. This is a rare funding opportunity to continue the progress made thus far. Staff recommends adopting the resolution as required for the pre-application process.

Respectfully,

S/Luke Howe Economic Development Director

# STATE OF GEORGIA CITY OF DORAVILLE COUNTY OF DEKALB

# **RESOLUTION NO. 2013-**

# A RESOLUTION SUPPORTING THE CITY'S LAND AND WATER CONSERVATION FUND GRANT PRE-APPLICATION; AND PROVIDING FUNDING ASSURANCES

WHEREAS, at the called City Council meeting of the City of Doraville, Georgia, held on December 2, 2013, a motion was made and duly seconded that the City of Doraville agrees to submit a Pre-Application for funding from the Land and Water Conservation Fund (LWCF); and,

WHEREAS, the City has offered the Halpern Park Phase II Renovation Project for LWCF consideration; and,

WHEREAS, the City of Doraville further agrees that, in the event the City's application is recommended for funding by the Georgia Department of Natural Resources, the City certifies and assures that it has the ability and intention to finance fifty (50) percent of the total cost and will move forward with the due diligence to prepare, or have prepared, appropriate documentation required for a formal LWCF application.

**NOW, THEREFORE, BE IT RESOLVED** THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAVILLE, GEORGIA HEREBY EXTENDS ITS SUPPORT TO THE CITY'S LWCF PRE-APPLICATION; AND,

**BE IT FURTHERED RESOLVED,** THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAVILLE SHALL ALLOCATE THE \$25,000.00 MATCH, IN THE EVENT THE DEPARTMENT OF NATURAL RESOURCES APPROVES THE HALPERN PARK PHASE II RENOVATION PROJECT.

APPROVED AND ADOPTED THE SECOND DAY OF DECEMBER, 2013.

CITY OF DORAVILLE, GEORGIA	ATTEST:	
Donna Pittman, Mayor	Sandra Bryant, City Clerk	
APPROVED AS TO FORM:	(SEAL)	
Cecil G. McLendon, City Attorney		