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VIA EMAIL: tsmith@fayettecountyga.gov, dbell@fayettecountyga.gov, & dadaven@bellsouth.net

Board of Commissioner of Fayette County, Georgia (the “BOC”)
c/o Tameca P. Smith, MBA, CMC, County Clerk &
Deborah Bell, RLA, Director, Community Development Department
Dennis Davenport, County Attorney
140 Stonewall Avenue, West
Suite 100
Fayetteville, Georgia 30214

Re: Fayette County Parcel Identification Numbers (“TPN”): 0703 012 (the “Property”) owned by Andrea Pope Camp (the “Owner”); Rezoning Petition No. 1355.24 (the “Application”) of Jordan Camp, Attorney-in-Fact for Andrea Pope Camp (the “Applicant”).

Dear Mmes. Bell and Smith:

This letter serves to convey the enclosed, procedurally required constitutional and *York* objections of the Owner. Please ensure that all enclosures are included with the files for the Application and presented to the Fayette County Board of Commissioners (the “BOC”) prior to their final vote on the Application.

It is my understanding that the County, through the Planning Commission of the Fayette County, Georgia and/or the Staff of Fayette County, Georgia, is recommending that the BOC impose the following **unconstitutional and illegal conditions of approval** on the Application (among other recommended conditions of approval):

1. The owner/developer shall dedicate land to Fayette County as needed to provide a minimum 40-ft of right of way as measured from the existing centerline of Davis Road.
2. The owner/developer shall dedicate land to Fayette County as needed to provide a minimum 40-ft of right of way as measured from the existing centerline of Huiet Drive.
3. Submittal of all warranty deed(s) and legal descriptions for right-of-way dedications shall be provided to the County within 90 days of the approval of the rezoning request, or prior to the final plat approval, whichever comes first.
4. The owner/developer shall improve the gravel road segments fronting the parcel and extend the improvement north on Huiet Drive to meet existing pavement. The improvement shall meet County Standards for Collector Roads and be designed and constructed in accordance with Fayette County’s Development

- Regulations. Alternatively, the owner/developer may pay Fayette County \$1,105,000 so that Fayette County can make the improvements in the future. The work shall be completed, or the payment made, prior to Final Plat approval.
5. Prior to submission of any final plat(s) or amendments or revisions thereto, and irrespective of the number of lots in any final plat(s) or revision thereto, the developer shall be required to extend the public water line from adjacent subdivision to provide water service for each lot in the subdivision. The water line extension shall be constructed to the standards outlined in, “Sec. 12-90. - Mandatory connection to public water system, including the installation of fire hydrants.”

These conditions are unequivocally unconstitutional and illegal.

First, the 1983 Constitution of the State of Georgia and the Fifth Amendment to the Constitution of the United States prohibit ***takings of property without the payment of just and adequate compensation***. *E.g.*, Just Compensation Clause of the Fifth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraphs I-II of the Constitution of the State of Georgia of 1983; Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States of America. The conditions requiring dedication of right of way and that the Applicant either improve a public right of way and extend the public water system or pay money to the County constitute takings of property—real property or the money required to improve the right of way or the money exacted by the recommended condition—without first paying the Owner just and adequate compensation.

Second, the Georgia General Assembly requires local governments to pay just and adequate compensation before exercising the right of eminent domain. O.C.G.A. §§ 22-1-5, -6. Additionally, before acquiring property by eminent domain or legislative fiat (as is recommended by the Staff and Planning Commission recommended conditions), a local government must “make every reasonable effort to acquire . . . real property by negotiation” and when the local government seeks to acquire fee simple title to real property, the local government must first have the property appraised before trying to acquire such property and the local government must provide the property owner with information sufficient to meaningfully evaluate the local government’s offer of monetary compensation. O.C.G.A. § 22-1-9(1)-(3); *Summerour v. City of Marietta*, 338 Ga. App. 259 (2016). And, above all, “[n]o owner shall be required to surrender possession [or title] of real property before the [local government] . . . pays the agreed purchase price or deposits with the court . . . , for the benefit of the owner, an amount not less than the . . . apprais[ed] . . . fair market value of such property or the award of compensation in [a] . . . condemnation proceeding for such property.” O.C.G.A. § 22-1-9(4). Here, however, the County has neither had the right of way appraised nor attempted to acquire the right of way by negotiation. Accordingly, the County recommended conditions requiring the dedication of right of way violate the O.C.G.A. § 22-1-9—aptly known as the “Landowner’s Bill of Rights.” Because these efforts are being taken in bad faith, the Owner could pursue attorneys’ fees incurred in defending against this attempted unconstitutional and illegal taking of property undertaken in bad faith, without just and adequate

compensation, and without compliance with the Landowner's Bill of Rights (and other law). O.C.G.A. §§ 9-15-14, 13-6-11, 22-1-12.

Third, ***a local government is prohibited from acting "in bad faith in order to compel an agreement on the price to be paid for the property" or "intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his or her real property."*** O.C.G.A. § 22-1-9(7)-(8). However, that is exactly what is occurring here. The above-referenced recommended conditions would require the property owner to appeal a decision of the BOC on the Application incorporating those conditions to prove that those conditions constitute a taking of property. Additionally, the Planning Commission and Staff recommending those conditions in order for the Application to be approved is bad faith—the zoning is the hostage, and the ransom is the surrender of the Owner's property. In essence, it is illegal contract zoning by force. *Marietta v. Traton Corp.*, 253 Ga. 64 (1984).

Fourth, all of the ***above-referenced conditions constitute illegal "development exaction", which is (among other things) any requirement attached to a rezoning which compels the payment, dedication, or contribution of goods, services, land, or money as a condition of approval.*** O.C.G.A. §§ 36-71-2(6), (7). As the County knows, development exactions may only be assessed through impact fees; they may not be exacted by zoning condition. *Id*; O.C.G.A. § 36-71-3. Requiring the dedication of right of way, the extension of a water line, and the paving of a public road (or, in lieu thereof, contribution of over a million dollars to the county) is a "development exaction" prohibited by O.C.G.A. § 36-71-1, *et seq.*

For the foregoing reasons, the Owner respectfully requests that the above conditions of approval not be considered by the Board of Commissioners.

Should you have any questions/concerns regarding this letter, its attachments/enclosures, and/or the Application, please do not hesitate to contact me.

Sincerely,



Steven L. Jones

Enclosures
cc: Applicant

EXHIBIT "A"

CONSTITUTIONAL OBJECTION

As applied to the real property of Andrea Pope Camp (the "Owner"), which is identified as Fayette County Tax Assessor Parcel No(s): 0703 012 (the "Subject Property") and is the subject of the previously-filed rezoning application (the "Application") of Jordan Camp, attorney-in-fact for Andrea Pope Camp (the "Applicant"), and facially, the Zoning Ordinance of Fayette County, Georgia (the "Zoning Ordinance"), codified at Chapter 110 of the Code of Ordinances of Fayette County, Georgia (the "Code of Ordinances") is unconstitutional in that the Owner's (and the Applicant's) property rights in and to the Subject Property have been destroyed without first receiving fair, adequate, and just compensation for such property rights. As applied to the Subject Property and facially, the Zoning Ordinance deprives the Owner (and the Applicant) of constitutionally protected rights in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraphs I-II of the Constitution of the State of Georgia of 1983; Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

Application of the Zoning Ordinance to the Subject Property, and the Zoning Ordinance facially, are unconstitutional, illegal, arbitrary, capricious, null, and void, constituting takings of the Subject Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraphs I-II of the Constitution of the State of Georgia of 1983; Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States of America thereby denying the Owner (and the Applicant) of an economically viable use of the Subject Property while not substantially advancing legitimate state interests.

Inasmuch as it is impossible for the Owner (and/or the Applicant) to use the Subject Property and simultaneously comply with the Zoning Ordinance, the Zoning Ordinance, as applied to the Subject Property, and the Zoning Ordinance facially, constitute arbitrary, capricious, and unreasonable acts by Fayette County, Georgia without any rational basis therefor and constitute abuses of discretion in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States of America; Article I, Section I, Paragraphs I-II of the Constitution of the State of Georgia of 1983; Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

Application of the Zoning Ordinance to the Subject Property and the Zoning Ordinance facially are unconstitutional and discriminate against the Owner (and the Applicant) in arbitrary, capricious, and unreasonable manners between the Owner (and the Applicant) and others similarly situated in violation of Article I, Section I, Paragraph II of the Constitution of the State of Georgia of 1983 and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States of America.

Failure to approve the Application, with only those conditions consented to by the Applicant, would be unjustified from a fact-based standpoint and instead would result only from

EXHIBIT "A"

constituent opposition, which would be an unlawful delegation of authority in violation of Article IX, Section II, Paragraph IV of the Constitution of the State of Georgia of 1983.

WHEREFORE, the Owner and the Applicant request that the Board of Commissioners of Fayette County, Georgia approve the Application, as specified and designated therein, with only conditions consented to by the Applicant.

Respectfully submitted this 7th day of January 2025.

TAYLOR ENGLISH DUMA LLP
Counsel for Applicant/Owner

/s/ Steven L. Jones

Steven L. Jones

Georgia State Bar No.: 639038

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EXHIBIT “B”

OBJECTION TO AND FOR ZONING HEARING BASED ON YORK V. ATHENS COLLEGE OF MINISTRY, INC.

As applied to the real property of Andrea Pope Camp (the “Owner”), which is identified as Fayette County Tax Assessor Parcel No(s): 0703 012 (the “Subject Property”) and is the subject of the previously-filed rezoning application (the “Application”) of Jordan Camp, attorney-in-fact for Andrea Pope Camp (the “Applicant”), any and every public hearing regarding, and any Board of Commissioners of Fayette County, Georgia (“BOC”) action (including, but not limited, any final action) on, the Application, and the Zoning Ordinance of Fayette County, Georgia (the “Zoning Ordinance”), codified at Chapter 110 of the Code of Ordinances of Fayette County, Georgia (the “Code of Ordinances”) facially and as applied to the Subject Property, the Applicant, the Owner, and the Application, are objected to by Applicant and Owner based on, but not limited to, the reasons set forth herein (collectively the “York Objection” and each an “Objection”), in accordance with *York v. Athens College of Ministry, Inc.*, 348 Ga. App. 58, 821 S.E.2d 120 (Ga. Ct. App. 2018):

Contemporaneous with the filing of this *York* Objection, the Applicant and Owner are filing a Constitutional Objection, and all Objections set forth therein are incorporated herein by reference as if fully restated. The Applicant and Owner object to any and every public and other hearing(s) regarding the Application, including, but not limited to, those before the BOC and/or the Planning Commission of Fayette County Georgia (the “Planning Commission”), because the time limitation, if any, imposed on the presentation of evidence and testimony in support of, as well as in rebuttal to opposition evidence, comments, and/or testimony to, the Application deprive the Applicant and Owner a meaningful opportunity to be heard and preserve issues, in violation of the Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States and Article I, Section I, Paragraph I of the Constitution of Georgia of 1983. Likewise, the Applicant and Owner object to any and all members of the public (and/or other persons) who appear (or otherwise give testimony and/or opinion) at any and all public hearing(s) and other meetings, including, but not limited to, before the BOC and/or the Planning Commission to the extent that (but not limited to) said individuals (a) do not have standing to appeal the BOC’s decision on the Application (i.e., do not satisfy the substantial interest-aggrieved citizen test); (b) are not under oath; (c) are not subject to cross-examination; (d) present evidence on and/or make statements that qualify as (or must or should be assessed with the aid of) expert opinion testimony without any or all individuals being qualified as expert witnesses; (e) present evidence on and/or make statements that are not germane to the exclusive factors for consideration of the Application set forth in the Zoning Ordinance of Fayette County, Georgia (the “Zoning Ordinance”), codified at Chapter 110 of the Code of Ordinances of Fayette County, Georgia (the “Code of Ordinances”); (f) present evidence and/or make statements that are founded, wholly or in part, upon inadmissible, unreliable, nonprobative, insubstantial, and/or lay, nonexpert opinion evidence; and/or (g) fail to disclose any and every campaign (or other) contribution to any member of the BOC.

Additionally, the Applicant and Owner object to any BOC action that does not approve the Application or approves the Application with conditions not consented to by the Applicant and any other action of the County and/or the Planning Commission to the extent that (but not limited to) such action is: (a) in violation of Section 50-13-19(h) of the Official Code of Georgia Annotated or otherwise: (1) in violation of any constitutional, statutory, and/or ordinance provisions; (2) in

EXHIBIT “B”

excess of the constitutional, statutory, and/or ordinance authority of the Planning Commission and/or BOC; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and/or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; (b) contrary to the report(s) and recommendation(s), to the extent the Applicant consents to the conditions thereof, of (1) the Fayette County, Georgia Department of Planning and Zoning (or any assigns thereof); (2) the Fayette County Planning Commission; and/or (3) any other Department or agency of Fayette County, Georgia or the State of Georgia; (c) founded, wholly or in part, upon inadmissible, unreliable, nonprobative, insubstantial, and/or lay, nonexpert opinion evidence; (d) contrary to, or based, in whole or in part, on factors or considerations other than, the exclusive factors or procedure for consideration of the Application set forth in the Zoning Ordinance; (e) based, in whole or in part, on evidence and/or information received by the BOC (1) outside of the public hearing on the Application; (2) by *ex parte* or other similar means; and/or (3) otherwise in a manner which does not afford the Applicant a right to respond to or otherwise confront all evidence considered by the BOC in its evaluation of the Application; (f) otherwise not made pursuant and in conformance with the Code of Ordinances; the Zoning Ordinance; the Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*; and/or any other law, including the Constitutions of the State of Georgia or the United States of America; and/or (g) pursuant to an ordinance, resolution, zoning map, and/or the like not adopted in compliance with the Code of Ordinances; the Zoning Ordinance; the Georgia Zoning Procedures Law, O.C.G.A. § 36-66-1, *et seq.*; and/or any other law, including the Constitutions of the State of Georgia or the United States of America, which the Applicant contends is the case for the applicable ordinances, resolutions, and maps, including, but not limited to, the Zoning Ordinance.

By and through this *York* Objection, the Applicant and Owner hereby preserve all the above and incorporated Objections, and any and all evidence, arguments, and objections made and/or tendered at any hearing, and/or prior to the BOC’s final action, on the Application, and asserts them on and within the record before, and for consideration and resolution (prior to any formal decision) by, the BOC.

WHEREFORE, the Applicant and the Owner request that the Board of Commissioners of Fayette County, Georgia approve the Application, as specified and designated therein, with only conditions consented to by the Applicant.

Respectfully submitted this 7th day of January 2025.

TAYLOR ENGLISH DUMA LLP
Counsel for Applicant/Owner

/s/ Steven L. Jones

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