

IN THE SUPERIOR COURT OF CARROLL COUNTY


Alan Lee, Clerk
Carroll County, Georgia

STATE OF GEORGIA

<p>Dylan Cook, Daniel Christner, Polina Christner, Paul Cutler, Karen Hartley, Brad Hartley, Antaus Hight, Sherred Johnson, Greg Surette, Clint Reeves, John Vega and</p> <p>John and Jane Does 1-20,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p>	<p>Superior Court Case No. _____</p> <p>Lower Judicatory Case/Decision:</p> <ul style="list-style-type: none"> • Annexation of Parcel 168 0090 (Hickory Level Road)(ANX-01 & 2-24)(RA-06-24) • Rezoning of Parcel 168 0090 (Hickory Level Road) from Agricultural and Conservation to PUD (ANX-01 & 2-24)(RA-06-24) • Annexation of Parcel 169 0120 (2664 South Van Wert Road Road) (ANX-01 & 2-24)(RA-06-24) • Rezoning of Parcel 169 0120 (2664 South Van Wert Road) from Agricultural and Conservation to PUD (ANX-01 & 2-24)(RA-06-24) • Text Amendment to Establish Section 4.18Technology Park Overlay District and New Definition To Sec. 13.01(TA-01025) <p>Action Taken at January 14, 2024 meeting of Villa Rica City Council Meeting.</p>
<p>City of Villa Rica, Georgia, Embry Development Company, LLC, Avemore GA LLC, Artesia Capital LLC And Jerry C. Tolbert</p> <p style="text-align: center;">Respondents</p>	

PETITION FOR REVIEW TO SUPERIOR COURT¹

COME NOW Dylan Cook, Daniel Christner, Polina Christner, Paul Cutler,

¹ This petition attempts to follow the form set forth by O.C.G.A. 5-3-7(3) modified as appropriate for the facts of this case.

Karen Hartley, Brad Hartley, Antaus Hight, Sherrod Johnson, Greg Surette, Clint Reeves, John Vega and John Does 1-20, the Petitioners named above, petition the Superior Court Carrol County pursuant to O.C.G.A. § 5-3-1 and O.C.G.A. § 36-66-5.1 for review of the final judgment rendered by the City of Villa Rica on January 14, 2025 with the following case number designated by the lower judicatory: **Case Action as Described in Caption.**

The Basic Issues involved in this Petition can be summarized as follows:

Embry Development Company LLC (“Embry”) submitted a petition to annex approximately 200 acres of land contained in two non-contiguous parcels (the “Hickory Level Road” and “South Van Wert Road” parcels) into the City of Villa Rica from unincorporated Carroll County, for the purpose of joining those parcels with another 200 parcel V07 0140003 already within the limits of the City of Villa Rica (the “Avenmore Parcel”), and further sought amendment to the then current zoning designation for the Avenmore Parcel (multifamily Planned Unit Development) to Industrial to allow for the construction of a large Data Center Project encompassing all three parcels.

Petitioners to this action are adjacent and adjoining landowners both in Carroll County and within the City of Villa Rica, who object to annexation of the subject land out of Carroll County (which had previously rejected industrial development of the type proposed by Embry) and object to the rezoning of all three subject parcels

because of a host of failures and omissions by Embry and the City of Villa Rica related to the annexation and zoning applications, including but not limited to:

- Failure to follow the Rules of the Georgia Department of Community Affairs, Ga. R. Reg. 110-12-3 regarding notice to and review by the appropriate regional commission for a Development of Regional Impact. Petitioners contend that the size and scope of this proposed 400 acre Data Center project triggers the notification and review threshold to local governments affected by the project;
- Failure to provide proper notice of planned action and meetings via newspaper, signage and certified mail;
- Acceptance of and Consideration of Rezoning package by unauthorized agent and without required information specified by the application package;
- Approval of annexing decision which “carves out” a parcel of land to remain as an “island” to remain in Carroll County and not be part of the land subject to annexation into the City of Villa Rica in violation of State statutes;
- Approval of re-zoning application before the subject land was approved for annexation in to the City of Villa Rica (i.e. voting to amend zoning designation before land was subject to the jurisdiction of the City) also in violation of State statute.

I. Actions/Decisions Subject to this Petition for Judicial Review

The final judgment being appealed is as follows:

The Decisions taken by 5-0 affirmative vote of the Villa Rica City Council on January 14, 2024:

- The decision to annex Parcel 168 0090 (Hickory Level Road) from Carroll County into the City of Villa Rica
- The decision to rezone Parcel 168 0090 (Hickory Level Road) from Carroll County from Agricultural / Conservation to PUD – Industrial or into the Technology Park Overlay District

- The decision to annex Parcel 169 0120 (2664 South Van Wert Road) from Carrol County into the City of Villa Rica Agricultural and Conservation to PUD (ANX-01 & 2-24)(RA-06-24)
- The decision to allow a five acre tract of Parcel 169 0120 (2664 South Van Wert Road) to be “carved out” and excluded from the annexation and/or rezoning action.
- The decision to rezone parcel 169 0120 (2664 South Van Wert Road) from Agricultural / Conservation to PUD – Industrial or into the Technology Park Overlay District

II. Parties to this Petition

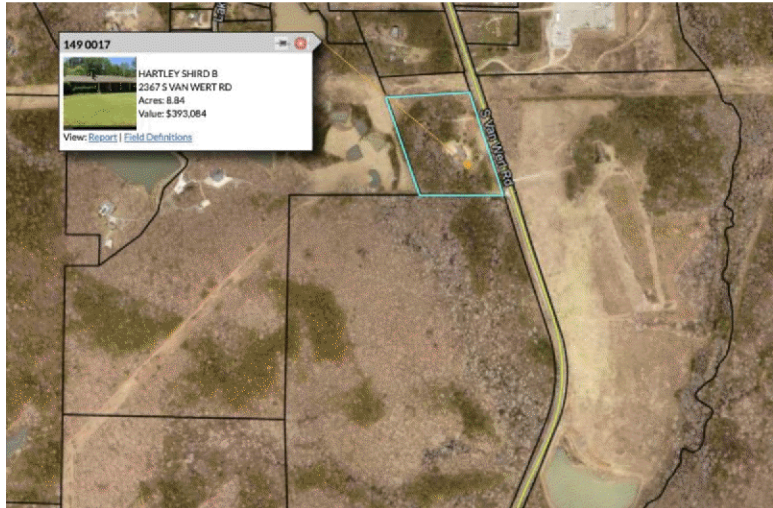
Petitioners

Petitioners Dan and Polina Christner are the owners of 2377 S. Van Wert Road, Villa Rica Carroll County, which land immediately borders to the north parcel 169 0120 (2664 South Van Wert Road) which is the subject of the annexation into the City of Villa Rica. Petitioner Sherred Johnson is the owner of 95 Lakeview Drive, Villa Rica (which is immediately adjacent to the Christner property and very close to the South Van Wert parcel) As adjacent property owners of the South Van Wert Road parcel which may allow for the construction of a Data Center, their land and quality of life will be immediately and directly adversely impacted by the actions below.

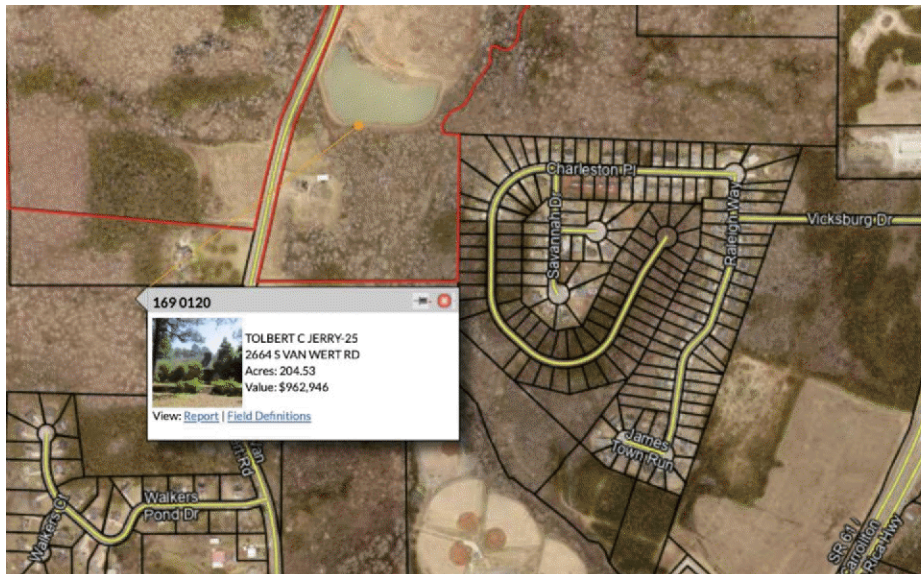
Petitioners Karen and Brad Hartley are the owners of Parcel 149 0017 Carroll County, which land immediately borders to the north and across the street to the east parcel 169 0120 (2664 South Van Wert Road) which is the subject of the annexation into the City of Villa Rica. As adjacent property owners of the South Van Wert Road parcel which may allow for the construction of a Data Center, their land and quality

of life will be immediately and directly adversely impacted by the actions below.

A map of the Hartley property in relation to the South Van Wert parcel is shown below:



Petitioners Clint Reeves, Greg Surette, Antaus Hight, John Vega and Dylan Cook reside in the Charleston Place Subdivision (including Charleston Place, Savannah Drive and Raleigh Way) which subdivision is immediately to the South of the Avemore Parcel and immediately to the East of the South Van Wert parcel) As adjacent property owners of the South Van Wert Road parcel which may allow for the construction of a Data Center, their land and quality of life will be immediately and directly adversely impacted by the actions below. A map of the Van Wert parcel in proximity to the Charleston Place subdivision is depicted below:



Petitioner Paul Cutler resides in unincorporated Carroll County just to the north-west of the Hickory Level Road parcel. As a nearby property owners of the Hickory Level Road parcel which may allow for the construction of a Data Center, their land and quality of life will be immediately and directly adversely impacted by the actions below

Petitioners John Doe 1 – 20 are adjacent and/or nearby residents to Parcel 168 0090 (Hickory Level Road) and parcel 169 0120 (2664 South Van Wert Road), who live in unincorporated Carroll County, or who already live within the City of Villa Rica. As adjacent residents and property owners of the Hickory Level Road or South Van Wert Road or parcel which may allow for the construction of a Data Center, their land and quality of life will be immediately and directly adversely impacted by the actions below.

Petitioners John Doe 1 – 20 are neighboring adjacent landowners to Parcel V07

0140003)(Avermore Parcel), who live in unincorporated Carroll County, or who already live within the City of Villa Rica. As adjacent residents and property owners of the Avemore parcel which may allow for the construction of a Data Center, their land and quality of life will be immediately and directly adversely impacted by the actions below.

Respondents

The relevant statutes, O.C.G.A. § 36-66-5.1 and O.C.G.A. § 5-3-1 only identify the lower municipal entity or adjudicative body as necessary respondents. However in this case, because the rights of those parties seeking the challenged annexation and re-zoning may be impacted by this Court’s review of the decisions of the Villa Rica City Counsel, Petitioners have named the following parties as respondents:

- **City of Villa Rica Georgia:** The entity whose decisions are the subject of this Petition for Judicial Review.
- **Embry Development Company, LLC:** The Named Applicant for the petition to annex and rezone Parcel 168 0090 (Hickory Level Road) and Parcel 169 0120 (2664 South Van Wert Road)
- **Avemore GA LLC:** The owner of parcel V07 0140003 (parcel previously subject to PUD and within City of Villa Rica boundaries)
- **Artesia Capital LLC:** The owner of Parcel 168 0090 (Hickory Level Road)
- **Jerry C. Tolbert:** The owner of parcel 169 0120 (2664 South Van Wert Road) as of the date of the rezoning application, and purported owner of retained parcel (Tract 1) to remain in Carroll County after annexation and rezoning).

Petitioners intend to serve and provide each of these Respondents with Notice of the Petition.

III. Record in the Lower Judiciary

The following describes any existing recording, transcript, or other record of evidence in the lower judiciary (check one):

NO official transcript or recording exists of the proceedings in the lower judiciary.

NO official transcript exists of the proceedings in the lower judiciary, but the proceedings were recorded by: Video and placed on the City of Villa Rica's Youtube Channel.

January 14, 2025 City Council Meeting

<https://www.youtube.com/live/6Xrlo6RuOwQ?si=n87MQp4EOXt9cuWI>

December 17, 2024 Planning & Zoning Commission Meeting

<https://youtu.be/r1UUW11nDoI?si=HLw40tqbOiGUVcWc>

An official transcript exists of the proceedings in the lower judiciary.

Other: The Meetings of the December 17, 2024 Planning and Zoning Commission and the January 14, 2025 City of Villa Rica City Council meeting were recorded on video and can be found online as follows:

January 14, 2025 City Council Meeting

<https://www.youtube.com/live/6Xrlo6RuOwQ?si=n87MQp4EOXt9cuWI>

December 17, 2024 Planning & Zoning Commission Meeting

<https://youtu.be/r1UUW11nDoI?si=HLw40tqbOiGUVcWc>

Petitioner intends to obtain an transcript of relevant portions of these meetings for supplementation of the record in addition to the original full, unedited video recordings which Petitioner relies upon as the original record.

In addition Petitioner contends that the some or all of the of the following documents which are contained on the City of Villa Rica website associated with the Planning and Zoning and City Council Meetings should be considered part of the official record.

From the December 17, 2024 Planning and Zoning Meeting:

- 1) Agenda
- 2) Agenda Packet (as relevant to issues in this petition) including
 - a) TA-12-24 Text Amendment to Establish Section 6.11 PUD-IND Within the Villa Rica Zoning Ordinance Cover Sheet (002)
 - b) 24120_8.11 Technology Park (TP)(002)

<p>ANNEX 01 &2-24 RA-06-24- Hwy 61 & South Van Wert- Cover Sheet - 12-11-24</p>	<p>RA-06-24 & ANX01 &2-24 Hwy 61 & South Van Wert- Planning Report - 12-11-24</p>	<p>Annexation 01-2024 2664 South Van Wert Road As Amended Parcel ID 169 0120 - Parcel Split</p>
<p>Annexation 01-2024 Amended Survey Tolbert ALTA R 12-13-24</p>	<p>Annexation 02-2024 Hickory Level Road Parcel ID 168 0090</p>	<p>ANNEX 01 &2-24 RA-06-24- Hwy 61 & South Van Wert- Cover Sheet - 12-11-24</p>
<p>RA-06-24 & ANX01 &2-24 Hwy 61 & South Van Wert- Planning Report - 12-11-24</p>	<p>RA 06-24 Rezoning Application</p>	

From City Council Meeting January 14, 2025:

- 1) Agenda for Meeting
- 2) Agenda Packet (as relevant to issues in this petition) including
 - a) TA-12-25 Text Amendment to Establish Section 4.18 Technology Park Overlay District Cover Sheet
 - b) Technology Park Overlay District summary document
 - c) Text Amendment TA-01-25 Technology Park Overlay District
 - d) all supplemental documents associated with Annexation Petitions including

ANNEX 01 &2-24 RA-06-24- Hwy 61 & South Van Wert- Cover Sheet - 12-11-24	RA-06-24 & ANX01 &2-24 Hwy 61 & South Van Wert- Planning Report - 12-11-24	Annexation 01-2024 2664 South Van Wert Road As Amended Parcel ID 169 0120 - Parcel Split
Annexation 01-2024 Amended Survey Tolbert ALTA R 12-13-24	Annexation 02-2024 Hickory Level Road Parcel ID 168 0090	RA 06-24 Rezoning Application

Petitioners contend that additional documents and information, particularly real property transfer records, records of Georgia Rules and Regulations regarding Developments of Regional Impact, and other relevant documents and/or correspondence not specifically enumerated herein but relevant to the proceedings should be accepted by the Superior Court as part of the record pursuant to this Court’s authority under O.C.G.A. § 5-3-9(a) and O.C.G.A. § 36-66-5.1(1) (“all competent evidence shall be admissible at the trial thereof”).

Each of the Documents noted above appears in the City of Villa Rica Internet Portal <https://villaricaga.portal.civicclerk.com>

IV. Applicable Standard of Review

There is ambiguity in the applicable standard of review as established by Georgia Statutes.

O.C.G.A. § 36-66-5.1 (enacted 2022) provides for de novo judicial review by the Superior Court of zoning decisions taken by local municipalities:

(1) Zoning decisions as described in this chapter, being legislative in nature, shall be subject to direct constitutional challenge regarding the validity of maintaining the existing zoning on the subject property or the validity of conditions or an interim zoning category other than what was requested in the superior court pursuant to its original jurisdiction over declaratory judgments pursuant to Chapter 4 of Title 9 and equity jurisdiction under Title 23. Such challenges shall be by way of a de novo review by the superior court wherein such review brings up the whole record from the local government and all competent evidence shall be admissible in the trial thereof, whether adduced in a local government process or not and employing the presumption that a governmental zoning decision is valid and can be overcome substantively by a petitioner showing by clear and convincing evidence that the zoning classification is a significant detriment to the petitioner and is insubstantially related to the public health, safety, morality, or general welfare; . . .

The Georgia Legislature has more recently amended the procedures for Petition for Judicial Review through O.C.G.A. § 5-3-1 the “Superior And State Court Appellate Practice Act, (effective July 2024) which provides in pertinent part:

5-3-5. Obligations of court; de novo proceedings; jury trials.

(a) Except as provided in subsection (b) of this Code section or otherwise provided by law, a reviewing court shall:

- (1) Review only matters raised in the record of the proceeding in the lower judiciary;
- (2) Accept the findings of fact and credibility of the lower judiciary unless they are clearly erroneous;

(3) Accept a decision regarding an issue within the sound discretion of the lower judiciary unless such a decision was an abuse of discretion;

(4) Determine whether the final judgment was sustained by sufficient evidence; and

(5) Review questions of law de novo.

(b) A reviewing court shall conduct a de novo proceeding under this chapter if a de novo proceeding is specified by law. Cases reviewed under this subsection shall be heard by the reviewing court without a jury unless a jury trial is ordered by the reviewing court and authorized by law.

(c) A demand for a jury trial under this chapter shall be filed in the reviewing court within 30 days after filing a petition for review.

In this case, because Petitioners ask the Court to review questions of law (i.e. whether the Planning and Zoning Commission and City Council followed statutory procedures, rather than questioning their judgment to approve or deny the requested relief) and because O.C.G.A. § 36-66-5.1(1) specifically speaks to a “de novo review by the superior court wherein such review brings up the whole record from the local government and all competent evidence shall be admissible in the trial thereof” Petitioner respectfully submits that the standard of Review of the challenged decisions would be de novo based upon the entire record and all competent evidence.

V. Errors / Procedural Violations Specifically Challenged in this Petition for Judicial Review

Additional details regarding the issues for review are summarized as follows, but it is the intent of Petitioners to supplement this motion with additional facts, documents and case authority pursuant to O.C.G.A. § 5-3-8 (d)(providing for

amendment of petition before a hearing on the merits).

A) Failure to Follow Evaluation and Notice Requirements for Developments of Regional Impact

City of Villa Rica and/or the Respondents failed to follow procedures outlined by Georgia Rule and Regulation 110-12-3 for Developments of Regional Impact. Villa Rica did submit a preliminary and incomplete application on December 6, 2024 (DRI # 4347) but that application was withdrawn before the completion of the review:

4347	Avemore	Any other development types	Carroll	Villa Rica	CF	12/6/2024	Withdrawn
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A true and correct copy of the DRI submission (later withdrawn) is attached hereto as Ex. A.

B) Failure to Provide Proper Notice to Community

1) City of Villa Rica and/or Respondents failed to post required signage as to the proposed annexation and/rezoning actions as required by O.C.G.A. § 36-66-4. Petitioners contend that no signage was posted prior to the Planning and Zoning Commission meeting to consider the Annexation Petition, and that once signage was later posted, it was not posted on each parcel of property subject to the Annexation and Rezoning petitions.

2) City of Villa Rica and/or Respondents failed to send certified letters to affected / neighboring landowners as was specifically referenced and

reported to the Planning and Zoning Commission and to the City Counsel by the Nina Shabazz, Community Development Director as part of the Planning Department's recommendations for approval.

Staff recommendation: **APPROVAL**

Reasons:

1. Based on the City's Comprehensive Plan, the applicant's request to rezone the parcel from PUD to PUD-Industrial is supported.
2. PUD-Industrial will provide the highest and best use of the land, without overburdening city schools, roads and infrastructure.
3. The rezoning allows a vacant, underutilized parcel to be developed into an asset for the city and could spur, support additional development in the corridor.

Public Notifications:

As required by *Section 11.05* in the Code of the City of Villa Rica, the public has been notified in *Times-Georgian* on December 5, 2024; a sign has been posted on the subject properties; and all abutting property owners have received notification via regular and certified mail.

Public Response:

In response to the public notifications, no residents have contacted the city to voice concern or support for the proposed actions.

Nina Shabazz
Community Development Director

Petitioners to this Request for Judicial Review specifically state and aver that no notice of the proposed Annexation or Rezoning was received by mail, and there is no evidence in the record that regular and certified mail notice was sent despite the claim from Nina Shabazz Community Development Director (as shown above).

3) City of Villa Rica and/or Respondents failed to provide proper newspaper notice as to the proposed annexation and/rezoning actions as required by O.C.G.A. § 36-66-4 (i.e. the first newspaper notice on 12/3/24 was only 14 days before the Planning and Zoning Committee meeting, where notice was required to

be provided at least 15 days before such meeting. Pursuant to O.C.G.A. § 1-3-1(d)(3) when calculating days for action the first day is not counted by the last day is counted. Therefore 12/17/24 falls on the fourteenth (14th) day after the newspaper notice making the notice insufficient.

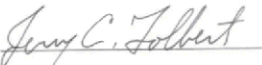

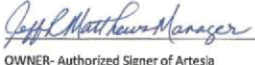

See Ex. B copy of posted newspaper notice.

C) Approval of Application without Proper Authorization of Agent

The applications for rezoning reviewed and approved by the Planning and Zoning Commission and the City Council did not show that the applicant (Embry Development Company LLC) had authority from the owners of the land at issue.

The owner of Parcel 169 0120 (2664 South Van Wert Road), Jerry Tolbert, authorized ***Avemore GA LLC*** (not Embry) to file the rezoning application.

The owner of Parcel 168 0090 (Hickory Level Road) Artesia Capital LLC, authorized ***Atlas Development LLC*** (not Embry) to file the rezoning application.

<p style="text-align: center;">STATEMENT LETTER</p> <p>I Jerry C. Tolbert being the owner of property located at 2664 S. Van Wert Rd in Villa Rica Ga. And having Carroll County Ga. Parcel #169-0120 hereby giving authorization to Avemore Ga. LLC (applicant) to file a rezoning application with the City of Villa Rica. I understand the applicant will file said rezoning with the intent to seek a classification of Industrial, and to include the property in the Avemore PUD adjoining the property mentioned.</p> <p> OWNER- JERRY C. TOLBERT DATE-</p> <p> APPLICANT DATE- 8-8-2024</p>	<p style="text-align: center;">STATEMENT LETTER</p> <p>I Authorized signer of Artesia being the owner of property located on NE Hickory Level Rd in Villa Rica Ga. (Carroll County) Parcel #168-0090 hereby giving authorization to Atlas Development LLC (applicant) to file a rezoning application with the City of Villa Rica. I understand the applicant will file said rezoning with the intent to seek a classification Industrial, PUD, Special use Data Center.</p> <p> OWNER- Authorized Signer of Artesia DATE- 8/16/2024</p> <p> APPLICANT DATE- 8/16/2024</p>
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D) Approval of Language Not Considered or Recommended by the Planning and Zoning Commission

The City Council voted to approve different language for the Technology Park Overlay District than the language that was presented to and approved by the Planning and Zoning Commission. Specifically, the Planning and Zoning Commission approved language containing a 45 foot height limit on structures within the district. The text approved by the City Council included a 60 foot height limit – with no discussion of (or even identification) that the language of the proposed Technology Park Overlay District had changed from the language approved by the Planning and Zoning Commission.

See Ex C text presented to Planning and Zoning Commission 12/17/24 and Ex. D text approved by City Council 1/17/25.

E) Approval of Rezoning Application which on its face was missing required information

The Rezoning Application reviewed and approved by both the Planning and Zoning Commission, as well as the City Counsel, did not include a variety of information specifically required by the Application, including any of the information required to be a part of the application as specified by Sec. 3(a)-(h)

**Required Materials to Accompany the Application for
Zoning Map Amendment**

1. Copy of deed, lease, option agreement or other evidence of ownership or applicant's interest in the property. If the applicant is not the owner, attach a notarized statement signed by the owner authorizing the applicant to request the amendment.
2. A site development plan prepared in conformance with submittal requirements (unless waived by Community Development Manager or requested zoning district is Single-Family Residential).
3. A written statement describing the following:
 - a. The proposed uses and the effect the proposed use may have on surrounding properties and a statement of the facts indicating that the proposed change will not be detrimental to the general public interest and the purposes of this Code.
 - b. Whether such change is consistent with the intent and the purpose of this Code and the goals and policies of the Comprehensive Plan.
 - c. The areas which are most likely to be directly affected by such a change and the likely effects.
 - d. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts, or other social or economic conditions in the areas and zoning districts affected.
 - e. The proposed time schedule and phasing for development.
 - f. The source/method for providing utility/infrastructure services to the property.
 - g. A description of existing road conditions and any new roads to be included in the development and of the effect the proposed development will have on existing road and traffic conditions; and
 - h. A list of any state, federal, or other public agencies' approvals or permits required for the proposed development.

See Ex. E Rezoning application presented by Embry Development to rezone the Avemore Parcel (V07 0140003) and the South Van Wert (169 0120) and (168 0900)Hickory Level Road. None of the information required to be presented in Sec. 3 a – h was included in the application presented by Embry Development Company or considered by the P&Z Commission or City Council. The application was incomplete on its face and should not have been considered or approved.

F) Approval of Annexation Petition which requested impermissible “carve out” of land from Petitioner’s land parcel to remain in Carroll County as an “island”

Both the Planning and Zoning Commission and the City Counsel approved a “carve out” of a parcel of land from the City Annexation which would leave an island of land remaining in Carroll County (but surrounded by the City of Villa

Rica) which “carve out” is specifically prohibited by the applicable zoning regulations. O.C.G.A. § 36-36-20(a)(2) which provides:

(a)(2) The entire parcel or parcels of real property owned by the person seeking annexation is being annexed; provided, however, that lots shall not be subdivided in an effort to evade the requirements of this paragraph; and

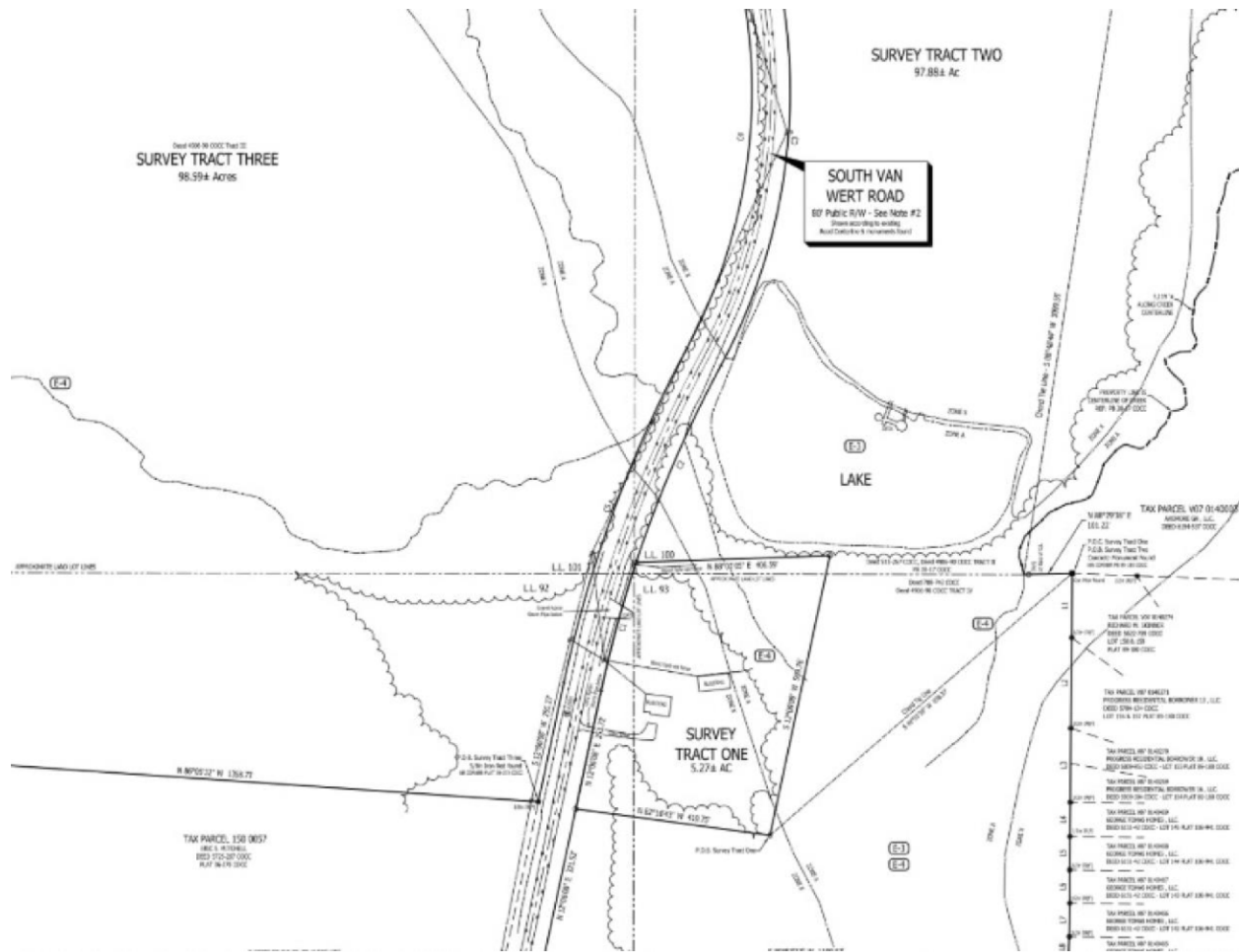
This prohibition was clearly and directly violated. See Ex. F Planning sheet and recommendations presented to the Villa Rica City Council.

STAFF RECOMMENDATION: The order of the vote and the motion are to act on the rezoning request and then to take action on the annexation request.

Staff recommends rezoning approval from Conservation and Agricultural to the expanded PUD to with recommended permitted uses as defined in the Zoning Ordinance as Section 4.18 Technology Park Overlay District and with conditions noted. With no objections received from Carroll County, City staff recommends approval of both the annexation of Parcel ID 168 0090 (Hickory Level Road) and approval of the annexation and recommended split of Parcel ID 169 0120 (2664 South Van Wert Road to allow the residence as identified in the amended survey to remain in Carroll County)

See also O.C.G.A. § 36-36-4 (a) “The creation of unincorporated islands as described in paragraph (1)(2) or (3) of this subsection shall be prohibited” where subsection (1) prohibits “Annexation [] which would result in the creation of an unincorporated area within its aggregate external boundaries abutting the annexing municipality.

The Parcel that Tolbert sought to exclude from the annexation (the “recommended split of parcel ID 169 0120” is shown below as “Survey Tract One” within the tax parcel otherwise subject to annexation.



See Ex. G Survey submitted with Annexation application. Exclusion of Survey Tract One creates an island of property remaining in Carroll County, wholly bordered by land intended to be incorporated into the City of Villa Rica, in clear and direct violation of O.C.G.A. § 36-36-4 (a) and O.C.G.A. § 36-36-20(a)(2).

G. Conducting Vote to Rezone Property before Annexation

The video record of the City Council meeting on January 14, 2025 shows that the Counsel took the vote to approve the re-annexation of the three subject parcels

before taking action to approve the annexation. The Motion and Vote on re-zoning begins at approximately the Three Hour and Twenty Minute (3:20.00) mark of the meeting. After that vote, the motion and vote for annexation was taken at approximately the Three Hour and Twenty Four Minute Mark (3:24.00). These votes were out of order and in direct violation of O.C.G.A. § 36-36-4 (d) which provides in pertinent part:

(d) If the zoning is for property to be annexed into a municipality, then:

(1) Such municipal local government shall complete the procedures required by this chapter for such zoning, except for the final vote of the municipal governing authority, prior to adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under [Code Section 36-36-6](#);

The language “except for the final vote of the municipal authority, prior to adoption of the annexation ordinance or resolution” is the key language here, as it clearly provides that while preliminary hearing, report, discussion, etc. can and should take place before the actual annexation, the local authority (here Villa Rica) must actually vote to annex the property before the vote to rezone the property. This only makes logical sense, because neither the Planning and Zoning Commission nor the City Council of Villa Rica have actual authority to rezone a specific parcel until that parcel of land is within the municipal boundaries of the City and subject to the jurisdiction thereof. This mistake (*i.e.* voting to rezone before voting to annex) renders the rezoning decision as to Parcels 168 0090 (Hickory Level Road) and 169 0120 (South Van Wert) void and ultra vires, as such votes were clearly done in

violation of the plain language of the applicable statute.

VI. Conclusion and Relief Requested

When the record is considered by this Court it will be clearly established that Embry/Villa Rica failed to follow the notice requirements for Developments of Regional Impact; failed to provide proper notice to neighboring and affected landowners of the annexation or rezoning applications; allowed for a carve out and creation of an “island” of land remaining in Carroll County and not subject to the annexation; and failed to follow the technical procedures for annexation and rezoning (i.e. approved rezoning before annexation).

Petitioners request an order directing and declaring that the actions of the Villa Rica City Council taken during its January 14, 2025 meeting regarding annexation of Parcels 168 0090 (Hickory Level Road) and 169 0120 (South Van Wert) and Rezoning of 168 0090 (Hickory Level Road), 169 0120 (South Van Wert) and V07 0140003 (Avenmore) are void and of no effect because of the procedural defects and irregularities clearly established in the record to be presented to this Court.

Respectfully Submitted this 10th day of February, 2025

COHEN COOPER ESTEP & ALLEN

/s/ Jefferson M. Allen
Jefferson M. Allen
Georgia Bar No. 010898
Attorney for Petitioners

3330 Cumberland Boulevard
Suite 600
Atlanta, Georgia 30339
404-814-0000 (T)



Developments of Regional Impact

[DRI Home](#)
 [Tier Map](#)
 [Apply](#)
 [View Submissions](#)
 [Login](#)

Application Details:

Project Name: Avemore
Submitting Local Government: Villa Rica
Developer: Embry Development
Current Status: Withdrawn
Projected Process Completion Date:
RDC: Chattahoochee Flint RDC
DRI Tier: Metro
GRTA Jurisdiction? No

Application History:

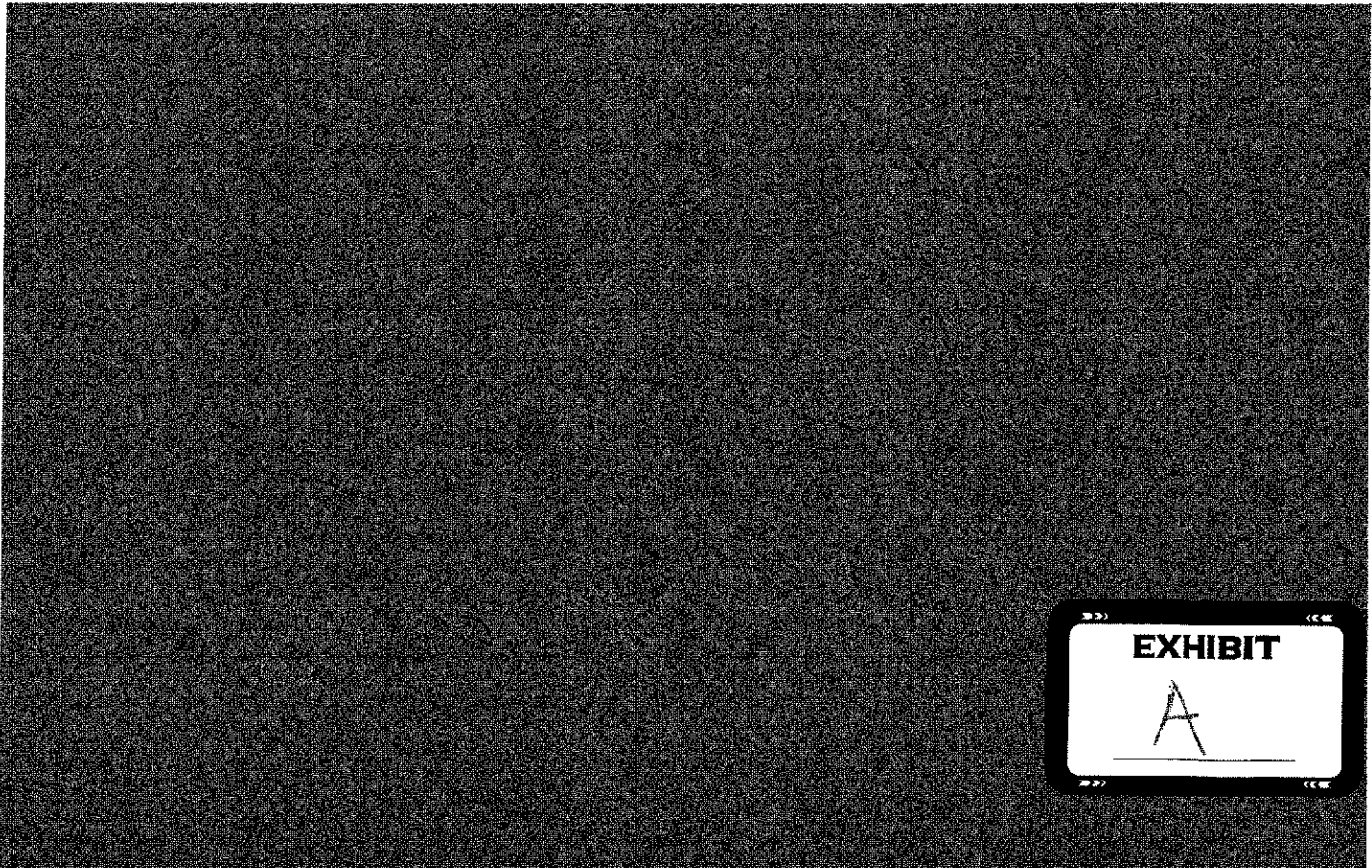
Initial DRI Information Form Submitted: 12/6/2024 [View Initial Form](#)
Additional DRI Information Form Submitted: 12/6/2024 [View Additional Form](#)

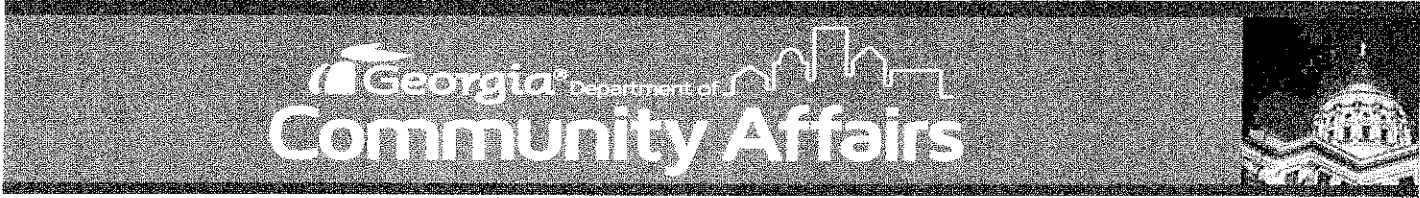
DRI Determination:

Completeness Certification:
Request for Comments:
RDC Finding:
GRTA Finding:

[GRTA DRI Page](#) |
 [ARC DRI Page](#) |
 [RC Links](#) |
 [DCA DRI Page](#)

[DRI Site Map](#) |
 [Contact](#)





Developments of Regional Impact

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DRI #4347

DEVELOPMENT OF REGIONAL IMPACT Initial DRI Information

This form is to be completed by the city or county government to provide basic project information that will allow the RDC to determine if the project appears to meet or exceed applicable DRI thresholds. Refer to both the Rules for the DRI Process and the DRI Tiers and Thresholds for more information.

Local Government Information

Submitting Local Government: Villa Rica
Individual completing form: Nina Shabazz
Telephone: 770.508.4006
E-mail: nshabazz@villarica.gov

*Note: The local government representative completing this form is responsible for the accuracy of the information contained herein. If a project is to be located in more than one jurisdiction and, in total, the project meets or exceeds a DRI threshold, the local government in which the largest portion of the project is to be located is responsible for initiating the DRI review process.

Proposed Project Information

Name of Proposed Project: Avemore
Location (Street Address, Hwy 61 and South Van Wert GPS Coordinates, or Legal Land Lot Description):
Brief Description of Project: Technology Park

Development Type:

- | | | |
|---|--|--|
| <input type="checkbox"/> (not selected) | <input type="checkbox"/> Hotels | <input type="checkbox"/> Wastewater Treatment Facilities |
| <input type="checkbox"/> Office | <input type="checkbox"/> Mixed Use | <input type="checkbox"/> Petroleum Storage Facilities |
| <input type="checkbox"/> Commercial | <input type="checkbox"/> Airports | <input type="checkbox"/> Water Supply Intakes/Reservoirs |
| <input type="checkbox"/> Wholesale & Distribution | <input type="checkbox"/> Attractions & Recreational Facilities | <input type="checkbox"/> Intermodal Terminals |
| <input type="checkbox"/> Hospitals and Health Care Facilities | <input type="checkbox"/> Post-Secondary Schools | <input type="checkbox"/> Truck Stops |
| <input type="checkbox"/> Housing | <input type="checkbox"/> Waste Handling Facilities | <input type="checkbox"/> Any other development types |
| <input type="checkbox"/> Industrial | <input type="checkbox"/> Quarries, Asphalt & Cement Plants | |

If other development type, describe:

Project Size (# of units, floor area, etc.): 432 acres

Developer: Embry Development

Mailing Address: PO BOX 489

Address 2:

City: suwanee **State:** GA **Zip:** 30024

Telephone: 404.569.9756

Email: mike@embrycompanies.com

Is property owner different from developer/applicant? (not selected) Yes No

If yes, property owner: C.Jerry Tolbert, Artesia Capital & Avemore GA, LLC.

Is the proposed project entirely located within your local government's jurisdiction? (not selected) Yes No

If no, in what additional jurisdictions is the project located? Carroll County

Is the current proposal a continuation or expansion of a previous DRI? (not selected) Yes No

If yes, provide the following information: Project Name: Avemore
Project ID:

The initial action being requested of the local government for this project:
 Rezoning
 Variance
 Sewer
 Water
 Permit
 Other

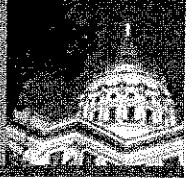
Is this project a phase or part of a larger overall project? (not selected) Yes No

If yes, what percent of the overall project does this project/phase represent? N/A

Estimated Project Completion Dates: This project/phase: 2028
Overall project:

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Developments of Regional Impact

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DRI #4347

DEVELOPMENT OF REGIONAL IMPACT Additional DRI Information

This form is to be completed by the city or county government to provide information needed by the RDC for its review of the proposed DRI. Refer to both the Rules for the DRI Process and the DRI Tiers and Thresholds for more information.

Local Government Information

Submitting Local Government: Villa Rica
 Individual completing form: Nina Shabazz
 Telephone: 770.508.4006
 Email: nshabazz@villarica.gov

Project Information

Name of Proposed Project: Avemore
 DRI ID Number: 4347
 Developer/Applicant: Embry Development
 Telephone: 404.589.9756
 Email(s): mike@embrycompanies.com

Additional Information Requested

Has the RDC identified any additional information required in order to proceed with the official regional review process? (If no, proceed to Economic Impacts.)

(not selected) Yes No

If yes, has that additional information been provided to your RDC and, if applicable, GRTA?

(not selected) Yes No

If no, the official review process can not start until this additional information is provided.

Economic Development

Estimated Value at Build-Out: >45 million

Estimated annual local tax revenues (i.e., property tax, sales tax) likely to be generated by the proposed development: >1 million

Is the regional work force sufficient to fill the demand created by the proposed project?

(not selected) Yes No

Will this development displace any existing uses?

(not selected) Yes No

If yes, please describe (including number of units, square feet, etc):

Water Supply

Name of water supply provider for this site: Carroll County

What is the estimated water supply demand to be generated by the project, measured in Millions of Gallons Per Day (MGD)? 1 MGD

Is sufficient water supply capacity available to serve the proposed project? (not selected) Yes No

If no, describe any plans to expand the existing water supply capacity: Unknown. Villa Rica and Carroll County Water Authority is working jointly to determine how to best provide the required volume of water.

Is a water line extension required to serve this project? (not selected) Yes No

If yes, how much additional line (in miles) will be required? Yes. Unknown. Potable water to be determined by CCWA and possible VR Utilities. Reuse water to be determined by VR Utilities Department

Wastewater Disposal

Name of wastewater treatment provider for this site: City of Villa Rica

What is the estimated sewage flow to be generated by the project, measured in Millions of Gallons Per Day (MGD)? < 1 MGD

Is sufficient wastewater treatment capacity available to serve this proposed project? (not selected) Yes No

If no, describe any plans to expand existing wastewater treatment capacity: No. Currently investigating options for expansion with state regulatory agencies.

Is a sewer line extension required to serve this project? (not selected) Yes No

If yes, how much additional line (in miles) will be required? Yes. One reuse pump station @ approx. 4.5 miles of force main & wastewater 5.5 gravity/force main

Land Transportation

How much traffic volume is expected to be generated by the proposed development, in peak hour vehicle trips per day? (If only an alternative measure of volume is available, please provide.) negligible only the employees <15 VMT/day

Has a traffic study been performed to determine whether or not transportation or access improvements will be needed to serve this project? (not selected) Yes No

Are transportation improvements needed to serve this project? (not selected) Yes No

If yes, please describe below: There are road improvements ongoing, but most of the improvements will be done onsite.

Solid Waste Disposal

How much solid waste is the project expected to generate annually (in tons)? TBD

Is sufficient landfill capacity available to serve this proposed project? (not selected) Yes No

If no, describe any plans to expand existing landfill capacity: Undetermined at this time.

Will any hazardous waste be generated by the development? (not selected) Yes No

If yes, please explain:

Stormwater Management

What percentage of the site is projected to be impervious surface once the proposed development has been constructed? <80%

Describe any measures proposed (such as buffers, detention or retention ponds, pervious parking areas) to mitigate the project's impacts on stormwater management: The city's landscaping, setback, buffers and impervious surface maximums will be adhered.

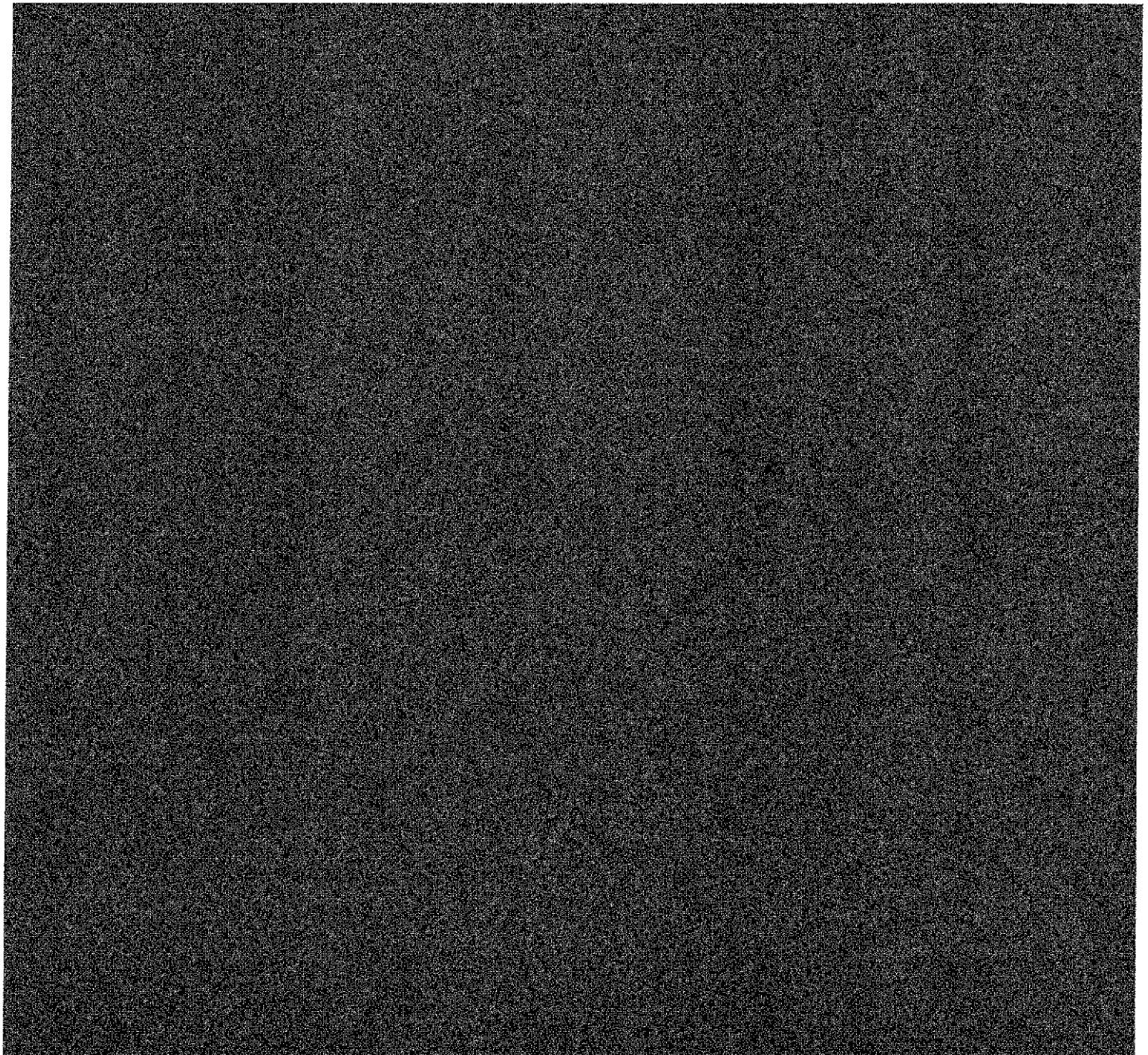
Environmental Quality

Is the development located within, or likely to affect any of the following:

- 1. Water supply watersheds? (not selected) Yes No
- 2. Significant groundwater recharge areas? (not selected) Yes No
- 3. Wetlands? (not selected) Yes No
- 4. Protected mountains? (not selected) Yes No
- 5. Protected river corridors? (not selected) Yes No
- 6. Floodplains? (not selected) Yes No
- 7. Historic resources? (not selected) Yes No
- 8. Other environmentally sensitive resources? (not selected) Yes No

If you answered yes to any question above, describe how the identified resource(s) may be affected:

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/s/ Sherril N. Bailey,
Petitioner
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NOTICE OF PUBLIC HEARING

Anx-01-24, Anx-02-24, and RA-06-24

Public hearings will be conducted by the Planning Commission at 6:00 PM on Tuesday, December 17th, 2024, and by the City Council at 6:00 PM on January 14th, 2025, at the Holt-Bishop Justice Center, Municipal Court Room, 101 Main Street, Villa Rica, Georgia.

The City of Villa Rica Planning Commission and City Council will hold public hearings to consider the following:

Rezoning Request: By Embry Development Company, LLC for property (Parcel # V07 0140003) from Planned Unit Development (PUD) to Planned Unit Development - Industrial Medium Density (PUD1-(12) to allow a Data Center.

Annexation Requests: For properties Parcel # 169 0090 and Parcel # 169 0120.

Text Amendment: Section 8.11 - Data Center.

The public is invited to attend the hearings to provide oral comments or submit written comments on the subject to the City of Villa Rica, Attention: Villa Rica City Council, 571 West Bankhead Highway, Villa Rica, Georgia 30180, prior to the public hearings.

Opponents to the above actions are required to submit a disclosure report five days before the public hearings. For questions or concerns, call Community Development at 878.546.1236.

12/03, 12/10

NOTICE OF REZONING HEARINGS:

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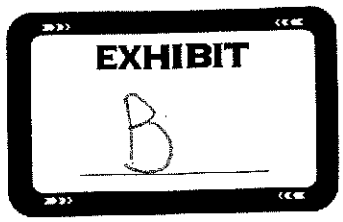
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Notice Publish Date:

Tuesday, December 10, 2024

Notice Content

CLASS:10900 NOTICE OF PUBLIC HEARING Anx-01-24, Anx-02-24, and RA-06-24 Public hearings will be conducted by the Planning Commission at 6:00 PM on Tuesday, December 17th, 2024, and by the City Council at 6:00 PM on January 14th, 2025, at the Holt-Bishop Justice Center, Municipal Court Room, 101 Main Street, Villa Rica, Georgia. The City of Villa Rica Planning Commission and City Council will hold public hearings to consider the following: Rezoning Request: By Embry Development Company, LLC for property (Parcel # V07 0140003) from Planned Unit Development (PUD) to Planned Unit Development - Industrial Medium Density (PUD)-(I2) to allow a Data Center. Annexation Requests: For properties Parcel # 168 0090 and Parcel # 169 0120. Text Amendment: Section 6.11 - Data Center. The public is invited to attend the hearings to provide oral comments or submit written comments on the subject to the City of Villa Rica, Attention: Villa Rica City Council, 571 West Bankhead Highway, Villa Rica, Georgia 30180, prior to the public hearings. Opponents to the above actions are required to submit a disclosure report five days before the public hearings. For questions or concerns, call Community Development at 678.840.1238. 12/03, 12/10

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Technology Park Overlay District (TP).

Purpose. The Technology Park Overlay District is established for the development of higher echelon technology and business development seeking to develop separate facilities for management headquarters, data centers, training areas, low-impact light manufacturing, motion picture, television and other multi-media production research and development operations and offices.

Such facilities are often grouped together in order to provide common amenities, such as adequate and convenient parking, service, and utilities. Operations shall cause no radiation or radioactivity at any exterior wall and no electrical radiation that affects any operation or equipment other than those of the creator of the radiation. The establishment of such a district requires a predetermined development plan, appropriate screening, adequate separation from other land uses and more stringent controls. It is the primary intent of this district to allow for such areas in order to meet contemporary needs.

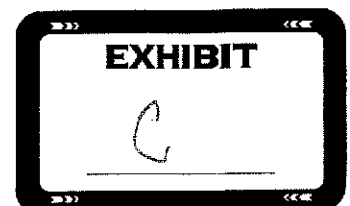
Principally permitted uses

The following uses, , shall be permitted in TP Overlay Districts:

- A. Administrative operations (finance, insurance).
- B. Commercial printing.
- C. Commercial testing laboratories.
- D. Communications equipment Mfg.
- E. Computer and electronic repair and calibration.
- F. Computer operations and data processing
- G. Data Centers
- H. Corporate offices or headquarters.
- I. Design and engineering.
- J. Drugs and pharmaceuticals distribution and/or Mfg.
- K. Educational services.
- L. Electronic components Mfg.
- M. Electrical substations
- N. Hospitals, clinics, medical and dental offices, medical and dental laboratories, and veterinary clinics.
- O. Industrial controls Mfg. (used in industrial production for controlling equipment or machines).
- P. Management and professional services.
- Q. Metalworking machinery production.
- R. Motion picture, television and other multi-media production.
- S. Office machines Mfg.
- T. Office/research.
- U. Public/Govt. buildings.
- V. Pilot plants and production facilities.
- W. Plastic, composite products Mfg.
- X. Research and development Mfg.
- Y. Special industry machinery Mfg.
- Z. Transportation equipment Mfg.
- AA. Unlisted use. The director may approve an unlisted use in this zoning district where the unlisted use is similar in type and nature to a listed use in that district.

Permitted accessory uses.

Permitted accessory uses are as follows:



- A. Employee lunchrooms.
- B. Temporary outside storage if the same is in conjunction with pilot plants or production facility uses, subject to being screened from adjoining properties.
- C. Recreational facilities for use by tenants, employees and clients.
- D. Private temporary living quarters associated with research and development
- E. Storage facilities within wholly enclosed buildings.
- F. Water Storage Facilities
- G. Trash receptacles.
- H. Telecommunication structures.
- I. On-site day care provided by businesses within the park for employees.
- J. Security structures, which may be installed within buffers and setbacks if located at approved entrances and exits.
- K. Battery storage
- L. Alternate fuel storage

Lot Standard

Standard	Setback Requirements
Minimum Lot Area	5 Acres
Minimum Lot Width	150 Feet
Minimum Lot Frontage	50 Feet
Building Height (Principal and Accessory Structures)	45 Feet (Excludes parapet walls, rooftop mechanical equipment, and penthouses).
Front Setback (Principal and Accessory Structures)	50 feet
Side Setback (Principal and Accessory Structures)	50 feet
Rear Setback (Principal and Accessory Structures)	50 feet
Minimum distance from structures on same lot	10 feet
Maximum Lot Coverage (Buildings)	60%
Maximum Lot Coverage (Total Impervious Area)	80%

Required lot standards shall only apply to external property boundaries with other properties not zoned as part of the TP district. Minimum lot frontages, width and acreage shall not apply to subdivided lots within the TP district, so long as the entirety of the contiguous development complies with these standards, and so long as the subdivided lot has adequate frontage on public or private roads and access drives to allow service.

Lighting Requirements

Lighting shall meet the requirements of Section 7.12 of the Zoning Ordinance.

Parking requirements

1. Each building shall provide 25 parking spaces minimum. Ancillary office buildings and other occupiable structures shall park at one space per 500 SF of GFA.
2. Joint parking areas serving multiple buildings may be permitted onsite.
3. Handicap accessible parking shall be provided in conformance with federal ADA requirements.
4. Parking areas shall not extend into buffer areas.
5. Unloading shall be onsite and not within the right-of-way.
6. Parking space geometrics shall conform with Section 7.02 of the Zoning Ordinance.

Landscaping and Buffering

Bufferyards for TP Overlay Uses:

1. Adjacent to Residential Districts: A minimum 75-foot buffer yard shall be maintained separating the TP property from all residential zoning districts. The buffer yard shall be planted per the Type 4 Bufferyard Standards of the Zoning Ordinance.
2. Adjacent to Commercial Zoning Districts: A minimum 30-foot buffer yard shall be maintained separating the TP property from all commercial zoning districts. The buffer yard shall be planted per the Type 3 Bufferyard Standards of the Zoning Ordinance.
3. Adjacent to Industrial Zoning Districts: A minimum 10-foot buffer yard shall be maintained separating the TP property from all industrial zoning districts. The buffer yard shall be planted per the Type 1 Bufferyard Standards of the Zoning Ordinance.

Fences in the TP Overlay District may exceed the maximum listed fence height of 8' in the Zoning Ordinance in all setbacks yards.

Noise

1. Generator testing is limited to between 7:00 a.m. and 5:00 p.m.;
2. Except for generator testing or commissioning activities, generator use is limited to backup/emergency use only.

Chapter IV. Zoning Districts

Section 4.18 Technology Park Overlay District (TPOD).

Purpose. The Technology Park Overlay District is established for the development of higher echelon technology and business development seeking to develop separate facilities for management headquarters, data centers, training areas, low-impact light manufacturing, motion picture, television and other multi-media production research and development operations and offices.

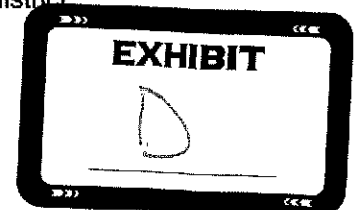
Such facilities are often grouped together in order to provide common amenities, such as adequate and convenient parking, service, and utilities. Operations shall cause no radiation or radioactivity at any exterior wall and no electrical radiation that affects any operation or equipment other than those of the creator of the radiation. The establishment of such a district requires a predetermined development plan, appropriate screening, adequate separation from other land uses and more stringent controls. It is the primary intent of this district to allow for such areas in order to meet contemporary needs.

1. Principally permitted uses

The following uses, shall be permitted in TP Overlay Districts:

- A. Administrative operations (finance, insurance).
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- C. Commercial testing laboratories.
- D. Communications equipment Mfg.
- E. Computer and electronic repair and calibration.
- F. Computer operations and data processing
- G. Data Centers
- H. Corporate offices or headquarters.
- I. Design and engineering.
- J. Drugs and pharmaceuticals distribution and/or Mfg.
- K. Educational services.
- L. Electronic components Mfg.
- M. Electrical substations
- N. Hospitals, clinics, medical and dental offices, medical and dental laboratories, and veterinary clinics.
- O. Industrial controls Mfg. (used in industrial production for controlling equipment or machines).
- P. Management and professional services.
- Q. Metalworking machinery production.
- R. Motion picture, television and other multi-media production.
- S. Office machines Mfg.
- T. Office/research.
- U. Public/Govt. buildings.
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- Y. Special industry machinery Mfg.
- Z. Transportation equipment Mfg.
- AA. Unlisted use. The director may approve an unlisted use in this zoning district where the unlisted use is similar in type and nature to a listed use in that district.

2. Permitted accessory uses.



Permitted accessory uses are as follows:

- A. Employee lunchrooms.
- B. Temporary outside storage if the same is in conjunction with pilot plants or production facility uses, subject to being screened from adjoining properties.
- C. Recreational facilities for use by tenants, employees and clients.
- D. Private temporary living quarters associated with research and development
- E. Storage facilities within wholly enclosed buildings.
- F. Water Storage Facilities
- G. Trash receptacles.
- H. Telecommunication structures.
- I. On-site day care provided by businesses within the park for employees.
- J. Security structures, which may be installed within buffers and setbacks if located at approved entrances and exits.
- K. Battery storage
- L. Alternate fuel storage

3. Lot Standard

Standard	Setback Requirements
Minimum Lot Area	5 Acres
Minimum Lot Width	150 Feet
Minimum Lot Frontage	50 Feet
Building Height (Principal and Accessory Structures)	60 Feet (Excludes parapet walls, rooftop mechanical equipment, and penthouses).
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Side Setback (Principal and Accessory Structures)	50 feet
Rear Setback (Principal and Accessory Structures)	50 feet
Minimum distance from structures on same lot	10 feet
Maximum Lot Coverage (Buildings)	60%
Maximum Lot Coverage (Total Impervious Area)	80%

Required lot standards shall only apply to external property boundaries with other properties not zoned as part of the TPOD. Minimum lot frontages, width and acreage shall not apply to subdivided lots within the TPOD, so long as the entirety of the contiguous development complies with these standards, and so long as the subdivided lot has adequate frontage on public or private roads and access drives to allow service.

4. Lighting Requirements

Lighting shall meet the requirements of Section 7.12 (Outdoor Lighting) of Chapter VII. Design Standards of the Zoning Ordinance.

5. Parking requirements

Parking shall meet the requirements of Section 7.02 (Off-street Parking and Loading) of Chapter VII. Design Standards of the Zoning Ordinance. Additionally,

- A. Each building shall provide 25 parking spaces minimum. Ancillary office buildings and other occupiable structures shall park at one space per 500 SF of GFA.
- B. Joint parking areas serving multiple buildings may be permitted onsite.
- C. Handicap accessible parking shall be provided in conformance with federal ADA requirements.
- D. Parking areas shall not extend into buffer areas.
- E. Unloading shall be onsite and not within the right-of-way.
- F. Parking space geometrics shall conform with Section 7.02 of the Zoning Ordinance.

6. Landscaping and Buffering

Landscaping shall meet the requirements of Section 7.05 (Landscaping Standards) of Chapter VII. Design Standards of the Zoning Ordinance. Additionally, buffer yards for TPOD Uses:

- A. Adjacent to Residential Districts: A minimum 75-foot buffer yard shall be maintained separating the TP property from all residential zoning districts. The buffer yard shall be planted per the Type 4 Bufferyard Standards of the Zoning Ordinance.
- B. Adjacent to Commercial Zoning Districts: A minimum 30-foot buffer yard shall be maintained separating the TP property from all commercial zoning districts. The buffer yard shall be planted per the Type 3 Bufferyard Standards of the Zoning Ordinance.
- C. Adjacent to Industrial Zoning Districts: A minimum 10-foot buffer yard shall be maintained separating the TP property from all industrial zoning districts. The buffer yard shall be planted per the Type 1 Bufferyard Standards of the Zoning Ordinance.

Fences in the TP Overlay District may exceed the maximum listed fence height of 8' in the Zoning Ordinance in all setbacks yards.

7. Noise

Noise shall meet the requirements of Section 9.04 Non-residential design standards, Item 16 Noise and Vibration Standards, of Chapter VII. Design Standards of the Zoning Ordinance.

Additionally,

- A. Generator testing is limited to between 7:00 a.m. and 5:00 p.m.;
- B. Except for generator testing or commissioning activities, generator use is limited to backup/emergency use only.

Amendment to section 13.01 Definitions:

TECHNOLOGY PARK OVERLAY DISTRICT (TPOD): The Technology Park Overlay District (TPOD) is a planning tool used as a special zoning of an area that is growing and guided to support technology businesses to include their infrastructure needs. The Technology Park Overlay District is established for the development of higher echelon technology and business development seeking to develop separate facilities for management headquarters, data centers, training areas, low-impact light manufacturing, motion picture, television and other multi-media production research and development operations and offices to name a few.



City of Villa Rica Planning and Zoning Department

1605 Carrollton Villa Rica Hwy | Villa Rica, Ga 30180

678-785-9995 | www.Villarica.org

REZONING APPLICATION



Required Materials to Accompany the Application for Zoning Map Amendment

1. Copy of deed, lease, option agreement or other evidence of ownership or applicant's interest in the property. If the applicant is not the owner, attach a notarized statement signed by the owner authorizing the applicant to request the amendment.
2. A site development plan prepared in conformance with submittal requirements (unless waived by Community Development Manager or requested zoning district is Single-Family Residential).
3. A written statement describing the following:
 - a. The proposed uses and the effect the proposed use may have on surrounding properties and a statement of the facts indicating that the proposed change will not be detrimental to the general public interest and the purposes of this Code.
 - b. Whether such change is consistent with the intent and the purpose of this Code and the goals and policies of the Comprehensive Plan.
 - c. The areas which are most likely to be directly affected by such a change and the likely effects.
 - d. Whether the proposed amendment is made necessary because of changed or changing social values, new planning concepts, or other social or economic conditions in the areas and zoning districts affected.
 - e. The proposed time schedule and phasing for development.
 - f. The source/method for providing utility/infrastructure services to the property.
 - g. A description of existing road conditions and any new roads to be included in the development and of the effect the proposed development will have on existing road and traffic conditions; and
 - h. A list of any state, federal, or other public agencies' approvals or permits required for the proposed development.
4. Additional exhibits, as may be required by the Community Development Director.

Acreage	Residential	Commercial	Industrial	PUD
0-5	\$300	\$600	\$750	\$800
5.1-10	\$400	\$700	\$850	\$1000
10.1-20	\$600	\$1100	\$1100	\$1200
20.1- 30	\$800	\$1200	\$1300	\$1500
30.1- 40	\$900	\$1200	\$1400	\$1600
40.1- 50	\$1000	\$1400	\$1600	\$1800
50.1- 60	\$1100	\$1500	\$1700	\$1900
60.01 +	\$1200+25/acre Max. of \$2500	1600+25/acre Max. of \$4000	1800+25/acre Max. of \$5000	2000+25.99/acre Max. of \$6000

Please Return To:

Shaun Daniels
 Planner I
 (678) 785-9995
sdaniels@villarica.gov

Renee Kilgore
 Administrative Assistant
 (678) 840-1283
rkilgore@villarica.gov

Required Materials to Accompany the Application for Text Amendment

1. Proposed text amendment; Written statement describing reasons for the proposed text amendment; and any other exhibits as may be required by the Community Development Director.

Disclosure of Campaign Contributions

In accordance with the Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A, the following questions must be answered:

Has the applicant made, within two (2) years immediately preceding the filing of this application for rezoning, campaign contributions aggregating \$250 or more or made gifts having in the aggregate a value of \$250 or more to a member of the City Council or Planning Commission who will consider the application?

Yes _____ No X

If Yes, the applicant and the attorney representing the applicant must file a disclosure report with the City within ten (10) days after this application is first filed. Please supply the following information that will be considered as the required disclosure:

Council/Planning Commission Member Name	Dollar amount of Campaign Contribution	Description of Gift \$250 or greater to Board Member

We certify that the foregoing information is true and correct, this _____ day of _____, 2024.

EMBRY DEVELOPMENT COMPANY, LLC

J. MIKE EMBRY, Managing Member

Applicant's Name Printed

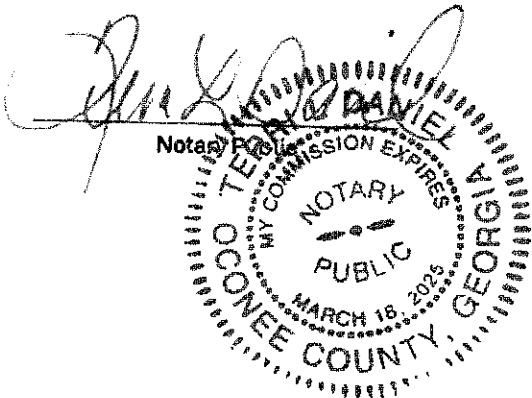
JOSEPH H. FOWLER, ESQ.

Applicant's Attorney, if applicable - Printed

Jerry Manay
Signature of Applicant

Joseph H. Fowler
Signature of Applicant's Attorney, if applicable

Sworn to and subscribed before me this 27 day of September, 2024.



Required Materials to Accompany the Application for UDC Text Amendment

The Community Development Manager may waive informational requirements upon finding that the information is not required to determine compliance with UDC requirements.

1. Proposed text amendment; Written statement describing reasons for the proposed text amendment; and any other exhibits as may be required by the Community Development Director.

Disclosure of Campaign Contributions

In accordance with the Conflict of Interest in Zoning Act, O.C.G.A., Chapter 36-67A, the following questions must be answered:

Has the applicant made, within two (2) years immediately preceding the filing of this application for rezoning, campaign contributions aggregating \$250 or more or made gifts having in the aggregate a value of \$250 or more to a member of the City Council or Planning Commission who will consider the application?

Yes _____ No X

If Yes, the applicant and the attorney representing the applicant must file a disclosure report with the City within ten (10) days after this application is first filed. Please supply the following information that will be considered as the required disclosure:

Council/Planning Commission Member Name	Dollar amount of Campaign Contribution	Description of Gift \$250 or greater to Board Member

We certify that the foregoing information is true and correct, this day of, 20 24.

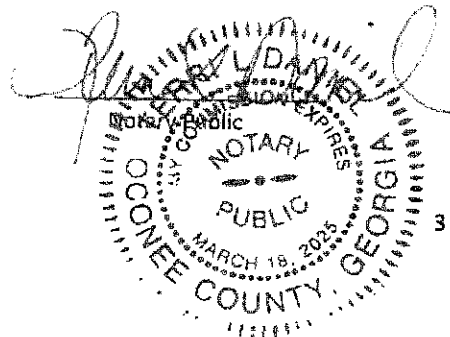
Mike Embry, Avemore GA, LLC, Agent for Jerry Tolbert
Applicant's Name Printed

Mike Embry
Signature of Applicant

Applicant's Attorney, if applicable – Printed

Signature of Applicant's Attorney, if applicable

Sworn to and subscribed before me this day of, 20 24.



Ordinance Text Amendment

Zoning Map Amendment

Please complete the blanks with the information requested. If any of the information or required materials is missing or incomplete, the application will not be processed. Also, please note the required information requested on the back of this page.

Date of Application: _____

Applicant Name: EMBRY DEVELOPMENT COMPANY, LLC

Address: P.O. Box 2789 City: Suwanee State: GA Zip: 30024

Phone: 404-569-9756 Email: mike@embrycompanies.com

Agent Name: Joseph H. Fowler, Esq.

Address: P.O. Box 489 City: Douglasville State: GA Zip: 30133

Phone: 770-920-2000 Email: jfowler@hrflegal.com

Owner Name (If different from applicant): See Attached List of Property Owners

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Email: _____ (Note: A notarized statement signed by the property owner(s) authorizing the applicant to make this request shall be attached to the application)

REZONING REQUEST

Existing Zoning: PUD (Avamore) & Agriculture (Annexation) Requested Zoning: PUD Amendment (Avamore)
PUD (Annexation Parcels)

Property Address: Highway 61 & South Van Wert Road Nearest Intersection: _____

Present Use of Property: Vacant and Residential

Proposed Use: ~~State General~~

Size of Tract: 432.46 Land Lot Numbers: 92, 93, 98, 99, 100, 101 & 125 Districts: 6th

Gross Density: _____ units per acre Net Density: _____ units per acre

Property Tax Parcel Number(s): V07 0140003, 168 0090 & 169 0120

(For Office Use Only)

Total Amount Paid \$ _____ Cash _____ Check # _____ Received by: _____

Application checked by: _____ Date: _____ Map Number(s): _____

Planning Commission: Approved _____ Denied _____ Date: _____ Conditions: No _____ Yes _____ How many: _____

City Council Decision: Approved _____ Denied _____ Date: _____ Conditions: No _____ Yes _____ How many: _____

Manager's Signature: _____ Date: _____

PROPERTY OWNERS

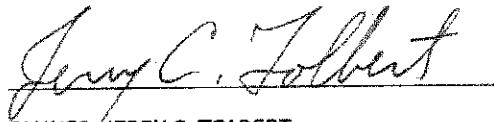
C. JERRY TOLBERT
2664 SOUTH VAN WERT ROAD
VILLA RICA, GA 30180
TAX PARCEL: 169 0120

ARTESIA CAPITAL, LLC
JEFF R. MATTEWS, MEMBER
P.O. BOX 324
VILLA RICA, GA 30180
TAX PARCEL: 168 0090

AVEMORE GA, LLC
P.O. BOX 2789
SUWANEE, GA 30024
TAX PARCEL: V07 0140003

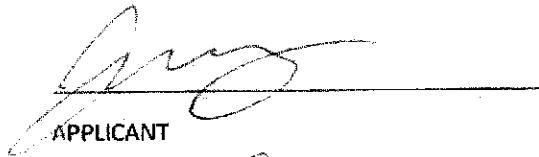
STATEMENT LETTER

I Jerry C. Tolbert being the owner of property located at 2664 S. Van Wert Rd in Villa Rica Ga. And having Carroll County Ga. Parcel #169-0120 hereby giving authorization to Avemore Ga. LLC (applicant) to file a rezoning application with the City of Villa Rica. I understand the applicant will file said rezoning with the intent to seek a classification of industrial, and to include the property in the Avemore PUD adjoining the property mentioned.



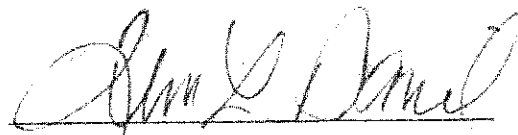
OWNER, JERRY C. TOLBERT

DATE-



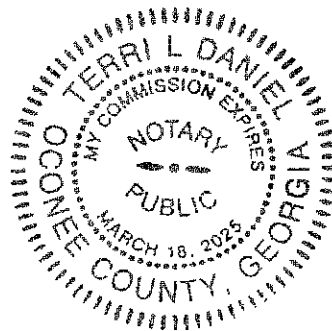
APPLICANT

DATE- 8-8-2024



NOTARY

DATE- 8/8/24



STATEMENT LETTER

I Authorized signer of Artesia being the owner of property located on NE Hickory Level Rd in Villa Rica Ga. (Carroll County) Parcel #168-0090 hereby giving authorization to Atlas Development LLC (applicant) to file a rezoning application with the City of Villa Rica. I understand the applicant will file said rezoning with the intent to seek a classification Industrial, PUD, Special use Data Center.

Jeff Matthews Manager

OWNER- Authorized Signer of Artesia

DATE- 8/16/2024

[Signature]

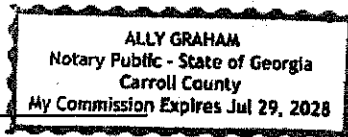
APPLICANT

DATE- 8/16/2024

[Signature]

NOTARY

DATE- 8/16/2024



PROCESS

Pre-Application Conference
(Optional)

Application Filed with Department

- Staff Review For Completeness.
- Public Hearing Schedule
- Public Notification

Planning Commission Hearing

- Within 45 Days Of Filing Complete Applications
- Consideration Of Staff, Applicant, And Public Testimony

Planning Commission Action

Within 60 Days of Close of hearing

Planning Commission Recommendation

Approval, Approval with Conditions, or Denial

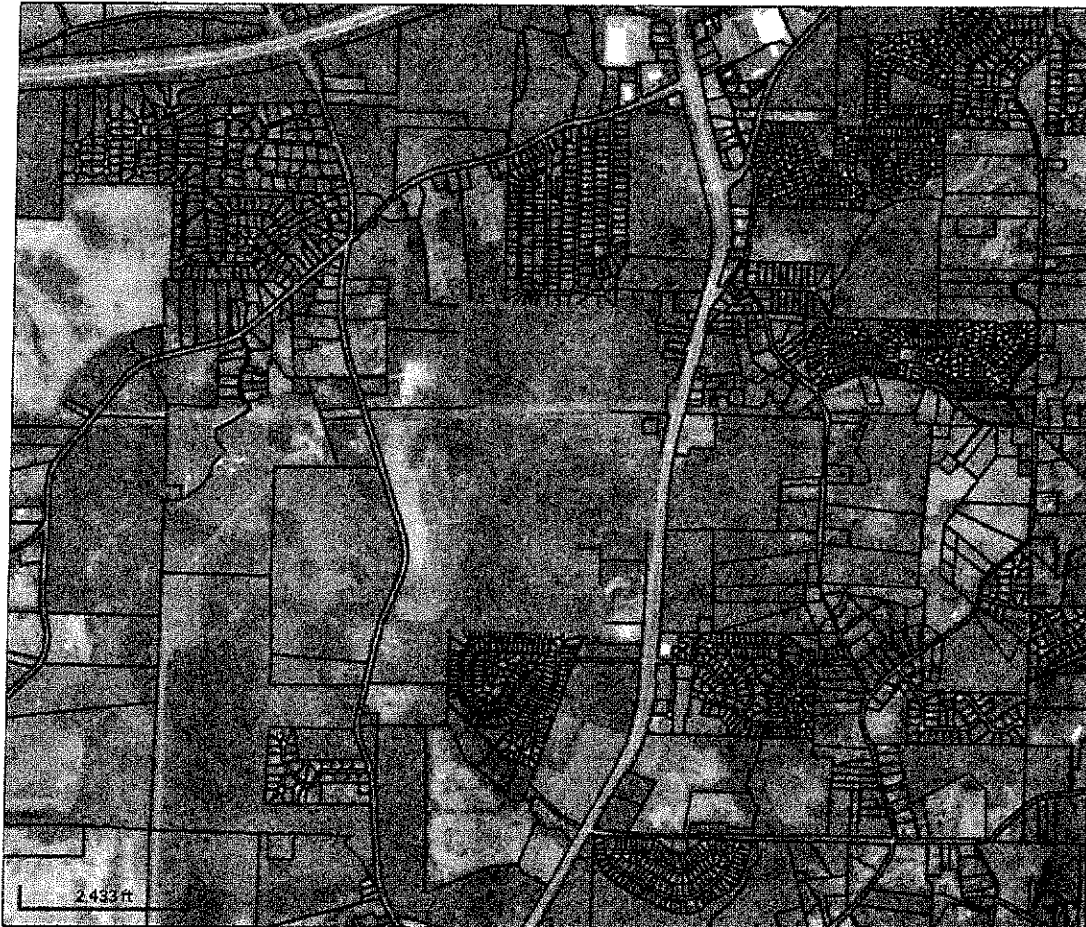
City Council Public Hearing

- Within 45 days of PC action
- Consideration of PC action and staff, applicant, and public testimony

DENIAL

City Council Action

APPROVAL



Overview

Legend

- Parcels
- Roads

Parcel ID	V07 0140003	Owner	AVEMORE GA LLC	Last 2 Sales			
Class Code	Agricultural		PO BOX 2789	Date	Price	Reason	Qual
Taxing District	VILLA RICA		SUWANEE, GA 30024	10/6/2023	\$5076000	MP	U
Acres	192.9	Physical Address	63 GOLDWORTH RD	9/6/2016	\$464000	FM	Q
		Assessed Value	Value \$1085626				

(Note: Not to be used on legal documents)

Date created: 9/20/2024
 Last Data Uploaded: 9/19/2024 6:08:58 PM

Developed by  **Schneider**
 GEOSPATIAL

eFiled and eRecorded
DATE: 10/06/2023
TIME: 3:13 PM
DEED BOOK: 6194
PAGE: 537 - 550
FILING FEES: \$25.00
TRANSFER TAX: \$5,076.00
INTANGIBLE TAX: \$0.00
PARTICIPANT ID: 2217758023
PT61: 022-2023-004395
RECORDED BY: DJ
CLERK: Alan J. Lee
Carroll County, GA

After Recording Return To:
Clark Real Estate Law Group LLP
11340 Lakefield Dr, Suite 200
Johns Creek, GA 30097

Order No.: CRE-232516
Tax Map: V07 0140003 & V07 0140004

LIMITED WARRANTY DEED

STATE OF GEORGIA
COUNTY OF CARROLL

THIS INDENTURE, made this 6th day of October, 2023, between Winchester Real Estate Investment Company, LLC, a Georgia limited liability company, of the County of Carroll, State of Georgia, as party or parties of the first part, hereinafter called Grantor, and Avemore GA LLC, a Georgia limited liability company, as party or parties of the second part, hereinafter called Grantee.

The words "Grantor" and "Grantee" whenever used herein shall include all individuals, corporations, and any other persons or entities, and all the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under either of them, and the pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto. If more than one party shall execute this deed each Grantor shall always be jointly and severally liable for the performance of every promise and agreement made herein.

WITNESSETH that: Grantor, for and in consideration of the sum of Ten And No/100 Dollars (\$10.00) and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

Tract I

ALL THAT TRACT or parcel of land lying and being in Land Lot 99 of the 6th District, Carroll County, Georgia, and being more particularly described as follows:
BEGINNING at a point on the northern right-of-way of Old CCC Camp Road which is 216 feet westerly along said right-of-way from its intersection with the centerline of Goldworth Road; running thence westerly along the northerly right-of-way of Old CCC Camp Road 175 feet to a point; running thence northerly, perpendicular to said road 252 feet to a point; running thence easterly parallel to said road 175 feet to a point; running thence southerly perpendicular to said road 252 feet to the POINT OF BEGINNING.
Said property having an address of 55 Goldworth Road, Villa Rica, Georgia 30180.

Together with

Tract II

ALL THAT TRACT or parcel of land lying and being in Land Lot 99, 100 and 125 of the 6th District of Carroll County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the western right of way of Carrollton-Villa Rica Highway, aka State Route 61, with the north line of Land Lot 99; thence westerly along said land lot line to the northwestern corner of Land Lot 99, which is the common corner of Land Lots 99, 100, 125 and 126 of the 6th District; thence running North along the East land lot line of Land Lot 125 a distance of 1,450.00 feet, more or less, to the southeast corner of Lot 16 of Ridgeside Subdivision, Unit 5, as said lot and subdivision are shown and delineated on a plat recorded in Plat Book 30, Page 194, in the Office of the Clerk of Superior Court of Carroll County, Georgia, which plat and the record thereof are by reference incorporated herein; thence leaving said land lot line and running in a westerly direction along the south line of Lots 16, 15, 14, 13, and 12 of Ridgeside Subdivision, Unit 5 as shown on plat recorded in Plat Book 30, Page 194, Lots 37, 36, 35, 34, 33, and 32 of Block "A" of Ridgeside Subdivision on plat recorded in Plat Book 12 Page 27, said Clerk's Office and the south line of property now or formerly owned by Meadowbrook Memory Garden's Inc. a distance of 1,700 feet, more or less, but specifically to Bay Springs Creek; thence running in a southerly direction along the meanderings of said Bay Springs Creek to a point where said creek intersects the south land lot line of Land Lot 100, said District; thence running in an easterly direction along the south land lot line of Land Lot 100 a distance of 2,170 feet, more or less, but specifically to the southeast corner of said Land Lot 100; thence running in a northerly direction along the east land lot line of Land Lot 100 a distance of 1,500 feet, more or less, to a point at the northwest corner of property now or formerly owned by L.W. Thomas; thence running in an easterly direction along the north line of property now or formerly owned by L.W. Thomas a distance of 670 feet, more or less, but specifically to the west right of way of Carrollton-Villa Rica Highway, aka State Route 61; thence running in a northerly direction along the west right of way of said State Route 61 a distance of 1,600 feet more or less, to the north land lot line of Land Lot 99 and the POINT OF BEGINNING.

LESS AND EXCEPT so much of said property was conveyed to George C. Holloway by Warranty Deed dated August 28, 1958, recorded in Deed Book 117, Page 454, Carroll County, Georgia records.

Being the same property conveyed from Felix A. Williams to Eunice Inez Mitchell by Warranty Deed dated July 5, 1962, recorded in Deed Book 137, Page 545, Carroll County Deed Records, LESS AND EXCEPT that property described in the following deeds: Warranty Deed to Earnest W. Cardell and Lela S. (Mrs. Ernest W.) Cardell, dated August 25, 1967, recorded in Deed Book 193, Page 361, Right of Way Deed to Department of Transportation dated August 26, 1986, recorded in Deed Book 547, Page 448, and Warranty Deed to the City of Villa Rica, Georgia, a municipal corporation, dated March 5, 1987, recorded in Deed Book 555, Page 131, said Deed records.

Being the same property conveyed from William G. Mitchell, Jr., Executor of the Estate of Inez Williams Mitchell to William G. Mitchell, Jr., Patricia DeWitt and John Mitchell in Executor's Deed of Assent recorded in Deed Book 864, Page 77, in the Office of the Clerk of Superior Court of Carroll County, Georgia.

This conveyance is subject to that conservation easement granted to the Chattahoochee Open Land Trust, Inc. with respect to a portion of the above-described property, said easement being recorded in Deed Book 2083, Page 339, Carroll, Georgia records.

Said property having an address of 63 Goldworth Road, Villa Rica, Georgia 30180

LESS AND EXCEPT:

The commercial, retail, and office lot number RT-015 according to the Engineered Master Plan PP-004, of Avemore Master Planned Community map dated 9/1/2021, being 2.23 acres, more or less.

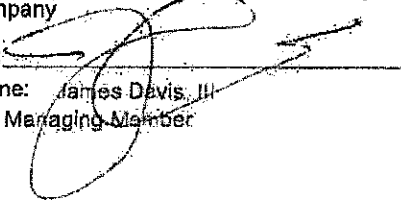
SUBJECT to all zoning ordinances, easements, and restrictions of record insofar as the same may lawfully affect the above-described property.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in Fee Simple.

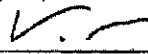
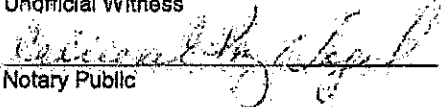
AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons owning, holding or claiming by, through or under the said Grantor.

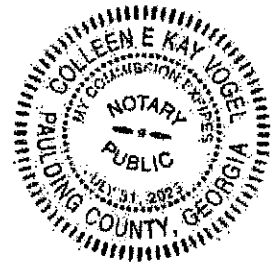
IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, this 6th day of October, 2023.

Winchester Real Estate Investment
Company, LLC, a Georgia limited liability
company

By: 
Name: James Davis, III
Its: Managing Member

Signed, sealed and delivered in the presence of:


Unofficial Witness

Notary Public
My Commission Expires: _____



HARTLEY, ROWE & FOWLER, P.C.

ATTORNEYS AT LAW

JOSEPH H. FOWLER

DIRECT DIAL: 770/920-2001
EMAIL: JFOWLER@HRFLEGAL.COM

12301 VETERANS MEMORIAL HIGHWAY
POST OFFICE BOX 489
DOUGLASVILLE, GEORGIA 30133-0489

TELEPHONE: 770/920-2000
FAX: 770/920-9119

September 30, 2024

Mayor and City Council
City of Villa Rica
1605 Carrollton Villa Rica Highway
Villa Rica, Georgia 3018.

RE: Amendment to Avamore PUD to Add Data Centers as a Permitted Use
Annexation of 204.53 Acres Owned by Jerry Tolbert and 35.03 Acres Owned
by Artesia Capital, LLC

LETTER OF INTENT

Dear Mayor and City Council:

Embry Development Company, LLC is filing the within application to rezone and annex the above properties for the purpose of annexing the Tolbert and Artesia Capital, LLC properties into the City limits of the City of Villa Rica for the purpose of the construction of ~~data centers~~ as shown on the concept plan filed concurrently herewith.

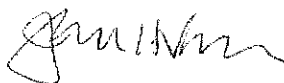
Simultaneously, the application is submitted to amend the Avamore PUD for the purpose of authorizing a data center as a permitted use.

The concept plan is conceptual at this point and is subject to further revisions prior to the final hearing on this project.

Thank you for your attention to this matter.

Respectfully,

HARTLEY, ROWE & FOWLER, P.C.


Joseph H. Fowler

JHF/ses

September 30, 2024

PROPOSED REZONING ON PROPERTY
BY EMBRY DEVELOPMENT, LLC
NOTICE OF CONSTITUTIONAL CHALLENGE

BACKGROUND

C. Jerry Tolbert ("Tolbert"), Artesia Capital, LLC ("Artesia") and Avemore GA, LLC ("Avemore") (collectively the "Owners") are the Owners of land located at Highway 61 and South Van Wert Road in Villa Rica, Georgia (the "Property"). An application for the rezoning from Agricultural (Tolbert and Artesia) and PUD (Avemore) to PUD for data centers was filed by the Embry Development, LLC (the "Applicant").

PROPOSED USE

The Applicant proposes to annex and rezone Tolbert and Artesia to PUD and amend the PUD on Avemore for the development of data centers on the Property.

CONSTITUTIONAL REQUIREMENTS

In accordance with the requirements of various Georgia cases, including *OS Advertising Company v. Rubin*, 263 Ga. 761 (1994); *Cobb County Board of Commissioners v. Poss*, 257 Ga. 393 (1987); and *Gradous v. Board of Commissioners*, 256 Ga. 469 (1989), it is hereby submitted that, if not rezoned as requested by this action, the Villa Rica City Zoning Ordinance presently in effect, with any amendments, which prohibits the Project, is unconstitutional in that it renders the Property unusable and destroys its marketability. As such, the current zoning classification constitutes a taking of the Property without just and adequate compensation and without due process of law in violation of the Fourteenth Amendment to the United States Constitution and in violation of Article I, Section I, Paragraph I and Article I, Section III, Paragraph I(a) of the Constitution of the State of Georgia. In this connection, the Applicant contends that to deny the

requested rezoning constitutes an abuse of the police power, in that such denial bears no substantial relation to the public health, safety, morality, or general welfare. Accordingly, such action would constitute a deprivation of Property rights without due process of law. Furthermore, to deny the rezoning results in relatively little gain or benefit to the public while inflicting serious injury or loss on the Applicant and Owners. To this extent, such action is confiscatory and void. The Property is best suited for PUD use, as proposed by the Applicant, and to deny the rezoning renders the Property unusable and destroys its marketability. This is a taking of Property without just compensation and without due process of law. In reality, the denial of the requested rezoning causes a detriment to public good, in that the public can be served by the development proposed by the Applicant given the particular location of this Property.

Accordingly, we respectfully urge your approval of the zoning request.



CITY OF VILLA RICA

City Council Meeting Agenda Item Cover Sheet

SUBJECT: Rezoning and annexation for Hwy 61 and South Van Wert-Avemore PUD (RA-06-24) (ANX-01 & 2-24)

AGENDA DATE: 1/14/2025

DATE PREPARED: 12/11/2024

PREPARED BY: Diana DeSanto, Interim City Manager

PUBLIC HEARING: Yes

PURPOSE: The applicant, Avemore GA LLC, seeks an annexation and rezoning for Parcel ID 168 0090 (Hickory Level Road) and Parcel ID 169 0120 (2664 South Van Wert Road), as with the amended survey to reflect a parcel split for the residence on the property to remain within Carroll County. The applicant seeks the rezoning with the annexation from Carroll County Zoning Designation Conservation and Agricultural to a Planned Unit Development (PUD), to include an expansion of the PUD for permitted uses as identified in the Technology Park Overlay District.

BACKGROUND: The City Council approved the Avemore project at 55 and 63 Goldworth Road in 2018 with a total of 200 single-family units, 300 multi-family units and live/work units, along with a host of other uses, including senior housing, which includes independent living, memory care and a minimum age restriction of fifty-five (55) years. In 2020, the city increased the total number of single-family lots to no more than 250 units, and the multi-family units to a maximum of 325 units. In 2021, the City Council approved an additional 290 units of senior housing with a minimum age of fifty-five (55) years. The applicant returned each year to extend their zoning approvals for another year as specified in the original and subsequent conditions placed on the conditionally approved project.

In September 2024, the applicant filed an extension to the previously approved PUD and sought to extend and alter the PUD to include Light Industrial (I1) (ALT-01-24). The application was denied by Planning and Zoning Commission and the applicant was instructed to file a new application that would effectively remove the previously approved housing units and mixed-use components. The new PUD would change the use to Medium Industrial (I2). The applicant withdrew his application and filed a new application.

Following this process, the applicant filed two requests for annexation (ANX-01 & 02-24) and a rezoning application from Carroll County Agricultural and Conservation Use to PUD as expanded with additional permitted uses being considered simultaneously as a text amendment for a Technology Park Overlay.



Following the approval of the text amendment for a Technology Overlay Park, the proposed use could include a corporate campus with administrative operations, technology park with electrical substations, research and development or other computer operations, data processing to name a few.

STAFF RECOMMENDATION: The order of the vote and the motion are to act on the rezoning request and then to take action on the annexation request.

Staff recommends rezoning approval from Conservation and Agricultural to the expanded PUD to with recommended permitted uses as defined in the Zoning Ordinance as Section 4.18 Technology Park Overlay District and with conditions noted. With no objections received from Carroll County, City staff recommends approval of both the annexation of Parcel ID 168 0090 (Hickory Level Road) and approval of the annexation and recommended split of Parcel ID 169 0120 (2664 South Van Wert Road to allow the residence as identified in the amended survey to remain in Carroll County)

IMPACT: N/A

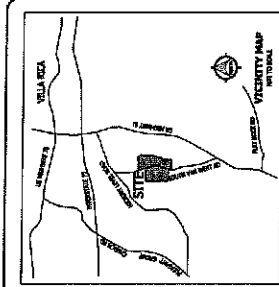
POTENTIAL ACTION: Approval with the following conditions:

No additional residential units will be proposed or approved with this PUD zoning

Sewer Capacity and Conveyance to be addressed and agreed upon with the City in the form of a Development Agreement.

MOTION: To approve the request for rezoning from Agriculture and Conservation to PUD, with the expansion of the PUD to include the provisions of principally permitted uses included within the Section 4.18 Technology Park Overlay District and with the recommended conditions (no additional residential units will be proposed or approved with this PUD zoning and sewer capacity and conveyance to be addressed and agreed upon with the City in the Form of a Development Agreement).

To approve the annexation of Parcel ID 168 0090 (Hickory Level Road) and approval of the annexation and recommended parcel split of Parcel ID 169 0120 (2664 South Van Wert Road) which will allow the residence identified in the amended survey to remain within Carroll County.



NOTES

1. THIS SURVEY IS BASED UPON THE FIELD NOTES OF THE SURVEYOR, AND THE FIELD NOTES ARE THE ONLY RECORD OF THIS SURVEY.
2. THE SURVEYOR HAS BEEN ADVISED THAT THE LANDS SHOWN ON THIS SURVEY ARE THE SAME AS SHOWN ON THE SURVEY MAP OF THE COUNTY OF CARROLL, GEORGIA, DATED 1910.
3. THE SURVEYOR HAS BEEN ADVISED THAT THE LANDS SHOWN ON THIS SURVEY ARE THE SAME AS SHOWN ON THE SURVEY MAP OF THE COUNTY OF CARROLL, GEORGIA, DATED 1910.
4. THE SURVEYOR HAS BEEN ADVISED THAT THE LANDS SHOWN ON THIS SURVEY ARE THE SAME AS SHOWN ON THE SURVEY MAP OF THE COUNTY OF CARROLL, GEORGIA, DATED 1910.
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8. THE SURVEYOR HAS BEEN ADVISED THAT THE LANDS SHOWN ON THIS SURVEY ARE THE SAME AS SHOWN ON THE SURVEY MAP OF THE COUNTY OF CARROLL, GEORGIA, DATED 1910.
9. THE SURVEYOR HAS BEEN ADVISED THAT THE LANDS SHOWN ON THIS SURVEY ARE THE SAME AS SHOWN ON THE SURVEY MAP OF THE COUNTY OF CARROLL, GEORGIA, DATED 1910.
10. THE SURVEYOR HAS BEEN ADVISED THAT THE LANDS SHOWN ON THIS SURVEY ARE THE SAME AS SHOWN ON THE SURVEY MAP OF THE COUNTY OF CARROLL, GEORGIA, DATED 1910.

LEGEND

- 1. SURVEYED BOUNDARIES
- 2. UNDEVELOPED LAND
- 3. DEVELOPED LAND
- 4. ROAD
- 5. RAILROAD
- 6. WATER
- 7. POWER LINE
- 8. TELEPHONE LINE
- 9. FENCE
- 10. EASEMENT
- 11. ENCUMBRANCE
- 12. UNDEVELOPED BOUNDARIES
- 13. DEVELOPED BOUNDARIES
- 14. ADJACENT SURVEY
- 15. ADJACENT UNDEVELOPED LAND
- 16. ADJACENT DEVELOPED LAND
- 17. ADJACENT ROAD
- 18. ADJACENT RAILROAD
- 19. ADJACENT WATER
- 20. ADJACENT POWER LINE
- 21. ADJACENT TELEPHONE LINE
- 22. ADJACENT FENCE
- 23. ADJACENT EASEMENT
- 24. ADJACENT ENCUMBRANCE

TITLE EXAMINATION

The title has been examined and found to be correct and in accordance with the records of the County of Carroll, Georgia, and the State of Georgia, and no other claims or interests have been discovered.

SURVEY TRACT ONE

Contains 1.00 acre of land, more or less, bounded by the Van Wert Road to the north, the State Road 100 to the east, and the Survey Tract Two to the south and west.

SURVEY TRACT TWO

Contains 1.00 acre of land, more or less, bounded by the Van Wert Road to the north, the State Road 100 to the east, and the Survey Tract One to the south and west.

SURVEY TRACT THREE

Contains 1.00 acre of land, more or less, bounded by the Van Wert Road to the north, the State Road 100 to the east, and the Survey Tract One to the south and west.

SURVEY TRACT FOUR

Contains 1.00 acre of land, more or less, bounded by the Van Wert Road to the north, the State Road 100 to the east, and the Survey Tract One to the south and west.

SURVEY TRACT FIVE

Contains 1.00 acre of land, more or less, bounded by the Van Wert Road to the north, the State Road 100 to the east, and the Survey Tract One to the south and west.

GENERAL INFORMATION

This survey was made for the purpose of dividing the land shown on the survey map of the County of Carroll, Georgia, into five tracts, each of one acre, more or less.

ADJACENT SURVEYS

The lands shown on this survey are adjacent to the lands shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT UNDEVELOPED LAND

The lands shown on this survey are adjacent to the undeveloped lands shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT DEVELOPED LAND

The lands shown on this survey are adjacent to the developed lands shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT ROAD

The lands shown on this survey are adjacent to the Van Wert Road, which is shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT RAILROAD

The lands shown on this survey are adjacent to the State Road 100, which is shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT WATER

The lands shown on this survey are adjacent to the water shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT POWER LINE

The lands shown on this survey are adjacent to the power line shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT TELEPHONE LINE

The lands shown on this survey are adjacent to the telephone line shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT FENCE

The lands shown on this survey are adjacent to the fence shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT EASEMENT

The lands shown on this survey are adjacent to the easement shown on the survey map of the County of Carroll, Georgia, dated 1910.

ADJACENT ENCUMBRANCE

The lands shown on this survey are adjacent to the encumbrance shown on the survey map of the County of Carroll, Georgia, dated 1910.

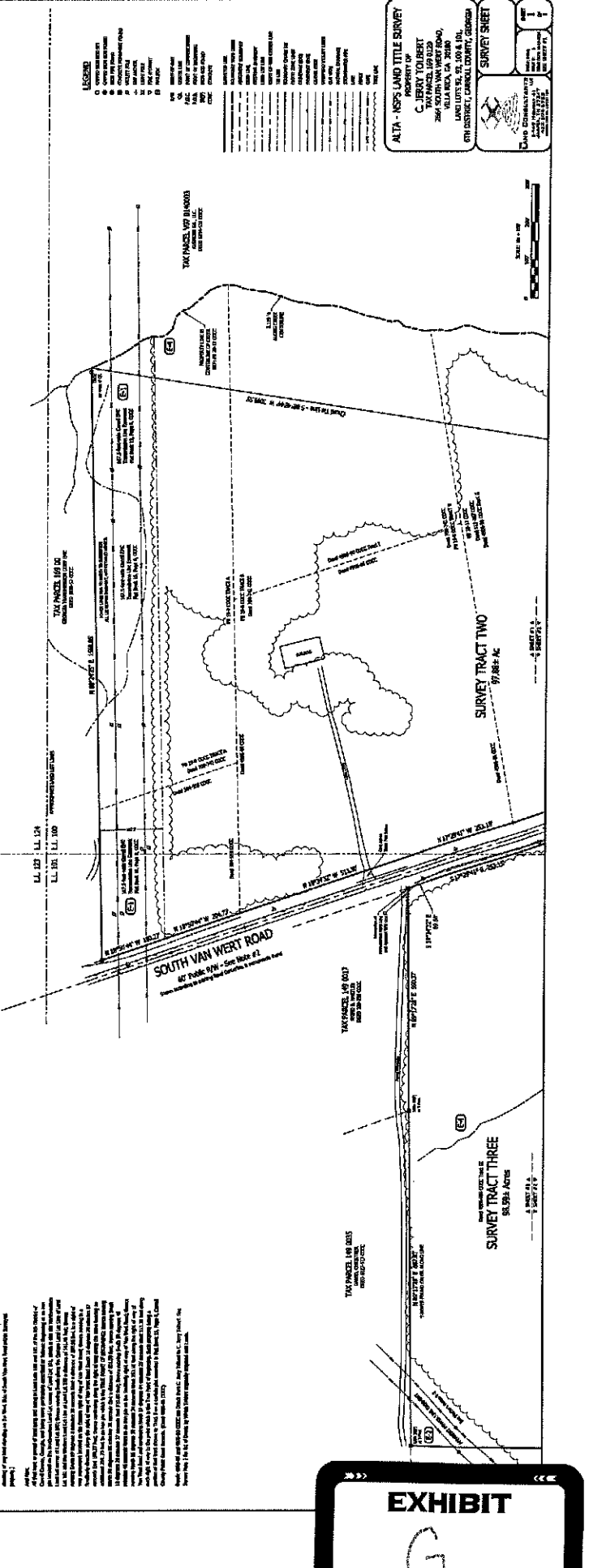


EXHIBIT G

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

CIVIL ACTION NUMBER SUCV2025000127

Christner, Polina
Christner, Daniel
Cutler, Paul
Karen, Hartley
Cook, Dylan
Reeves, Clint
Hartley, Brad
Johnson, Sherred

PLAINTIFF

VS.

City of Villa Rica
Artesia Capital LLC
Embry Development Company LLC
Avemore GA LLC
Tolbert, Jerry C

DEFENDANTS

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

SUMMONS

TO: CITY OF VILLA RICA

You are hereby required to file with the Clerk of said court and serve upon the plaintiff or plaintiff's attorney, whose name, address and email address are:

**Jefferson M Allen
Cohen Cooper Estep & Allen
3330 Cumberland Boulevard
Suite 600
Atlanta, Georgia 30339
jallen@ccealaw.com**

an answer to the complaint which is herewith served upon you. You must make your answer within 30 days after service of this summons upon you. This time excludes the day of service. If you fail to answer, the court will issue a default judgment against you for the relief sought in the complaint.

If this action pertains to a Protective Order, the answer is to be filed and served on or before the scheduled hearing date attached.

This 10th day of February, 2025.

Clerk of Superior Court



Alan Lee, Clerk
Carroll County, Georgia

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

CIVIL ACTION NUMBER SUCV2025000127

Christner, Polina
Christner, Daniel
Cutler, Paul
Karen, Hartley
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Johnson, Sherred

PLAINTIFF

VS.

City of Villa Rica
Artesia Capital LLC
Embry Development Company LLC
Avemore GA LLC
Tolbert, Jerry C

DEFENDANTS

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

SUMMONS

TO: ARTESIA CAPITAL LLC

You are hereby required to file with the Clerk of said court and serve upon the plaintiff or plaintiff's attorney, whose name, address and email address are:

**Jefferson M Allen
Cohen Cooper Estep & Allen
3330 Cumberland Boulevard
Suite 600
Atlanta, Georgia 30339
jallen@ccealaw.com**

an answer to the complaint which is herewith served upon you. You must make your answer within 30 days after service of this summons upon you. This time excludes the day of service. If you fail to answer, the court will issue a default judgment against you for the relief sought in the complaint.

If this action pertains to a Protective Order, the answer is to be filed and served on or before the scheduled hearing date attached.

This 10th day of February, 2025.

Clerk of Superior Court



Alan Lee, Clerk
Carroll County, Georgia

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

CIVIL ACTION NUMBER SUCV2025000127

Christner, Polina
Christner, Daniel
Cutler, Paul
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PLAINTIFF

VS.

City of Villa Rica
Artesia Capital LLC
Embry Development Company LLC
Avemore GA LLC
Tolbert, Jerry C

DEFENDANTS

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

SUMMONS

TO: EMBRY DEVELOPMENT COMPANY LLC

You are hereby required to file with the Clerk of said court and serve upon the plaintiff or plaintiff's attorney, whose name, address and email address are:

**Jefferson M Allen
Cohen Cooper Estep & Allen
3330 Cumberland Boulevard
Suite 600
Atlanta, Georgia 30339
jallen@ccealaw.com**

an answer to the complaint which is herewith served upon you. You must make your answer within 30 days after service of this summons upon you. This time excludes the day of service. If you fail to answer, the court will issue a default judgment against you for the relief sought in the complaint.

If this action pertains to a Protective Order, the answer is to be filed and served on or before the scheduled hearing date attached.

This 10th day of February, 2025.

Clerk of Superior Court



Alan Lee, Clerk
Carroll County, Georgia

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

CIVIL ACTION NUMBER SUCV2025000127

Christner, Polina
Christner, Daniel
Cutler, Paul
Karen, Hartley
Cook, Dylan
Reeves, Clint
Hartley, Brad
Johnson, Sherred

PLAINTIFF

VS.

City of Villa Rica
Artesia Capital LLC
Embry Development Company LLC
Avemore GA LLC
Tolbert, Jerry C

DEFENDANTS

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

SUMMONS

TO: AVEMORE GA LLC

You are hereby required to file with the Clerk of said court and serve upon the plaintiff or plaintiff's attorney, whose name, address and email address are:

**Jefferson M Allen
Cohen Cooper Estep & Allen
3330 Cumberland Boulevard
Suite 600
Atlanta, Georgia 30339
jallen@ccealaw.com**

an answer to the complaint which is herewith served upon you. You must make your answer within 30 days after service of this summons upon you. This time excludes the day of service. If you fail to answer, the court will issue a default judgment against you for the relief sought in the complaint.

If this action pertains to a Protective Order, the answer is to be filed and served on or before the scheduled hearing date attached.

This 10th day of February, 2025.

Clerk of Superior Court



Alan Lee, Clerk
Carroll County, Georgia

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

CIVIL ACTION NUMBER SUCV2025000127

Christner, Polina
Christner, Daniel
Cutler, Paul
Karen, Hartley
Cook, Dylan
Reeves, Clint
Hartley, Brad
Johnson, Sherred

PLAINTIFF

VS.

City of Villa Rica
Artesia Capital LLC
Embry Development Company LLC
Avemore GA LLC
Tolbert, Jerry C

DEFENDANTS

**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

SUMMONS

TO: TOLBERT, JERRY C

You are hereby required to file with the Clerk of said court and serve upon the plaintiff or plaintiff's attorney, whose name, address and email address are:

**Jefferson M Allen
Cohen Cooper Estep & Allen
3330 Cumberland Boulevard
Suite 600
Atlanta, Georgia 30339
jallen@ccealaw.com**

an answer to the complaint which is herewith served upon you. You must make your answer within 30 days after service of this summons upon you. This time excludes the day of service. If you fail to answer, the court will issue a default judgment against you for the relief sought in the complaint.

If this action pertains to a Protective Order, the answer is to be filed and served on or before the scheduled hearing date attached.

This 10th day of February, 2025.

Clerk of Superior Court



Alan Lee, Clerk
Carroll County, Georgia

General Civil and Domestic Relations Case Filing Information Form

FILED IN OFFICE

CLERK OF SUPERIOR COURT
CARROLL COUNTY, GEORGIA

SUCV2025000127

DENNIS T. BLACKMON

FEB 10, 2025 03:03 PM

Superior or State Court of Carroll County

For Clerk Use Only

Date Filed 02-10-2025

MM-DD-YYYY

Case Number SUCV2025000127


Alan Lee, Clerk
Carroll County, Georgia

Plaintiff(s)

Christner, Polina

Last	First	Middle I.	Suffix	Prefix
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Christner, Daniel

Last	First	Middle I.	Suffix	Prefix
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Cutler, Paul

Last	First	Middle I.	Suffix	Prefix
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Karen, Hartley

Last	First	Middle I.	Suffix	Prefix
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Defendant(s)

City of Villa Rica

Last	First	Middle I.	Suffix	Prefix
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Artesia Capital LLC

Last	First	Middle I.	Suffix	Prefix
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Embry Development Company LLC

Last	First	Middle I.	Suffix	Prefix
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Avemore GA LLC

Last	First	Middle I.	Suffix	Prefix
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Plaintiff's Attorney Allen, Jefferson M

Bar Number 010898

Self-Represented

Check one case type and, if applicable, one sub-type in one box.

General Civil Cases

- Automobile Tort
- Civil Appeal
- Contract
- Contempt/Modification/Other Post-Judgment
- Garnishment
- General Tort
- Habeas Corpus
- Injunction/Mandamus/Other Writ
- Landlord/Tenant
- Medical Malpractice Tort
- Product Liability Tort
- Real Property
- Restraining Petition
- Other General Civil

Domestic Relations Cases

- Adoption
- Contempt
 - Non-payment of child support, medical support, or alimony
- Dissolution/Divorce/Separate Maintenance/Alimony
- Family Violence Petition
- Modification
 - Custody/Parenting Time/Visitation
- Paternity/Legitimation
- Support – IV-D
- Support – Private (non-IV-D)
- Other Domestic Relations

Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

Case Number _____

Case Number _____

I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

Is a foreign language or sign-language interpreter needed in this case? If so, provide the language(s) required.

_____ Language(s) Required

Do you or your client need any disability accommodations? If so, please describe the accommodation request.

IN THE SUPERIOR COURT OF CARROLL COUNTY

STATE OF GEORGIA

<p>Dylan Cook, Daniel Christner, Polina Christner, Paul Cutler, Karen Hartley, Shird B. Hartley, Antaus Hight, Sherrod Johnson, Greg Surette, Clint Reeves, John Vega and</p> <p>John and Jane Does 1-20,</p> <p style="text-align: center;">Petitioners,</p> <p>City of Villa Rica, Georgia, Embry Development Company, LLC, Avemore GA LLC Artesia Capital LLC And Jerry C. Tolbert</p> <p style="text-align: center;">Respondents</p>	<p>Superior Court Case No.</p> <p>SUCV2025000127</p> <p>Lower Judiciary Case/Decision:</p> <ul style="list-style-type: none"> • Annexation of Parcel 168 0090 (Hickory Level Road)(ANX-01 & 2-24)(RA-06-24) • Rezoning of Parcel 168 0090 (Hickory Level Road) from Agricultural and Conservation to PUD (ANX-01 & 2-24)(RA-06-24) • Annexation of Parcel 169 0120 (2664 South Van Wert Road Road) (ANX-01 & 2-24)(RA-06-24) • Rezoning of Parcel 169 0120 (2664 South Van Wert Road) from Agricultural and Conservation to PUD (ANX-01 & 2-24)(RA-06-24) • Text Amendment to Establish Section 4.18Technology Park Overlay District and New Definition To Sec. 13.01(TA-01025) <p>Action Taken at January 14, 2024 meeting of Villa Rica City Council Meeting.</p>
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PLAINTIFFS MOTION FOR APPOINTMENT OF A SPECIAL PROCESS SERVER

COMES NOW the Plaintiff, pursuant to O.C.G.A. § 9-11-4(c) and shows this Court that expedited service on Defendant is necessary and requests the appointment of a Special Process Server to serve Defendant, as authorized under the law. Plaintiff submits herewith an Affidavit of the process server.

Plaintiff's request this appointment because under the relevant statute for judicial appeal there is an expedited and dramatically shortened time to effect service of the respondents. Furthermore, as several of the respondents to not reside in Carroll County, Petitioners need to rely

upon a private server who can place necessary focus on timely service rather than Sheriffs offices from various counties which have their own service duties and workload.

WHEREFORE, Plaintiff moves the Court for an Order appointing Brad Moore who is not an interested party or a party to the suit, is a citizen of the United States and is over 18 years of age, to serve Defendant with process, and to make a return on that service pursuant to O.C.G.A. § 9-11-4(c).

Respectfully Submitted this 11th day of February, 2025

COHEN COOPER ESTEP & ALLEN

/s/ Jefferson M. Allen

Jefferson M. Allen

Georgia Bar No. 010898

Attorney for Petitioners

3330 Cumberland Boulevard

Suite 600

Atlanta, Georgia 30339

404-814-0000 (T)

IN THE SUPERIOR COURT OF CARROLL COUNTY

STATE OF GEORGIA

<p>Dylan Cook, Daniel Christner, Polina Christner, Paul Cutler, Karen Hartley, Shird B. Hartley, Antaus Hight, Sherrod Johnson, Greg Surette, Clint Reeves, John Vega and</p> <p>John and Jane Does 1-20,</p> <p>Petitioners,</p>	<p>Superior Court Case</p> <p>No. SUCV2025000127</p> <p>Lower Judicatory Case/Decision:</p> <ul style="list-style-type: none">• Annexation of Parcel 168 0090 (Hickory Level Road)(ANX-01 & 2-24)(RA-06-24)• Rezoning of Parcel 168 0090 (Hickory Level Road) from Agricultural and Conservation to PUD (ANX-01 & 2-24)(RA-06-24)• Annexation of Parcel 169 0120 (2664 South Van Wert Road Road) (ANX-01 & 2-24)(RA-06-24)• Rezoning of Parcel 169 0120 (2664 South Van Wert Road) from Agricultural and Conservation to PUD (ANX-01 & 2-24)(RA-06-24)• Text Amendment to Establish Section 4.18Technology Park Overlay District and New Definition To Sec. 13.01(TA-01025) <p>Action Taken at January 14, 2024 meeting of Villa Rica City Council Meeting.</p>
<p>City of Villa Rica, Georgia, Embry Development Company, LLC, Avemore GA LLC Artesia Capital LLC And Jerry C. Tolbert</p> <p>Respondents</p>	

ORDER GRANTING MOTION FOR SPECIAL APPOINTMENT OF PROCESS SERVER

Plaintiff's Motion for Special Appointment of Process Server having been read and considered, and it appearing to the Court that such an appointment is authorized by O.C.G.A. § 9-11-4(c) and should be made,

IT IS HEREBY ORDERED that Brad Moore who is a citizen of the United States is specially appointed, authorized, and directed to serve a copy of the Summons and Complaint in this action on Defendant with process, and to make and file his proof of service as required by law.

SO ORDERED, this ____ day of February 2025.

Judge Dennis T. Blackmon
Superior Court of Carroll County

Presented by:

COHEN COOPER ESTEP & ALLEN

/s/ Jefferson M. Allen
Jefferson M. Allen
Georgia Bar No. 010898
Attorney for Petitioners

3330 Cumberland Boulevard
Suite 600
Atlanta, Georgia 30339
404-814-0000 (T)

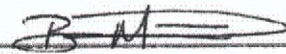

Alan Lee, Clerk
Carroll County, Georgia

AFFIDAVIT OF PROCESS SERVER

I, the undersigned, Brad Moore, being dully sworn, deposes and states:

- 1) That I am a professional process server, a U.S. Citizen over the age of 18, and meet all of the requirements for appointment as a process server in the state of Georgia.
- 2) That I am a wholly disinterested party and I neither have any relationship with, nor am I employed by, any of the parties to this action and in no way can benefit from its outcome.
- 3) I have not had a felony conviction or any other action taken against me which would prevent me from being lawfully appointed as a process server in the State of Georgia.

FURTHER AFFIANT SAYETH NAUGHT


signature
Brad Moore
print name
1840 Sanborne Way
address line 1
Dacula, GA, 30019
City, State, Zip
(770) 235-7676
phone
brad@legioninvestigativegroup.com
server email address

STATE OF: Georgia)

COUNTY OF: Hall)

Signed and sworn to (or affirmed) before me

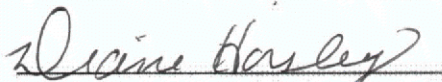
this 7 day of January, 2025

by Brad Moore process server, who is

personally known to me

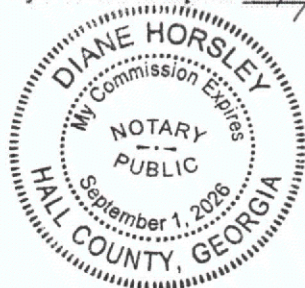
produced identification

type of identification produced: _____



Notary Public, State of Georgia

My commission expires: 9/1/26



**IN THE SUPERIOR COURT OF CARROLL COUNTY
STATE OF GEORGIA**

**DYLAN COOK, DANIEL CHRISTNER *
POLINA CHRISTNER, ET AL. *
PLAINTIFFS * Civil Action File
*
VS. * No. 25-CV-127
*
CITY OF VILL RICA, GA, ET AL. *
*
DEFENDANTS ***

VOLUNTARY RECUSAL ORDER

I, DENNIS T. BLACKMON, hereby recuse myself in the above-styled case. I hereby request that another Judge be assigned to the above-styled case. By random computer assignment.

SO ORDERED, this 12 day of February 2025.



JUDGE, DENNIS T. BLACKMON