
This summary is provided as a convenience and service to the public, media, and staff. It is not the intent to transcribe proceedings verbatim. Any reproduction of this summary must include this notice. Public comments are noted and heard by Council, but not quoted. This document includes limited presentation by Council and invited speakers in summary form. This is an official record of the Milton City Council Meeting proceedings. Official Meetings are audio recorded.

INVOCATION- Greg Foster, City of Milton Fire Department, led the invocation.

CALL TO ORDER

Mayor Joe Lockwood called the regular meeting of the Milton City Council for Thursday, November 15, 2007 to order.

ROLL CALL

City Clerk Marchiafava called roll and reminded those in attendance to please silence all cell phones and pagers at this time. Additionally, those attending the meeting who would like to provide public comment either during the public hearings or during the call for public comment you are required to fill out a public comment card and that need to be turned in to City Clerk staff. They are available at the front and back tables.

Councilmembers Present: Councilmember Karen Thurman, Councilmember Julie Zahner Bailey, Councilmember Bill Lusk, Councilmember Neal O'Brien, Councilmember Tina D'Aversa, and Councilmember Rick Mohrig.

PLEDGE OF ALLEGIANCE

Mayor Lockwood led the Pledge of Allegiance.

APPROVAL OF MEETING AGENDA

City Clerk Jeanette Marchiafava:

Staff would like to recommend the following changes:

1. Add to new business the approval of the September 2007 invoice for legal fees.
2. Add an executive session to discuss pending litigation.
3. Move Agenda item no. 07-413, Zoning No. RZ07-007 VZ07-005 to the end of the zoning agenda.

Motion and Vote: Councilmember Mohrig moved to approve the Meeting Agenda as amended. Councilmember D'Aversa seconded the motion. The motion passed unanimously.

REPORT OF ELECTION RESULTS

City Clerk Jeanette Marchiafava gave the official results for the City of Milton Municipal Election on November 6, 2007: For Milton City Council, District 2, Julie Zahner Bailey with 61.61 percent; Roger A. Santee with 38.33 percent; Milton City Council District 4, Burt Hewitt with 60.26 percent, Neal O'Brien with 39.37 percent; Milton City Council District 6, Alan Tart with 55.13 percent, Rick Mohrig with 44.84 percent. These are the results of the election.

PUBLIC COMMENT

Mayor Lockwood asked if there was any public comment.

Jon Carroll stated that he wanted to thank the Mayor and City Council for all that they have done and hopes we can look forward to the challenges of the future.

Bob Moheb, 13085 Morris Road, Milton, GA 30004 stated that he wanted to thank Councilpersons Mohrig and O'Brien for the great job they have done and hope they will stay involved with the City. He also congratulated Councilmember Bailey.

City Clerk Jeanette Marchiafava stated that concludes the public comment portion of the meeting.

REPORTS AND PRESENTATIONS

Councilmember Bill Lusk read a Proclamation declaring December 1, 2006 as Commission Day.

PUBLIC HEARING

ALCOHOLIC BEVERAGE LICENSE APPLICATIONS

Agenda Item 07-427

Casa De Tontos, LLC D/B/A/ Sip Wines, 12635 Crabapple Road, Suite 120, Milton, GA 30004. This is an approval of an alcoholic beverage license application for Casa De Tontos, LLC dba as Sip Wines located at 12635 Crabapple Road, Suite 120, Milton, GA 30004. The applicant is John Foster Smith for package sales for wine.

Program Director Tami Hanlin presented the application. She stated that the applicant has completed all the necessary paperwork. He meets the distance requirement and has passed the background check. The staff recommendation is to approve this application.

Mayor Lockwood asked for any public comment.

City Clerk Marchiafava stated that there were no public comment and Mayor Lockwood closed the public hearing.

Motion and Vote: Councilmember D'Aversa moved to accept the application of an alcoholic beverage license application for Casa De Tontos, LLC dba as Sip Wines located at 12635 Crabapple Road, Suite 120, Milton, GA 30004. The applicant is John Foster Smith for package sales for wine. Councilmember Zahner Bailey seconded the motion. The motion passed unanimously.

CONSENT AGENDA

Agenda Item 07-424

1. **Approval of the October 18, 2007 Regular Meeting Minutes.**

2. Agenda Item 07-425

Approval of the November 1, 2007 Regular Meeting Minutes.

3. Agenda Item 07-279

Approval of Land Development Final Plats:

- | | | | |
|----|---------------------|------------------|--------------------|
| a) | Minor Plat revision | Rivercliff | change amenity lot |
| b) | Final Plat | Kingsley Estates | 45 new lots |
| c) | Final Plat revision | Kingsley Estates | change addresses |

d)	Final Plat revision	The Manor 1-A	move SSE
e)	Final Plat revision	Crabapple Station	move lot lines
f)	Final Plat revision	The Manor 2-W	change SSE
g)	Minor Plat	Westwood Estates	2 new lots
h)	Minor Plat	Chatham Providence	2 new lots
i)	Final Plat	Milton Place	27 new lots
j)	Minor Plat	Milton Manor	3 new lots
k)	Final Plat	Centennial Village	29 new lots
l)	Final Plat revision	Lake Deerfield II	change building 19
m)	Minor Plat	Kingsridge Properties	2 new lots

Motion and Vote: Councilmember Lusk moved to approve the Consent Agenda. Councilmember Mohrig seconded the motion. The motion passed unanimously.

ZONING AGENDA

City Clerk Jeanette Marchiafava read the zoning rules and stated that at the regularly scheduled meeting of the month, the Mayor and City Council consider the zoning agenda. These items include rezoning petitions, modifications of zoning, use permits and associated concurrent variances, in addition to ordinances, resolutions and text amendments. The petitions will be heard in the sequence listed on the posted agenda. Staff and all those speaking for of an application will be allowed a total of 10 minutes to present the petition. The applicant may choose to save some of the time for rebuttal following the presentation by the opposition. The opposition will be allowed a total of 10 minutes to present its position. If time remains the opposition will be allowed to rebut. Since the burden of proof is upon the applicant, they will be allowed to make closing remarks provided time remains in the allotted time. City clerk staff will be keeping track of time and will inform one periodically of the remaining time. Those called to speak will be taken in the order that the speaker cards were received prior to the beginning of tonight's meeting. All speakers will identify themselves by name and address and organization if applicable before beginning their presentation. The Planning Commission reviews the zoning agenda items and recommendations have been forwarded to the mayor and city Council for consideration of its position. In addition, the applicant shall not submit material to the Council during the meeting unless requested to do so. All material that one wishes to have reviewed by the Council in consideration of the application should be submitted to the staff of the department of community development to be included in the normal distribution of packages to the Council. When an opponent of a rezoning action has made within two years immediately preceding the filing of the rezoning action being opposed campaign contributions actions totaling \$250 or more to a local government official of the local government, which will consider the application. It is the duty of the opponent to file a disclosure with the governing authority of the respective local government at least five days prior to the Planning Commission meeting. A violation of the relevant state statute constitutes a misdemeanor. Therefore, if one has contributed \$250 or more to a Councilmember and you have not filed a disclosure prior to the Planning Commission's meeting, the City Attorney strongly suggests that you have someone else speak on your point of view.

Agenda Item 07-412

U07-003/VC07-007, 2540 Hopewell Road - The applicant is seeking to develop a 16,728 square-foot church with 199 fixed seats. He is also requesting a three part concurrent variance to:

Reduce the 75 foot buffer and 10 foot improvement setback to a 25 foot buffer and a ten-foot improve setback along the south and west property lines. (Article 12.H.3.1.C.2) To allow parking between the

building and the right-of-way (Article 12.H.3.5.F.3) to increase the building setback along the right-of-way (Article 12.H.3.5.C.1) This will be the second reading.

Community Development Director Tom Wilson addressed the Mayor and City Council and stated that the applicant for this application is determined that his property is unsuitable for the church as they had planned. They are requesting that they be allowed to withdraw this application. It was reviewed by the Planning Commission last week. They also recommend to the City Council that they allow this application to be withdrawn. The staff's recommendation to City Council is that they allow this application to be withdrawn.

Motion and Vote: Councilmember D'Aversa moved to accept the applicant's withdrawal of U07-003/VC07-007. Councilmember Mohrig seconded the motion. There was no Council discussion. The motion passed unanimously.

Agenda Item 07-414

U07-005, 13660 New Providence Road, The Mill Spring Academy. The Grace Church is requesting to use the existing gym and assembly room and the "T" buildings for up to 200 members and the River Lutheran Church to use the great room for up to 175 members. This will be the second reading.

Community Development Director Tom Wilson stated that the Community Development Department recommends approval of this application. The Planning Commission reviewed this and also recommends to the Council approval of this application. For more details about this Robyn MacDonald is going to speak to the Council.

Senior Planner Robyn MacDonald stated that this petition is a use permit for a church located within the same time of Sunday Morning. Therefore, 167 spaces are required. The site plan indicates a total of 244 parking spaces on the site. Staff is of the opinion that there is enough off street parking spaces to facilitate these to churches. The applicant has stated in a letter of intent that the Grace Church will meet on Sunday mornings between 9:30 a.m. and 12:30 p.m. and for evening service between 5:30 p.m. and 7 p.m. on Sunday and will meet in both the gym and the assembly room and the "T" building. The River Lutheran Church will meet between 10:30 a.m. and 12:30 p.m. in the great room of the upper school.

In conclusion the proposed church is consistent with board and plan policies and is compatible with the surrounding area. This development is in accordance with the requirements of the zoning ordinance and staff recommended conditions. Staff recommends approval conditional of this proposed use for the church.

At the Planning Commission meeting they included and voted unanimously to include condition 4e, which is to provide traffic control when 50 cars depart at one time from the premises. Right now the applicant is not at that point in time but the Commission was concerned about sight distance on the curve. So that was put into the conditions that are before the City Council tonight.

City Clerk Marchiafava stated that there was no public comment on item.

Motion and Second: Councilmember D'Aversa moved to approve U07-005, 13660 New Providence Road, (The Mill Spring Academy). The Grace Church is requesting to use the existing gym and assembly room and the "T" buildings for up to 200 members and the River Lutheran Church to use the Great Room for up to 175 members. Councilmember Mohrig seconded the motion.

Councilmember Zahner Bailey stated that she could not hear Robyn MacDonald and asked that she confirm the number of total users conditioned under the use permit.

Senior Planner Robyn MacDonald stated that the condition would be 50 cars departing. The total number of people is about 350.

Councilmember Zahner Bailey stated that her question is that if at some point in the future the two churches in combination should go beyond that, the applicant would need to come back before the Council to ask for a variance to that use permit.

Senior Planner Robyn MacDonald stated that was correct, the applicant would get a new use permit.

Councilmember Zahner Bailey only other question was for Dan Drake, Public Works Director. During all of the reviews they talked about whether or not, because of the sight distance from that entrance, if at some point whether it be the school or those churches...if there was a point in time when the Public Works Department felt that perhaps a flashing light or something would be necessary? She asked Mr. Drake to speak about how they would be pursuing that.

Public Works Director Dan Drake stated that they have a project out there right now to improve the striping and the raised pavement markings and they believe that alone should address some of the conditions out there right now. The flashing light is not necessary at this point.

Councilmember Zahner Bailey asked Mr. Drake if at some point that became necessary that would still be something that they would pursue for safety purposes?

Public Works Director Dan Drake stated that was correct.

Vote: After no further discussion, the motion passed unanimously.

Agenda Item 07-415

RZ07-013, Zoning Ordinance Article 12H.2, Northwest Overlay District Demolition Permit for both residential and non-residential buildings.

Community Development Director Tom Wilson stated that this is an amendment to the zoning ordinance regarding the Design Review Board's review of demolition permits. Senior Robyn MacDonald will explain in more detail.

Senior Planner MacDonald stated that they are just trying to clarify, ensuring that all demolition permits, whether they are residential in nature or commercial buildings non-residential. That they are all included to go to the Design Review Board before the demolition permit is approved by community development. On Page 2, before the 12H.2, the staff did a clean up to make it very clear.

It states that at this point in time the City of Milton Design Review Board shall review all plans for development in the City of Milton except for single-family residential land uses and/or dwelling units for compliance with the standards herein and shall make recommendations to the Department of Community

Development prior to the approval of a building permit, primary variance and land disturbance permit and for both residential and non-residential structures for a demolition permit.

She noted that as this went before the Planning Commission one can see some other little edits like taking out overlay district. The Commission felt that this was not appropriate to be called the City of Milton Design Review Board so that edit has been made as well. That is pretty much all of the edits to this article at this point in time.

City Clerk Marchiafava stated that was no public comment.

Mayor Lockwood called for a motion and a second.

Motion and Vote: Councilmember Zahner Bailey moved to approve RZ07-013, Zoning Ordinance Article 12H.2 northwest overlay District, Demolition permit for both residential and non-residential buildings. Councilmember Lusk seconded the motion. The motion passed unanimously.

Agenda Item 07-416

RZ07-014, Zoning Ordinance Article 12A.3.8, Overlay District Authority to amend deadline for consideration of Certificate of Endorsement by the Design Review Board.

Community Development Director Tom Wilson stated that this is an amendment to the zoning ordinance regarding the Certificate of Endorsement that is issued by the Design Review Board. Community Development recommends approval of this item. Robyn MacDonald will provide a little more detail on the timing. This was all about the timing of when something is submitted and the time in which they had to act to actually get this before the Design Review Board.

Senior Planner Robyn MacDonald stated that basically at this point in time once a building permit or a land disturbance permit or a demolition permit goes before...now it is required to go before the Design Review Board before it has a final approval by the Community Development Department with the other reviews.

On Page 12A.6.3.8 it states that The DRB shall consider completed application for COE within...it was previously 15 days and now they are asking for 90 days. There was some discussion at the work session where it was discussed that it was 45 days. But at the Planning Commission they recommended a 90 day limit just in case the first month it was rezoned it missed the second month for some unheard of reason that it would not be automatically approved. So the Commission felt comfortable with the 90 days. But that is not at all the anticipation of staff that once a permit comes in it should be heard before the next Design Review Board meeting. She added that there is some editing for cleaning up to make it consistent with the City of Milton.

City Clerk Marchiafava stated that there was no public comment on this item.

Motion and Vote: Councilmember D'Aversa moved to approve RZ07-014 Zoning Ordinance Article 12A.3.8 Overlay District Authority to amend deadline for consideration of Certificate of Endorsement by the Design Review Board. Councilmember Lusk seconded the motion. The motion passed unanimously.

Agenda Item 07-417

RZ07-015, Zoning Ordinance to delete the following Articles:

- 12B – Sandy Springs Overlay District
- 12B(1) Perimeter Community Improvement District
- 12C Cascade Corridor Overlay District
- 12D Old National Highway Overlay District
- 12E Northeast Fulton Overlay District
- 12F Sandtown Overlay District
- 12J Chattahoochee Hill Country Overlay District
- 12K South Fulton Parkway Overlay District
- 12L Clifftondale Overlay District
- 12M Cedar Grove Overlay District

Community Development Director Tom Wilson stated that this amendment would eliminate from the zoning ordinance those portions that were adopted along with the Fulton County Zoning Ordinance. These portions have absolutely no relevance to the City of Milton. There are not many things that Milton does that are truly no-brainers but this is absolutely one of them. The Community Development Department recommends deletion of these parts of the zoning ordinance. It will reduce it by almost 100 pages in size and probably a couple of pounds in weight. The department does recommend approval of this amendment.

City Clerk Marchiafava stated that there was no public comment on this item.

Motion and Vote: Councilmember Lusk moved to approve RZ07-015 Zoning Ordinance to delete the following articles: 12B-Sandy Springs Overlay District, 12B(1)-Perimeter Community Improvement District, 12C-Cascade Corridor Overlay District, 12D-Old National Highway Overlay District, 12E-Northeast Fulton Overlay District, 12F-Sandtown Overlay District, 12J-Chattahoochee Hill Country Overlay District, 12K-South Fulton Parkway Overlay District, 12L-Clifftondale Overlay District, 12M-Cedar Grove Overlay District. Councilmember Zahner Bailey seconded the motion. The motion passed unanimously.

Agenda Item 07-418

ZM07-006, 2865 Webb Road - To modify Condition 3a of Z06-051 to reduce the required 25-foot buffer and 10-foot improvement setback to a five-foot landscape strip along the east and west property line for a distance of 150 feet north of the existing building.

Community Development Director Tom Wilson stated that the department is recommending denial of this request to reduce the buffer. Robyn MacDonald will provide a bit more detail.

Senior Planner Robyn MacDonald stated that the subject site is to be developed as a Childcare/Montessori School within an existing single-family residence. It was rezoned from AG-1 to O/I pursuant to Z06-051 for a maximum density of 1470.59 square feet of gross floor area per acre zoned for a total of 2000 square feet. The applicant requested a concurrent variance to reduce the required 25 foot buffer and 10 foot improvement setback to a five foot landscape strip along the east and west property lines only in the area of the existing driveway, structure and parking areas which was approved by the Board of Commissioners last year. Because of the long and narrow shape of the lot approximately 117 feet wide, the required 70 feet, 25 foot buffer and 10 foot improvement setback on either the east or west property lines leaves is approximately 47 feet for the play areas.

Staff is of the opinion that the reduction in the required buffer will have a negative impact on the adjacent properties to the east and west as they are currently developed with single-family residences zoned AG-1. Secondly, there is sufficient room to allow the play area to be located further to the south. Therefore, staff recommends denial of the requested modification to condition 3A.

City Clerk Marchiafava stated that there was no public comment on this item.

Applicant, Kyota Ussery, stated that she was the owner of the property at 2865 Webb Road. As Robyn MacDonald described, the property is narrow and long. The applicant believes that when the staff was going through figuring out whether they were going to recommend this or not that Robyn MacDonald told her that they overlooked the fact that she has a septic system back there. The septic tank is directly behind the building and within a certain distance there are all of the drainage lines which there cannot be any structure over the drainage fields. The applicant's plans were for a small expansion and this leaves her with no room. She only has 47 feet to work with and she needs five feet for one additional classroom in the back. She will then have absolutely no area to put the playground because the area of the playground is going to fall into the drainage field. This is why she is asking for a reduction in the buffer just so many feet beyond the building so that it allows her to expand to one or two more classrooms and be able to also put enough play ground for the children.

The applicant stated that she went through this when she did the rezoning with Fulton County but it was kind of overlooked and she informed her neighbors. There was no opposition. There was no objection to that but she understands because she got AG-1, which pretty soon is not going to be AG-1. She does not know if the Council can consider that at this time or not but in her case it makes a big deal because she needs to be able to expand a certain amount to be able to survive. If the Council could consider that that would be great, she only needs about 150 feet beyond the building.

Mayor Joe Lockwood asked for any comments or questions from the Council. There were none. He asked for a motion and a second.

Councilmember D'Aversa asked Director Tom Wilson to clarify what staff would have been looking for to recommend approval of this?

Community Development Director Tom Wilson stated that he was unaware that there was a septic tank back there. He did not believe that it was shown on the site plan and that is something to consider.

Councilmember D'Aversa asked if they could recommend deferral and ask to review this again.

Motion and Second: Councilmember D'Aversa moved to defer the modification of condition 3.a of Z06-051 to reduce the required 25-foot buffer and 10-foot improvement setback to a five foot landscape strip along the east and west property line for a distance of 150 feet north of the existing building for a period of 30 days. Councilmember O'Brien seconded the motion.

Councilmember Mohrig asked Director Tom Wilson if those 30 days would give them enough time to talk to the applicant and consider the septic field.

Community Development Director Wilson stated that it would.

Vote: After no further discussion, the motion passed unanimously.

City Clerk Jeanette Marchiafava stated as moved by motion and vote the Council will now hear RC07-007/VC07-005.

Agenda Item 07-413

RC07-007/VC07-005, southeast corner of SR 9 and Deerfield Pkwy - To rezone from A (Medium Density Apartments) and C-1 (Community Business) to C-1 (Community Business) to develop 141,511 square feet of retail, commercial, service, office and accessory uses including fast food restaurant limited to bagel, bakery, coffee houses and ice cream parlors, which shall not be freestanding, and a gas station. The applicant is also requesting a three-part concurrent variance;

To reduce the required buffer along the east property line from 100 feet to 25 feet and the 10-foot improvement setback; To delete the 10-foot landscape strip along the south property line; and To allow a loading area within the front yard.

Community Development Director Tom Wilson stated that the Community Development Department is recommending approval of the rezoning, denial of part one of the concurrent variance, and approval of parts two and three of the concurrent variance. The Planning Commission reviewed this at their last meeting. Likewise they recommended approval of the rezoning, denial of parts one and three of the concurrent variance and approval of part two of the concurrent variance. Robyn MacDonald will provide the details of this rezoning.

Senior Planner Robyn MacDonald stated that the Planning Commission also recommended that the request for the gas station be withdrawn and that was withdrawn in their motion as well. What comes before the Council is basically the site plan but without the gasoline station on the northeast corner.

This is a 16.3 acre site currently zoned A (Medium Density Apartments) pursuant to Z84-224 approved for 12 units per acre and C-1 (Community Business) pursuant to Z84-223 approved for 8,000 square feet per acre within a single structure, which was the 116,720 square feet. The site is currently vacant and the existing trees of non-specimen size are harvested and the property graded under an approved land disturbance permit issued by Fulton County for Deerfield Place, Phase 1. Along the southern portion a temporary earth and detention pond is being constructed to manage Phase 1 of Deerfield Place immediately to the south. This rezoning request along with the applicant's site plan, Phase 1 located to the south exceeded the Atlanta Regional Commission's threshold of 300,000 square feet for retail use. As a development of regional impact a DRI review was submitted to the Georgia Regional Area Transportation Authority. The result of this review has been attached to the staff report. The findings by the ARC were that the project is in the best interest for the region and therefore the state.

The proposed retail development is suitable based on the existing C-1 Community Business to the south pursuant to ZR3-185 approved at 9552 square feet per acre as well as Board policy on the underlying zoning for the subject site.

Regarding different issues of the variances MacDonald stated that Article 4.43e.1b requires a 100 foot undisturbed buffer and a 10-foot improvement setback under the large scale retail service commercial structures and development of 75,000 square feet or greater ordinance adopted by Fulton County on May 4, 2006 adjacent to residential uses.

The applicant is requesting a concurrent variance to reduce the buffer to 25 feet and a 10-foot improvement setback along the east property line. Staff is of the opinion that the required buffer should remain at least at 100 feet and a 10-foot improvement setback to separate the existing residential development to the east. Based on the fact that the applicant has not demonstrated a hardship that is not self imposed. Staff recommends denial of part 1 of VC07-005.

The applicant is also requesting the deletion of a required 10-foot landscape strip along the south property line in order for the development to the south and the subject site to be developed as one. This would provide for both vehicular and pedestrian inter-parcel access. It is the staff's opinion that by granting this variance the overall development would be more cohesive and meet the intent of the comprehensive plan for encouraging inter-parcel access within and between land uses to improve transportation, circulation and to increase pedestrian safety. Therefore, staff recommends approval conditional of part 2 of VC07-005.

The applicant has requested a concurrent variance to allow a loading area within the front yard, Article 12G-4f6. The site plan indicates that the largest building located on the northern portion of the site has a loading area facing Deerfield Parkway. Deerfield Parkway is technically considered the front yard. Based on the development's linear shape and other buildings fronting the loading area adjacent to Deerfield and the applicant providing a wall to screen the loading area, staff recommends approval conditional of part 3 VC07-005.

In conclusion, the proposed C-1 development is consistent with the policies and intent of the Focus Fulton 2025 comprehensive land use plan and consistent with recent board policy. Therefore staff recommends that this request to rezone to C-1 be approved conditional. Further, staff recommends denial of part 1 of VC07-005 and approval conditional of parts 2 and 3 of VC-7-005. A set of recommended conditions are included if the Mayor and City Council choose to approve the proposed development as submitted.

Mayor Lockwood stated that the Council would now hear from the applicant. Congratulations were in order as the applicant is the father of a new baby girl.

Attorney Pete Hendrix presented the application. He stated that he practices law at 6085 Lake Forest Drive. The property is a 16.3 acre tract located at the southeast corner of Deerfield Pkwy and SR 9. The front corner of the property is presently zoned to the A apartment classification and the 14.59 acre portion of it is presently zoned C-1 at appreciably the same level of density as was requested under this application. A total of 116,722 square feet with one little catch and that is the reason that Hendrix is in front of the Council this evening. It has to be built in one building. They could not break that out or they would not be going through a rezoning if they did not have to labor under all of that development as being under one building. Because it is being connected to phase II it triggered a DRI. The applicant filed their rezoning application on June 5, 2007. The DRI process started on June 11, 2007. They finally came out from under that on the 30th of August, 2007 with a letter recommending approval that has been sent to the state and is very important in the Council's consideration of the application. GRETA and ARC conditioned the applicant to the curb cut on Deerfield being 400 feet from that intersection. That is coming into play with the current variance that the applicant has requested and that is that they be reduced to a 25-foot natural undisturbed buffer and a 10-foot improvement setback. In addition to that, Phase I is at that same level of treatment along that easterly property line.

The folks who were present at the Planning Commission meeting stood up in favor of the immediately impacted folks to the east, Villages of Devonshire as well as Camden Deerfield. So the two immediately

adjoining neighborhoods have spoken affirmatively in favor of that request. Not only do the fit, he thinks, overcoming the burden of the shape and size along the configuration of the property that they labor under, but also under Section 22.3.1 as long as what they are asking for is in basic harmony and the policy and intent of the zoning ordinance then it is an either/or. They don't necessarily have to carry the burden on shape and size although Hendrix feels that they do carry that burden. But in addition to that and given the fact that phase I is at the 25 foot natural undisturbed plus 10, they feel like they are basic harmony with that by asking for it on the phase II.

The applicant is also asking for the ability to have the loading dock area in the front yard. The prevailing amount of comment at Planning Commission in concern or opposition to this was over the filling station. They have removed the filling station and in fact, they now have a site plan that shows not only the filling station and gas pumps removed but they have also given an architectural treated wall that will have the same treatment as the architecture of the building. They have a planted landscape strip that will give further screening from Deerfield Pkwy and now they have placed a building intended to be either a financial institution or a restaurant so there will be totally and complete visual blockage of that loading dock area.

The other application that Hendrix has concerns a concurrent variance. It is to be able to do away with what by development standards are the required landscape strips, C-1. Obviously they want to be able to develop this out with complete continuity with pedestrian engagement, cross parking between phase I and phase II and therefore he is asking for removal of the old development standard and it would have to be a 10-foot landscape strip. When they came through with phase I they anticipated that there might be a phase II and so they have that same relief that has been granted under phase I where there is no landscape strip that is required on that side.

Attorney Pete Hendrix stated that at this point in time he thinks that he would like to reserve the rest of his time for rebuttal.

Mayor Lockwood asked if there was anyone else that would like to speak in support of the application.

City Clerk Marchiafava stated that she thinks they want to reserve that time. She stated that they will move to opposition. First, she will call on Alan Tart, on behalf of the Avensong Community Association, and he has filed the affidavit with the clerk. They are distributing a handout as well.

OPPOSITION

Alan Tart stated that he was speaking on behalf of the Avensong Community Association. Avensong is a neighborhood of about 564 homes located at Deerfield Pkwy and SR 9. First and foremost Mr. Tart stated that he appreciates the City and the Planning Commission's careful analysis of this. They offer the following recommendations with regard to this rezoning. First of all, the use of the facility for gas stations has been withdrawn. However, the neighbors would like as a condition that it include no filling stations or pumps of any kind. That is to make sure that in the future this is not used for any other sort of filling station. The neighbors also recommend denial of all three variances requested and they base this recommendation on the fact that they feel that the developer has not demonstrated hardship to justify variances.

With regards to part I of the variance to reduce the required buffer along the east property line from 100 feet to 25 feet and a 10-foot improvement setback, the required 100 foot buffer along that east line is to shield that residential property immediately adjacent to the development. As was mentioned earlier, the apartment

community apparently has written a letter but that was written by the management of that property development and all of the residents were not represented in that letter. Also, with regard to part II of the variance to delete the 10 foot landscape strip along the south property line, the neighbors feel that that should be denied due to the substantial clear cutting that was done on the land. They feel that the landscape strip could be creatively distributed so that there are still breaks in the asphalt but still allow for inter-parcel access, which is needed to create the harmony in the development.

With regards to part III, which is to have the loading dock in the front yard which will be Deerfield Parkway, the neighbors are asking that to be denied.

The neighbors would like some conditions added to prohibit drive-thru's for dry cleaners and fast food establishments whether free-standing or not as well as no more than two drive-thru's for any bank that would be installed. They learned from a meeting with Sumner that the gas station would be replaced by either a bank or a restaurant. They would like that to be limited to two drive-thru's only. Also to be consistent with recent citizen recommendations from improving the SR 9 overlay the neighbors recommend that the building height be limited to 30 feet or less. As the Council may recall a couple of weeks ago when this came up for a vote to improve the SR 9 overlay that particular section of the improvement was not adopted but a comment was made by the city that there could be limitations to the building height in rezoning.

Mr. Tart stated that the neighbors would also like for the lighting standards to be at least as stringent as the northwest overlay. They would like the number of parking spaces to be reduced from five per thousand to four per thousand feet of building space and break up parking with increasing the number of landscape islands. The land immediately adjacent to the apartment community, there are 50 and 60 parking spaces with no break. Increase the distance between the street and sidewalks to provide greater safety and usability. Also erect a black equestrian fence on the other side of the sidewalk next to the street. This will be facing SR 9 and will enhance the rural equestrian character of the city's gateway. Add a requirement that the detention facility should be natural in design with no chain link fence. Also given the substantial clear cutting, the neighbors ask that the trees on the property...increase the number of four-inch trees by at least 25 percent. Add a requirement for the traffic signal to be added at SR 9 and Deerfield Pkwy to provide safe traffic passage for the residents in the area. The neighbors would also like for the development...as they all know, the development will bring more litter into the area especially given that there will be an entrance and an exit on Deerfield Pkwy. They would like for the developer to maintain the landscaping between SR 9 to the entrance of Avensong and further cooperate with the neighborhood from Avensong down to Webb Road to make sure that the litter is collected. The neighbors would also like for the City of Milton to establish an approved truck route that would take trucks up Windward Pkwy and down SR 9 so that Deerfield Pkwy is not used for truck deliveries.

It is the neighbors' opinion that the variances that are being asked for by this developer are being asked for because they want increased density on this parcel. The neighbors would like for the city Council to provide an equal playing field for developers by only approving variances for which hardships exist. The neighbors would appreciate the Council's cooperation in making SR 9 an area that is truly befitting the gateway of Milton.

Isaiah Yancey, 13274 Merrywood Drive, Milton stated that he was president of the Regency at Windward Square Town Home Association. The Regency at Windward Square is a subdivision of 144 homes, which is directly across the street from the Sumner development. The Board of the homeowners' association reviewed

the variances and they are opposed to all three variances for the very same reasons that Mr. Tart has just reviewed. Yancey would also like to go on record...

City Clerk Marchiafava stated that Mr. Yancey had 45 seconds left for his opposition.

Mr. Yancey stated that they also oppose the gas station and they are totally in favor in concert with the additional recommendations.

City Clerk Marchiafava stated that the speaker had more than 45 seconds left. She apologized that she had her numbers wrong and if Mr. Yancey wanted to continue talking, he had a total of 10 minutes.

Mr. Yancey stated that those were his comments. He wanted to stress that they are totally in favor of the additional recommendations as proposed by the homeowners' association from Avensong.

Sara Allen, 13430 Avensong Ives Way, stated that she was speaking in regards to a petition that she started against this rezoning. The Council should have a list and the supporting documents. Not all copies will include all of the supporting documents. The list is of 137 people not only in Avensong but also in the other adjoining neighborhoods that oppose this rezoning. Of the 137, Ms. Allen stated that she spoke directly to 28 of those people and that was directly against the loading dock and the gas station. The gas station has been removed but she also wants to reiterate to Alan Tart's comment about putting the exception in there that there will be no filling stations so that that use does not get added in the future. This petition shows that the people in the surrounding area are opposed to this. This is not just the homeowners' association board but also the opinion of the people that actually live in the area who are opposed to these variances. In conclusion, Ms. Allen wanted to support the recommendations that Alan Tart has suggested which will support the petition that 137 people signed.

Ed Parsons, 2950 Serenade Court, stated that his residence is catty-cornered to where this development is taking place. He is here to oppose the proposed variances. He had a couple of things he wanted to bring to light here. One was that he reviewed the information on the Milton web site last night. One thing that is a little bit inaccurate is on the photos that he has, there is a piece of property that is straight west of this development area has already been developed as Habitat Homes. There is another piece of property that is being developed as a town home community. It is almost entirely surrounded by high density homes already. One has to take into consideration the amount of noise that is going to be generated. He knows the Council has talked about the variances with the setbacks and the things like that but one of the things he wanted to bring up is the noise consideration. Previously he lived in a location that was adjacent to a grocery store and retail location. Starting at 6 a.m. they had loading trucks coming in and out and garbage trucks so one of the considerations that should be approved in some fashion would be a loading dock that they would consider putting some kind of time restriction on when they can deliver things to the stores.

City Clerk Marchiafava stated that Mr. Parsons had one minute left.

Mr. Parson stated that concluded his comments.

City Clerk Marchiafava stated that completes the opposition's comments at this time.

Attorney for the applicant, Pete Hendrix, stated that if the Council would go to page 7 of the staff's review, where the proposal of the use that is suitable for the adjacent properties in the affirmative and the

adverse affect in the negative. It has a reasonable economic life as currently zoned. They all know that 14.589 acres of it does and it is just that one huge building aspect that has him in front of the Council. Excessive burden of the use of the infrastructure and if the conditions of zoning are complied with considered that it won't, conformity with land use plan as a live-work neighborhood would suggest office, service, commercial retail densities up to 10,000 square feet to the acre. This application is 8,808 square feet to the acre.

On the next page, existing of changed conditions effecting the development and of course the development throughout that corridor and environmentally adverse effects in the negative it is to be noted that phase I contiguous and to the south is actually relevant showing 9,052 square feet to the acre.

One gets over to the other issues of consideration on pages 12 and 13 with paragraphs H through P. All of those found by the staff to be in the affirmative. Staff concluded at the end that it is consistent with the plan and if approved according to the staff's recommended conditions they feel that it would be an inappropriate development.

Attorney Pete Hendrix stated that he would like to go back once again to the variances that they are asking for. The staff has seen fit to recommend they approve the variance for the loading dock in the front yard. And now with the deletion of the gas pumps on the revised and amended site plan that they have been able to put together, there is a wall that comes along there between that loading dock and Deerfield Parkway that is going to have the same architectural and building material treatment as the actual building. In addition to that there is a beefed up landscape strip going up towards Deerfield Pkwy and now one has the intervention of the building that has been placed up there where the gas pumps had been located as the anticipated use either as a restaurant or as a bank. But once again, coming to the landscape strip that is along the easterly property line, the applicant feels that they are burdened by the configuration of that piece of property that is legitimate. One can see how the road narrows on that property as one goes from phase I up through the phase II that is in front of the Council.

In addition to that, Mr. Hendrix stated that he would go back to that section of Article 3.2.1 that says we do not necessarily have to carry that burden if they can show that it is in basic harmony. Mr. Hendrix maintained that it is in basic harmony because phase I has in place along that easterly line the same 25-foot natural undisturbed and 10-foot improvement setback that they are asking for under this application.

He stated that he would ask Brian Snelling to walk the Council through as to the basic integrity of the development, the building materials, the architectural design and what they have done to try to respond to some of the community comments but particularly with a view towards the location of the Kohl's.

Brian Snelling, 1450 S. Johnson Ferry Road, Atlanta, GA 30319, stated that he had a couple of items to go over, one regarding the picture. The gentleman is correct; some of these other areas are being developed. Unfortunately with the aerial software that he has in his office, a 2005 aerial was the latest he could get. He does have some more recent aerials but he is correct that there are other developments in approximate location of the building. Obviously that building is there. Some of the other comments regarding the property to the east of them, it is true that they have met with Camden Deerfield. They are not just a property management company that does higher end developments randomly. They are actually the owners of the property and he has met with them and they are not just a property management company that has no interest in the property. They are actually the owners of the property reviewing an agreement about the reduction of the buffer because they know the measures that the applicant is putting in place. Obviously, the 25 feet exists

now, the 25-foot buffer, they no they are planning an additional 25 feet. There is also some topography that allows a berm. Because of the topography change there is also a berm, in a sense, that will be planted with their landscape strip that further shields their property from the adjacent property.

City Clerk Marchiafava stated that Mr. Snelling had one minute remaining.

Brian Snelling stated that once he gets into any questions that the Council may have, he did bring his architect. They have designed the entire center and their 3-D model, all of the phase I architecture is accurate. They have tried to expand that into phase II. He has not invested a lot of time developing all the architecture of phase II without knowing if they can get approved. Obviously they have not spent an inordinate amount of money putting that in but they can speak about the architecture and speak about the need of a landscape strip. To delete that landscape strip that is there and obviously get their continuity they can still plant those islands through there so essentially one would still have some landscaping at the property lines and the landscaping at the property line's out lots. Most of the need for the variance, especially the loading in the front yard, is one that because they decided to roll in that extra acre and a half, which is currently zoned apartments, into their commercial. They could have left that alone and not bothered with that and that variance would have gone away.

Mayor Lockwood stated that he would like to first off say to Mr. Snelling and his company that this is a very nice looking project. It is a quality looking development. As everyone knows, in the City of Milton they need...they are going to have some development and they would certainly like to have some quality development and he thinks the applicant has put forth the effort and time to present the Council with that. On these three variances he thinks the point was made about the loading dock and it being on the front yard on Deerfield Pkwy. But as long as they...he knows it is not a separate property now but he knows there is another building there and if the applicants put the wall in there he thinks that will pretty much do away with the issue of the loading dock being even seen by the public or on Deerfield Pkwy.

Community Development Director Tom Wilson stated that those measures certainly do mitigate the view of that loading dock and minimize it.

Mayor Lockwood stated that he thinks the biggest hurdle here is probably the 100 foot buffer going through the 25 foot to the 100 foot buffer. He has been looking at it a little bit and he wants to get staff's recommendation on if they would be able to shift the building over a little bit to maybe with some parking and whatnot if there is a way to come to some middle ground on going from a 25-foot buffer to a 100-foot buffer.

Community Development Director Tom Wilson stated that it would obviously be different. He does not know what kind of hardship or what kind of condition that would place upon the applicant, but maybe they could just ask them what that would mean.

Councilmember Thurman asked if they allowed them to go to four parking spaces per thousand rather than five, could they get rid of that whole row of parking that is currently...

Community Development Director Wilson stated that moving the five spaces per thousand to four spaces per thousand would reduce the parking count by 20 percent. Certainly that would be more of a reduction in those 70 spaces as the applicant had indicated. They could be eliminated as well as a few other spaces could be eliminated where they could go from five to four spaces per thousand.

Councilmember Thurman stated that would give them an extra 10 to 20 feet of buffer. If they went to a 74,999 square foot store rather the 87,000 square feet they could put it at 25 feet without having to come before the Council.

Community Development Director Wilson stated that is correct. The requirement for the 100-foot buffer is restricted by the big box ordinance which is anything greater than 75,000 square feet.

Councilmember Zahner Bailey was asked if he could confirm that the building that is being proposed is 87,000 square feet.

Community Development Director Tom Wilson stated that was correct.

Councilmember Zahner Bailey stated the big box ordinance that is in place was adopted legally not only by Fulton County but by this City Council is indeed in place and is what requires that 100 feet.

Community Development Director Tom Wilson stated that was correct.

City Attorney Scott stated that Pete Hendrix just pointed out something to him and he wanted to confirm it with Tom Wilson as well. He is concerned the fact that he does not know that the reduction in the parking can be done by this Council. He believes it needs to go to the Board of Zoning Appeals.

Community Development Director Tom Wilson stated that he does not agree with that. He thinks the Council can over ride anything in the zoning ordinance.

Councilmember Thurman stated long as it is a condition of the current zoning application. They can not hear it by itself as long as it is conditioned of one they can hear it.

Community Development Director Tom Wilson stated that was correct.

The applicant stated that he was not standing up there taking issue with the substance that is being discussed here. He thinks one has to be careful not to apply an unenforceable condition. That was his only issue.

Councilmember Zahner Bailey asked of Tom Wilson to speak as to how they would if they wanted to have some additional conditions beyond those that are currently part of staff's recommendation but could include four per thousand versus five per thousand. What would be his recommendation if they were to incorporate that as a condition of zoning too this evening?

Community Development Director Tom Wilson stated that first of all, five per thousand that is in the zoning ordinance...the Council adopted that and that is their action. They can certainly over rule that action as a condition of zoning and they would still be writing a condition of zoning to be specific to either a specific number of parking spaces that they wish them not to exceed or it could be a percentage, like four per thousand. It really doesn't have to be that exact number; it might be four something per thousand. They were just talking about the length of the building plus a little bit more to be given another 20 feet with a 20 foot additional buffer if they could possibly shift the building over a little bit more. Let's say hypothetically that they are and it is within the Council's purview to reduce that four per thousand. What specifications would

that give for the 87,000 square foot building today that is being proposed? Would that give them and afford them a 100-foot buffer? Tom Wilson stated that he thought they would have to ask the applicant that.

Attorney for the applicant, Pete Hendrix, stated that he would have to look at a couple of things. The overall 16½ acres and he does not know that he has recalculated based on these spaces. There are probably the same numbers and that they are showing roughly. On the gas station before they were showing roughly 18 space. It was parking at less than five per thousand per their application. One thing they kind of looked at was that Kohl's looked at their own tract and their parking requirements. Eliminating the full 72 spaces along this end would drop them down to about 3.75 per thousand, which is pretty low for anybody. But overall, bringing these back into play and as far as one looks at the full 16 ½ acres, he believes that number would still be over four per thousand but it will be reduced. One of the points they have actually talked about internally, and if one notices from this plan, which is probably different from the plan that was submitted with the application and even different from their phase I plan. On one side they had gone back in and on those 73 spaces they have added the landscape islands back in and the row in front of Kohl's, even though his engineer did not put it there, he told him to add it there. This building, if it gets approved, he wants to be a little closer to the street so half of this parking is gone anyway. They have gone back and added the islands in two different spots. Where that came from, leaving those islands out is part of their agreement with Fulton County on phase I and Gene Calloway. They actually worked with Mark Law but they went with the one that they directly had this conversation with but it kind of carried over.

The whole purpose of the trees is to shade from the heat gained from the parking. The theory is that obviously in the summer, later in the day is where one gets most of that heat gain. If it is shaded from the west, which is why a lot of things are left out because they didn't cut any trees. They still have their landscape strip. They took the trees that would have been in those islands and popped them behind the curb and they provided the same shading. That has also allowed them to meet their parking count on phase I or get close to it. With all of the landscape islands that were shown on phase I...they still had the requirement of meeting 1,441 spaces. He thinks phase parks at about a 4.81 per thousand ratio as what was approved in zoning. So it makes it very difficult to meet one zoning condition but not the other. So they did work with Gene Calloway and even though some of these spaces in the back along this property and everywhere they had an ability to shade from the west, they moved the tree actually into a thicker island and then gained a few more parking spaces here and there to also get close to their traffic count without having to come and ask for another variance to reduce the parking count. So they carried that same theory over into phase II but since they have been talking this week they are willing as the applicants to add these islands in as shown. They can add the islands into this to reduce the spacing and they would also be happy to entertain a reduction of some of these maybe from the front wall back and still allow these parking spaces with the islands to be treated as parking for the front of the store then maybe loose about 30 plus spaces. What one would have coming off Deerfield...there is roughly 50 feet to the back of the curb. The spaces are 19-20 feet deep so one would have a 70 foot buffer along the majority of the property. They would like to keep some of the parking because that would get their ratio closer to four for Kohl's and in a sense once one gets back to where the detention facility is he will naturally have to 20 foot landscape strip along the back side of the pond and he would also have the 25 foot buffer. So one is getting roughly 50-60 feet and for the most part he is going to have 50 feet with some trees in the parking and from that point to the back he would have 70 feet of buffer/landscape strip. It is nothing that they have actually talked around this week as something to do with Kohl's. It is something that they would add on to conditions themselves. So the answer to the question is that they can't meet the 100 foot buffer with the 87,000 square foot building. The 100 feet is roughly right to the edge of the wall. That is where to 100-foot comes into play. If one puts the 100-foot buffer in then he loses the entire driveway,

Mayor Joe Lockwood inquired if there was a possibility to shift the building towards SR 9? He thought that there was about 20 feet there.

Brian Snelling stated that he thought there was about 10-15 feet. They could get closer to the building setback.

Attorney for the applicant, Pete Hendrix, stated that it also would require, because of the topography of SR 9, the existing topography and the fact that it has to be here. It would require them to build a retaining wall in that location, which through other measures of time he has come to learn that retaining walls are not desired in the City of Milton in certain places. They would require a retaining wall there if the applicant moves the building closer to SR 9. The way they have it designed right now, because of the topography they would work that slope back naturally with landscaping and other measures. So there is a little flexibility there but it is very close to that building setback line.

Councilmember Zahner Bailey said that there were three possible prototypes or footprints for Kohl's. Maybe there are more, but that is what she was told. Is there a slightly smaller store footprint that the applicant can put there that would allow for that 100-foot buffer and that same positioning of the store that they have there?

Brian Snelling stated that they do have a smaller footprint that is 65,000 square feet that is small. Their standard prototype for a large store is 87,000 square feet. It is not an option for Kohl's to put that 65,000 square foot building here because the store would not do too well. The shelves would be empty because their demographics, their numbers on the demographics in the area, their projected sales would actually cause the store...they couldn't keep it stocked. Eventually the shelves would be empty, they can't keep a full line of product and that becomes an issue for them and they would not do the store. A 65,000 square foot store here would not function properly and it wouldn't produce the revenue and the sales that they need to keep the store stocked and eventually customers will quit coming because they would walk into a store and there is nothing on the shelf or the product one wants to find is not on the shelf and he is going to find somewhere else to shop.

Councilmember Zahner Bailey stated that if they did put a 65,000 square foot store there, they won't have to worry about the 100-foot buffer anyway.

Brian Snelling stated that a part of the DRI and all the GRETA approval is to try to have access from this parcel out to Deerfield Pkwy. They drew a site plan with this store moved closer to SR 9, right up against that 40-foot buffer, put a retaining wall in and actually drew the 100-foot buffer and the 60-foot setback right up against the wall and then it eliminates the connectivity from this driveway right up to the rest of the center. This driveway would then have to be moved down closer to Deerfield Pkwy than the GRETA requirements require and the driveway would simply just be this parcel and a truck turn around to try and get back out. They could build it. But it is not practical because the whole point is to have interconnectivity and an alternate access route and not have one access point on SR 9 to this parcel.

Councilmember Zahner Bailey clarified that their choices are they can go with a bigger store and Snelling can try to work with the Council on trying to get greater than the 25-feet but not the 100-feet. Or it may not be a Kohl's. A different store could be 75 and they would get the 25-feet and the City would not get the 50-feet or whatever they could get with the situation with the 87,000 square foot store.

Brian Snelling stated that that was correct. He does not know the wording of the big box ordinance, it says an individual retailer. He proposed that maybe Kohl's walked away from the deal and stated that at this time they could not come to City of Milton. As he said earlier, he could go build an 116,000 square foot building 25 feet or roughly 30 feet off that property line and just break it up into multiple tenants and not have to ask for a variance. He could come in and take this same, exact building, but a dividing wall in it and put two 40,000 square foot tenants in it and he won't have to ask for the variance. It is one of those things where Kohl's wants to be here, the applicant wants them to be here, he thinks this is a great development. The applicant is willing to make some changes along the east property line. He has 25 feet there now and they are planning an additional 25-feet behind the curb so one would have 50 feet and they would be happy to lose the back 30 plus spaces. From the front wall back to the drive would be 70 feet minus the little driveway area. Then one would have the natural detention area with the 25-foot landscape strip in the back and a 25-foot buffer. He stated that for the majority of the property one would have 60 to 70 and then there would be one side where he would have 50 feet.

Mayor Lockwood asked Mr. Snelling if there is any flexibility on the actual footprint, not the square footage but to deepen the building 20 feet and have 20-foot less width so that it would fit better and give him the buffer.

Brian Snelling stated that actually he would have to defer to Kohl's on that. They have fixture plans that they will allow and for them to go and design a custom store...they actually do have some people from Kohl's here tonight. He does not know if they are prepared to speak to that point but in his conversations with them and he will be happy to bring them up if the Council would like to hear directly from them. But from his conversations with Kohl's for them to do business it is hard for them to go into every community and do a custom store. In order for them to lay out their fixture lights and their store the prototypical way, this empty box that they have now...anything they can change is obviously the loading dock location. So the basic square is what it is and the loading dock could be moved from the back to either side. If he is not mistaken, he inquired if it does not allow loading in the side yard? So, in a sense the way that...because they decide to bring that acre and a half in created their own front yard, SR 9 is now the side yard. They obviously don't want their loading dock on the side yard. And if they tried to move it to this side, they are in the same boat. They would cut off any access from this parcel to Deerfield Pkwy, which is a requirement that they are going to have alternate means of egress from the property.

Councilmember Zahner Bailey stated that it would be great to hear from Kohl's with regard to these suggestions.

Mayor Lockwood stated that there might be a question that they could address first. What are the dimensions of their 87,000 square foot building?

Brian Snelling stated that he believes it is roughly 248 feet square on the box and the loading dock area and storage area he thinks is 290 roughly. The main box is square, not rectangular.

Councilmember Lusk clarified that there was no benefit to rotate it 90 degrees. In fact, it wouldn't be acceptable he is sure. Turn the front of the building around to SR 9 away from the parking area if they were to rotate it.

Jeff Adam, 12224 West Cherry Street, North Hills, WI (Representative from Kohl's), stated that he was the senior site development manager for Kohl's. Brian Snelling talked to him and spoke exactly correctly on the footprint. They have an 87,000 square foot footprint and a 67,000 or 66,500 square foot footprint that they do use in smaller communities that wouldn't support the large store. This one is going to be for the large store. Their prototypes are basically the box and if the integrity of the box is to be maintained the loading dock would be shifted from the back over to the side. Another thing is they are really trying to maintain this for the type of product that they can get into the store. They have recently submitted their prototype to the USGBC, which is the United States Green Building Commission to be LEED certified for all of the prototypes. So, for next year there is a potential that if it is the prototype it would be a LEED certified building. This is an acute program for Kohl's and they are just trying to maintain that to fall into all the steps of green building around the country.

Councilmember Zahner Bailey asked with regards to the two prototypes versus the three... when she went through the annual report of Kohl's it does refer to three different scenarios and this is their 2006. It listed that all three formats will be part of their expansion and it refers to a suburban and urban and a small. Is the annual report incorrect?

Jeff Adam stated that was correct; there is an urban in addition to a downtown setting. Like through downtown New York there would be multi-level developments. Two of the three would be the 87,000 for one; the second would be the 68,000 that they could move in stand alone situations.

Councilmember Zahner Bailey asked Mr. Adam to speak to particular markets. She knows their growth strategy talks about having 1200 stores nationally. Could Mr. Adam speak as to where some of that second prototype is utilized within the United States? Could he give the Council some market examples?

Jeff Adam stated that it was tough to say. A lot of the stuff is in the mid-west where they already have their large stores situated where they need them. They take a smaller one to where a smaller community can support it.

Councilmember Zahner Bailey stated that it would be helpful to her to have specific examples of where certain prototypes are used in specific markets based on demographics.

Jeff Adam mentioned Oxford, AL and Opelika, AL are a couple of them. Burlington, WI; there are a couple in Wisconsin. He would have to bring up the entire list of small markets.

Councilmember Zahner Bailey stated that that was her point. There are a lot of markets where they do utilize the prototype other than the 87,000. She is assuming that some of those stores are actually, are successful or perhaps they wouldn't still build them.

Jeff Adam stated that was correct. They are just for smaller communities. The marketing firm puts together a strategy that says for Milton with the demographics that they have here the sales are going to be such that it is going to need to be a large store. They cannot do a small store when final sales would outperform.

Mayor Lockwood stated that he assumed that Kohl's has certainly done their homework on that and invested the money to be sure they wouldn't go forward with that prototype. He would like to say that the Council is there to serve the citizens. By doing that sometimes they have to look at the whole picture and certainly agrees that this is a nice development and he is certainly in favor of it. He knows that the one big

stickler on it is the buffer and that is why he thinks they ought to address the loading dock and the buffer. They have gotten some ideas where they could at least come to a happy medium but he would be interested to hear if anyone else would support that on the Council.

Councilmember Zahner Bailey stated that the Design Review Board, and she knows the Planning Commission, talked about rotation of the building. She asked Mr. Adam to speak to what Kohl's perceived requirement is about having parking in the front versus being able to shift building to some degree. If hypothetically Kohl's is willing not to have all of the parking in the front? She asked Mr. Adam to speak to that as an option.

Jeff Adam stated that he and Snelling had looked at that from the scenario of them turning the building with the depth that they have. Many things they pride themselves on as well as targeting other big box retailers is having the parking lot in front being convenient for the customer to come and shop and get back out to the parking lot conveniently. They are not coming out and then having to walk a great deal with a lot of merchandise and go to their cars. If the building is square and they are going to rotate it, it really isn't going to matter. Adam stated that if they are turning it they are basically going to have some parking in front with the doors in the front.

Councilmember Zahner Bailey stated that part of the thought is if they have that parking that perhaps if they didn't have to have the mass of parking required where it is, there could be some shifting and some rotation without that footprint being exactly where it is currently if they are shifting part of that parking. Her understanding is that some of that parking requirement to the front is in part what dictates that particular footprint being in that particular location.

Brian Snelling stated that he wanted to answer some of the questions or perhaps clarify where the parking can go or can't go.

Councilmember Zahner Bailey stated that not even a full rotation, but if there is a way to shift some of that parking so that they don't have so much of the mass. That is something the Design Review Board had talked about in addition to perhaps a smaller footprint. She is just trying to understand what the sole complexion of things is of the things that have been looked at in the hopes of still meeting some of those buffer requirements that are in place obviously to protect the citizens.

Brian Snelling stated that in speaking to some of the parking; obviously they can't get any parking on this side of the building because this driveway has to be here. It has to be a 200 foot throat length, which is currently what is shown due to the topography and the slopes. This area drops down literally and there is no physical way to get there. He can't create an intersection and there is just not enough room to put in regional parking in this area. Obviously pulling the store further back goes against the buffer issues. They did look at scenarios and even before they submitted the zoning package, they do this all of the time on all of their projects. He thinks he is almost on site plan 68 or 69 and that is just with the current engineer he is using. They had previous site plans as well. If they move the Kohl's they looked at several site plans in trying to move the Kohl's south and turning it to face SR 9. One still has the same issue; he ends up with very little parking that is able to be put in front of the store. The detention facility is currently in place. It needs to be there because it partially serves phase I because of the topography of the entire site. Roughly 4+ acres of storm drainage flows into this pond in phase I and they have another small pond. If he moves it any further north, then he just can't get there because of the slopes. Then also, if he leaves the...the current ordinance states that one has to have a 100 foot buffer. He is not actually allowed to have a detention facility in there so

he would have to move that detention facility forward and then Kohl's pushes even further forward and he loses the driveway and the connectivity in between the two. He can't go behind it because it can't go through the buffer and he ends up with one little driveway. He pointed out a driveway that starts and curves down and comes basically into the same spot. Then he ends up with very little parking in that location. The other snowball effect of that is anybody that he wants to put into this shopping center, that wants to feel like they are a part of the shopping center, if he moves the anchor down to this end of phase II and try to move these north, that is un-leasable space because no tenant wants to sit that far north and not feel like they are drawing from the same demographics that everyone else is. So in talking with all of their small shop retailers, their national majors and their anchors they obviously feel like this is the best site plan to draw someone into the center and allow them to flow between the two anchors and shop at all of their retailers and make everyone successful out there. If he starts putting people out where they feel like they are not part of the shopping center, first of all they can't lease the space and if one does find to take it then it is just going to be a constant turn and constant vacant space.

Councilmember Zahner Bailey asked about parking and Kohl's. She stated that the applicant mentioned that when they discussed shifting it, that there wasn't enough parking at the front. That is based on the prototypical sort of approach that Kohl's said they have an ideal of having so much parking at the front. What if the applicant creatively talked with Kohl's about maybe looking at that prototypical parking a little bit differently? Would that have allowed them to shift that and perhaps not impede on that 100-foot buffer?

Brian Snelling stated that they looked at that and again it comes down to if one has a parking space on this side of the store and someone has to park there and walk and carry merchandise around, that's...

Councilmember Zahner Bailey asked if they ever had two entrances on Kohl's. Has there ever been consideration for 360 degree architecture where one would have two entrances? Snelling stated that he believes they have that, they have some older prototypes they have done that have side entrances; Jeff Adam could definitely speak later to that. The Council member stated that she was just curious if maybe that was not maybe an option to divide up some of the parking and give folks that opportunity to approach the building from two different sides. Snelling stated that he would let Jeff Adam speak on that. He knows that from those they had early on probably the part to be LEED certified and the prototype that they want to bring to this facility.

Jeff Adam stated that they do have prototypes where they have a front and a side entrance. Their typical list that they acquire from just knowing how they operate is about is they need to require five feet per thousand when they go into a deal with a developer. Obviously here they are going to be taking less and they understand that even if they take less because of site that Snelling is talking about that it is going to work and they could possibly accept that. If one takes that he would have to have about 225 stalls on either entrance because they don't do department style check out, they have all of their check out at the front of the store. That is the way Target and other retailers have it. If they only have a couple of spaces it's not going to be able to stack adequately. Coming out of the one entrance would provide community parking and the short parking field is not going to be used.

Councilmember Zahner Bailey stated that she was thinking about that as an option they need to discuss, pushing that building a little bit further. What strikes her is it is a very large, obviously large mass of density in a narrower portion of a site plan. She inquired what the total number of square feet was both in phase I and in phase II.

Brian Snelling stated that phase I was approved at roughly 299,000 square feet. He thinks they are right around 295,000 square feet or something like that. Phase II will be 131,500 gross square footage and that is where issues are. They have a mezzanine in there that adds 5,000 square feet. He stated that it was about 128,000 square feet when one actually looks at sales floor area. This actually got a little bit smaller in looking at the retailers. In fact, the point of moving to the south, they actually approached the retailers and are currently trying to negotiate leases for these spaces and asked them if they could sit over there and they said no. These are the exercises that he goes through daily and so that is one of the reasons.

Councilmember Zahner Bailey stated that she was just trying to get a sense of the total impact of this parcel as opposed to 450,000 or between 430,000 square feet and 450,000. Her point is in trying to bring that into perspective is the Council has heard from a lot of citizens that are concerned about the impact. Not just in the apartments behind, but also they have heard from at least four or five different subdivisions and homeowners' associations. At least from her perspective, especially thinking about Milton as a green community and she applauds Kohl's for wanting to develop something that meets those green standards and would hope to continue to encourage that on this site. Hopefully the Council will and collectively find a way for them to be here that meets all of the needs. She is concerned about the impact to the citizens and obviously striking that balance is important. She just does not want to lose sight of the fact that they have buffer standards in place for big boxes. That is why it is called the Big Box Ordinance. The Big Box Ordinance particularly is in place because one has a big box. There are a couple of big boxes and that is not a bad thing. It is just the reality of this site plan, 430,000 to 450,000 square feet. She does not want to lose sight of the impact of that 450,000 square feet on the residents that will live with this across the street, to the side of it, to the back of it. She is concerned about losing that buffer and when she looks at the annual report and when she hears them discuss prototypes that are successful in other parts of the United States, she wants to urge the applicant to maybe do a little bit more soul searching about a prototype that could indeed still meet the standards of the City of Milton. The standards that the citizens are expecting the Council to uphold when they can, and she is just not sure that there has been enough explorations into these other prototypes. She does respect the fact that the applicant believes right now, this evening, that this largest footprint is the only thing that they can embrace. She is curious as to what discussions they might have second to this meeting tonight. She would embrace discussions with the head of Kohl's real estate department, maybe that is who some of these applicants are. She would love to better understand in what market the small prototype has worked and still been able to meet those buffer requirements. She believes their policies require that when the Council makes a decision first and foremost they have to protect the integrity of the neighbors. In fact one of the earlier site plans that was shown for the 2005 aerial, it didn't show those additional residents that indeed are now surrounding this 430,000-450,000 square feet. It is a lot of density. And of course they want to embrace their businesses. They do need those businesses but when one looks at this 430,000-450,000 square feet, they are not looking at the impact to those surrounding community and she does not want to lose sight of that. It is a density that without these variances based on the current sight plan can't be configured. The purpose of the variance is because this big box can't be positioned on this site without the variance. And that is the purpose of why they have development standards so that they get upheld and protect those adjacent land owners. She would be remiss if she didn't say that as they have this discussion tonight. She is concerned that they are losing sight of the impact to the residents that live here that will live with this day in and day out. She lives right there so there is a lot of folks that they have heard from in letters, that came to microphone to speak. She would encourage all of the Council members to give careful consideration before they start to erode the very development standards that they have spent a lot of weeks saying that they are going to uphold for the SR 9 area. She personally can't support eroding a development standard that is one of the four development standards that protects SR 9. She does not know if they have looked hard enough and deep enough at a different site configuration that could still meet those standards to allow these businesses to

develop and yet still protect the very standards that they all profess to want to protect. She is concerned about giving up on the standards that are in place for a reason.

Brian Snelling responded that to build the 100 foot buffer that box, whether it is Kohl's, ABC Hardware, whoever, being a single tenant that box can still be built there and with the 100 foot buffer. It just comes right up against the building wall. He will have to move the building actually closer to SR 9, which he would think would not be wanted by anyone. The 100 foot buffer sits 100 yards off SR 9 on the back property and they could pull that box right up to the building setback so that the back left corner sits right on that 45 foot setback. This building is built; there is a 100 foot buffer there. The driveway would have to be outside of the GRETA recommendations and outside of what he believes the transportation department for the city of Milton wants. It would have to be closer to Deerfield Pkwy than it is if one adheres to the full 100 foot buffer requirement. He would allow no access from this parcel to Deerfield Pkwy so that all of the traffic is now coming out through an unsignalized intersection on SR 9 trying to make a left turn onto SR 9.

Councilmember Zahner Bailey stated that was assuming the 87,000 square feet without giving consideration to the other prototypes that Kohl's developed.

Brian Snelling stated that to get back to the point he is saying that that building can be built there with a 100 foot buffer. It is not a very attractive site plan and he is not saying that it is something that they would probably do if someone could come and do it. One can also build that same exact box there with two 40,000 square foot prototypes and it is still a big box. He can build it and connect on the end of it and build 116,000 square feet in a big block.

Councilmember Zahner Bailey stated that they may be getting beyond the purview of her question. Her concern is, and she actually does not think that GRETA...she thinks that she heard that the DRI review required those. When one takes all of those into consideration, she does not know that he can erode those requirements from the DRI review from the Milton DOT standpoint. Her point still stands that she does not know that they have explored it thoroughly enough through collaborative conversations with Kohl's either other site plan configurations or that other prototype. She shops at Kohl's, she loves Kohl's, it is a great organization. She would still shop there if it were a smaller footprint. In fact, she would probably go there more often because it would be a little more unique. That is really not the point. The point is that the variance being requested does not meet the standard that citizens expect the Council to uphold.

Brian Snelling stated that in speaking to that, the issue of size of the store, he thinks that it is sort of multi-faceted. He has another development down off of Edgewood and they have a Target store down there. The Target store came in with one of their components that has proven to be undersized for that location and they are not able to keep that with sufficient inventory. They have made a determination that with the market that the City of Milton brings to the table that the 87,000 square foot store is a store that from a market-business standpoint is successful. If they went to the smaller store he thinks they have put the viability of store at risk and they have then increased by some level of volume the truck traffic in and out trying to keep that undersized store with inventory. Whereas if one has a store that has a decent size to it that they think is going to fit the market and is going to be successful, he will not have as much coming and going from a truck perspective.

Councilmember Zahner Bailey stated that she did understand that. She also wanted to state as a matter of order that she does not know that they are allowing the opposition equal time. She is concerned that they have...she just wanted to say that they are not diverting from their...

Attorney Pete Hendrix stated that in sitting just listening to this; he thinks that what he has heard is a 25-foot natural undisturbed buffer along the area of the detention pond. A 25-foot natural undisturbed buffer and 25-foot landscape strip going from the detention pond to the southeast corner of the building and then a 25-foot natural undisturbed buffer and 45-foot landscape strip going from the southeast corner of the building to Deerfield Pkwy with the deletion of the parking along the easterly wall of the building. Hendrix thinks that the Council asked of the applicant what could be the hybrid. Where could they sort of try and come to the middle? And that is what he thinks he heard out of it.

Councilmember Thurman stated that she had one other issue. The fixtures the applicant is showing lighting the parking lot, is that the kind of lighting that he intends to use? She does not like shoe box lighting.

Brian Snelling stated one of the casualties of today was the cut sheets for the light fixtures. The lighting that they are proposing, the actual fixture itself is the same one seen at the Publix in Birmingham at Birmingham. It is a very architectural feature. It is dark sky compliant with full cut off fixtures and they are very architectural in nature. No shoe box light fixtures will be used on this property.

Councilmember Thurman inquired if he had no problem with making that a condition of the...

Brian Snelling stated no, because he has already bought 79 light poles for phase I.

Councilmember Zahner Bailey stated that she had a question about the site plan. Her understanding is that the site plan they have had presented to them, she knows they have talked about this being revised and she has heard some math going around. But she thinks admittedly that Mr. Snelling had mentioned that he was doing some of the math on the fly. So, with all due respect for Pete Hendrix, when they talked about that 25 and that 45 foot buffer she is a little concerned that they are working from the site plan and modifying numbers kind of on the fly without really knowing what that revised site plan would truly demonstrate in terms of real math. It concerns her tonight that they have a site plan that was presented to the community through this process but it is being modified and the Council is still being asked to modify buffers without a revised site plan for them to really look at. She would ask that this Board and the Mayor and City Council that if they are going to start going down a path of considering anything other than that 100 feet...she surely wouldn't want to do anything on the fly since this is a forever sort of impact. She could not possibly support on the fly. She said there is talk about mitigating and approving a variance without knowing what it really means in terms of really on the ground. She asked Tom Wilson to comment about whether or not they have a site plan that they could really look at right now and say, yes this is the exact amount of dimension they would have if they ...

Brian Snelling stated that he measured out on paper and came up with about eight feet of the 70 that Mr. Hendrix was...his math on the fly that Councilmember was referring to, the only thing it had to do with was the parking count. He is talking about math being applied as 3.76 versus 2.95.

Councilmember Zahner Bailey stated that she was not being critical.

Brian Snelling stated that his math on the fly had nothing to do with the buffer variance. He can tell the Council exactly, within a few feet of what that buffer is. It is not a difference of 80 to 20 feet; it is a difference of 79 to 81 feet or something like that.

Councilmember Zahner Bailey stated that from a site plan perspective she would like to keep some semblance of process especially when they start to talk about reducing parking and they start to talk about removing the gas station and they talk about other potential shifts and maybe even some conditions of zoning that they haven't even talked about yet like the distance from a sidewalk to the edge of a road. At what point would it make sense to have a revised site plan that they could look at before they make a formal motion or before they have a decision that they have a site plan that is actually reminiscent of something that they are actually discussing, just from a process standpoint.

Community Development Director Wilson stated that the Council has to decide for themselves where their comfort level is. His comfort level is that one could make all of the changes that they spoke about tonight, make them conditions of zoning, looked at a modified site plan, and he could still assure the Council that at the end of the day when he issues a land disturbance permit, it would be consistent with everything they have said in the past and everything that they made a condition of zoning on. They may not have that same comfort level that Wilson does but he does not have to have a site plan completely detailed consistent with conditions of zoning in order to assure one that any condition of zoning that the Council makes tonight would be installed before they issue a land disturbance permit.

Councilmember Zahner Bailey asked about the distance when they are talking about that 100 feet plus the additional 10 feet?

Community Development Director Wilson stated that if they say it is going to be 77 feet, it is going to be 77 feet or it is not going to be. It is not going to be about 77 feet or 80 feet or whatever it is they say that is going to be what it is going to be and the site plan would have to be modified to meet that or they will have to come back to the Council again for a modified site plan.

Councilmember Zahner Bailey stated with removing the parking, what is that distance? What are they going to have for a buffer if they take the parking on the east side?

Community Development Director Wilson stated that his best guess at this moment is about 80 feet. If the Council says 80 feet then that is what it is going to be. When they reconfigure, if they need to move it a foot or two closer to SR 9 he would be able to do that to make the 80 feet. The actual number is 70 feet from where they are currently. It is 50 feet from the parking lot to the back of curb. The parking spaces are roughly 19 feet deep so one would be looking at 69 feet so there might be a little room on the SR 9 side.

Brian Snelling stated that there are a few feet they can shift around. There is a drive aisle that needs to be maintained at 25 feet per the fire marshal and other requirements. They have a few feet down there to shift but where the Council is looking is 50 feet to back of curb and then 19 feet per parking space so 69-70 feet.

Mayor Lockwood stated that he is hearing from the applicant that they would certainly meet the Council well more than half way by let's say an arbitrary number of 80 feet, not a buffer along the side of the building. He asked to hear from the rest of the Council with comments if they were to entertain something like that.

Councilmember Mohrig stated that he thinks he would be open to...How much does he have to shift towards SR 9 without having to build the retaining wall that they talked about?

Brian Snelling stated that they were almost there. He would have to get with his civil engineer and his traffic engineer because they handle the evaluation of the topography. There is a...in order to get the front corner in, if he moved it all the way to the building setback line he would have to put a retaining wall in along the building setback line to hold this slope of the highway. In part of their discussions with the city traffic engineers and GDOT they made this highway wider by 16 feet. So that highway got closer to them by 16 feet, which means where he had slope before to work it out, now he has got to build that slope up to hold the highway. And that is what makes it tighter.

Councilmember Mohrig asked Tom Wilson to comment about the property line. What is the buffer? What is the distance back to the apartments that exists today in that undisturbed area? He is trying to determine how close they are to that residential area today.

Community Development Director Wilson stated that he did not have the distance but suggested they take a look at the aerial photograph.

Brian Snelling stated that the aerial was actually pretty accurate. Most of phase I is roughly where the buildings are shown. So, really there is a building there and some buildings to the north that one can see on their property because they have a stream on their property. There is already a natural area there that will remain. The majority of the applicant's property, when they add the extra buffer to it, will continue. He stated that he has an aerial in his hand that shows where the trees are currently cleared now and what is there now. As one can see they did a very good job of cutting off where their plan is with respect to that property to the east of them. In the detention facility they would have the 20 foot landscape strip on the back side of their detention facility, which would add to the 25 feet that is currently there.

Community Development Director Wilson stated that there will be a 40-foot perimeter setback around this multi-family development. So there is at least 40 feet between that building and the closest building to that east property line in that area that has trees in it. That would be a required dimension of 40 feet by the zoning ordinance. It could be more than that but he doubts that there is less than another 40 feet.

Mayor Lockwood asked if Mr. Wilson was saying another 40 feet additional off of their property line.

Community Development Director Wilson said this facility that was built here will have a requirement of a 40 foot perimeter setback along this same property line for any of these buildings. It could be more than that but he would bet that it is not.

Mayor Lockwood inquired if they had 70 or 80 feet plus the 40, which is 110 or 120 feet from the building to the actual drive.

Councilmember Mohrig stated if we are willing to extend that buffer and take the additional buffer out, is the applicant willing to increase plantings and landscaping in that area?

Brian Snelling stated that they would have trees there in those islands anyway. If the parking spaces went away he thinks the same spacing would apply. What they would do is...that is 50 feet and he believes their landscape strip ordinance, when they spoke with Mark Law, they would stagger those. They have some there now anyway behind the curb. They would then stagger those in a pattern and connect the patterns, one every 30 feet and they would probably, as they get into multiple rows they would stagger them. If they are doing two rows of trees they are staggered in pattern. They would not just replace the parking with.....they would

have to put landscaping there but they would have to also plant some trees, shrubs and bushes to match their landscaping plan everywhere else on the site. They would not just throw a bunch of sod down. Could it be a condition that maybe in that area that the applicant “beef up” the landscape a little bit...plant it to buffer standards.

Community Development Director Wilson stated that they did not want to plant it any denser than buffer standards.

Brian Snelling stated that the only thing he would speak to that is they would want to plant either...there is a 20 foot undisturbed buffer now that they will be supplementing that planting where it is thin anyway. They have already committed to do that. Outside of that he stated that they are calling it a landscape strip or something like that. He has to be a little careful because in Milton’s ordinance it doesn’t allow for certain things in landscape strip like working and grading. If he had to put that driveway in he would like to be working with Mark Scott and staff to get some relief to be able to grade and work in there. There is some strange language in there that doesn’t even allow one to go into it. It is worded a certain way.

Councilmember Zahner Bailey stated that it was supposed to be an undisturbed buffer.

Brian Snelling stated that they would definitely plant more trees in there to match their current landscape plan.

Councilmember D’Aversa stated that her comment is that it sounds like the surrounding community would prefer to have a more unique looking store and a uniquely sized store. And given the 100 foot requirement, she would love to see the applicant consider putting their smaller footprint there and still come back to the Council with a 100 foot buffer. She understands the economics of the store but she does think that the applicant would be extremely successful. They have seen it throughout other areas in Milton when they do things more uniquely that it does pay off. Her concern is that they are putting a very large box store in an area that is probably not appropriate for it. If they put in the smaller store, they would not have to worry about buffers. It would actually be much closer to the apartments and there would be no need for a variance.

Brian Snelling said one could not necessarily move the building because he would have less structure.

Councilmember D’Aversa stated that they were assuming that the applicant would not be willing to work with the community and the community doesn’t want it to be closer to the apartments. Given that, she knows that they have rules and regulations and overlays and ordinances but they have got to listen to the community and she hasn’t heard anybody come out in favor of this large box store. There are also a lot of citizens who are excited about it and love to shop at Kohl’s. She stated that it is not that they are not excited about Kohl’s. She loves to shop at Kohl’s and she is thrilled to have these stores here. But she also thinks that the applicant would be wildly successful by doing something a little unique and making the surrounding community happy with the development as opposed to almost kind of force fitting it is what it sounds like they are hearing tonight. That is her concern.

Brian Snelling stated that the owner of the property directly to the east that this effects is not opposed to it.

Councilmember D’Aversa stated that he (the owner) was a developer of the apartment complex and he is not the citizens that live there everyday. That is the difference. The Council has heard from far more people than are present tonight. Her honest opinion is she wants Kohl’s to be here, she wants their property to be

here. She thinks it looks beautiful just like the mayor has suggested. She is just concerned about trying to force something into what are already defined specifications and overlays as opposed to building for that overlay.

Councilmember O'Brien stated that he was concerned that as tempting as it is to suggest to someone a gut feeling that a different marketing strategy would be successful he does not think they can accept that responsibility. He thinks the Council has to act on what is before them and he would agree that he does not think there is any sentiment that a 25-foot buffer is satisfactory and he is encouraged that the staff has looked these last few days at a significant increase over that but short of 100 feet. He thinks the Mayor has expressed support for the strategy that was offered whether that prevails or not remains to be seen. But he stated that he was impressed by the work that has been done but he is also concerned. He thinks they need to work with the input that has been provided from the community both in the room and outside the room deal with what they can do as a Council and staff. He does not think it is really fair or appropriate to say to any business that if they don't accept the risk for their failure or success they can't really say that if a store in Oxford, AL is successful with a completely different demographic that they would insist on that. He thinks that the Council can't.

Mayor Lockwood asked if they could go back to the retaining wall issue on the northeast corner. What the applicant has proposed now from what he understands is the slope.

Brian Snelling stated that was correct.

Mayor Lockwood inquired how far out could he push or build a retaining wall and still allow for the future widening of SR 9? What he has currently is the slope in there. So if he put in a retaining wall up on that northwest corner how much more clearance could he gain on the west side of the building there?

Brian Snelling stated that the simplest thing is to let the building stand. Either go all the way to the building setback line and see what they gain there and then gauge that as to what type of retaining wall he thinks he might have to build. He stated that if he moves his building all the way to the building setback line, if he remembers correctly the retaining walls are 10-12 feet. He would have to build a 12 foot retaining wall in that area to hold that back. It would be from the corner of the building it would come down and flank the driveway and then turn up probably dead end out, probably go back to zero somewhere. He thinks the topography...or maybe actually it would be full length. He stated that he thought he had a site plan that shows it but he thinks it includes the 100 foot buffer. He would have to go back and see but he believes his landscape engineer said that it would be 10-12 feet from around there. And it would probably just run a little past the building to hold up the building. He would have to work the slope out depending on what goes there.

Councilmember O'Brien inquired from this depicted position how much movement can one achieve right now? From depicted to the 40-foot buffer?

Brian Snelling stated that the dashed line is roughly 10-12, maybe 15 feet that they can shift that building to the west to get it closer to SR 9.

Councilmember Lusk said they have probably covered this ground before but asked if they do move the building to the setback line on SR 9 how much clearance or buffer would one get from the east side of the building?

Brian Snelling stated that it would depend on if the Council would let him keep the driveway down the side of the building or not. If he eliminated it he could do a 100-foot buffer. With that driveway there one is looking at maybe another 15 feet. Whatever they add here they would add onto the end of these parking spaces once they converted those to landscaping. So they are looking at 70 or maybe 80-85 feet in this area if it were all landscaped.

Councilmember Thurman asked how trucks would access the loading dock.

Brian Snelling stated that they would either get rid of the driveway or the trucks would not be able to access the loading dock. Or they would be required to shift this driveway closer to the intersection, which again would be below that 400 foot threshold that city transportation wants, and GRETA and DRI and all of the other approvals that they have gone through. It is currently 419 feet from centerline to centerline.

Councilmember Thurman asked currently how does one expect trucks to access the loading dock. From Deerfield or SR 9?

Brian Snelling stated that they would come SR 9 to Deerfield into the truck dock area back in. When they leave they would come back to the signal. Kohl's has even stated in a conversation earlier that they have put together their own truck plan for their deliveries and they instruct their store managers to instruct all deliveries and they can request or require that the truckers go back to the signal, which they naturally are going to do anyway. They are going to look for the easiest way to get out. With that being said they can do everything that they can to make them go here. He could not guarantee that one truck may not go down Deerfield Pkwy., there is just no way he can do it. They do that a lot on their shopping centers. The one down on Edgewood that they spoke of earlier they came up with a truck routing plan that ensured the only place that they could go was back behind the parking deck. But they recommend that they send it out to all of the store managers that this is where the trucks need to go. For the most part they do adhere to it. They would be forcing all trucks to go back to the signal at SR 9 to Windward Pkwy to SR 400.

Councilmember Lusk asked that they recap where they are at this point, what they tentatively have agreed upon and where they stand as far as what conditions...

Mayor Lockwood stated that he does not know that they have agreed with anything but what they are talking about is if the applicant were to shift the building and have to go to the expense of having to put a retaining wall in...probably his guess would be 80-85 foot buffer versus 100 foot, would that be fair to say?

Brian Snelling stated that it would for the most part. He would like to not extend that the full length because he does want to keep that detention facility there.

Mayor Lockwood stated that they were just talking about from the building back. They are not looking at the other buffers.

Councilmember Zahner Bailey asked what happens to that other 10 foot improvement setback. It is 100 feet plus that 10-foot improvement setback. Wasn't it really 110 feet?

Community Development Director Wilson stated that it was a 100 foot buffer with a 10 foot improvement setback, which one would substitute for 80 or 85....

Councilmember Zahner Bailey stated that it was not 85 feet it was 80-110 and somehow that additional 10 feet has gotten lost in this conversation.

Councilmember Lusk stated that what he really thinks is important is they are talking about a 25 foot natural undisturbed buffer and then how much they supplement that. Let's say one brings it to 80 feet. That supplement is a landscape strip because they have got to be able to get in there and grade that will then be replanted to buffer standards. A landscape strip does not require a 10 foot improvement setback off of it, a natural undisturbed buffer does.

Councilmember Zahner Bailey stated that that would be working from the variance request versus working from what is the development standard that they adopted legally. She is not trying to arrive at it from the variance request, she is trying to get there from the 110 feet that is currently required.

Councilmember O'Brien inquired if there was presently a prohibition on truck traffic on Deerfield Pkwy? He heard the number this week in pre-briefings and there will be 20,000 vehicles using Deerfield Pkwy when it becomes a part of the west side parkway. Is there a prohibition?

Public Works Director Dan Drake stated that there was none that he knows of. The City does not have a truck routing system within Milton as of yet.

Councilmember Zahner Bailey stated that they have spent a lot of time on the buffer and they have not resolved that. She would like to talk about some other conditions that they have heard from citizens and she does not want to lose the opportunity to mention those if she may. With regards to drive-throughs the Council heard a request that there not be any drive-throughs for dry cleaners or for fast food establishments. They had talked about that as well as no more than two drive-throughs for banks. She would like this body to consider that as a condition. They have not talked about the height of the building. They did hear weeks ago that on the SR 9 overlay many citizens wanted to see that the height restriction of 30 feet... she does know if she is better off going through all of these. She asked the applicant to mention very quickly what the height of this current building proposed?

Brian Snelling inquired if Councilmember Zahner Bailey meant the Kohl's? He believes the main body is 28 ½ feet.

Councilmember Zahner Bailey asked if there was any point of that building that goes beyond that 30?

Brian Snelling stated that there might be a couple of architectural pop ups to screen the RTUs on the roof that may go above that. He thinks that it would not exceed probably...he thinks their internal requirement on that is 35 feet on phase II. The building will be over 35 feet. This building is 28 feet on the main body and a few parapet pop-ups depending on where they need to screen. It looks like 30' 8" to screen the RTUs and those are things that they will probably have to figure out.

Councilmember Zahner Bailey stated that she had a question for Tom Wilson. With the 30 foot height limitations, is the parapet considered the height of the building? Is it still part of that calculation?

Community Development Director Wilson stated that it was.

Councilmember Zahner Bailey inquired if one's building height is at 28; would there be a way to modify that parapet to meet a 30 foot requirement? She is assuming from a design standpoint one probably could.

Brian Snelling stated that they only have a 30'8" height in the mezzanine area and that is the only area. He pointed out the area on the SR 9 side that is 30 feet; the rest of it is 25'8".

Councilmember Zahner Bailey stated that it sounds like a 30 foot height condition would match that and it would meet some of the concerns.

Brian Snelling stated that it would be 30 feet only in the mezzanine area. The mezzanine only gets a parapet.

Councilmember Zahner Bailey stated that the SR 9 overlay already restricts the buildings to two stories north of Webb Road.

Community Development Director Wilson stated that was correct.

Councilmember Zahner Bailey asked is the condition that Alan mentioned from Avensong no more than a 30-foot, two-story equivalent?

Community Development Director Wilson stated that it was restricted to two stories by the comprehensive plan and the standards for the big box ordinance restricts it to 35 feet and no higher.

Councilmember Zahner Bailey stated that is why she is suggesting that the Council consider a 30-foot maximum height. The other thing she wanted to talk about is fencing. Right now the discussion includes some discussion about chain link fence. Two things that she would like to substitute would be in Section 3H. She would like to substitute an eight-foot high opaque, solid wood or masonry wall on the east property. She would like to remove any mention of chain link fencing. She would also want to make sure that they introduce and make sure that the language in any condition talks about full board fencing outside of the sidewalk or asphalt trail and that was a specific recommendation made by Brian Maloney of the bike or pedestrian pathway. She wants to make sure that that was adequately addressed whether it is this evening or if they pursue a deferral or however they end up arriving at a final decision point this evening. Another thing that concerned her and she understands it may have been just a typo on somebody's part but it talked about one bike spot per 100 and she thinks that was a mistake. She would prefer it say something like one multi-bike rack per store entry. She believes that Kohl's particularly does this. It is not a big deal but it is a detail she thinks they should capture in a condition. With regards to sidewalks or alternative pathways, a number of the Council members had talked about the importance of having sidewalks five feet or an alternative pathway five feet from the edge of the road because the whole goal is to have a trail way for people to actually utilize. Obviously, along SR 9 with the traffic patterns she would suggest that they have a condition of zoning that discusses sidewalks and alternative pathways being at least five feet from the edge of the road to the first edge of the that sidewalk. This was discussed in the review session. She does not want to lose that thought. She thinks that is an important condition of zoning whether that be denied or deferred. With regards to the trees, the Council has heard from many citizens that this clear cut obviously is a concern. She thinks they have an opportunity, collaboratively working with the business community to step up the size caliper of tree that is used. She would not want to enforce anything that would be onerous but she thinks some percentage increase, whether it is the trees along the roadway...she thinks the 25 percent at four-inch caliper would be an improvement if those were along the roadway. She also recommends that within the

development, within those landscape strips that they at least consider stepping up from a two-inch caliper tree to at least a three-inch caliper tree. Again, this is going to be 430-450,000 square feet if it is not a different footprint of density that will be clear cut. She thinks they owe it to this community to step up the size of those trees that would be recompensed. The Council had already talked about lighting. She thinks that it would be important for those lighting standards to be a condition of zoning. With regards to the detention facility, she stated that she has heard and she knows that the current recommendation is for that to be a naturalistic detention facility. She would just continue to applaud that effort on the part of the developer and would ask that when that is fenced, which has already been mentioned, that particularly around the detention facility as they have done on another SR 9 rezoning, that the full board fencing and any wiring that would provide for the safety be a part of that naturalistic design. The other thing that she thinks the applicant talked about but she does not know if they captured it definitely is that when one looks at that sea of asphalt currently, there is nothing at least that she is aware of in the current conditions that requires a landscape island, whether it be every six parking spaces or every eight. The northwest overlay requires something similar. She would ask the Council this evening to make sure that they consider that as a condition of zoning so that one does not have non-interruption of parking. She thinks they need interruption of parking if they are going to have less seas of asphalt. She did hear, and she appreciates the fact that the applicant has a truck routing plan. She realizes that the Council cannot condition that truck routing plan but if they could have language within anything that they do tonight or subsequent to this evening with regards to the...if they can embrace it, encourage it, whatever language would be appropriate, as close as it can be short of being able to require it; she thinks that needs to be a matter of record whenever they come to a conclusion. She also heard some discussion about noise considerations. If she missed this, she apologizes, but she inquired if they could also speak to hours of operation as well as times for truck deliveries? She knows that in other instances they have limited the delivery times to a specific time of day and she thinks they need to do that here again as a consideration for the neighbors. That should also include when Dumpsters get dumped. She thinks they need to be specific and she heard the concern about a noise ordinance and she thinks the Council needs to address it. She thinks they need to address in terms of time the store delivery as well as when Dumpsters are dumped as well as whether or not that gets consideration.

Several Council members stated that the dumpster issue was part of their solid waste ordinance to include the time for dumpster pick up.

Councilmember Zahner Bailey stated that she was just making a point because they had a gentleman that talked about the noise ordinance. She wanted to make sure that the Council covered it adequately.

Community Development Director Wilson stated that since they are now talking about conditions of zoning he stated that since the package was printed and sent to the Councilmembers or even put on the web sit, he has re-structured condition 1a, which is the condition regarding use. His recommendation when he said to the Council that it was for approval, it is with approval with this substitute condition 1a. With the permission of the Council, Mr. Wilson stated that he will read it into the record.

“Condition 1a would allow retail/service/commercial and/or office and accessory uses, including fast food restaurants limited to bagel, bakery, coffee houses without window services and ice cream shops, none of which may be freestanding. Also including exterior food and beverage service areas when associated with a permitted business. Allowed uses shall not exceed a maximum density of 8,806 square feet per acre zoned or a total of 141,511 gross square feet, whichever is less. Furthermore, the following uses shall be excluded: gas station and its associated gas pumps, all free-standing fast food restaurants, commercial amusements, cinemas are allowed, liquor stores and package stores, wine cellars are allowed. Motels, hotels, adult

oriented businesses including adult book stores, adult entertainment or adult entertainment establishments as defined in Article 3.3.3, check cashing stores, pawn shops, coin operated laundries, video arcades, video machines that are incidental to otherwise permitted businesses are allowed. Pool halls, stand alone massage parlors, stand alone nail parlors, stand alone beauty shops, stand alone barber shops, clinical spas are allowed and may include less than 400 square feet of beauty/barber shop, and less than 400 square feet of nail salon, flea markets, second hand, surplus retail shops, road side vending, road side produce stands or seasonal vending.”

Councilmember Zahner Bailey asked if they could also add no convenience stores and fortune tellers or billboards.

Community Development Director Wilson stated that if the Council makes a motion then they should add that as part of their motion.

Mayor Lockwood stated that at this time and maybe point of order time basically the Council has three variances that they have spoke with the applicant about, they have staff recommendations, they are talking about the buffer issue and slightly moving the building. Now they are also talking about additional zoning requirements. At this point the applicant has not come to the Council with those and don't need these items. They wouldn't have to add these items unless the Council were to request that and they would agree to.

Community Development Director Wilson stated that was correct and the applicant could agree or not agree to it.

Mayor Lockwood stated that they could add some of these items if they wanted to.

Community Development Director Wilson stated that they should ask the applicant if this list of prohibitive uses is a problem...

Councilmember Zahner Bailey said before they ask that question, as a matter of point of order if going from an A to a C-1 is a required rezoning. She believes that conditions of zoning are their purview if they are going to allow a rezoning from A to C-1 separate and distinct from the variances. A Council member stated that from A to C-1 is a very small part of it. It was stated that it doesn't matter. As a point of order going from A to C-1 the Council has the authority vested in them as a body to add any conditions of zoning...they have the authority to have recommended conditions. It is not about...this is a matter of order. It is up to the Council to decide what conditions of zoning are appropriate based on the rezoning request that is before them.

Community Development Director Wilson stated that it is entirely within the Council's purview to make a motion with any conditions of zoning that they wish to add to it. It is entirely within the applicant's purview to of course not accept it and then the Council will have a decision...

Councilmember Zahner Bailey stated that she understood whether or not the authority... she stated that realistically they could have not come before the Council with the rezoning request for that one piece. It is just for the variance for the others and then they wouldn't have needed the dock variance at all.

Community Development Director Wilson stated that he thinks he understood her, yes.

Councilmember Zahner Bailey stated that there was a lot within this that she does think are important details. On one of the conditions that they talked about in their review session that has not had any discussion here this evening and that is the landscape strip. She knows that at face value it would make sense to just eliminate that all together. But she had proposed, and this is the second of the three variances. The landscape strip that is currently between the two phases, what she had suggested is some additional language that she had clarified during their review session. That is that rather than to approve the elimination of that was instead to perhaps, change that language just to say, "to reduce the required 10-foot landscape strip along the southern property line to the extent necessary to allow for inter-parcel connectivity between phase I and phase II." And the premise of that is that because one has in reality a lot of parking, there is 430-450,000 square feet, if at least by not eliminating that in its entirety they do add a little bit of green space, if one can call a landscape strip green space. But at least it would add back or at least not remove a landscape strip that could provide some breaking up of that parking. She does not think one would lose anything, she thinks the community in theory gains a little bit.

Brian Snelling stated that if one looks at their color site plan out there, they have a sidewalk going through it to allow connectivity. They have parking lot islands on either side of it and they have a wide sidewalk through there. They will have some plantings.

Councilmember Zahner Bailey stated that that language would not be so different from what Mr. Snelling presented...

Brian Snelling stated that the Council could try to write it any way that they want. He does not know how they would write it other than...

Councilmember Thurman asked Mr. Snelling what they were looking at right now?

Brian Snelling stated that they were definitely looking at phase I. The building on the right is the PetCo that is the building furthest north on phase I. Phase I basically runs almost through that sidewalk that one sees going from east to west. That is approximately phase I that runs right up along side that building which will be the next major anchor to the north. One can see that wide strip there is roughly where they would leave all of the landscaping and then obviously down against SR 9 they have that wide area that comes up the side of what they are calling Building 900 that has the little dormers on it. In the back part of the phase I would be the 20-foot landscape strip where the detention facility is. So, in a sense they have exactly what the Council is asking for.

Mayor Lockwood inquired if Mr. Snelling was showing the detention facility as a natural or hybrid or concrete presently? And how much does that footprint change how much does that compromise the parking ratio depending on what is ultimately decided upon or required?

Brian Snelling stated that the detention pond that one sees that they are representing, because of when they designed that several months ago, they show that as the wall that is the footprint of the detention pond that they were actually trying to permit six months ago and got turned down.

Mayor Lockwood stated that they could call that the non-natural version.

Brian Snelling stated that it has walls below grade but he guessed that one could. They are lovely in the sense of design in that on their current design one thing they are looking at doing is...because they have lost

so much time, but with that, both ponds were designed and permitted under phase one. There is one that has gradient walls in it and is currently being built. It is hidden by all of the building. The same theory is behind the other pond. It is behind the building. It also has a 25-foot landscape strip around it so that one will not see it. It is at the back of the property, one cannot see it from the right-of-way. But during their civil permitting process for phase I, which all of this topography was taken down under, once phase II came on board, in order to get these retail units here, they needed to reconfigure this pond and in order to do that they added some walls in it. This would allow them to build these buildings. If they had to do that same volume in a completely earthen pattern, it is about two-thirds of an acre more than one sees there and the way that it is currently out there and now that they are required to put in that temporary measure...the top of the slope comes down roughly in the middle of these buildings and makes those buildings unbuildable if he had to leave it in that volume in earthen. One thing that they are considering now because of part of the way it is designed is to keep this same footprint, where one sees the wall patterns, which is 10 feet at the top of the slope to try to go underground with pipes to try to hold the volume that they need. That is one option that is very expensive. There are building walls that are essentially taking up an extra two-thirds of an acre is also very expensive in creating this unbuildable land. Right now because of timing and what they need to move forward, they are considering keeping that earthen end of it also, even though it is not a current requirement, they understood it and it was rejected earlier as part of a civil engineering vision. It was turned down and portrayed to the applicant as a request that no one wanted. So in order to save time that they didn't have to waste there, the applicant decided to make that temporarily earthen and they would keep alternatives open.

Councilmember Thurman stated that building it especially in line with being green component, is it a natural look to design it to actually what the standard is increasingly for the industry and she thinks it is going to be a benefit to a development because the applicant's pond is in the back of the property and there are an actual number that there are folks that live at the back of the property that would be looking at this. Not to mention the customers that would enjoy hopefully a better looking detention facility. She is thrilled that the applicant is considering a more naturalistic detention. She thinks that hopefully more of the industry is headed that way.

Brian Snelling stated that with the landscape fencing requirements they have one will not see it. He could be standing at the pond won't see it anyway. That is one thing he is considering doing there. But they know that is not feasible on every piece of property. He is really not sure that it is feasible here or not.

Mayor Lockwood stated that a good point was made that it is behind the building anyway. No one can see it. He stated that he would like to go back to some of the items that Councilperson Bailey brought up. Would the applicant be okay with no chain link fence along the back?

Brian Snelling asked Mayor Lockwood if he was speaking about along the east property line?

Mayor Lockwood stated that he was.

Brian Snelling stated that in speaking of that fence it is not something that...

Mayor Lockwood stated that it is just a security issue.

Brian Snelling stated that they weren't even required to do it. Actually GRETA and others wanted them to inter-parcel connectivity sidewalks through there. They met with the Villages of Devonshire and the Camden Deerfield properties who directly abut them and they asked for the fence on their property to prevent people

from walking back and forth. After many discussions, several discussions, a majority of this, roughly 1200-1600 feet comes to the Villages property line. The rezoning condition would only apply to roughly 1200 feet. But in his conversations with the Villages and Camden, they don't want an opaque fence or they don't want a wood fence because they want it on their property line. If the applicant had to put it on his property line they would have to put in a 25-30 foot buffer. It would have to be on the interior of that buffer. Right now the buffer would be 35 feet into their property and would not serve the purpose the neighbor's want. From a maintenance standpoint the neighbors asked the applicant if they would help them. They were planning on building fences anyway. They would work with them. The applicant stated that he would build the fence along the property line. They are going to work with the neighbors to build it on their property and then the neighbors are going to take over the ownership and the maintenance of that fence. From that perspective it has nothing to do with the visual and from the fact that one will not see it from anywhere pretty much on their property because they do have some issues. They prefer them to be black vinyl chain links because in kind of dies into the trees. The thing they have agreed to on in talking with Tom Wilson is if they were to build that within 200 feet of the property, they would stop the fence within 200 feet from Deerfield so it would not be seen from Deerfield and if it was pushed to continue all the way through Deerfield, that last few hundred feet could convert to a decorative wrought iron or some kind of wood, some kind of fence that meets the current four board.

Councilmember Thurman asked if in some of the other areas he would be using the four board fence.

Brian Snelling stated that the detention pond is already going to have a chain link fence around it. That one was permitted to have a chain link fence under his current permit. He does not see the point of changing it, but he can. It is not like it is going to be visible from anywhere. As far as putting the fence along SR 9 and Deerfield that is not a cost that he has anticipated. They can still have it on phase I.

Mayor Lockwood clarified that where there is fencing called for the applicant would be okay with it if it works.

Brian Snelling stated that was correct.

Mayor Lockwood stated that it was brought up about the bike path and an asphalt path to the bike trail to work within that program. He asked the applicant if he would be willing to do that?

Brian Snelling stated that he would to a point. Some things he has heard are like a minimum. He would be hesitant to work with a mandatory minimum from back of curb to edge of sidewalk because it does get tight down here and SR 9 is skewed off of the right-of-way. There is 110 feet of right-of-way out there now that is sufficient for the future widening for bike lanes, medians, everything. Unfortunately, the way that SR 9 is currently paved it is off center towards the applicant's property. They would actually need to work with Dan and Abbey with the city staff. They met with GDOT and they feel like they have come up with a plan to push that sidewalk as far off of the back of curb as possible with regards to topography and existing utility poles. They will meander that as far away from the curb because they understand traffic safety. The thing at the other side of the highway is currently the standard two-foot side strip and they have even agreed to an extent to go back to phase I with the approval of that two foot side strip. They have agreed to wherever they can they would push that as far off as possible due to topography...

Councilmember Zahner Bailey clarified that in some places that is no more than two feet. So they could end up with nothing more than a two foot strip between edge of road and edge of pavement and they have

referred the conversation to Mr. Drake. She stated to Mr. Drake that maybe in context to that whole review session on Tuesday that he had some suggestions and it was discovered that several people on this Council during that meeting looked to have a five-foot distance. She asked Mr. Drake to speak to that.

Public Works Director Drake stated that he spoke to the standards that were set from the Bike Path Committee with having a six foot asphalt trail with a minimum a four feet from the back of curb. One of the options is to have an easement on the property for that to meet that four-foot and a six-foot requirement. It would be up to the applicant if it is acceptable. He stated that he would like to bring up one thing about the fences, the four board fences. As written in this letter they would be between the street, the back of curb and the trail. There will be some areas where if there are retaining walls and they are putting the trails as far back as possible then there may even be a rail requirement and maybe the fence would be more appropriate as a substitute for that rail towards the back as well as towards the street. He wants to make sure that they have some of that flexibility to those design standards.

Brian Snelling stated that it is their intent to do everything that they can where there is room and close to the road. The city has been very good to work with and he will do what he can. The Council says that it must meet a minimum of this for the entire length and that is all Snelling is trying to say. He is not opposed to working with people and trying to get things done and meet the wishes of the city. But sometimes of one tries to put in an all-encompassing condition he may make it worse.

Mayor Lockwood stated that his point is that it is possible to work with the staff. The other thing he mentioned was what Mr. Snelling's thoughts were on...it was brought up about the trees, maybe some of them along the road, beefing them up to four-inch caliper versus two-inch.

Councilmember Zahner Bailey stated that in many cases they only required a two-inch caliper tree.

Community Development Director Wilson stated that along the right-of-way the standard is three-inch but they would beef it up to four. In the parking lot the standard is two-inch.

Councilmember Zahner Bailey stated that was why she addressed them as along the road as well as within the interior of the development.

Brian Snelling stated that in looking at the plant list that they have 3 ½ -inch, two-inch. Out at the detention ponds the trees are mostly two-inch. In the parking lot islands the current ordinance requires that parking lot islands have two-inch caliper trees, they meet all of those requirements. He has already bought 31 acres of it and in going through it on page 2 he would really have to do a cost analysis. He has already budgeted out most of that because he knew what the design would roughly be if they were approved to this. Sometimes in going from a two-inch tree to a four-inch tree sounds easy in a room but it triples the cost of the tree. It is one of those things that they can look into but he thinks their landscaping plan is probably going to get close to \$1 million.

Mayor Lockwood asked Mark law if he knew the difference between a two-inch tree and a three-inch tree or whatever. What are his thoughts? Sometimes over time within a couple of years one cannot really tell the difference between the two.

City Arborist Mark Law stated that a two-inch tree would take about three years for it to become established. A four-inch tree would take six years to get established. It depends on what one wants. If he

wants immediate impact then one would go with a larger (four-inch caliper) tree. However that does require more maintenance and the smaller tree does have a better chance of rooting out quicker and establishing itself quicker. With the drought conditions that the area is in that may be a factor to consider. The landscape strip is already requiring three-inch trees and two-inch on the parking lot islands. He did notice that Councilmember Bailey requested that only 25 percent of the trees be of a larger caliper. That might be acceptable right there but the smaller trees he thinks would provide a better choice at this time.

Councilmember Zahner Bailey stated that was why she mentioned the percentage. But the goal is when one goes back out to that site that is currently clear-cut and she thinks in consideration of the concerns voiced by citizens, that the Council has an obligation to them to try to look for some opportunities to try to make that a little more attractive than what it would have otherwise been with the two-inch caliper tree.

Brian Snelling stated that if he understood Mark, he was saying the smaller caliper trees are actually more viable right now just for taking in that first couple of years.

City Arborist Mark Law stated that over all they normally are but with the drought situations it seems to be more of an issue. That is one reason they would be more...

Councilmember D'Aversa asked if that were a perpetual requirement for the developer or petitioner? At what point is the loss of a tree a pure loss by its replacement?

Community Development Director Tom Wilson stated that it is always a requirement that if the loss of a tree occurs it is required to be replanted. They are in perpetuity. So if one loses one of the trees, he replaces it.

Councilmember Lusk stated on the path issue, he first had the idea of going to a 10-foot standard and he would like to incorporate that concept if possible if the Council gets to a point where they have a conceptual understanding or agreement if it would fit. As he understands it the bike path plan would have 10-foot standards so if they could reach to that he thinks that is a more usable path for two-way pedestrian traffic or for people with strollers and that sort of thing in that corridor.

Mayor Lockwood stated that one would have to...if that would work. He does not know if...

Community Development Director Tom Wilson stated that he thinks they need to let Dan talk about the increased dimension and whether or not it will fit in the site plan or not.

Public Works Director Drake stated that with their discussions with the Bike Path Committee and the way that they are interpreting it is that is a 10-foot bike lane and what the committee was recommending is that they have a four-foot on street with a six-foot off street. That is what they are proposing here is a four-foot on and a six-foot off. There would be a train of removing that off and on street for a 10-foot, which could be an option. They were going more towards the separate use path.

Mayor Lockwood stated that at this point he thinks if no one wants to make a motion, he would give this a shot.

Community Development Director Tom Wilson stated that this is a very complicated set of conditions and they have talked about a lot of things. He asked Mayor Lockwood if he could indulge him for five-minute

break until they can get back here and re-write these conditions of zoning and print them out so that there is no confusion or misunderstanding about what the Council is about to make a motion for.

Councilmember Zahner Bailey stated that they did not talk about the loading dock when they mentioned a wall. Has that wall been reviewed by the Design Review Board at this point? Have they seen...

Brian Snelling stated that on November 6, 2007 Kohl's came down and talked to the Design Review Board and brought some elevations down. The screen wall was discussed, which is typically shown. The applicant's architecture here tonight is not accurate because Kohl's designs their own building, but that is the intent of the screen wall. The architecture of the screen wall will match the building. It clearly shows that when the truck is down in the dock one will not see it because of the screen wall.

Councilmember Zahner Bailey stated that her point about that though is it creates a different visual. It extends that building so one has more mass. They already have a pretty large mass and she wanted to point out that a wall doesn't necessarily, yes it might hide the loading dock but what it actually does is extend that plane and it is obviously not that tall. She does not see that as being landscaped or any discussion about that being landscaped so she does think they need to consider that a wall is not always the best end result.

Brian Snelling stated that one would basically be looking at the same thing they would be looking at on the side of the building if the loading dock wasn't there.

Councilmember Zahner Bailey asked if there was any discussion about that being landscaped as an option, having 10 feet in front of it to try to landscape so that one would not just go from wall to asphalt. She asked Tom Wilson if they had any notes from what the Design Review Board had to say about that. She asked if maybe during the five-minute break he could look for those comments from the Design Review Board.

Community Development Director Wilson stated that they actually didn't have anything to say about landscaping in front of that wall. A member of the staff stated that there was some mention of it. They did talk about the fact that it has to be a drive aisle and to the top end, he personally thinks it would be very difficult to keep anything alive against that wall. This is based on the pure fact that other vehicles would be coming down through there. It would be tough to irrigate it. That wall would have some heat elements to it that would create almost a little microcosm there. He thinks that it would hurt anything that one would try to plant there. He is not saying that it is something that they can't talk about. That is one reason they beefed up the landscaping in a sense at that property line between the Kohl's and the out lot because that out lot could realistically be sold off if a restaurant wanted to come in and buy it as their own out lot. They would have some beefed up landscaping along that property line where it is more natural and not just up against the building.

Councilmember Zahner Bailey stated that she did not know what the distance was from the edge of that landscaping. She asked the applicant if he knew what that might be.

Brian Snelling stated that it would be roughly 25-30 feet. He thinks the 25 feet would meet the fire marshal's requirement and he thinks they added a little extra room in there because he believes that maybe there is a compactor somewhere that if a truck comes down there, he needs to be able to turn around and get back down off it. It should be a little bit wider to enable the truck to back down in there.

Five Minute Break:

Motion and Vote: Mayor Lockwood made a motion to take a five-minute break. Councilmember D'Aversa seconded the motion. The motion passed unanimously.

Reconvene:

After the break Lockwood reconvened the meeting.

Mayor Lockwood stated that he was going to make a motion. There was some conversation with the applicant and Mayor Lockwood wanted to stress that he knows personally that the City of Milton is supporting this development and wants to do it right but they are a little uncomfortable with just throwing so many things around at the last minute.

Motion: Mayor Lockwood moved to defer this decision until their December 6, 2007 meeting.

He stated that he is committed to the applicant in working with them and the staff to firm up all of these ideas and changes that they are talking about and bring it back on December 6th.

Second: Councilmember Zahner Bailey seconded the motion.

Brian Snelling stated that he is basically okay with that. He has tried to work well with staff and even some of the members of the community. They had multiple meetings some which no one showed up for and then some that had a good turnout. He stated that one thing they are up against because they did submit this in June, they had to go through the DRIs and now this zoning cycle they have expended about six plus months there of time. If the applicant were willing to take the risk on their own and design some of these plans, especially maybe the Kohl's, then can they submit that either prior to or shortly thereafter and go ahead and get on some of the Design Review Board cycle and some of that permitting process? Can they work with the staff to try and expedite some of these building permits to make up for the lost time. He just wanted to make sure that they could get the permits and do that.

Community Development Wilson stated that would not be a problem. The city would just not issue the permit until then.

Vote: There was no further discussion from Council. The motion was passed unanimously.

Mayor Lockwood stated that he would like to thank the developer and Brian Snelling and everyone else who was involved for going through this. He just wanted to make sure that everyone is comfortable with the Council's decision but he certainly wants to work with the applicant and look forward to having the Kohl's in the neighborhood.

Mayor Lockwood stated that the Council does realize the time issue and that is why if they deferred something they defer it for 30 days. The Council is deferring it to their December 6, 2006 meeting which is three weeks away at most. They will get together as soon as possible and that way...he does not want to drag the application out anymore.

FIRST PRESENTATION

Agenda Item 07-426

Approval of Amendments to Chapter 7, Alcohol Beverage Licenses, of the Code of Ordinances for the City of Milton, Georgia.

Motion and Vote: Councilmember Mohrig moved to approve the first presentation. Councilmember Lusk seconded the motion. The motion was approved unanimously.

UNFINISHED BUSINESS

Agenda Item 07-431

Approval of Ordinance Annexing 1400 Mayfield Road.

Ordinance No. 07-11-55

City Attorney Mark Scott presented the item. He stated that he thinks the Council has had a chance to read the packet. This is the second reading of this item. As the memo outlines for the Council, a few weeks ago this item came in through public safety. They learned that there was actually a property remaining on Mayfield Road that had not been annexed by either the city of Alpharetta or the City of Milton. Interim City Manager Chris Lagerbloom paid the property owner a visit and found him to begin with he had Milton campaign signs on his front lawn. So he obviously had some interest with Milton and from that point Lagerbloom asked the owner if he had heard that he was remaining unincorporated. The owner was aware of that. Mr. Lagerbloom asked the resident what his pleasure was, would he want to come into Milton? The resident stated that he would. Mr. Lagerbloom got the resident's phone number for him and he called him, he e-mailed him the annexation application and they have a complete annexation application under the 100 percent method. Mr. Scott asked that whoever makes the motion if he would make the motion as printed in front of the ordinance. The motion to approve the ordinance is printed in front of the Council with one correction and that is if one looks at the second exhibit to the ordinance, which has the plat on it, section II of the ordinance refers to the property located on land lot 1058 of the second district, second section of Fulton County, Georgia. Upon closer look it is also on land lot 1103 so if someone would be so kind as to make an amendment when he actually makes the motion to include both land lots 1058 and 1103 in Section II of the ordinance Scott stated that he would greatly appreciate that.

This property is on Mayfield Road abutting against the land lot line where...more or less from Freemanville over to this point. The city line follows Mayfield Road at this point it chinks up forward along the land lot line. There is a bit of property if one looks at the plat, the property just to the lower left, southwest of this that is still in Alpharetta but it is still contiguous to Alpharetta across Mayfield Road.

This is really a public safety issue more than anything else because Fulton County alerted Alpharetta and Milton about this because of the fact that this property would once they discovered it, which they only discovered it about a month ago, would remain unincorporated. They realized that they were going to have to serve this for public safety purposes from Johns Creek and Johns Creek was not available from south Fulton, which could be a horrible response time as one can imagine.

He said there was no reason why the Council should not approve this. The applicant would like to annex. It is just one property. It is about six acres zoned AG-1. That won't change and it is a good fit with Milton. There is a barn on the property and it is a very Milton-like property. Scott recommended to the Council that they pass the ordinance to annex the property.

City Clerk Marchiafava stated that there was no public comment.

Mayor Lockwood asked for a motion and a second.

Motion and Second: Councilmember O'Brien moved to approve an ordinance annexing 1400 Mayfield Road adding the addition of Land Lot 1103. The language is section II. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion was approved unanimously.

UNFINISHED BUSINESS

Agenda Item 07-432

Approval of an ordinance establishing solid waste collection services within the city of Milton; providing for the scope and nature of the operation; providing for the disposal of garbage, solid waste and refuse; requiring the execution by service providers of a non-exclusive agreement with the city of Milton, providing procedures for the handling of complaints; providing for an infrastructure maintenance fee; requiring indemnity insurance; providing for revocation and amendment; prohibiting assignment and subletting without consent; providing for forfeiture; and for making other provisions.

Ordinance No. 07-11-54

Interim City Manager Chris Lagerbloom said that he was bringing in the solid waste ordinance for the second year. It is due to expire on November 22, 2007. This just re-solidifies it for a year in its current form. Lagerbloom stated that he can tell the Council that he saw one e-mail earlier today and he will throw it out before the Council if it is their pleasure. Since they passed this the first time they also passed a noise ordinance. The time that is in this Solid Waste ordinance that was in the first one that they passed was to allow for collection from 7 a.m. to 7 p.m. The noise ordinance indicates 7:30 a.m. to 7:30 p.m. during the weekday and 9 a.m. to 6 p.m. on Saturday. Lagerbloom stated that he was sure necessarily if they could control Saturday pick ups within that time frame but if it is the Council's pleasure he would think that it would make sense to maybe amend that 7 o'clock beginning in the morning to match the noise ordinance, which is 7:30 a.m. If that would be the pleasure then the motion will be to amend that time from 7 a.m. to 7:30 a.m. in section 4.3. If the Council does not think that is necessary and wants to keep it at 7 to 7, it could pass just as it is. This would allow the City to continue with the same ordinance for the next 365 days.

He mentioned that the City has talked about the possibility of adding some type of recycling clause to this particular solid waste ordinance. He had a conversation with the city attorney who indicated that his opinion would be that there is some possibilities to do that but it would be more appropriate to do it in a five letter agreement directly with the franchisee rather than trying to incorporate it into this particular document.

Councilmember Thurman stated that her only question on that would be a function of timing and without a definitive time frame is that something that they could look to in the near term?

Interim City Manager Chris Lagerbloom stated that it was, absolutely.

Motion: Councilmember Lusk moved to approve the ordinance establishing solid waste collection services with the amendment as stated to have the collection hours coincide with the noise ordinance.

Mayor Lockwood asked Mark Scott if that was specific enough?

City Attorney Scott stated that there has been no restatement so they could do it from the amendment to list 7 to 7:30 on the record.

Second: Councilmember Thurman seconded the motion.

Mayor Lockwood added to that amendment that the pickup time is 7:30 a.m. to 7:30 p.m.

Vote: The motion passed unanimously.

NEW BUSINESS

Approval of the September 2007 invoice for legal fees.

Interim City Manager Chris Lagerbloom stated that the fact that this made it to the Council tonight is nobody's faulty but his own and he realized that his is not traditionally the way the Council would like to get the documents to the meeting agenda. He also realized that there is some urgency in making good on a bill as opposed to holding this until December 6, 2007. He stated that he made the decision very frankly because there is not a lot on here that is actually billed to the mayor and city Council from this month. But he can tell them that with the exception of about 10 items the costs that were incurred as each item was heard at the staff level and have been reviewed and signed off on by the staff members throughout the document also indicates that there is a split service of things billed to the city attorney's fees as well as for other counsel that was used during this particular month. The total bill is \$19,734.96. This represents the last legal bill for the fiscal year 2007. The amended budget for legal fees in FY07 was \$237,000.00. This represents 100 percent of the year billed at \$220,427.59 putting the City at 95.84 percent of budget. Lagerbloom stated that he would give the Council a couple of minutes to look over those.

There are a couple of items that are not incurred at the staff level. Again, he does not feel that any of them are in question. They all look to be in line with what would be accepted. Lagerbloom offered his apologies that this gets to the Council so late.

Mayor Lockwood stated that if there were no public comments he would ask for a motion and a second. There was no public comment.

Motion and Vote: Councilmember Thurman moved to approve the September 2007 invoice for legal fees. Councilmember O'Brien seconded the motion. There was no Council discussion. The motion was approved unanimously.

MAYOR AND COUNCIL REPORTS

Mayor Joe Lockwood stated that he appreciated everyone's cooperation on that last zoning item and, hopefully, they can move forward on it and make the best decision. He appreciates everyone working together on that.

Mayor Lockwood added that, as most of the Councilmembers are aware, of the issue they have with Fulton County the EMS. Fortunately, for the animal control they have decided to extend that so that may be a new year issue. But, on their EMS for those that don not know all of the details, Fulton County has typically been subsidizing the response time. The response time according to the state is 12 minutes. They have enjoyed an eight minute response time and the county has subsidized that. Milton's is somewhere around \$600,000 a year for their area whereas some of South Fulton is a couple of million dollars. Fulton County is kind of playing like they all moved up to Chattanooga and they wanted city so the county has decided not to subsidize that anymore. He does not feel that it is going to negatively impact Milton because there is going to be some negotiations going on with the provider. Obviously they are going to have a little more incentive to

keep the works. The North Fulton mayor's of all of their cities are going to work together to try to come up with something that benefits all of them and keeps the service for their citizens. They are fortunate to have such a great fire department and the EMS guys there. They typically have the fire trucks there with an EMT before the ambulance arrives anyway.

Those are two issues that they are working together on with the North Fulton Mayors.

There were no Council reports at this time.

STAFF REPORTS

Interim City Manager Chris Lagerbloom stated they have had the opportunity to partner with their friends in the City of Alpharetta as they do their "Shop with a Cop" program on December 11, 2007. It is nice to partner with them because they are doing it in Milton at the Wal-Mart. The city has elected to provide some folks to be there that night to shop with the kids. Certainly they will send something out to the Council if anyone wants to attend. At this point Lagerbloom has also committed to them that he thinks it is possible that he can find some funding in the amount of \$1000 or he will do it himself. But anyone who would have any interest, they have raised right at \$6500 at this point in the City of Alpharetta. That will be used to influence 65 kids. They have the ability to add some kids to it because of Milton's commitment to putting people there but he does not think it is necessary that they take all of the glory from it but that they also make some contributions. A 100 percent tax-deductible contribution...again if they are able to find the \$1000 in ten \$100 increments or twenty \$50 increments or whatever they can find. Lagerbloom stated that he would make up the distance in anything they were to make. He is not trying to guilt anyone into it but it is a great event and if anyone has any interest in helping the City support that program that they have been able to participate in, it is a very heart warming, good experience.

Interim City Manager Chris Lagerbloom stated he has done it for years in a row and it is a good time. December 11th, it starts at 6 p.m. They asked that the volunteers get there at 5:30 and the kids start to show up at 6. The event will be held at the Wal-Mart in Milton. Checks can be made out to the Alpharetta Police Athletic League. They are a 501c3 and one's donation is 100 percent, for this event, tax deductible as is earmarked for this special event. He stated that he was happy to be the collection point for that to make sure it gets to the right people. It's a good event and Lagerbloom thinks they are going to be able to assist more kids through their willingness and their opportunity to participate.

Interim City Manager Chris Lagerbloom stated that he wanted to let Linda put the Council in the loop of what the holiday events are that are occurring in Milton. The only reason this is coming up at this meeting this late at night is it is the only time before they have another Council meeting so there is not another opportunity to bring it before Council before the actual event.

Projects Coordinator Linda Blow presented the Council with the information on the holiday event that begins at Scottsdale Farm on November 23. The family day is Saturday, December 1st. If there are any particular questions the information is on the web site and everything that occurs during this is done for the benefit of North Fulton Community Charity. They aptly asked them to set down the needy families to let the City of Milton help those that are within the Milton City limits first, and if there is anything that spills over or if they get lucky and just get funds for them that of course will be doled out. They are having a silent auction and tree decoration. The trees are donated for their use by the Scottsdale Farms. They are having a train ride and hopefully a live reindeer for the children to see and Santa is going to be there and they are

going to have the Milton Memory Tree. They have lots of things going on. During the week they are having carolers and they are professional carolers. They invite everyone to come out this week and listen to some holiday music.

EXECUTIVE SESSION

The purpose of the Executive Session to discuss pending legislation.

Motion and Vote: Councilmember D'Aversa moved to adjourn into Executive Session. Councilmember O'Brien seconded the motion. The motion was approved unanimously.

RECONVENE

Motion and Vote: Councilmember Thurman moved to reconvene the regular meeting. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion was passed unanimously.


ADJOURN

Motion and Vote: Councilmember D'Aversa moved to adjourn the regular meeting at 11:10 PM. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously.

Date Approved: January 14, 2008



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor