
Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



North facing (static) panel – 611 Webb Industrial Drive



Staff Review:

As part of its Northwest Corridor Project, the Georgia Department of Transportation (GDOT) will be widening I-75 westward in order to construct elevated, managed lanes. This is resulting in the condemnation of properties, many of which contain legally nonconforming billboards, along the west side of I-75. In this case, although the existing billboard is not being acquired by GDOT as part of the I-75 managed lane project, the applicant is requesting multiple variances so the existing billboard may be demolished and reconstructed at the same location, except that the new billboard is proposed at a height of 70 ft. (an increase in height of 35 ft).

Scott Peters, representing Clear Channel Outdoor Inc., is requesting variances that would allow the reconstruction of a billboard located at 611 Webb Industrial Drive. The subject property is adjacent to I-75, zoned HI (Heavy Industrial), and currently contains a double-sided, static face billboard. The surrounding properties are also zoned HI and RRX (Railroad and Railroad Crossings). The existing sign is not proposed to be demolished by GDOT as part of the I-75 managed lane project, however, the applicant is requesting the variances in order to construct a higher sign due to the increase in elevation of the new managed lanes.

Section 714.04 (G.) states that “No billboard lawfully in existence on December 11, 2013 shall be altered or moved unless it is made to comply with the provisions of this Division.” Additionally, Section 714.06 (C.)(3.) states that “no structural repairs or changes in the size, shape, location, or design of this sign shall be permitted except to make the sign comply with the requirements of this article.” In order reconstruct the sign, the following variances would be necessary:

1. Variance to reduce the side setbacks for a billboard support structure from 20’ to 11.’
2. Variance to reduce the rear setback for a billboard support structure from 40’ to 23.’
3. Variance to reduce the rear and side setbacks for billboard sign faces to 0.’
4. Variance to locate a billboard within 1,000’ of other billboards.
5. Variance to locate a billboard on a substandard lot.
6. Variance to reduce the minimum lot width from 150’ to 21.’
7. Variance to locate a billboard closer to a permanent structure than a distance that is equal to or greater than the height of the sign.

As stated above, although the existing billboard is not being acquired by GDOT as part of the I-75 managed lane project, the applicant is requesting multiple variances so the existing billboard may be demolished and reconstructed at the same location, except that the new billboard is proposed at a height of 70 feet (an increase in height of 35 feet).

This request for variances was discussed by City Council on Wednesday October 8, 2014, and there were questions about the area of the property and the possibility of acquiring additional property. After a lengthy discussion the matter was tabled until the next regularly scheduled City Council meeting on Wednesday November 12, 2014.



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

On November 10, 2014, the applicant requested that this item be tabled until the City Council meeting on December 10, 2014, when it was tabled at the applicant's request to the January 14, 2015 City Council meeting.

Marietta TAD #1 (as of 12-16-14)
Center City South Renaissance TAD

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Amount Collected	\$ 326,446.67	\$ 345,338.53	\$ 442,181.39	\$ 488,433.05	\$ 540,598.48	\$ 497,464.36	\$ 487,824.12	\$ 458,505.43	\$ 441,752.41	\$ 436,182.80	\$ 4,028,544.44	
Total Taxes due for FY - 04	\$ 282,970.39	\$ 282,970.39	\$ 282,970.39	\$ 282,970.39	\$ 282,970.39	\$ 282,970.39	\$ 282,970.39	\$ 282,970.39	\$ 282,970.39	\$ 282,970.39	\$ 2,829,703.90	
TAD collections	43,476.28	62,368.14	159,211.00	205,462.66	257,628.09	214,493.97	204,853.73	175,533.04	158,782.02	153,212.41	1,198,840.54	
Amount Paid To Date	\$ 43,476.28	\$ 62,400.02	\$ 159,211.00	\$ 205,399.40	\$ 254,278.56	\$ 209,387.56	\$ 191,251.46	\$ 133,156.72	\$ 158,782.02	\$ -	\$ 1,417,343.02	
Should have been paid	\$ 38,860	\$ 58,301	\$ 155,970	\$ 203,057	\$ 243,222	\$ 200,280	\$ 151,983	\$ 123,253	\$ 117,407	\$ -	\$ 1,421,269.41	
Diff	\$ 4,616.26	\$ 4,099.17	\$ 3,240.83	\$ 2,342.32	\$ 11,056.94	\$ 9,107.12	\$ 39,268.32	\$ 9,903.43	\$ 41,375.03	\$ -	\$ 3,926.39	
Payment Due	\$ (0.00)	\$ (31.88)	\$ -	\$ 63.26	\$ 3,349.53	\$ 5,106.41	\$ 13,602.27	\$ 42,378.32	\$ (0.00)	\$ -	\$ 64,467.91	

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Assessment	48,968,544	55,261,371	57,984,613	72,082,280	78,968,519	84,793,956	77,127,405	66,756,338	62,685,359	62,480,432	65,222,203	624,804,332
Net Change from Base Year	6,292,827	9,016,069	23,113,736	29,999,975	35,825,412	37,709,794	17,787,704	13,716,815	13,511,888	16,253,659	33,199,732	162,533,659
% Change from Base Year	12.85%	18.41%	47.20%	61.26%	73.16%	73.16%	57.50%	36.32%	28.01%	27.59%	33.19%	27.59%
	6.85	6.82	6.82	6.82	6.82	6.82	6.82	7.72	7.72	7.72	7.52	7.32
	43,106	61,490	157,636	204,600	244,329	192,043	137,322	105,894	101,609	118,977	1,367,005	

General Fund	AMST	Exemption	Net Assessed	Difference	% Change	Multiplier	Millage	Total Tax Calculated	Amount Owed	Total Tax General Fund per report	Amount Owed	Amount Paid
Digest 2004	48,968,544.00	5,330,481.00	43,638,063.00	5,672,996.00	10.27%	11.504510600%	6.85	\$ 337,781	\$ 38,860	\$ 326,447	\$ -	\$ 43,476.28
Digest 2005	55,261,371.00	5,950,312.00	49,311,059.00	8,548,512.00	14.74%	16.380672600%	6.82	\$ 355,912	\$ 58,301	\$ 345,339	\$ 37,556	\$ 62,400.02
Digest 2006	57,984,613.00	5,798,038.00	52,186,575.00	22,869,526.00	31.73%	34.386340500%	6.82	\$ 453,582	\$ 203,057	\$ 442,400	\$ 152,125	\$ 159,211.00
Digest 2007	72,082,280.00	5,574,691.00	66,507,589.00	29,773,765.00	37.70%	40.557177000%	6.82	\$ 500,669	\$ 243,222	\$ 488,652	\$ 198,183	\$ 205,399.40
Digest 2008	78,968,519.00	5,556,691.00	73,411,828.00	35,662,994.00	42.06%	44.971650300%	6.82	\$ 540,833	\$ 200,280	\$ 497,892	\$ 243,222	\$ 254,278.56
Digest 2009	84,793,956.00	5,492,899.00	79,301,057.00	29,366,633.00	38.08%	40.225676700%	6.82	\$ 497,892	\$ 151,983	\$ 488,869	\$ 200,280	\$ 209,387.56
Digest 2010	77,127,405.00	4,122,709.00	73,004,696.00	19,686,935.00	29.49%	31.088725800%	7.72	\$ 488,869	\$ 123,253	\$ 460,140	\$ 151,983	\$ 191,251.46
Digest 2011	66,756,338.00	3,431,340.00	63,324,998.00	15,612,631.00	24.99%	26.786091400%	7.72	\$ 460,139	\$ 117,407	\$ 445,565	\$ 123,254	\$ 133,156.72
Digest 2012	62,685,359.00	3,081,844.00	59,603,515.00	18,193,175.00	27.89%	29.423921600%	7.32	\$ 445,565	\$ 133,174	\$ 452,605	\$ 133,243	\$ 158,782.02
Digest 2013	62,480,432.00	3,229,738.00	59,250,694.00	18,193,175.00	27.89%	29.423921600%	7.32	\$ 452,605	\$ 133,174	\$ 452,605	\$ 133,243	\$ -
Digest 2014	65,222,203.00	3,390,965.00	61,831,238.00	43,638,063.00	18,193,175.00	27.89%	29.423921600%	\$ 452,605	\$ 133,174	\$ 452,605	\$ 133,243	\$ -
								\$ 8,164.61	\$ 19,969.45	\$ 4,488,900.07	\$ 1,413,802.18	\$ 1,417,343.02
								\$ (20,038.37)				

$$V = \frac{I - B}{T - V} \times \frac{(V - B)/V}{I - B}$$

$$V = \frac{61,831,238.00 - 43,638,063.00}{18,193,175.00} \times \frac{18,193,175.00}{18,193,175.00}$$

I = T x (V-B)/V
I = Increment
B = Base
T = ad valorem taxes levied in district
V = Taxable value of property

$$v = \frac{61,831,238}{43,638,063}$$

$$t = \frac{18,193,175}{29,426}$$

$$b = \frac{43,638,063}{133,243}$$

0.113873885

PUBLIC NOTICE OF VARIANCES

The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following variances for a recommendation to the City Council at their meeting on **Wednesday, January 14, 2015, 7:00 p.m.**, City Hall, for a final decision to be made.

V2014-43 [VARIANCE] CLEAR CHANNEL OUTDOOR, INC. request variances for property located in Land Lot 09980, District 16, Parcel 0120, 2nd Section, Marietta, Cobb County, Georgia and being known as 611 Webb Industrial Drive, currently zoned HI (Heavy Industrial). Variance to reduce the side setbacks for a billboard support structure from 20' to 11'; Variance to reduce the rear setback for a billboard support structure from 40' to 23'; Variance to reduce the rear and side setbacks for billboard sign faces to 0'; Variance to locate a billboard within 1,000' of other billboards; Variance to locate a billboard on a substandard lot; Variance to reduce the minimum lot width from 150' to 21'; Variance to locate a billboard closer to a permanent structure than a distance that is equal to or greater than the height of the sign. Ward 5B.

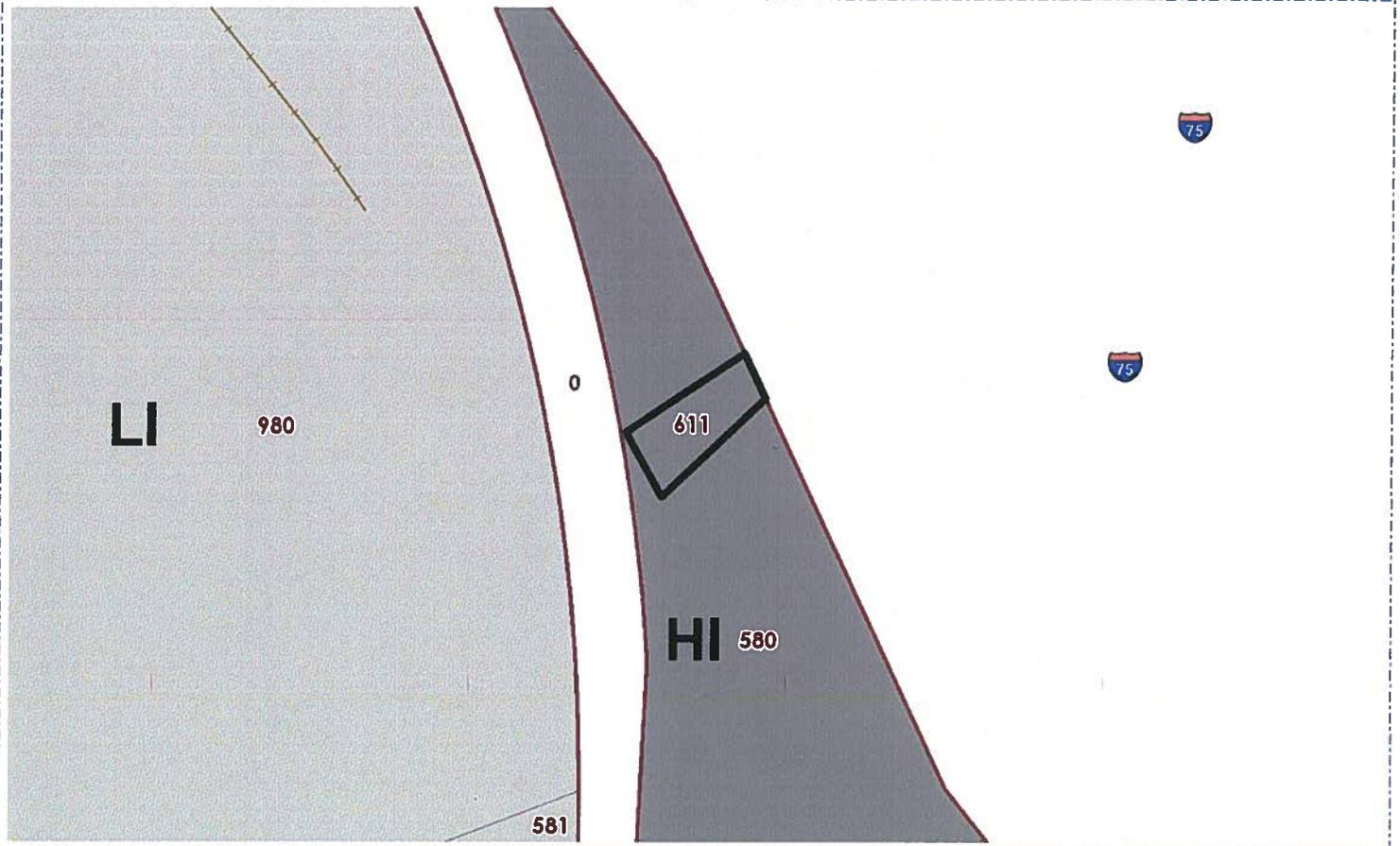
A description and plat of the property sought for the rezoning and future land use assignment are on file in the Planning and Zoning Office, City Hall, and is available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

For additional information please call the Planning and Zoning Office (770) 794-5440.

Accessibility to Meetings: If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call Mr. Dennis Stover, ADA Coordinator, at 770-794-5568 (voice) or 770-794-5560 (TDD) no later than 48 hours before the date of the above meeting.

City of Marietta
205 Lawrence Street
Marietta, Georgia 30060

Variance

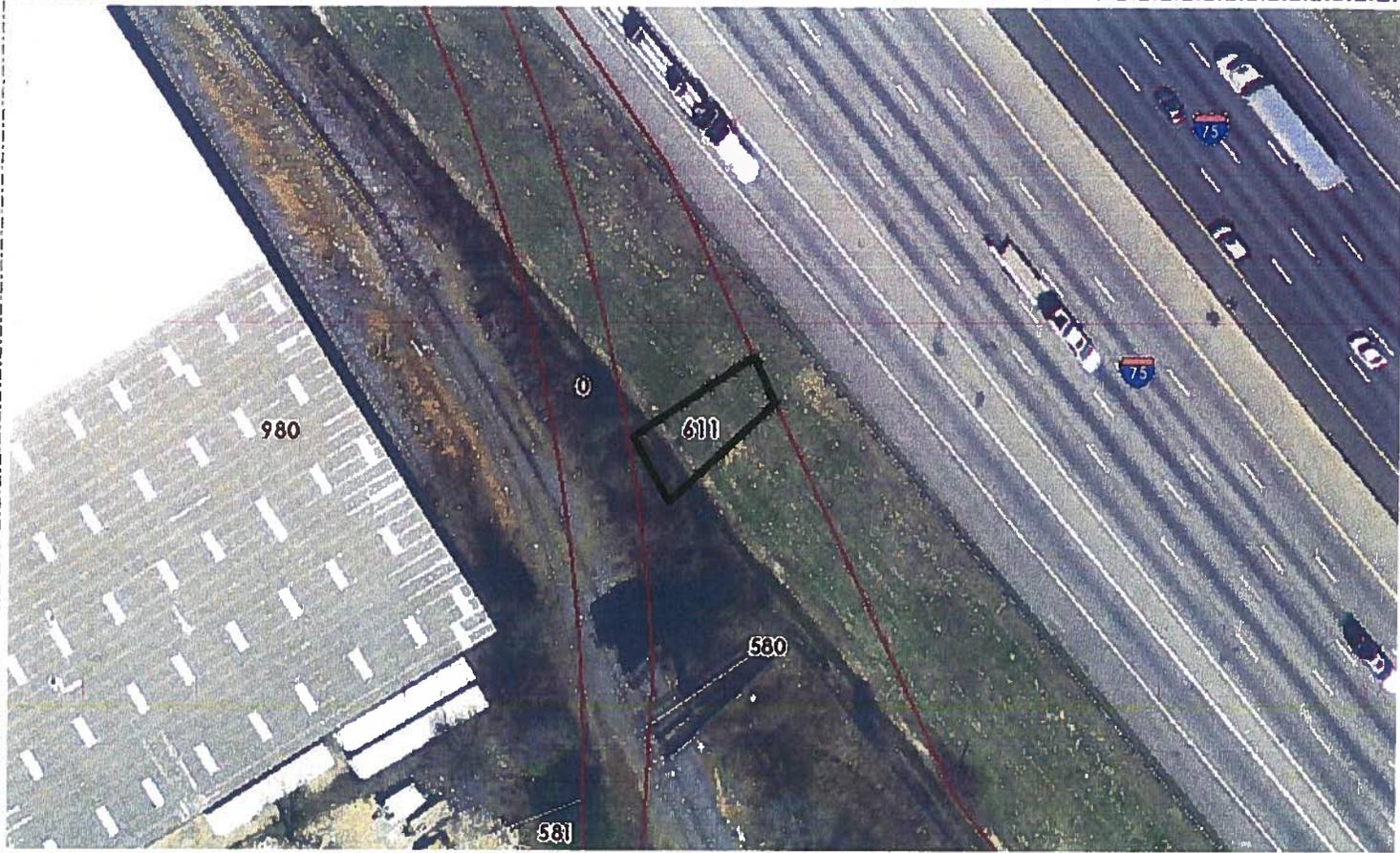


Address	Parcel Number	Acreage	Ward	Zoning	FLU
611 WEBB INDUSTRIAL DR	16099800120	0.023	5B	HI	IM
Property Owner:	Clear Channel Outdoor				
Applicant:					
City Council Hearing Date:	1/14/15				
Acquisition Date:					
Case Number:	V2014-43				
City of Marietta Planning & Zoning					

Zoning Symbols

-  Railroads
-  City Limits
-  Cobb County Pockets
- NA
-  R1 - Single Family Residential (1 units/acre)
-  R2 - Single Family Residential (2 units/acre)
-  R3 - Single Family Residential (3 units/acre)
-  R4 - Single Family Residential (4 units/acre)
-  RA4 - Single Family Residential - Attached
-  RA6 - Single Family Residential - Attached
-  RA8 - Single Family Residential - Attached
-  MHP - Mobile Home Park
-  PRD-SF - Planned Residential Dev. Single Family
-  RM8 - Multi Family Residential (8 units/acre)
-  RM10 - Multi Family Residential (10 units/acre)
-  RM12 - Multi Family Residential (12 units/acre)
-  RHR - Residential High Rise
-  PRD-MF - Planned Residential Dev. Multi Family
-  NRC - Neighborhood Retail Commercial
-  CRC - Community Retail Commercial
-  RRC - Regional Retail Commercial
-  PCD - Planned Commercial Development
-  LI - Light Industrial
-  HI - Heavy Industrial
-  PID - Planned Industrial Development
-  MKD - Mixed Use Development
-  CBD - Central Business District
-  OIT - Office Institutional Transitional
-  LRO - Low Rise Office
-  OI - Office Institutional
-  OS - Office Services
-  OHR - Office High Rise

Aerial Map



Address	Parcel Number	Acreage	Ward	Zoning	FLU
611 WEBB INDUSTRIAL DR	16099800120	0.023	5B	HI	IM

Property Owner:	Clear Channel Outdoor
Applicant:	
City Council Hearing Date:	1/14/15
Planning Commission Hearing Date:	
BZA Hearing Date:	Case Number: V2014-43
Comments:	

Legend

-  Railroads
-  City Limits
-  Cobb County Pockets

LAW OFFICES
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Scott W. Peters

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Direct Dial: (404) 954-9836

August 19, 2014

VIA HAND DELIVERY

Mr. Brian Binzer, Director
Department of Development Services
City of Marietta
205 Lawrence Street
Marietta, GA 30060

RE: Application for Variance – Clear Channel Outdoor
Letter of Intent
611 Webb Industrial Drive/GDOT Parcel 71

Dear Mr. Binzer:

Please accept this letter in support of the application of Clear Channel Outdoor, Inc., in regard to its request to reconstruct its existing legal non-conforming sign located at 611 Webb Industrial Drive in order to preserve the visibility of the sign. This existing outdoor advertising sign is subject to a condemnation action by the Georgia Department of Transportation (“GDOT”) for the I-75 managed lane project. This variance application seeks approval to allow the sign to be reconstructed at its existing location at a height of 70’ above the current elevation of the nearest general travel lane of I-75 (an increase in height of 35’). The replacement sign shall be of the same size and shape, and the only modification will be to increase its height in order to maintain the visibility of the sign to the existing travel lanes of I-75.

GDOT is in the process of condemning a limited portion of the parcel upon which this billboard is located. The property currently consists of approximately 976 square feet, and the sole improvement located upon the property is the existing outdoor advertising sign of Clear Channel Outdoor. The property has no value other than for use with the outdoor advertising sign. The top of the sign is currently approximately 35’ above the adjoining travel lanes of I-75 immediately adjacent to the sign. However, the new managed lanes will be constructed more than 20’ above the existing road grade immediately adjacent to the sign, and the elevation of the new managed lanes will continue to increase in height to the north of the sign location. As a result, the bottom

LAW OFFICES
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Mr. Brian Binzer

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August 19, 2014

edge of the sign will be even with (or below) the new managed lanes that are being constructed.

Clear Channel Outdoor owns a permanent easement across the property upon which the sign is located for purposes of maintenance and operation of the sign. In addition, Clear Channel Outdoor is the owner of easements for both access and visibility to I-75 across the adjoining property owned by Capital Materials, Inc. If the height of the sign can not be increased, these property interests of Clear Channel Outdoor will be significantly impacted. While the top of the sign is presently only 35' above the adjoining elevation of I-75, the Marietta Code of Ordinances allows an outdoor advertising sign to be up to 70' above the elevation of the adjoining roadway (Section 714.04.G.6).

Attached hereto as Exhibit "A" is a Variance Analysis detailing the variances requested in order to allow the reconstruction of the sign at an overall height of 70' above the existing road grade of I-75. As you can see by this analysis, there are no changes to the non-conformities that are applicable to the sign, as the increase in the height of the sign will be in conformity with the provisions of Section 714.04.G.6 of the Marietta Sign Ordinance. Upon reconstruction, the sign will be built in conformity with existing building codes, and shall be on the same footprint of the existing sign. The sign shall remain the same size and shape, only the height shall be increased by the requested thirty five feet.

In support of this request, Clear Channel Outdoor shows that its existing outdoor advertising sign is a legal non-conforming use which was originally constructed pursuant to a permit that was issued by the City of Marietta. In addition, Clear Channel Outdoor possesses a GDOT permit for this sign. The non-conformity of the existing sign is due to no action by Clear Channel Outdoor, but rather has resulted in changes to the Marietta code following the construction of the sign.

Clear Channel Outdoor further shows that the conditions requiring the request for this variance are being caused by GDOT, and not by any action of Clear Channel Outdoor or the property owner. The extraordinary and exceptional circumstances are the result of the actions of GDOT in condemning a portion of the property for the I-75 managed lane project, and constructing the new managed lanes at a significantly higher elevation than the existing I-75 general travel lanes. GDOT is constructing the managed lanes at an elevation of approximately 20' feet higher than existing road grade immediately adjacent to the sign, and approximately 20'-25' higher than existing grade immediately to the north of the subject sign (as reflected on attached GDOT plans and cross sections). It is this increase in height of the adjoining road which Clear Channel

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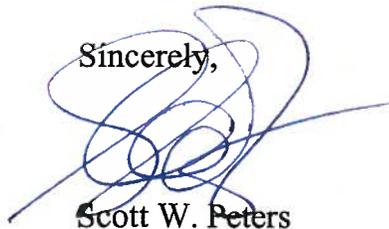
Mr. Brian Binzer
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August 19, 2014

Outdoor seeks to address by the requested increase in the height of the sign to 70' above the existing adjoining road grade. This increase in height will merely allow the sign to maintain visibility consistent with that which exists today to the adjoining travel lanes of I-75.

The granting of these variances will allow Clear Channel Outdoor to maintain this outdoor advertising sign in substantially the same condition which exists today. The requested variances are the minimum necessary to allow Clear Channel to maintain the use of this outdoor advertising sign, which is located immediately adjacent to I-75. If approved, the grant of these variances will also save the taxpayers of the State of Georgia (including those in Marietta) substantial expenses that would have to otherwise be paid to the Clear Channel Outdoor for the condemnation of its property interests and outdoor advertising sign. The ability to continue the use of this sign will also maintain the tax base of the City of Marietta by preventing the subject property value from being reduced by the loss of this asset. Clear Channel would not be able to viably maintain this existing non-conforming sign due to the actions of GDOT, and the Marietta Sign Ordinance would prohibit the reconstruction of the sign as requested without the approval of the requested variances.

Clear Channel Outdoor respectfully requests that this variance application be approved so as to permit the requested reconstruction of this existing legal non-conforming sign at a height of 70' over existing I-75 road grade. Thank you for your consideration in this regard.

Sincerely,



Scott W. Peters

SWP/cal
Enclosure

Parcel 71 - Variance Analysis

Clear Channel Outdoor

	Ordinance Requirement	As-Built	As-Proposed
1	Within 100 feet of the right-of-way of Interstate 75.	Yes	Yes
2	Billboards shall also be regulated as a principal use and are required to meet all dimensional standards of the applicable zoning district. HI setbacks: Minimum Lot Size: 40,000 sq. ft. Minimum Lot Width: 150 ft. Maximum Building Height: 50 ft. Maximum Floor Area Ratio: 1.0 Maximum Impervious Surface: 85% Front Setback (arterial): 75 ft. Front Setback (collector): 50 ft. Front Setback (local): 50 ft. Side Setback (major): 50 ft. Side Setback (minor): 20 ft.	Billboard on separate parcel, warehouse on adjoining parcel. Lot size: 0.029 Acres Lot width: 28' at widest Max Building Height: 53 ft. Max Floor Area Ratio: 5% Max Impervious Surface: ~10% Min landscaped area: 50% Front Setback (arterial): NA Front Setback (collector): NA Front Setback (local): 0.5 ft. Side Setback (major): 0.5 ft. Side Setback (minor): NA	Billboard on separate parcel, warehouse on adjoining parcel. Lot size: 0.029 Acres Lot width: 28' at widest Max Building Height: 70 ft. Max Floor Area Ratio: 5% Max Impervious Surface: ~10% Min landscaped area: 50% Front Setback (arterial): NA Front Setback (collector): NA Front Setback (local): 0.5 ft. Side Setback (major): 0.5 ft. Side Setback (minor): NA
3	No billboard shall be placed within 500 feet of a residential zoning district, church, school, park, public building or cemetery.	None	None
4	No billboard shall contain a sign area in excess of 672 square feet.	Panel size = 672	Panel size = 672
5	No billboard shall contain more than 2 faces	2 Panel Faces	2 Panel Faces
6	No billboard shall be located within a 1,000-foot radius of another billboard	Billboard 598 ft. to the South Billboard 865 ft. to the North	Billboard 598 ft. to the South Billboard 865 ft. to the North
7	No billboard may exceed 70 feet in height along an interstate as measured from the established road grade at the nearest point of the aforementioned road	35 ft. over I-75 road grade	Max 70 ft. over I-75 road grade
8	Tree preservation.	N/A	N/A
9	No billboard shall be located or erected on a substandard lot. In addition, billboards shall meet all other zoning district regulations, including required setbacks and lot widths. Support structures shall meet the setback requirement; however sign faces may extend 25% into any required setback.	Existing substandard lot - Dimensions Above	Existing substandard lot - Dimensions Above

10	No billboard shall be located or erected on a lot upon which a building is located if such lot or the building thereon has any sign located thereon	Billboard on separate lot from adjoining warehouse building	Billboard on separate lot from adjoining warehouse building
11	No billboard may be located closer to a permanent structure than a distance that is equal to or greater than the height of the sign	Billboard is located 71 feet from building located on adjacent parcel	Billboard will be located 71 feet from building located on adjacent parcel
12	Billboards shall be permitted in LI, HI, CRC, RRC, and OHR zoning districts. Billboards are prohibited in all other zoning districts	Zoned HI	Zoned HI
13	Billboards shall not be permitted within any right-of-way or easement provided for a railroad	Billboard is located adjacent to and over existing railroad spur line servicing Capital Materials.	Billboard is located adjacent to and over existing railroad spur line servicing Capital Materials

CONSTITUTIONAL OBJECTIONS

COME NOW Clear Channel Outdoor, Inc. and landowner Bryce Development, Inc. (collectively, the “Applicants”) and set forth their constitutional objections in the event their variance application is denied.

The Applicants seek variances in the City of Marietta, Georgia, as described in the foregoing application. The present classification of the subject property without the granting of such variances constitutes a taking of the property without payment of adequate compensation. Lamar Adver. of South Georgia v. City of Albany, 260 Ga. 46, 389 S.E.2d 216 (1990). Moreover, the entire Marietta sign code (division 714 of the Marietta Zoning Ordinance) and specifically sections 714.04(G) and 714.06 of the Marietta Zoning Code, violate the First Amendment to the Constitution of the United States and Article I, Section I, Paragraph V (Free Speech) of the Constitution of the State of Georgia. The sign code impermissibly “evidences hostility to signs in general and to commercial signs in particular.” Fulton County v. Galberaith, 282 Ga. 314, 647 S.E.2d 24 (2007). Sections 714.04(G) and 714.06 of the zoning code do not directly advance any governmental interest or, in the alternative, regulate speech more extensively than necessary to serve any government interest. Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S.Ct. 2882, 69 L. Ed. 2d 800 (1981); Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York, 447 U.S. 557, 100 S.Ct. 2343, 65 L. Ed. 2d 341 (1980); Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc., 266 Ga. 293, 467 S.E.2d 875 (1996). “To ban any type of commercial speech, the government must have a substantial reason for doing so. A ban on commercial speech must directly

advance the asserted governmental interest, and the prohibition must be tailored so that it sweeps no more broadly than is necessary to achieve that interest.” Fulton County v. Galberaith, 282 Ga. at 318. A government restricting speech “must draw its regulations to suppress no more speech than is necessary to achieve its goals.” Coffey v. Fayette County, 279 Ga. 111, 610 S.E.2d 41 (2005). The Marietta sign restrictions violate these standards.

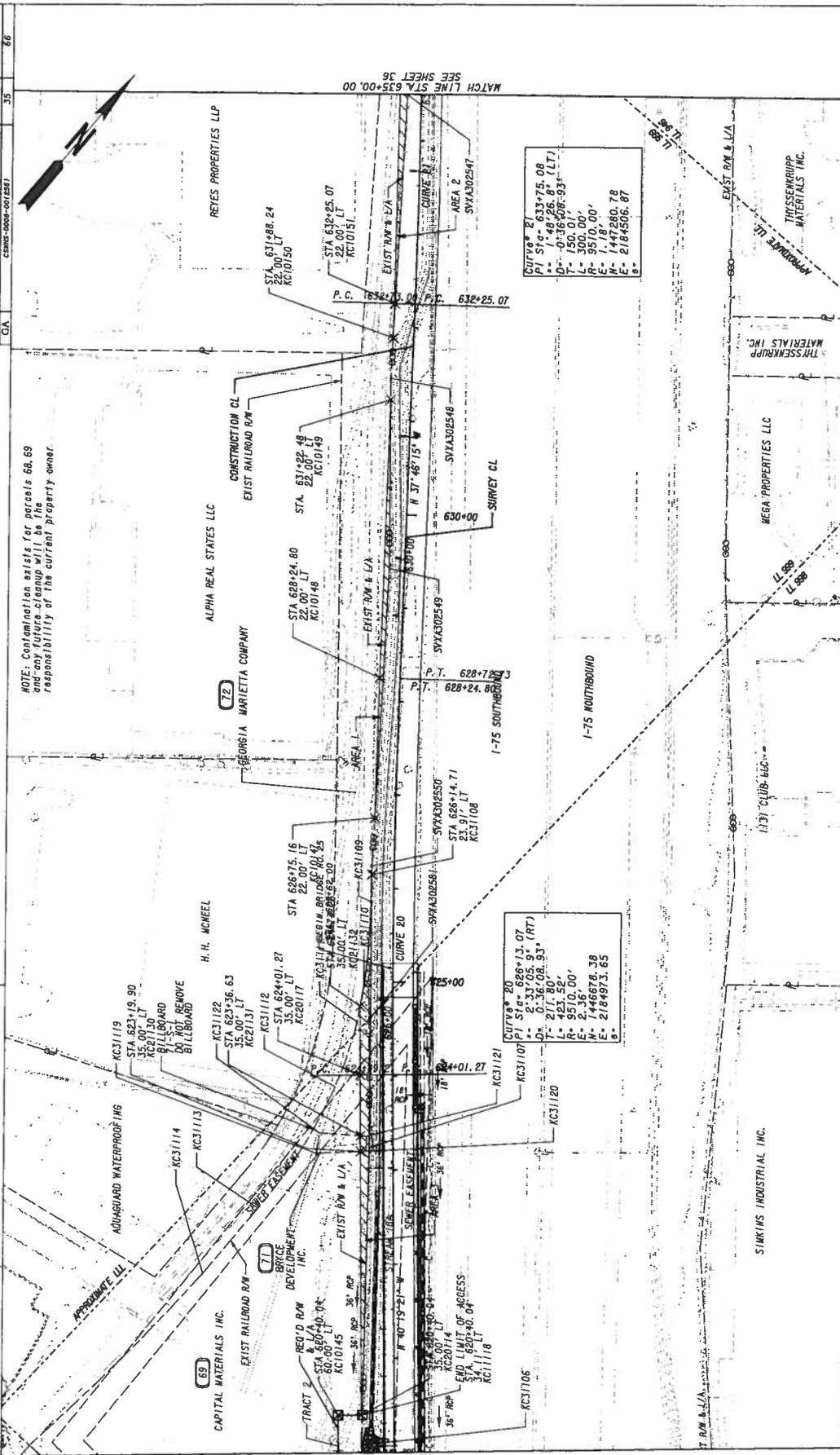
In addition, the arbitrary and capricious denial of the variance application would constitute a violation of due process and equal protection. Tuggle v. Manning, 244 Ga. 29, 159 S.E.2d 703 (1968). The denial of the variance application would not bear a substantial relation to the public health, safety, morals or general welfare. As a result, the denial of the variance application would be arbitrary and capricious. Sellars v. Cherokee County, 254 Ga. 496, 330 S.E.2d 882 (1985).

Further, the variance process set forth in section 714.04(G)(16) violates the applicant’s right to due process, equal protection, and free speech. Specifically, in order for a variance procedure to be valid, it must be “drawn with specific specificity to apprise an applicant of common intelligence of the standards which he should anticipate the governing body will consider” at the time the application is reviewed. Dinsmore Development Co., Inc. v. Cherokee County, 260 Ga. 727, 728 (1990). (Property owner entitled to special use permit for solid waste landfill where ordinance lacked sufficient objective guidelines to base approval or denial of permit); see also, Arras v. Herrin, 255 Ga. 11 (1985) (applicant entitled to beer and wine license where Board of Commissioners had absolute discretion, to approve or deny application permit); and FSL Corporation v.

Herrington, 262 Ga. 725 (1993) (applicant entitled to special use permit for sanitary landfill where county ordinance provided no objective criteria for approval or denial thereof). This is especially true where issues of free speech are involved because the government is prohibited from deciding who may speak and who may not based upon the content of the speech or the viewpoint of the speaker. City of Lakewood v. Plain Dealer Publishing Co., 486 U.S 750, 764 (1998).

If the Applicants' variance application is denied, their rights under the First and Fourteenth Amendments to the Constitution of the United States and under Article I, Section I, Paragraph I (Due Process); Article I, Section III, Paragraph I (Eminent Domain); Article I, Section I, Paragraph II (Equal Protection); and Article I, Section I, Paragraph V (Free Speech) of the Constitution of the State of Georgia will be violated. Denial of the application will also constitute an improper exercise of the police power.

NOTE: Contamination exists for parcels 68, 69 and any future cleanup will be the responsibility of the current property owner.

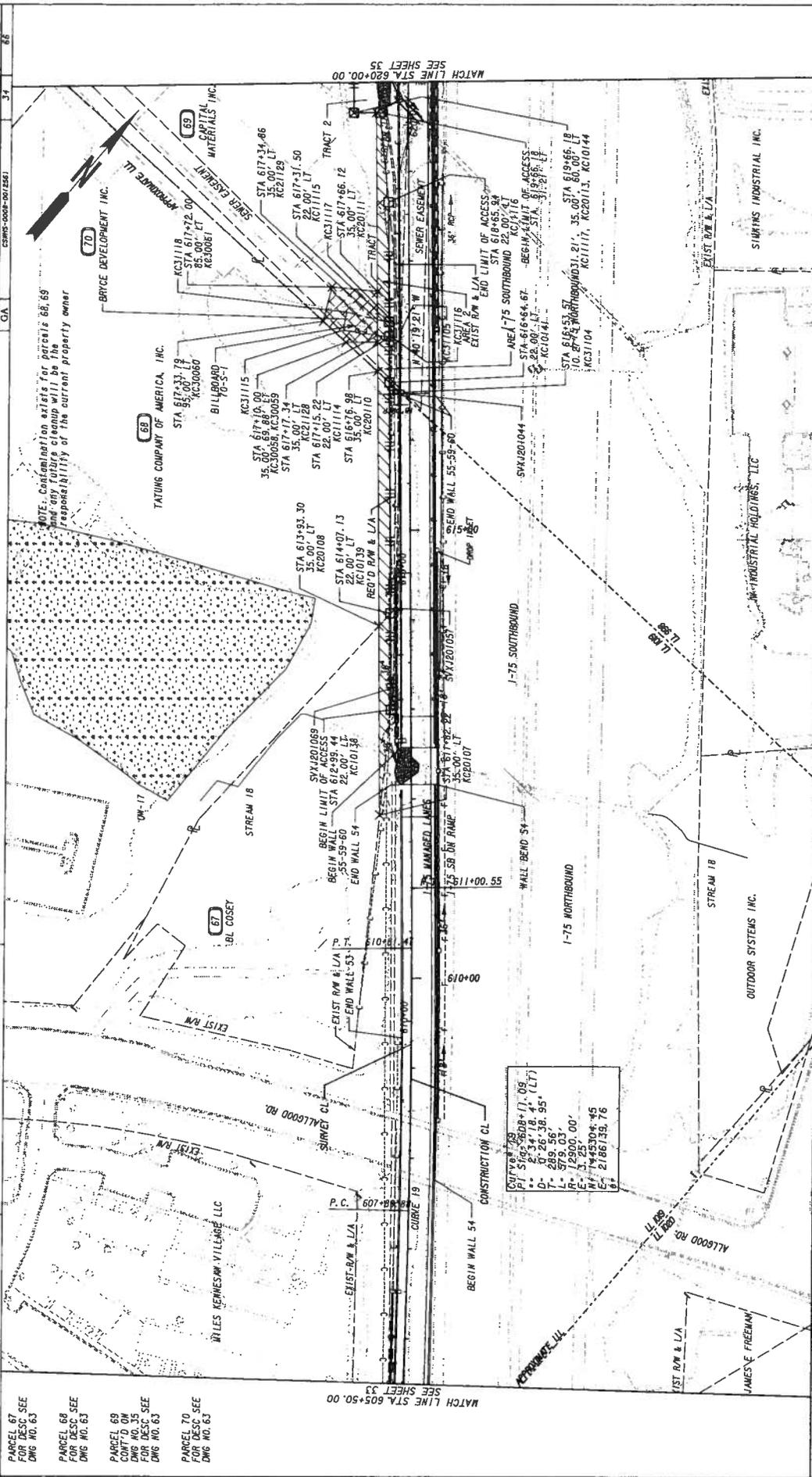


DATE	REVISIONS
06/07/13	SEE SHEET 3A
06/08/13	SEE SHEET 3B
11/01/13	SEE SHEET 3B
01/17/14	SEE SHEET 3C
06/19/14	SEE SHEET 3D

HNTB
370 NORTHDRIVE PARKWAY, 100
SUITE 200
ATLANTA, GEORGIA 30328

STATE OF GEORGIA
DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY MAP

PROJECT NO. CSMS-0001-012581
COUNTY: COBB
LAND LOT NO.: 946, 995, 998, 1019
GRID DISTRICT: 16
DATE: 04-20-12 SHEET 35 OF 66



DATE REVISIONS

DATE	REVISIONS
06/07/13	SEE SHEET 3A
04/09/13	SEE SHEET 3B
11/01/13	SEE SHEET 3B
01/21/14	SEE SHEET 3C
06/17/14	SEE SHEET 3D

HNTB
3700 NORTHSHORE PARKWAY, NW
SUITE 200
ALPHARETTA, GEORGIA 30201

STATE OF GEORGIA
DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY MAP

PROJECT NO. CSW608008-0012561
COUNTY: COB
LAND LOT NO.: 998, 1015, 1020
LAND DISTRICT: 16
DATE: 04-20-12 SHEET 34 OF 66

PROPERTY AND EXISTING R/W LINE
REQUIRED R/W LINE
CONSTRUCTION LIMITS
EASEMENT FOR CONSTR & MAINTENANCE OF SLOPES
EASEMENT FOR CONSTR OF DRIVES
EASEMENT FOR DEMOLITION

SCALE IN FEET
0 50 100 200

NOTE: Contamination exists for parcels 68, 69 and any future cleanup will be the responsibility of the current property owner

PARCEL 67 FOR DESC SEE DWG NO. 63

PARCEL 68 FOR DESC SEE DWG NO. 63

PARCEL 69 CONT'D DWG NO. 35 FOR DESC SEE DWG NO. 63

PARCEL 70 FOR DESC SEE DWG NO. 63

CURVE DATA
 P.C. 607+88.88
 P.T. 610+00.00
 D = 234'18.4" (LT)
 E = 26'38.95"
 L = 289.56'
 R = 1200.00'
 E = 2'25"
 L = 145309.45'
 E = 2166739.76'