



CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council

DATE: December 11, 2014

FROM: John McDonough, City Manager

AGENDA ITEM: Consideration of Acceptance of the Conservation Easement of Three (3) Acres along Powers Ferry Road

MEETING DATE: For Submission onto the December 16, 2014, City Council Regular Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Exhibits
Resolution

CITY MANAGER APPROVAL: _____

PLACED ON AGENDA FOR: **12/16/2014**

CITY ATTORNEY APPROVAL REQUIRED: () YES () NO

CITY ATTORNEY APPROVAL: _____



TO: Mayor and Council, City of Sandy Springs, Georgia; John McDonough, City Manager

FROM: Wendell K. Willard, City Attorney
Cecil McLendon, Assistant City Attorney

DATE: December 10, 2014, for Submission onto the Agenda of the December 16 City Council Meeting

ITEM: Consideration of Acceptance of the Conservation Easement of Three (3) Acres Along Powers Ferry Road

City Attorney's Recommendation:

The City Attorney recommends that the Mayor and City Council accept and approve the Conservation Easement with HSSW Powers Ferry Parcel, LLC for three (3) acres of land along Powers Ferry Road.

Background:

The subject property is adjacent to 6400 Powers Ferry Road. The land is currently undeveloped. The owner, HSSW Powers Ferry Parcel, LLC, wishes to maintain and protect the existing tree canopy, wetlands, waters, and other natural resources on the property so that it shall remain substantially in its natural condition in perpetuity. In order to accomplish this, the owner approached the City in order to grant the City a Conservation Easement so preserve the property in its natural condition. The owners have also agreed to pay up to Five Thousand Dollars (\$5,000.00) to erect mutually-agreed upon signage on the property naming the City as holder of the Conservation Easement.

Discussion:

If the City accepts this easement, then the City will have the right to preserve and protect the natural condition of the property in perpetuity, and to prevent any activity or use of the property which is inconsistent with this Conservation Easement.

Alternatives:

If the City does not accept the Conservation Easement, the owners would be free to find another entity legally entitled to hold a Conservation Easement, or to develop the property.

Financial Impact:

There is no cost to the City for accepting this easement. The ongoing costs of ensuring the property remains in its natural condition are minimal.

Attachments:

Exhibits

- Conservation Easement Agreement
- Plat of the property
- Maps showing the location of the property

After recording return to:
City of Sandy Springs
7840 Roswell Rd., Bldg 500
Sandy Springs, GA 30350
Attn: Cecil McLendon, Esq.

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the "Conservation Easement"), is made this _____ day of _____, 2014, by and between **HSSW POWERS FERRY PARCEL, LLC**, a Georgia limited liability company ("Grantor"), and **THE CITY OF SANDY SPRINGS**, a Georgia municipal corporation ("Grantee").

WHEREAS, Grantor is the owner in fee simple of certain real property comprised of approximately three (3) acres located along Powers Ferry Road in Fulton County, City of Sandy Springs, Georgia and more particularly described on Exhibit "A" and shown on Exhibit "B", both Exhibits attached hereto and made a part hereof (the "Property");

WHEREAS, Grantor desires to convey to Grantee a conservation easement placing certain limitations on the Property for the protection of the existing tree canopy, wetlands, waters of the State, and other natural resources, and to insure that the Property shall remain substantially in its natural condition forever;

WHEREAS, Grantee as a municipal corporation is qualified to hold a conservation easement under the laws of the State of Georgia.

NOW THEREFORE, in consideration of ten dollars in had paid and other good and valuable consideration, Grantor hereby conveys to Grantee a conservation easement over the Property consisting of the following:

COVENANTS. TERMS. CONDITIONS. AND RESTRICTIONS

A. PURPOSE

1. The purpose of this Conservation Easement is to ensure the Property will be preserved in a "natural condition", as defined herein in perpetuity and to prevent any use of the Property that will materially impair or interfere with the conservation benefits of the Property (the "Purpose"). Grantor intends that this Conservation Easement will confine the use of the Property to such activities, including without limitation, those involving the protection, restoration, enhancement, and/or preservation of the existing natural environment of the Property.

2. The term "natural condition," as referenced in the preceding paragraph and other portions of this Conservation Easement shall mean the condition of the Property as it exists at the time this Conservation Easement is executed.

3. Grantor certifies to Grantee that to the Grantors actual knowledge, there are no previously granted easements existing on the Property that interfere or conflict with the Purpose of this Conservation Easement

B. PROHIBITED USES

The following uses by Grantor, Grantee, their respective guests, agents, assigns, employees, representatives, successors, and third parties are expressly prohibited on the Property (collectively the "Restrictions"):

1. There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials and no alteration of the topography in any manner.
2. There shall be no changing the grade or elevation of the Property, impairing the flow or circulation of waters, or reducing the reach of waters.
3. There shall be no clearing, burning, cutting or destroying of trees or vegetation and there shall be no planting or introduction of non-native or exotic species of trees or vegetation.
4. There shall be no construction, erection, or placement of buildings, billboards, or any other structures.
5. There shall be no application of pesticides or biological controls, including for problem vegetation, without prior written approval from Grantee.
6. Any other use of, or activity on the Property which is or may become inconsistent with the purposes of this grant, the preservation of the Property substantially in its natural condition, or the protection of its natural condition is prohibited.

C. GRANTEE'S RIGHTS

To accomplish the Purpose of this Conservation Easement, Grantor, its successor and assign hereby grants and conveys the following rights to Grantee.

1. To preserve and protect the natural condition of the Property in perpetuity.
2. To enter upon the Property at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement.
3. To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the Purpose of this Conservation Easement.
4. The right to enforce by means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement.

D. GENERAL PROVISIONS

The following General Provisions shall be binding upon, and inure to the benefit of, the Grantor and Grantee, and the heirs, successors, administrators, assigns, lessees, licensees and agents of each:

1. Reserved Rights. Grantor reserves the right to engage in all acts or uses not prohibited by the Restrictions and which are not inconsistent with the Purposes of this grant, the preservation of the Property in its natural condition, and the protection of its natural condition.
2. Rights of Access. Grantee shall have the right to enter and go upon the Property for purposes of inspection, and to take actions necessary to verify compliance with the restrictions. Grantee shall also have the rights of visual access and view, and to enter and go upon the Property for purposes of making scientific or educational observations and studies, and taking samples, in such a manner as will not disturb the quiet enjoyment of the Property by Grantor.
3. Remedies. In the event of a breach of the Restrictions by Grantor, Grantee shall notify Grantor in writing and Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to correct the conditions constituting the breach. If Grantor fails to take such corrective action within thirty (30) days, or fails to pursue to complete the necessary corrective action, Grantee may undertake such actions, including legal proceedings, as are necessary to effect such corrective action.
4. Events Beyond Grantor's Control. Nothing herein shall be construed to authorize Grantee to institute any proceedings against Grantor for any changes to the Property caused by acts of God or circumstances beyond the Grantor's control such as earthquake, fire, flood, storm, war, civil disturbance, strike, the unauthorized acts of third persons, or similar causes.
5. Obligations of Ownership. Grantor is responsible for all real estate taxes, assessments, fees, or charges levied upon the Property. Grantor shall keep the Property free of any liens or other encumbrances for obligations incurred by Grantor. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein.
6. Signage. Grantor agrees to construct a sign naming the Grantee as holder of the conservation easement. Such sign and sign design shall be mutually agreed upon by the Grantor and the Grantee, and the cost for the sign shall not exceed Five Thousand Dollars (\$5,000.00) to be paid by Grantor.
7. Notification. Any notice, request for approval, or other communication required under this Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

Grantor: HSSW Powers Ferry Parcel, LLC
6400 Powers Ferry Road
Suite 400
Sandy Springs, GA 30339
Attn: Managing Member

Grantee: The City of Sandy Springs, GA
7840 Roswell Road
Building 500
Sandy Springs, GA 30350
Attn: City Attorney

8. Amendment. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided such amendment does not affect the purpose of this Conservation Easement or the status of the Grantee under any applicable laws. Any amendments must be consistent with the Purposes of this grant.

9. Warranty. Grantor warrants that it owns the Property in fee simple and that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Property which have not been expressly subordinated to this Conservation Easement.

TO HAVE AND TO HOLD, this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Conservation Easement on the date written above.

Signed, sealed and delivered
in the presence of:

GRANTOR:
HSSW POWERS FERRY PARCEL, LLC
A Georgia limited liability company

Unofficial Witness

By: _____

Notary Public

Name: _____

Title: _____

(NOTARY SEAL)

My Commission Expires:

Signed, sealed and delivered
in the presence of:

GRANTEE:
CITY OF SANDY SPRINGS, GA
A municipal corporation

Unofficial Witness

By: _____

Notary Public

Name: _____

Title: _____

(NOTARY SEAL)

(City Seal)

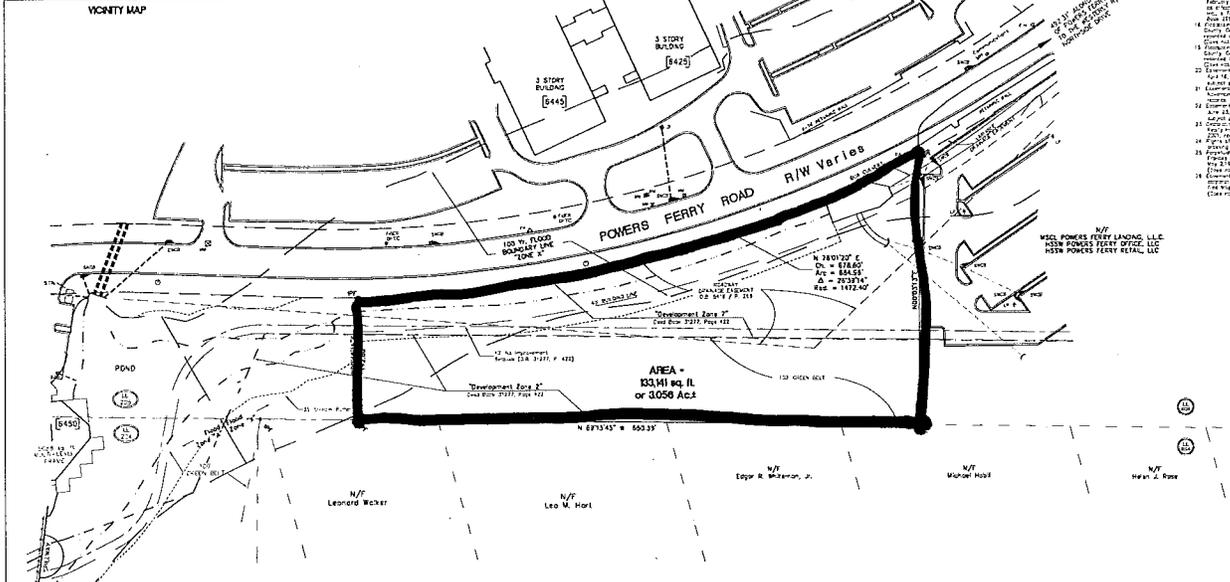
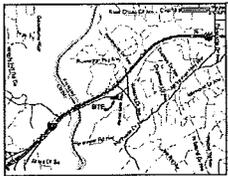
My Commission Expires:

EXHIBIT "A"

Legal Description

EXHIBIT "B"

Plat of Property



- REFERENCE DOCUMENTS
1. Property Deed to a Trust Company of Georgia, Inc. Powers Ferry Road, Georgia, State of Georgia, Deed to a Trust Company of Georgia, Inc. dated 10/28/1988, recorded in Deed Book 2147 Page 228, Volume 1, County of DeKalb, Georgia.
 2. General Land Office Survey of 1850, recorded in Deed Book 10, Page 10, Volume 1, County of DeKalb, Georgia.
 3. Deed to a Trust Company of Georgia, Inc. Powers Ferry Road, Georgia, State of Georgia, Deed to a Trust Company of Georgia, Inc. dated 10/28/1988, recorded in Deed Book 2147 Page 228, Volume 1, County of DeKalb, Georgia.
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EQUIPMENT DIMENSIONS

See 10 on sheet 1 of 2, Deed Book 2147, Page 228, Volume 1, County of DeKalb, Georgia.

See 11 on sheet 1 of 2, Deed Book 2147, Page 228, Volume 1, County of DeKalb, Georgia.

TO SHOW THE CONTENTS

1. To show the area of 53,341 sq. ft. or 3058 ac. as shown on this plan.

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20. To show the area of 53,341 sq. ft. or 3058 ac. as shown on this plan.



The area shown on this plan is shown as a natural product of the soil of 175,233 sq. ft. or 4.00 ac. of land, as shown on this plan, and is subject to the same conditions as the area shown on this plan.

LEGEND

- 1. 175,233 sq. ft. or 4.00 ac. of land
- 2. 53,341 sq. ft. or 3058 ac. of land
- 3. 121,892 sq. ft. or 2.78 ac. of land
- 4. 100 ft. wide easement
- 5. 100 ft. wide easement
- 6. 100 ft. wide easement
- 7. 100 ft. wide easement
- 8. 100 ft. wide easement
- 9. 100 ft. wide easement
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- 18. 100 ft. wide easement
- 19. 100 ft. wide easement
- 20. 100 ft. wide easement

Scale 1" = 50'

SURVEY

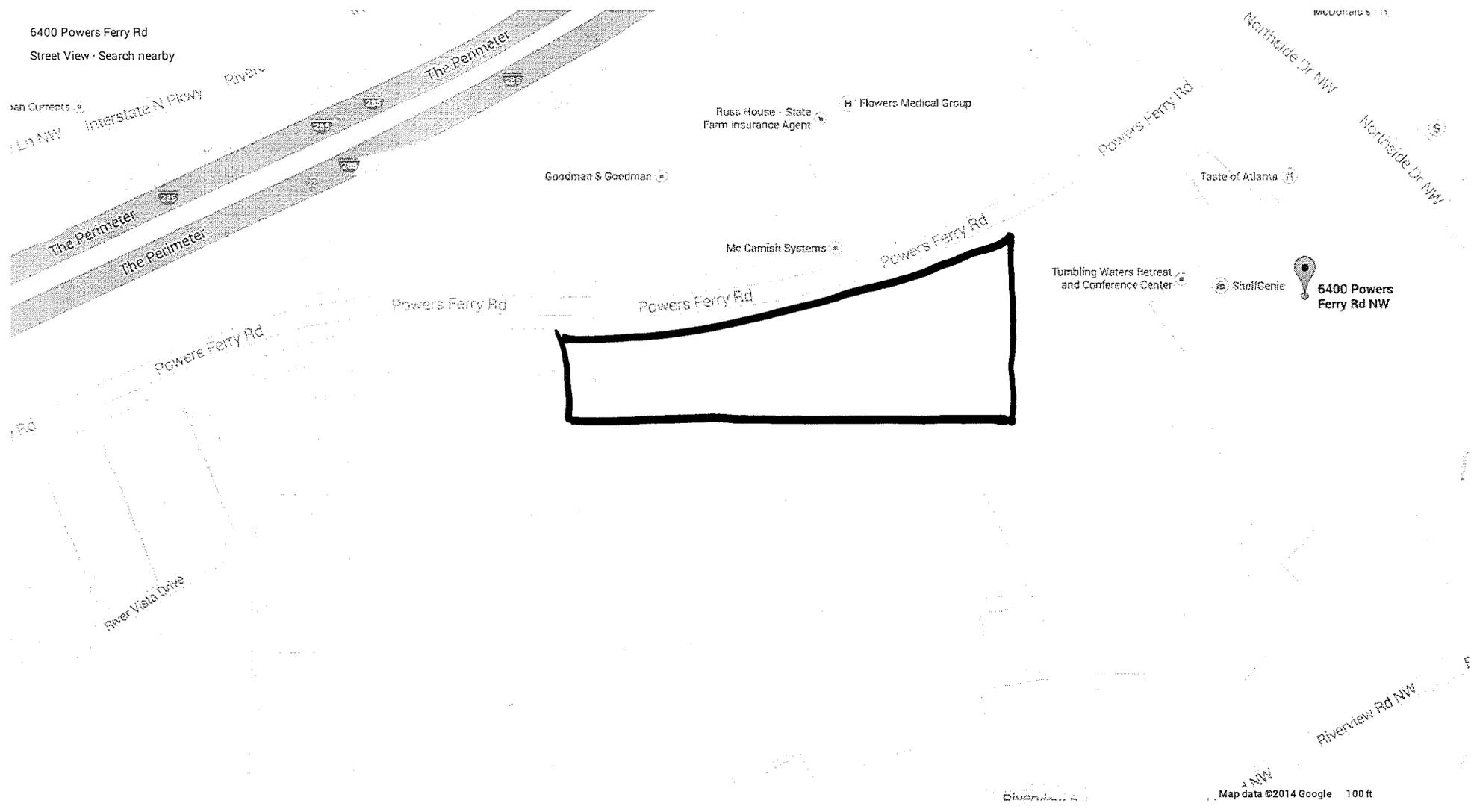
in partial of

MSCL Powers Ferry Landing, LLC
HSSW Powers Ferry Office, LLC
BANK OF NORTH GEORGIA
FIRST AMERICAN TITLE INSURANCE COMPANY

Surveyed by
 Charles H. Miller
 State of Georgia

Scale 1" = 50'

6400 Powers Ferry Rd
Street View · Search nearby



Goodman & Goodman

Russ House - State Farm Insurance Agent

Flowers Medical Group

Mc Camish Systems

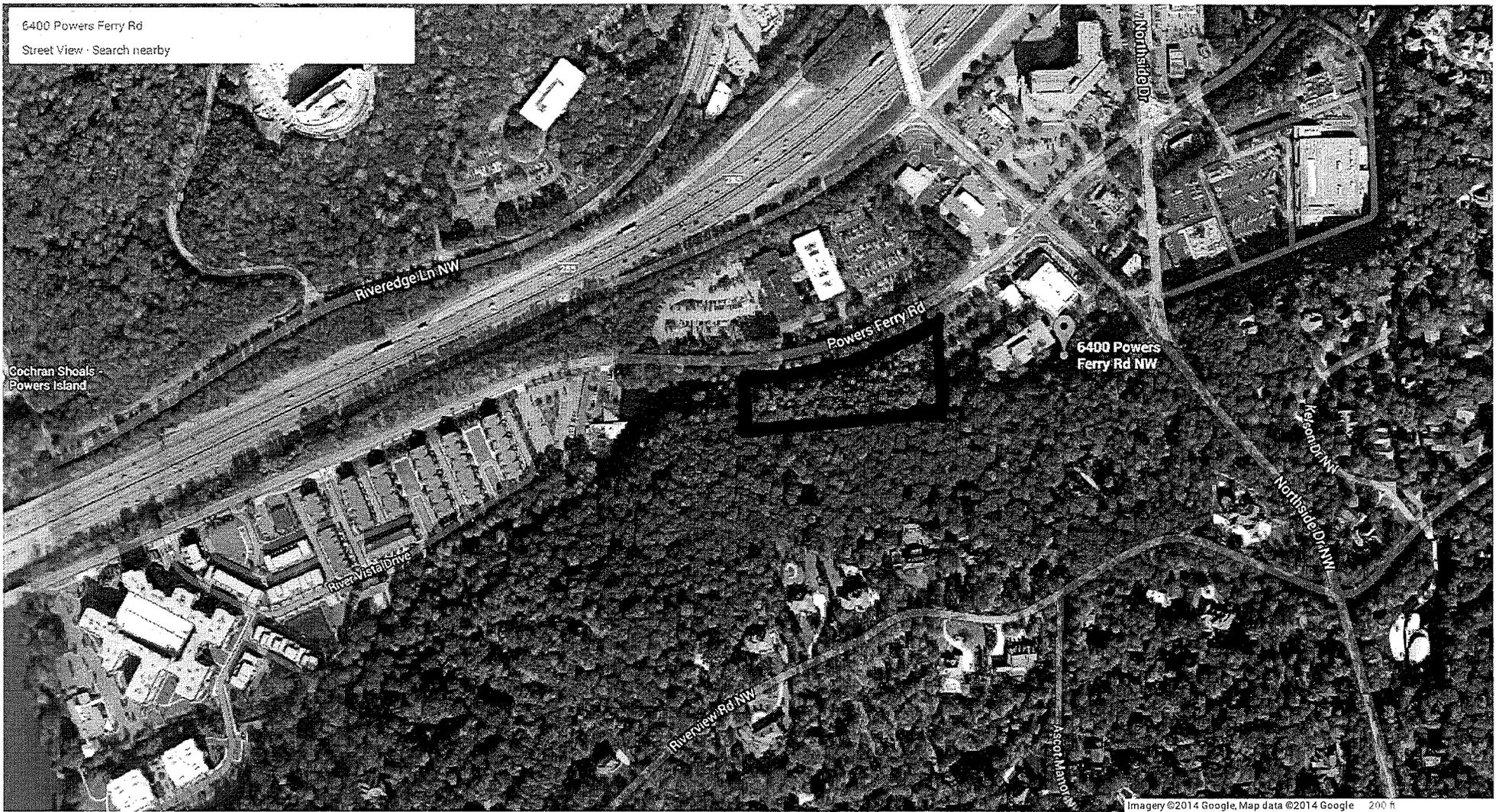
Taste of Atlanta

Tumbling Waters Retreat and Conference Center

StaffGenie

6400 Powers Ferry Rd NW

6400 Powers Ferry Rd
Street View · Search nearby



Cochran Shoals
Powers Island

RESOLUTION NO. 2014-12-__

**STATE OF GEORGIA
COUNTY FULTON**

**A RESOLUTION TO ACCEPT THE CONSERVATION EASEMENT OF
THREE (3) ACRES OF LAND ALONG POWERS FERRY ROAD**

WHEREAS, the owner of three (3) acres of undeveloped land along Powers Ferry Road, adjacent to 6400 Powers Ferry Road, desires to maintain the land in its natural condition and so requests the City accept a Conservation Easement to preserve the property in its natural condition; and

WHEREAS, the City is a municipal corporation and qualified to hold a conservation easement under the laws of the State of Georgia; and

WHEREAS, the Mayor and Council desire to maintain this land substantially in its natural condition forever and doing such is in the best interest of the citizens of the City of Sandy Springs.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy Springs, Georgia while in regular session on _____, 2014, at __:00 p.m. as follows:

In order to preserve the property in its natural condition, the Mayor and Council accept the Conservation Easement and authorize City staff to preserve and protect the natural condition of the property pursuant to the Conservation Easement in perpetuity. The Mayor and City Manager are authorized to execute any documents necessary to further the intent of this Resolution, subject to final approval by legal and finance departments.

APPROVED AND ADOPTED this _____ day of _____, 2014.

Approved: _____, 2014

Rusty Paul, Mayor

Attest:

Michael Casey, City Clerk
(Seal)