
Work Session of the Milton City Council was held Thursday, February 8, 2007 at 5:30 p.m. Mayor Joe Lockwood presiding.

All Councilmembers were present.

Update on completing Sign Ordinance.

Director of Community Development Tom Wilson suggested that February 21, 2007 at 3:00 p.m. we set aside this time to review the last ten (10) pages of the Sign Ordinance. He reminded that back in December the first twenty (20) pages were reviewed and we ran out of time. He further stated that on March 15, 2007 we would take the document to the City Council for approval.

PUBLIC COMMENT

Gordon Hunter stated that when we talk about the Sign Ordinance that we allow for seasonal and agricultural signs. He further stated it worked well with Fulton County and hopes this is included in the Milton Sign Ordinance.

CITY COUNCIL DISCUSSION

Councilmember Zahner Bailey asked Tom Wilson to confirm that the meeting just mentioned is for the 3rd Thursday in March.

Director of Community Development Tom Wilson stated that the 3rd Thursday in March would be the first opportunity for it to be on the agenda after the Work Session.

Councilmember Zahner Bailey asked if that would be the first reading since we have already adopted one.

Director of Community Development Tom Wilson clarified that it would be the first reading of the amendment.

City Manager Bovos wanted to clarify if everyone was agreeable with the 3:00 timeframe on February 21, 2007. He further stated we are slotting three hours for the meeting.

After a short discussion, Community Development Director Tom Wilson stated that 4:00 pm would be acceptable and all agreed.

Creation of Milton County

Councilmember Karen Thurman stated the Atlanta and Fulton County Legislative Delegation has requested opinion from our City on House Resolution 12, which is a resolution to allow counties that were previously merged to be recreated. She passed out information on the actual resolution and correspondence from State Representative Jan Jones which is an email indicating why she feels this would be beneficial to the residents of the newly formed Milton County. She further stated we need discussion on how we are to respond to their request for our opinion, be it either today or at a later date when everyone has had an opportunity to review the information. She again stated that the request for the opinion came from the Atlanta/Fulton County Legislative Delegation and not from Representative Jan Jones.

Mayor Lockwood asked if there was a time frame for a response to them.

Councilmember Karen Thurman stated there was not a time frame listed, but further stated they would be meeting each week and this is the first item they would like a response on.

Councilmember Zahner Bailey asked if the opinion is do we want to support a new county or an opinion of additional items we would want the delegation and state legislature to evaluate. She stated she is not clear as to what we are asked to do.

Councilmember Karen Thurman stated their request is open-ended, but first of all she believes they wanted to know if we would support this going to the next step and if so, what other things we would like to have them look at and what questions we might have. We can do this as a letter or we can do this as a resolution. This might be better to do as a letter initially rather than a resolution so it will be more of an informal way to express any questions we might have.

Councilmember Zahner Bailey stated that the response in the form of a letter is a good idea as many of the legislatures, including Representative Jan Jones, have identified the need for certain research and things of that nature. Perhaps some of those categories are things we want to support in terms of additional research and questions that are already being asked that we want to support.

Councilmember Karen Thurman asked if this is going to be responded in a letter, would it not be better for everyone to review the information and during staff comments at the next Council meeting we could discuss any additional things we would like to have included in order to get the letter out to them.

Mayor Lockwood stated this needs to get out on the website if at all feasible with a link to the State.

Councilmember Thurman stated she pulled Resolution 12 right off the web, so she was sure we could provide a link on our website.

City Attorney Engagement Process

Attorney Mark Scott stated that last week during the retreat there was a request to further define the manner in which the City Attorney will be engaged directly by the Council, as opposed through the Mayor and City Manager. He distributed a hand-out. He stated that House Bill 1470, the Charter, does contemplate the idea of direct contact with the City Attorney and the City Councilmembers. Therefore, in conjunction with discussions that Councilmember Thurman had with the City Manager, he stated they are looking for a way to facilitate this, but at the same time to keep the budget in mind. The bottom line is requests for brief consultation or short projects which will take less than one hour can be requested directly. However, if the City Attorney states this will take more than an hour of his time, then this will need to be channeled through the Mayor or the City Manager or both. This will allow the Councilmembers to ask quick questions, do short research, or to get a legal opinion from the City Attorney on an idea, but also allowing to keep costs at a minimum. He stated the other aspect is that the City Manager has requested that if the Councilmembers do utilize the City Attorney in this manner, that an entry is noted on the City Attorney's bill at the end of each month.

City Manager Bovos stated as a follow-up to the discussions at the retreat, which were open and honest dialogues regarding this process, from a staff perspective he stated he would prefer it remain the way it was finally discussed at the retreat. If the Council would like to change that, he felt that was fine. However, he stated there was a very strong need to manage expenses associated with legal fees. He further stated that Facilitator Scot Wrighton from UGA explained that the City Attorney's office is just an extension of a department within the organization, and based on different sections of our Code that would traditionally go to the City Manager's office. He further stated that if the Council is wishing engagement capabilities on their own, that is certainly fine with him, but at the same time, he stated the Council needed to share the responsibility in managing the budget. We adopted \$110,000 for our first fiscal year and we are tracking above that projection. He stated there is no where to pull money from other than public safety due to the majority of our funds are committed to contracts. He stated that his goal is to have an agreement on the engagement process that will come back as a policy and approved by ordinance.

Councilmember D'Aversa-Williams asked if the City Manager would like the Council's input on what he would call a "draft" which would then come back as an ordinance.

City Manager Bovos answered "yes."

Councilmember D'Aversa-Williams asked if he could let them know what amount was paid in legal fees in the month of January.

City Manager Bovos stated that December was \$21,000 and January was \$14,000.

City Attorney Scott stated that was actually November and December.

Mayor Lockwood stated we have to keep in mind that we have approximately a \$3,000 monthly budget.

Councilmember D'Aversa-Williams asked if the City Manager had a specific request broken out in these invoices so we could see who was engaging those services.

City Manager Bovos stated yes. The first bill was presented through City Council right before Christmas, on December 21st, and the next bill will be presented today. As it stands right now, those are the only bills that are coming back to Council for approval because we have no way to validate the services being performed.

Councilmember D'Aversa-Williams asked, in his opinion, what percentage does he think the current invoices reflect engagement from the Council.

City Manager Bovos stated that annexation was a huge item on the first bill, but perhaps 50% would be accurate.

City Attorney Scott stated that was correct because there was so much Council-Attorney interaction during the annexation process.

Councilmember D'Aversa-Williams asked City Attorney Scott that other than the verbiage in House Bill 1470 what are the other reasons that it would not be more prudent for the Council to just work through the City Manager's approval so that he could manage the budget.

City Attorney Scott stated that Councilmember Thurman addressed that during the retreat on Friday and he felt that he was not here to advocate a particular process in the way it should be handled, but to follow the directions given. He further stated that there might be certain times when there is a particular issue that you might want to seek counsel as opposed to running it through staff.

Councilmember D'Aversa-Williams stated we are not getting approval to request information, but rather getting approval to utilize the time of the City Attorney. If it is something that we do not necessarily want the staff to be involved in the discussion, but we would go to the City Manager and ask for some time with the City Attorney and the topic does not necessarily have to be disclosed. She asked if this was an accurate assessment.

City Manager Bovos stated he looks at this differently. We will soon have a priority list of items that the Council would like to accomplish in the first year based upon Thursday's discussion. He further stated he would agree with the City Attorney that there are occasions where you would not want to come to staff. Two of those being if there is a particular issue with myself, then you would need to go to the Attorney outside of that particular chain of command. The second occasion would be if there were an ethical violation that needs to be kept confidential and the Ethics Ordinance allows for that. He further stated that his challenge would be that in order to manage the resources across the organization, he would like to know specific topics. For instance, if someone calls him regarding the Sign Ordinance, that may be more of a global approach. He stated that he is trying to reduce the amount of one-on-one time that Council has with Staff or with the City Attorney so that everyone receives the same information. Furthermore, one of the things that resonated throughout that retreat is that all of you needed to be provided with the same information that everyone else has. He further stated it would be better if everyone provided him with the information and he would then pass this along to the City Attorney and then onto everybody on whatever topic is at hand verses each Councilmember engaging

in multiple conversations or topics. He stated his recommendation is that these still go through the City Manager's Office, but that he does respect if there is a need outside of the chain of command.

Mayor Lockwood stated that we need to come up with a balance and certainly there may be a time when there is a simple question and asked if there is a minimum amount the City Attorney can bill by. What if there is something where a Councilmember has a quick question and called the City Attorney and if he did not know the answer, he would have to access this and then bring in the City Manager or Mayor to see if he needs to proceed. He agrees that monitoring is necessary because everyone would not now how much time someone else might be taking and we need to keep the costs down. He further stated that we cannot hold the City Manager and the staff accountable for a budget where these costs are being run up individually.

Councilman Thurman asked the City Attorney if he bills on the hour or on the ten-minute increment.

City Attorney Scott replied that he bills on the 10th.

Councilman Thurman stated that realistically anything that we needed to discuss with you for more than 20 minutes would be something that most likely the whole Council would need to know, unless it were an ethics issue.

City Attorney Scott replied in the affirmative.

Councilman Thurman suggested that it be changed from an hour to twenty minutes, because if you cannot answer a question in twenty minutes, then it would be something that everyone would need to know.

Councilmember Mohrig stated that he is not in the mode of wasting people's time or in wasting the City's money and wanted to know the hourly rates.

City Attorney Scott replied the rate he charges for City Attorney and the going rate in this metropolitan area is \$150 per hour.

Mayor Lockwood stated that we need to discuss this further because if everyone uses 20 minutes, it will be hard for our City Manager to track.

City Attorney Scott stated that this is not something he is bringing to the Council, but he was asked to do this based on feedback that was received.

Councilmember Zahner Bailey stated that there were discussions regarding this issue on Thursday and Friday at the retreat. She further stated they were fortunate to have insight from the Carl Vincent Institute of Government. She stated that what she heard from Carl Vincent was that this relationship as an extension of staff is handled through the City Manager. She further stated that, as we have talked through the challenges with managing a budget that is slated for \$110,000 in the first year and we are already over \$35,000, that this concerns her.

City Attorney Scott stated that it is not \$8,000 a month, as you are looking at the fiscal year that ran from December or mid-way through November through the end of October or September and asked if that were correct.

City Manager Bovos stated that this is a ten month budget.

Councilmember Zahner Bailey stated that regardless of whether the City is on a ten or twelve month budget, her concern remains that currently we are over where any of us anticipated. She stated that she personally believes that this needs to be managed from a budget perspective and managed as we have talked about managing staff time across the board. She respectfully stated that it is ideal to be consistent in our processes and procedures and this is what was talked about on Thursday and Friday at the retreat. She further stated that from a procedural standpoint, there is a need for the

City Attorney and for legal review that we should send an email to the City Manager and let him know what our issues are and see if he can get a response from the City Attorney or he will allow us to have that direct conversation. However, she then stated that she understands that as the City Manager that Mr. Bovos needs to be able to review the invoices and understand where those dollars are allocated and to be responsible for those dollars. Unless we have those processes in place, Mr. Bovos is not responsible for managing that line item. She asked if this was correct.

City Manager Bovos stated this is correct, but that the other thing is that this will allow us to balance the work required out of the City Attorney's office and the associated costs with the priority projects of the Council.

Councilmember Zahner Bailey stated that this was also what was discussed on Thursday and Friday and that was as a new City we need to be prioritizing time and efforts. There are so many things that we need to do and that we want to do, but we have limited staff time and a limited budget. She further stated that she does not personally know if it can be managed any other way than to have items going through our City Manager.

Mayor Lockwood asked the City Manager if Council had a specific legal issue or question that they could make a call to him and you may direct them to the City Attorney to talk about it, but at least that way you could track it. Annexation is an example. Councilman Thurman worked tirelessly on this and spent a lot of time with the City Attorney. At least if the City Manager knew about it and was tracking it, he would know that when the bill came in how to charge it and be responsible for it. He asked if this is a possibility.

City Attorney Bovos stated this is a possibility, but he wanted to be sure that we are disseminating information to all member of the Council. If it comes into the City Manager's office and then goes to legal for review and comments come back to the City Manager's office, it will be disseminated and all members will be provided with the same information. Anytime you circumvent that process, there are going to be people who has information that the rest does not have.

Councilmember Thurman stated that she does not believe it will be the kind of information for a quick question that they will likely be calling the City Attorney about, but she would like to have the ability to do so. It might only happen once a month or once a year, but she would like to know that she can have a ten minute conversation with the City Attorney if needed. Furthermore, maybe Commissioner Riley can tell us if there are times when she talks with County Attorney without having to go through the County Manager.

Commissioner Riley stated except that the County Attorney is a direct employee.

City Attorney Scott said the argument could be made that the City Attorney is a direct employee of the Council.

City Manager Bovos said that we are all employees of the City Council.

Mayor Lockwood said he thought it would be a lot simpler if our City Attorney did have a fixed salary.

Councilmember O'Brien stated as he indicated at the retreat, Mr. Bovos is concerned about relinquishing responsibility, but continuing to have accountability for things that go on and he would agree with that. The larger issue is not just about the City Attorney. He suggested that anything outside a quarter hour opening would be something we would be accountable for. Whether it was the City Attorney or a City staff or CH2 staff member, we would have to have some accountability for that. We may decide upon 1/3 of an hour, 20 minutes, or quarter hour. If we engage City Attorney Scott on a relevant project and he does provide time that would be billable, we would then have a synopsis of that emailed to the other members of the Council, as well as the City Manager that would provide an oversight. He would suggest to the Council, if we would like to retain the ability to have legal counsel, perhaps a very modest legal bag, if it were. In other words, if each of us had an hour or two of legal time per year and anything outside of that would require specific authorization from the City Manager. We would have a little bit of latitude at a fairly modest expense, but it could also remain consistent with the priorities that are being set. Ultimately, he does believe that we should be

accountable whether it is the attorney or any other staff member individually for that time. The other issue is it seems clearly that the budget, as it was foreseen is insufficient for the amount of work that has been conducted by our City Attorney, but the upside is it represents a long term investment in our annexation program and a very valuable investment in his time on our behalf. He is not too comfortable if we are a little bit ahead of projection, but the challenge will be to find the funds to accommodate that.

Mayor Lockwood said he did not think it may be not as much finding the funds, but we will have to balance the legal fees to be less in the future to stay within our budget.

City Attorney Scott said frankly he expects that to happen because the startup will be behind us, unless of course we get a lot of litigation. We do not know.

Councilmember Mohrig said if we went in that direction, he thinks we would really have to take a look at what is the best arrangement for the city. He said do we have a full time city attorney on staff versus having to do an hourly rate. He would suggest we cross that bridge when we get to it. In the meantime, we all want to be prudent especially from a billable point. He asked the City Attorney if there have been a lot of one- on-one's outside of the annexation.

City Attorney Scott said the vast majority of the one- on-ones have been annexation related issues and mostly with Councilmembers Mohrig and Thurman.

Councilmember Mohrig said we are looking at an anomaly right now where we spent a lot of money because we went through the annexation effort. We had some challenges. It is not quite over, but he hopes to see this taper off where it is more business as usual, whatever that is, where we will not have the investment of a lot of time from the legal standpoint.

City Attorney Scott said another issue that he wanted to point out was something that was explored during the committee process and the formation of the city last year. The administration committee did look at the possibility of an in-house attorney and certainly there are cities around us that do have in-house attorneys. There are many fewer cities that do than those that don't. Roswell has two in-house attorneys, but they are the only one he is aware of right around here. Part of what you have to understand is that there are a lot of overhead, not just hourly legal fees, involved in having an in-house attorney. There is the need for a legal assistant, there is the need for the online research time, there are all kinds of other expenses that a firm provides for you that you do not have when you are in-house.

Councilmember Thurman said Councilmember O'Brien made a very good point. When any one on the Council is utilizing staff time, it is costing the City one way or the other, whether or not they are a salaried person, it is costing the City something so we need to be cognizant of that.

Councilmember O'Brien said also it costs the City if we pursue a side project, even if it had some merit, if it is inconsistent with the priorities that have been established by consensus through the leadership of the Mayor and City Manager. Effectively, the people of Milton are being denied the progress that is expected from us as a startup. His desire would be if whether it was Mr. Lagerbloom or Mr. Scott, if they incurred time over 15 minutes we could establish a staff rate, probably would be along the lines of \$150 per hour. He believes that we should consider establishing financial accountability to the individual Councilmember if that is done so that if the City Manager felt that a project was inconsistent with our objectives, we would be personally responsible for that. It is a legitimate concern because it has been mentioned that we have had some problems where staff has been hindered in their efforts to move forward by some degree of interference.

Mayor Lockwood said he thinks it goes back accountability. There may be an instance when we need to meet with certain staff or the City Attorney for an hour or two hours, it needs to go to the City Manager and let him make that call. There may be a situation that comes up where we directly need to call the City Attorney, but we could address that. If it

is a one time deal or special situation as a policy that we talk to our City Manager, who could then tract what is going on and everybody gets the same information.

Councilmember Lusk suggested that in the interest of time that we monitor this for the next month or two to see how we are tracking these additional costs. We may be speculating about something that is really not that great in magnitude. Once we get into some major issues, we all are going to have possibly the same legal questions that are coming up and he thinks at that point and time is when we need to get our heads together and come up with a list of common questions rather than repeating all of the same questions in separate phone calls.

City Attorney Scott said he wants to make it clear that that does not happen. If he gets the same questions again and again, which has not happened, he would probably just send out an email to everyone to say that a certain Councilmember has asked him this question and he looked into it and have given them this answer. Now, another Councilmember has also asked the same question, therefore, he will let everyone know that this is an issue and what his thoughts are.

Mayor Lockwood said we got a little off track and we are out of sequence. He asked if there was any public comment on this issue.

City Clerk Marchiafava said there was no public comment.

Councilmember Zahner Bailey said she wondered if we are not over complicating this. On Thursday and Friday, we talked about the need to have staff managed through our City Manager. We all agree that was important. If we find that it is not working can we not address this later? If we are saying it is really the exception versus the rule, she would prefer to see us have a process that really is typically how we are going to handle things. If we find there is a circumstance where somehow that is not working, we can bring it back up. Let us monitor it over the next two months. She would hope that we would monitor it through a process that we talked about at our retreat, which was to utilize the skill set of our City Manager. This is why she thinks we have a city manager to help monitor those various initiatives and make sure that we have priorities matched with the utilization of staff. Therefore, we can make sure our funding and our budget are consistent with those as well. Perhaps we are over complicating it. On Thursday and Friday, we said we were going to try to make sure that our City Manager would be monitoring those activities across the board. According to what City Manager Bovos just said, and we are viewing our very capable City Attorney as part of our staff, she is not sure that we would want to have a separate process from the process we have already said we needed to have for all staff.

Councilmember D'Aversa-Williams said with all due respect, fiduciary responsibility is what concerns her. We have given the City Manager that fiduciary responsibility and she would like to see us continue with that.

City Manager Bovos stated that until we have a policy that directs the management of this expense to the City Manager's office, he cannot accept fiduciary responsibility because he is not the one engaging the service. When we do have a hybrid and have a very interesting challenge in that you all are sharing fiduciary responsibility for the budget, he has to share capacity for the rest. He just wants everybody to be clear on that. He does not want to be sitting here in six months and all of you drilling him about why we are over in legal fees and for him to come back to you saying on February 8 we had a conversation about. He has been there, unfortunately, in the past and wants to be real clear about it on the record that until we have a policy that directs it through the City Manager's office, you all will share that responsibility.

Mayor Lockwood said his final comment is that it is more important that we have the financial responsibility go through the City Manager than the occasional time we may need a real quick answer or legal. Again, that is still something that we can call our City Manager about direct on something real quick or he may even say give our City Attorney a call.

Road Abandonment Realignment for Manor Golf and Country Club.

City Attorney Scott asked if Mr. Duncan was present.

Lee Duncan, 515 Rivercrest Road, Atlanta, stated that he was involved with a country club in north Fulton called The Manor Golf and Country Club. This probably has been going on for about four or five years now. In the process of moving along with this, there was a realignment done on Long Street, Wills Road, and Lively Road. This was all approved during the Fulton County era in March of last year. What they did was realign the road and finished work on the road. The road is now operational, but there has never been a transfer abandoning the existing right-of-way and accepting the new right-of-way. Fulton County held off physically doing this until the plats were actually going to be reported. As luck would have it, our plats were ready to be recorded and signed off and December 1st hit and now we are here, fortunately, with the City of Milton. An action as he understands it is required from the City Attorney in his opinion in addition to what has been done, he thinks to concur with the action previously taken at Fulton County to authorize the abandonment of the existing right-of-way in favor of the new right-of-way that is currently in place.

City Attorney Scott asked if Mr. Duncan if he was able to come up with the figures that he had left a message for him about. He does not know if he got his phone message, but sounds like he did not. What he had asked if he could let us know what the square footage or acreage that was abandoned, the footage or acreage that has been realigned, and the general cost of land in that area.

Lee Duncan said to City Attorney Scott if he has the paperwork that he gave him the acreage is actually spelled out on that. The acreage is something in the range of about a ½ acre. When we ran the computations for Fulton County, they were actually abandoning about a ½ mile of road. We were conveying to Fulton County six miles of road. They were pretty delighted with that. It substantially increased their asset base.

City Attorney Scott said he believes what we are going to have to do is to pass a resolution. Obviously, this is a Work Session and we are here to discuss this as the beginning phase of formulating a resolution. He believes he does have the copy Mr. Duncan provided him of the resolution Fulton County passed. With Council's concurrence, he wants to move forward with a resolution based on the Fulton County resolution where we do the same thing that they already did except that it was not completed according to the plats.

Mayor Lockwood said if he might, he would also like to ask Alex Watson to introduce a couple more comments into the record.

Alex Watson, 410 Champion Hills Court, Milton, said at this point the road that is being abandoned has actually now been developed as part of the golf course. The old roadway no longer exists. The new roadway which as Mr. Duncan pointed out is now in use. Most people who use the old one and now use the new one will concur that it is far more superior to that which they had before. We did want to point that the reason why it is on Fulton County's resolution is a significant amount of points has been extended by the owner of the property.

City Attorney Scott said the next point that Council would make on that behalf is that there is a pretty good argument that they have a vested right to the abandonment and realignment.

Mayor Lockwood asked if staff had any comments.

Community Development Director Wilson said he had an exhibit to present of the existing public street. It has been realigned into this alignment and now the traffic will continue to use this as a public right-of-way. There was some discussion as he was showing the streets in the exhibit.

Councilmember Lusk asked if the new roadway was designed, built and inspected according to the DOT standards. The response was yes.

City Manager Bovos said he would like to respond to Councilmember Lusk's question. On next Thursday the 15th, Council will consider formally adopting the second reading of "Construction Design Specifications". This change may not occur formally through Council action prior to next Thursday so this particular action may very well be subject to the new procedures outlined in that policy, which requires the developer to get testing and prove that they met construction specifications. He just wants to be real clear and open about the fact that we are adopting next Thursday those construction specifications and in the event this action is not completed, which it will not be because there is no way we can get this done before next Thursday unless we held a special meeting, and that is certainly up to the Mayor, this will fall under that particular policy.

Mayor Lockwood requested a clarification and asked does that mean we have to go back and do test or do they have testing for that certification.

City Manager Bovos said they provide a list of authorized and previously approved vendors to do the testing. They would engage those particular vendors to do the work. They would pay for that particular service and the reports would come back to prove construction specifications were met.

Mayor Lockwood stated he believes it was Mr. Duncan that said Fulton County had inspected and passed everything up to this point.

Lee Duncan said this is normally handled as a part of the city manager agenda or county manager agenda. He has never seen this handled as a separate agenda item. He is not trying to tell you how to run your city, but this is a procedural issue more than anything else. As long as the county standards were met, we relied on the county representations. He is not sure where we are going with this conversation.

Councilmember Mohrig asked if we have the records from Fulton County and City Manager Bovos said yes they provided them to us.

Councilmember Lusk asked if the county did their inspections or was there a third party inspection. Lee Duncan said the county did their inspections.

Councilmember Mohrig stated that in essence the developer actually had followed everything in Fulton and asked if they had done the testing. Lee Duncan said Fulton County had.

Community Development Director Wilson said he thinks what these gentlemen are trying to say is that essentially the county did everything except pick up the ball on that last one yard and at that point the City came to being and moved the line on them.

Lee Duncan said that literally we were at a point of completion it is just that it did not get recorded prior to December 1 and now they changed ownership of the abandonment.

Councilmember Zahner Bailey stated that she understands the dilemma of going from one jurisdiction to another. To her the issue is not as much about testing the road. Of course we need to and it is an excellent point, but we need to adopt different standards and we need to take that into consideration. Other than this item tonight, she has not seen any documentation about the abandonment of this road. She needs to see documentation about abandonment. More importantly, this is an issue, we as Council and Mayor need to address, i.e. the whole issue of policies with regards to abandonment. The assets are really a separate issue from just this discussion about the Manor. We need to step back and look at what is our policy with regards to abandonment, what our policy is with regards to existing roadways, and what our policy is with regards to the value of that asset. This is a public asset. She thinks before we make a decision

about this specific abandonment, short of holding up your process and plat, she knows that she or someone else sitting up here would like to know specifically what process did occur within Fulton County and separately, what process are we going to adopt with regards to abandonment. There have been other roads that have been abandoned and there has been a lot of communication within the community. It is about whether or not those roads should be abandoned and what is the value of that abandonment. She is not speaking necessarily about this example, but she thinks we have a more global issue about what will be our policies. Before we make a quick decision about one, we have also talked about policy with regards to abandonment and roads. She thinks it is a bigger issue. We have done a number of roads that have been abandoned recently. There are hundreds of people saying we do not have enough roads. It is a bigger issue that we need to address as Council and Mayor with staff.

Mayor Lockwood said he had two questions. On this issue, he certainly respects Councilmember Zahner Bailey's comments, but also this issue is kind of stuck in between process. He asked the City Attorney and city staff what are our options. His other question would be to see if Commissioner Riley had any comment on that.

Fulton County Commissioner Riley suggested considering waiving the testing required by the new ordinance in the event that your staff is satisfied with the reports that were provided from Fulton County.

City Attorney Scott said that would be his suggestion too. Arguably they could make a point that they have a vested right to this. They have more of a vested right to it from the county than they do from the City, but we are in the county shoes at this point.

Councilmember Mohrig asked if this road that Mr. Duncan is asking for abandonment, did he hear him say that it does not exist any more and there is a golf course there now. Lee Duncan responded yes. The lot actually runs through what would be the 18th tee.

Councilmember Thurman said she would like to get a clarification on what our City's abandonment policy is going to be going forward and whether or not legal notices have to be given and signs be posted. Clearly, this is a one time type of abandonment.

City Attorney Scott said that clearly we do not have one and we have not had to deal with this issue before. Frankly, Mr. Duncan came to him with a copy of the petition form he had filed with Fulton County and said is this what you want and is this good enough. He said frankly we do not have such a form and we do not have a policy yet because we have not dealt with this issue yet. Certainly, they are in a different situation someone would be starting all over again with the original process because they have been through everything except that final hurdle.

Councilmember Thurman asked if there was any exchange. Again, she will go out and drive the road because there is nothing like just going to drive it because that really helps clarify many questions. As she understands it, the new road, the new Long Street, is fully available for public access.

Lee Duncan said the procedure normally is in the exchange that you are talking about, but it is in the platting process. When they actually record their plat, they convey those right-of-ways to that regulatory agency, whether it is county, city or whatever it may be. Simultaneous to that, any necessary abandonment of rights are actually occurring at that point in time. We give you what you need for your right-of-ways then transfer back to them what you previously had.

City Manager Bovos wanted to say with response to Councilmember Zahner Bailey's comments that he feels like we need to take the two concurrently. He would not want to hold this up to develop a road abandonment policy and hinder this particular process. From staff's perspective, he will certainly get it on the list and will begin to work on that.

Lee Duncan stated that staff will inspect that road before the final draft so you can be sure that we will feel comfortable with the integrity of that road before we approve the final plat. They will also post bond for 15-18 months to make sure that road holds up. From his respective, there is probably no real question about the integrity of this road at this point.

Councilmember Zahner Bailey said that really is the issue. We have a budget to manage and obviously maintenance of roads is part of that budget. We absolutely need to make sure that we have a way to bond it and that it has been inspected. She is sure that Roddy Motes and other staff members will be out looking at that road along with Tom Wilson. We are establishing some policy here even with this that she thinks we need to be extremely careful with because we are embarking on taking over a road. If we have not tested it or inspected it, she does not think that we should assume that Fulton County has. She does not know why we would say that we are going to accept something now and think, "well we do not need to do our own testing". She personally believes that we indeed need to go out and test based on our own standards because we are now our own City so we need to establish what those standards should be.

Community Development Director Wilson asked if Councilmember Zahner Bailey would be comfortable if we just simply reviewed the testing data ourselves and we are comfortable with that.

Councilmember Zahner Bailey replied yes and she would hope that there would be a review by our staff as part of that process.

Councilmember Lusk commented that he would certainly accept that.

Mayor Lockwood said he thinks the general consensus concurs. This is a growing pain item and something that got caught between the cracks. Our intent is to work with Mr. Duncan and try to move forward on this.

Councilmember Lusk said as a point of information, what do we hope to accomplish when this is on the agenda next week.

City Manager Bovos responded that this is not on the agenda for next week and it will not be handled administratively until there is a policy that directs staff to handle this administratively. It would have to come back to Council sometime in March.

Councilmember Zahner Bailey said that it is the only way it would be handled administratively if we develop a policy that states that an abandonment could be administrative. She would not support administrative abandonment of roads as a policy, just for the record.

City Attorney Scott said we do understand that staff is going to take a look at the documentation, confirm that it looks good, and report back to the Council to make a final decision.

Councilmember Mohrig commented that we can actually look at it physically as well as look at the data we have.

Lee Duncan said at this point in time they have a plat that involves this as well as others that are in the system right now. The plat went through a complete review at Fulton County. Now the plat is going through another review for the City of Milton. The plat should be at a point in time where it should be finalized sometime in the next couple of weeks. He would like to emphasize to the significance of this particular aspect of getting the plat approved. The staff cannot finalize the plat until the Council has said grace on this issue. He would hope that we could carry this until March, but not much beyond March. If we need to be involved with helping put together a policy, we are experienced and have no problem doing that. Anything he can do to help facilitate this issue, just give him a call and he will make sure that it happens.

Councilmember Lusk said this should save some legal fees on our part. Mr. Duncan responded that he is very inexpensive.

City Clerk Marchiafava said there was no other public comment.

Next item is Discussion on Zoning Ordinance. This is specific to amending Article 19.4.1, 19.4.2, and Article 33 Section 25 G of the City of Milton Zoning Ordinance Regarding Adult Entertainment Establishments and Billboards.

City Attorney Scott said we received some new maps from CH2 Hill that he wants to share. The title of this map is "Sexually Oriented Business 1000 Foot Zoning Buffer". Last week when we passed the sexually oriented business ordinance, he indicated that we would have to do some, for lack of a better word, tinkering with the zoning district aspect of things because the concern was at the time we were on one hand creating a licensing scheme for this type of business which is obviously regular licensing scheme. On the other hand because of the first amendment issue, as the zoning ordinance currently exist, those types of businesses are only allowable in the M1 industrial zone period. We do not have any M2 and only about 11 acres of M1. At that point, he and Community Development Director Wilson took a look at where we could actually put them. If we expand the use slightly to other types of zoning districts, we would actually be constitutional and not have an absolute prior restraint on this type of business. What we determined was to look at C1 and C2, as well as CM1 restricted to the Highway 9 overlay district, and as you know at the last Council meeting we had the 1st reading on an amendment to the zoning ordinance to amend section 19.4.1 and 19.4.2. This is the portion of the zoning ordinance that we inherited from Fulton County. The proposed amendment is nothing more than changing the Fulton County reference to the City of Milton reference and then adding in Section 19.4.1A, required districts, not just M1, M2, industrial, but C1 and C2 as well. Within the state written overlay district only that is for adult bookstores which is Section 19.4.1. Section 19.4.2 is basically identical except it is adult entertainment establishments and everything else inside there is identical except for adult entertainment establishments versus adult bookstores. All we did was change that one section to show that C1 and C2 would also be permissible for zoning districts to engage in these activities. Obviously, we adopted a very tough sexually orientated businesses ordinance and he is not here to liberalize it. That is not what you want me to do and that is not what he is here to do. What we needed to do was come up with a scheme where when you look at the fact that it has to be a 1,000 foot buffer from that type of use to a residence, church, school, and to any number of other types of uses, you could actually have such a use. The map that is in front of you in the pink area shows what parcels within the City would be available to this type of use given all the restrictions; 1000 foot buffer, all the other restrictions on this type of use. It boils down to the parcels that you can see essentially which front on Windward Parkway just to the south of where we are sitting tonight. It is his opinion as our attorney that this is probably the bare minimum of what we can provide in terms of this kind of use. Because of the 1st amendment issue, we have to provide no more restraint than is absolutely necessary to meet the compelling government interest which we have established for all the materials that were provided about the secondary impacts on these types of businesses. If you look at it, it is a very small part of the City, but it is also an area particularly on Windward Parkway where there is a lot of retail. There may well be private agreements, covenants, deed restrictions that do not allow these types of retail tenants to operate such a business in those areas and that are not our problem. There is clear case law in Georgia that says we have allowed for it. Just because there is a private agreement that says they can not have it there, that is not an unconstitutional prior restraint. He thinks that this is the scheme. This is on our agenda for next week (15th) for final passage. He is comfortable now with recommending that we do in fact go forward with this part of the zoning ordinance amendment so as to allow these businesses under very specific circumstances as the ordinance read last week in these areas. The net affect is that you can only have them in that small pink area of the map he distributed if the landlords in this area will allow them at all. We do not know as we are sitting here tonight.

Councilmember Mohrig stated it looks like that is where we have Home Depot, Wal-Mart, as well as a light of retail. McDonalds is located in that area as well as some business office complex over by Deerfield. He asked would this amendment leave it open so if someone comes in and wants to do redevelopment or reuse of those parcels.

City Attorney Scott said for that matter if somebody had an open retail space that they wanted to rent who wanted to open up one of these types of businesses, the answer is yes. If they meet all the other requirements in terms of getting a license from the City, there are inventory restrictions and business restrictions. The ordinance we passed last week provided additional amendments to toughen up the requirements of how much you can sell, what percentage of the inventory it could be, how much actually goes off the shelves as opposed to what is just sitting there. It is not going to

be easy to open one of these businesses and we do not want it to be easy. We want it to be difficult, but we need it to be constitutional.

Mayor Lockwood asked for clarification on the purple area of the map and asked are there a lot of restrictions within that area.

City Attorney Scott said there very well may be. Landlords are not going to be willing to rent to a tenant like that, particularly in an area like this. That is a private safeguard that is already in effect. If someone buys the office space and proposes to put it in as opposed to rent, there may be deed restrictions on the types of businesses that can go in there. In Johns Creek, for example, one of the areas that is assumed M1 where you could put such a use in and one of the issues involved in the Love Shack case, is there is a fair amount of M1 that is all part of the Johns Creek, Pathology Park, but it is deed restricted. So practically they cannot put it there, but legally it meets the requirements.

Councilmember Thurman asked if City Attorney Scott is saying in his professional opinion we have to have some area that meets the legal requirements or else the whole thing could be declared unconstitutional.

City Attorney Scott replied exactly. Community Development Director Wilson and he have looked at this extensively and of course they consulted with Jim Friedwald who was here last week. He cannot think at this point, and has not been able to come up with another scheme, as to what type of district we could allow this in that would on one hand more severely restrict it, but yet stop short of restricting it altogether. There has to be somewhere that if someone really wants to put in one of these businesses and they can meet all of our requirements, it can go or it will be declared unconstitutional. He thinks this is the minimum that we can, for lack of a better term, get away with.

City Clerk Marchiafava said there was no public comment.

Community Development Director Wilson said he thinks it is important also to look at the future land use map in areas which may in the future become C1 and C2 or M1 and he has prepared a map that he will pass out. It does increase the size, but he would like to point out to any future rezoning you may try to restrict. It would be proliferate beyond what are already zoned C1, C2 and M1.

City Attorney Scott said that is sort of a worse case scenario where things could go under the comprehensive plan that currently exists.

Community Development Director Wilson said in order to expand it into this larger area it would have to go through a rezoning process.

Councilmember Zahner Bailey asked for the sense of acreage and frontage on both of those.

Community Development Director Wilson said between 200–250 acres.

Councilmember Zahner Bailey said that it is a pretty large area and that is her point knowing that there would be data that she would like to have. She asked what is the amount of acreage involved, the frontage per road, and what is currently in place. She does not know if he has already looked at the deed restriction that may be part of that going forward. She would hope that we could research that if it be the pleasure of Council and staff and find out what deed restrictions exist today based on what is on the ground today. If those deed restrictions are not in place, then we do not have them. Similar to a new rezoning, we would not have the opportunity to review those deed restrictions in place.

City Attorney Scott stated that you cannot put in deed restrictions anyway. As Community Development Director Wilson stated if anybody wanted to come forward and expand into the other potentially future zoning, we require them to put conditions.

Councilmember Zahner Bailey said she would be curious how many, in addition to not only the land base and land use map that would allow M1, C1 or C2 in that parcel, is that correct?

Community Development Director Wilson said that is correct.

Councilmember Thurman said it looks like it is a parcel that is in the new revised larger pink area that is developed out as residential.

City Attorney Scott said that he understands that the people at CH2 provided the map for us today. The reason he did not just hand out that map initially is because that map has not been further analyzed. That map is just based on the data of what is in the comprehensive land use map and what could conceivably be future zoning to those properties based on the comp plan. That map does not take those things into account.

Councilmember Lusk asked if we know what restrictions there is on the south side of Windward Parkway that being all commercial itself.

City Attorney Scott stated of course if there is a restriction in Alpharetta, then they have to be 1,000 feet from that site anyway as part of the application process. If you look at Section 19.4.1 and 19.4.2, they have to point that out to us in their application for that type of business license.

Councilmember Lusk asked if we know what progress Alpharetta has made.

City Attorney Scott replied no we do not. We can certainly give them a call and find out.

Councilmember Lusk asked if City Attorney Scott thought it would be helpful.

City Attorney Scott said he does think it would be helpful, but he does not think it would change his recommendation in terms of what we need and in terms of the fact that this is probably the most restrictive scheme that we can come up with short of actually not allowing them at all, which would be unconstitutional.

Councilmember Thurman said she would like to see prior to our actual voting on this next Thursday, what the map would look like based on, not just the concurrence of Randy's plan, but also property that is residential. Most likely just if it has been recently zoned residential and build out it will not be changing to commercial in the next 10 to 15.

Community Development Director Wilson said that they will correct this map to show that.

Councilmember Mohrig stated that it looks like there needs to also be a couple additions as far as wine and beer. Along Highway 9, there are a couple of stores he thinks we need to add in there. The Beverage Warehouse right by Wal-Mart and then a little further up by Bethany there is another addition. It looks like the majority of this already is developed between office parks. There are a few structures along Deerfield that are still open for development.

City Attorney Scott said he thinks that the point is there is retail space that would be available, at least perceivable on the market that could provide for such a use. He thinks that is what we need in order to show the least amount of restraint possible.

Mayor Lockwood asked if it was safe to say that the way it is currently zoned there is very small likelihood that sexually oriented businesses could come in, but we need to be very careful.

City Attorney Scott said you still have to apply for a business license and you still have to meet the requirements of that license. Certainly, if we turn it down unjustly and they say these requirements are met, they could sue and get that

decision reversed, which is of course what other folks are trying to do in our sister city. He thinks this puts it in a lot better shape than Johns Creek was under the current Fulton County scheme.

Mayor Lockwood asked City Attorney Scott if his legal opinion is that we cannot stop it totally.

City Attorney Scott said we can not stop it totally. We are too big of a city and have too much population, and too much square miles even though so much of it is AG1. So much of it is residential and we have commercial corridors. He thinks we would have a very difficult time prevailing in court if we outlawed it all together.

Councilmember Zahner Bailey said last time we talked about this one of the discussions we had with the outside counsel at the meeting is whether or not additional day care centers or anything else of that nature that would be something where children would be considered. She knows that that was an item to be discussed separate from that Council meeting. Without going and driving that, she does not know specifically where there could be a new daycare center that could be part of some of that residential development and/or where you might have a martial arts class for kids. Some of those strip shopping centers do have kid-friendly sports and activities. She would hope and ask that when part of this map is revisited, we could also look at whether or not there are child specific or children friendly activities in the vicinity.

City Attorney Scott said we will continue to gather information on that before the second reading.

Councilmember Zahner Bailey said she understands the constraint, but she personally cannot possibly evaluate this until she knows if there are any child specific activities in that 200–300 hundred acres and it does concern her. It concerned her last week and it continues to concern her.

City Attorney Scott said they will check that.

Mayor Lockwood asked if there were any more comments and there were none.

City Attorney Scott stated that is the first half. The second half is billboards, which is the amendment to Article 33. The Mayor and Council were provided with a map. Dawn Abercrombie of CH2 Hill was great today and got this done really quickly. One of the things that she emphasized from the perception of the of the future land use map that Community Development Director Wilson has, is that it does not show all the restrictions on billboards. In terms of what could actually be done, this is a bit more accurate and it gives you more. The Article 33 Amendment takes the portion that currently pertains to billboards as an allowed use, subject to permit of course, in the M1 industrial district and it duplicates that same passage inside the C1 and C2. Again, it is important to remind the Council that even if we do expand it to C1 and C2 the proposed amendment is only to allow the billboards where they and towards state number primary roads or national highways. There is a requirement of a minimum 50 ft setback from the right-of-way and a minimum of 1,500 feet from any other billboards or free standing signs. We have reduced that down and he will provide an explanation. The lot in which the billboard is located shall have sufficient area to accommodate the fall zone, which is calculated to be 106 of 160 circle around the billboard. The reason for that is a safety aspect. A maximum of 20 feet in height is key because hardly any billboards are 20 feet in height. Finally, compliance with applicable height standards for the district in which it is located. When he and Community Development Director Wilson first began trying to figure out what would happen if we took this to C1 and C2, they found out that if we kept the 1,500 feet from any other billboards or free standing signs, and also the restriction that they be 1,000 feet from any residence or AG1 property, they found that there was almost nothing available under that scheme just as there is really nothing available under M1. They went back and took out, as a suggested amendment, the 1,000 foot requirement from residences and came up with the map that is in front of the Council. There are a couple of things with this map. It is only the very southeastern most part of the City of Milton. It is only really the Highway 9 area. It also does not take into account that some of these parcels are a little bit hard to read because the areas that are contemplated to be possible uses are in pink and the parcel borders are in grey. It is hard to see the grey among the pink. If you take a good hard look, what you will see is that there are some very small parcels and this is not to say that every parcel that you see in pink is going to be allowed to

have a billboard on it. A 50 foot setback will still be required and you still have to have that 160 foot bubble around the billboard for the fall zone. So, if the lot is not 160 feet wide, you cannot put a billboard on it. Community Development Director Wilson and he worked on this and their recommendation is similar to what was just stated for the sexually oriented businesses. Probably the least worst scenario allows billboards on the parcels that meet the requirements of the billboard section, which again we are going to propose be moved and allowed into C1 and C2, but at the same time it is subject to all the other restrictions. From a practical standpoint, he reminded the Council that they still have to have a maximum of 20 feet in height and a maximum of 128 square feet of the billboard. He does not think you can see billboards anywhere that are on 128 square feet or 20 feet high. We have a good distance incentive, which is constitutional because is it height and size restrictions not content based restrictions for billboards to go anywhere in the city. At the same time, we have to allow for it at least on paper in some places. If somebody can meet the requirements and someone is willing to put up the billboard that is 20 feet high and no more than 128 square feet, and can meet all those other requirements being fronted on that state highway or with the 50 foot setback. The 1,500 feet from any other billboard, and also if somebody puts a billboard right smack in the middle, that also is going to restrict the number of billboards that you can put in relation to it because it has to be 1,500 feet from any other. Even though theoretically you could not put one on anywhere that is pink on the map, you are actually going to be able to put it in a lot fewer places than what it shows given all the other restrictions.

Mayor Lockwood stated to City Attorney Scott that in their workshop last week, Facilitator Scott Wrighton mentioned that there are some cities that totally band billboards. He does not know how far or if we looked at that looked into it that but he would like to know what his thoughts are on that.

City Attorney Scott responded that some cities have totally banned billboard and he has done some other research on case law where billboards are totally banned. Those cities are largely in rural areas and are not in major metropolitan areas and not areas where you have major routes of commuter traffic. Every city in the Atlanta metropolitan area, every county in the Atlanta metropolitan area that has severely restricted billboards or has had any type of ordinance that is vaguely content based, has been sued. If you want to restrict billboards altogether, and he thinks you are practically doing it already with the height and size restriction you have, that is the more practical approach to take. If you do go ahead and request that you want him to prepare an ordinance that outlaws billboards altogether, he thinks you are going to have him running up legal fees on another type of work.

City Clerk Marchiafava stated there is no public comment.

Councilmember Thurman asked what is the size of the standard billboard.

City Attorney Scott responded 720 sq ft and height is anywhere from 50 to 100.

Councilmember Mohrig said to go back to the Mayor's question, most of us were concerned that we were being constitutional, but we did not anticipate that there was an opportunity for no billboards. When that issue was raised at our retreat, it was somewhat tantalizing. His understanding of that would be that we had several thousand acres of pure land and we were going to start up big canoes in Milton. If he understands it, if you start from square one in a setting like that and say no billboards that is defensible, but with the arrangement that we have within metro Atlanta, it is not a legitimate viable opportunity for us to say no billboards. He asked is that a good way of looking at it.

City Attorney Scott responded that he cannot tell you that we might not be able to prevail in a case to say that Milton is so rural in nature. If all of Milton looked like what most of Milton does, other than this, he can easily make that argument. If all of Milton did not look like the Highway 9 corridor in terms of the commercial development, he will be much more comfortable telling you to go ahead and take the risk and there are risks in the Atlanta metro area. He cannot tell you with certainty that if we adopted an ordinance that did not allow them at all, we might not prevail in that ultimately. But the question is dramatically high risk given the litigation history of all of the cities and counties around us.

Councilmember D'Aversa-Williams stated what about the consistency with our vision. If we have a vision of a rural community, even though we have just become a city you need that argument. We have inherited Highway 9 in the manner that it is now and our hope is to work with Highway 9 developers to make sure that we are more rural in nature even in our developed area. She asked do you think that that consistent application if we adopt a policy against billboards would hold up if it was that very consistent from day one as a new city.

City Attorney Scott said he thinks you would have a lot better chance of that if you are consistent. It is important to remember that Fulton County already has a lawsuit that implicates five sites within the city; four of which are on Highway 9. There have already been applications made for those. If we did not have a commercial corridor at all that had not already been developed by Fulton County or shepherded in terms of the development by Fulton County and whose comprehensive plan we have inherited, he thinks we would have a lot better chance of prevailing on something like that. He cannot tell you that we could not prevail ultimately. It is conceivable to him that we could, but his advice is that he thinks we have a lot better chance of succeeding in preventing billboards with height and size restrictions than with absolutely outlawing them.

Councilmember D'Aversa-Williams said if we do develop some additional commercial areas, say an annexed area that we annexed over on Arnold Mill for example, her preference is to not have billboards at all. Even with the size restriction that we have, if we start to do that in the Arnold Mill area it will still be obnoxious for even those size signs.

City Attorney Scott said he thinks that in general, it is the first amendment with expression issue ultimately, even though we all know it is really about money. That is the issue and that is the argument that the sign companies always make. They always say that you are depriving them of their rights to freedom of expression. They have at times certainly tried to carry the banner for non-commercial people who might wish to engage in a non-commercial message on billboards. There are billboards that have religious messages. That is certainly the height of the type of freedoms expression that the courts are going to protect. Of course, billboard companies say they will rent space to somebody like that and it will be a non-commercial message. They try to use what they call over breath standing. Recent court decisions on a federal level have not allowed them to do that, however, at the state level, the Georgia Supreme Court is much more hostile towards local governments on these issues and is much more expansive in its interpretation of the 1st Amendment or for that matter the Georgia Constitutional Clause regarding freedom of expression than federal courts. His suggestion is if we are to guide a commercial corridor on Arnold Mill Road, the courts have been very clear that height and size restrictions are the easiest restrictions to have upheld.

Councilmember D'Aversa-Williams asked if we adopt these at Birmingham Crossroads would somebody would be able to put a sign up like this.

City Attorney Scott said if they meet all the other requirements. They have to have a 50 foot setback, they have to be at a parcel that is at least 60 feet wide, they have to be 1,500 feet away from any other billboard, they cannot be more than 20 feet in height, and they cannot be more than 128 square feet. Frankly, given the fact that we know that there are standard sizes 728 square feet and usually considerably higher than 20 feet, we are probably not, unless they want to challenge us on what is probably the most firm foundation that we have in the entire ordinance, which is the height and size. He does not think they would be successful on that and they are severely restricting what they could commercially feasibly put there anyway.

Councilmember D'Aversa-Williams asked City Attorney Scott if he had ever seen any challenges brought forth basically saying 1st amendment rights have been violated because you are restricting the freedom of my speech because of the size requirement.

City Attorney Scott replied not really. You can regulate time, place, and manner (manner gets into size and height). The classic example is the Harry Krishna's have to be allowed in the airport, but you can tell them that they can only be in certain areas and that they cannot go up to people. You have to allow them to be there because it is a public place. It is the same sort of thing with the billboards. You probably have to allow them ultimately depending on your situation.

If you are a major metropolitan heavy traffic area or if you are a more rural area, he thinks you can make the argument that you can keep them out altogether. If you are Berkley Lake, which is all residential and the little subdivision or two grounded on this lakefront, he thinks you can keep them out. But, as much commercial as we have and as much traffic as we have in the Highway 9 corridor, he thinks we would have a hard time ultimately not attracting at least a lawsuit. We may ultimately be able to prevail on that, but it is a question of risk versus reward.

Councilmember Lusk said getting back to some of the specifics and some of the other constraints, he knows we talked about them back on the 21st of December when we first read this and asked are we still covering lighting and inner changeability.

City Attorney Scott said one of that has changed. We are not amending any of that. Everything else we talked about on December 21st at your first meeting is in tact. "Billboards within commercial districts C1 & C2 located within the State Route 9 Overlay District only, freestanding signs shall not exceed 128 square feet and shall be located according to the following standards". All the other is standard. Section P says maximum of 20 feet in height. This is from the base to the top. The setback is a 50 foot setback from the right of way. There is another set back, which is your fall zone at 150 foot circle around.

Councilmember Thurman said realistically, coming into to commercial zoned property, most likely the property will be much more valuable with a building on it than it would be with a sign.

City Attorney Scott said that does not mean that you could not try to have both, but you still have to have that fall zone. You cannot build a building fall zone.

Community Development Director Wilson said he needs to make a clarification on that. When City Attorney Scott and he were talking about this earlier today and the fall zone, he was anticipating that a sign could reach the maximum height of the district which would be 60 feet. But now as we just discussed, the maximum height of the sign would be 20 feet 1½ times that would be 30, twice that would be 60 feet. It is really only a 60 foot fall zone for such a sign.

Councilmember Lusk asked where does the set back extend to and does it extend to the limits of the fall zone.

City Attorney Scott stated yes. The future map does not take into account all the restrictions that the orientation towards the state numbered route. The 50 foot set back, the 1,500 feet from any other billboard, the fall zone.

Councilmember Zahner Bailey asked if there was a map that takes those into account.

City Attorney Scott said he would have that before next week.

Community Development Director Wilson addressed Councilmember's Lusk's and stated he was right. It would be back 80 feet of the property in order to have a billboard located at 50 foot line.

Councilmember Lusk asked if it would be in the center of the lot, 160 feet deep.

Community Development Director Wilson said he did not know about the 160 feet. The requirements with the fall zone are 1½ times the height of the sign. When he and City Attorney Scott discussed this earlier, the 180 foot fall zone was because the maximum height from the district is 60 feet, but we just discussed that a sign could not exceed 20 feet. So 1½ times would be 30 feet in this direction and must be at least 50 feet off the right-of-way and nothing can be built or utilized in that fall zone.

Councilmember Thurman said she would like to know for next Thursday, what is the smallest size square that this can be built on.

Community Development Director Wilson said it would be a 60 foot radius circle.

Councilmember Zahner Bailey said it would be very interesting just to look at this based on this description today how many signs can be put up in the whole area. She asked does she have 10 or 20.

Community Development Director Wilson said he would like to point out that in this future land use map those properties fronting on Deerfield would not really qualify. They should be exempted from the pink area because that is not a state road. We need to correct that and that will take out a number of these properties.

Councilmember Zahner Bailey said we are really not sure what we are looking at because we need to carve out the road. There are a number of things that we just discussed that may modify that some. She would like to go back to some of the core discussions. When she looks at this wall she asked what the height of this room is and the response was 10 feet. If we are looking at the face of 128 square feet, 128 square feet is really big. When she drives down Arnold Mill today, there are a few billboards in Cherokee. She has not been out with a measuring tape, but there are some things she thinks that they would define as a billboard that are much smaller than 128 square feet. When she thinks about 20 feet tall, she thinks about the tallest lighting pole that is allowed in the Northwest Fulton Overlay. That is a pretty tall piece of metal. If we are comparing 128 square feet to 728 square feet, maybe it does not seem big to her. In the rural environment that we all drive, and we just spent a bunch of time talking about our vision, she is very concerned with the 20 foot high and 128 feet. She understands the need to evaluate this. She is not yet prepared to say that we cannot prohibit billboards entirely and she does respect the legal premise that we have to evaluate that risk reward. She thinks there is risk of a lot of billboards on Highway 9, and does not know what the number is.

City Attorney Scott said they have to be 1,500 feet away from each other and we only have so many miles on Highway 9.

Community Development Director Wilson said it would be estimated at about 10.

Councilmember Zahner Bailey said ten of them are still big and still not in keeping with the vision that we just spent a couple days talking about. It is a struggle and a dilemma and not a dilemma that she is yet comfortable with. From an individual perspective, she is not comfortable that she has all the data that she needs to decide if we could or could not withstand a lawsuit. Lawsuits do not make her fearful and she does not want to be making decisions based on the fact that we might get a lawsuit. She thinks we are going to get lawsuits; whether it is on signs or for some other reason. She thinks we need to be prepared for a lawsuit. She would prefer to say what could we do that would help to position us in the event of a lawsuit. We should assume that we are going to have a lawsuit and in the event that we have one, do we have case law that could help defend our position. Obviously, we are not going to resolve this issue this evening, but because we have 44 square miles and are largely rural and agricultural residential, you want to define that. It brings her back to City Attorney Scott's point, that there are some communities in Georgia that prohibit billboards. If we could even get the names of those communities where they have prohibited them all together, she thinks there are some examples mentioned that might be even in Georgia. It is a fact that we are part of metro Atlanta and a new jurisdiction, but she does not think that would preclude us from potentially prohibiting billboards here all together. She realizes that some of these are comments. This is a huge dilemma and this is a community that feels very strongly about appropriate signage and she realizes that we have to prepare ourselves for this and eventually maybe a lawsuit. She is just not there yet and thinks next Thursday we are saying that we are leaving here tonight thinking that we are comfortable with saying that it may only be 10 billboards. But they are still 20 feet tall and 128 square feet and that is huge. If she lived along Highway 9, if she even drove along Highway 9, which she does, it surely is not in keeping with the vision that we all spent a long of time talking last week. She is extremely concerned. If we were to arrive at the place that we think we still have to have them, she is not convinced that 20 feet tall is a must and is not convinced that 128 square feet is a must. We just said that we can restrict height and square footage. Part of her question is why is that a magic number; it is smaller than 728, but in her book, 128 sq. ft. is not small enough. She does not know if there is a legal definition of billboards based on width and height. She had posed that question before and does not know that we have gotten a response to that, but she does not think that 20 feet tall and 128 square feet is small enough. She would still like to see

us walk down that path of possible prohibition of billboards. If we cannot get there as a Council and Mayor, she would like to see us further restrict size. We also talked about restrictions of lighting of billboards, materials of billboards, and she does not know if we have any language to that effect. There is still a lot to be done on this issue of billboards.

City Attorney Scott stated that the existing restriction on signs in the State Route 9 Overlay District is multi-tenant developments are allowed with one primary alignment for the overall development, which shall not exceed the maximum of 64 square feet and a maximum of 20 square feet. We are already allowing 20 foot height in signs in the same overlay district and signs non billboard that are half the size of what the billboards should be.

Councilmember Zahner Bailey said keep in mind we have had citizens address us which said the Highway 9 Overlay is insufficient. She would be disappointed if we used the existing overlay which we have all agreed is insufficient. She does not think it is in keeping with what our vision is. There are some things going on in Roswell right now with Lou Oliver about redoing some of Roswell's signs in the area along Highway 9. We need to be thinking in the future not based on the overlay that we already know is insufficient with Highway 9, but instead what it should be. She is just extremely concerned about billboards.

Councilmember Thurman stated that she knows that for any commercial property there are restrictions on the setback that had to be away from residentially zoned or AU1 Zone property. She asked are there any similar restrictions for billboards. It looks like in some of these situations you have commercial zones directly next to a residential zoned property and asked could you put it 30 feet away from a residence.

Councilmember Mohrig said along those same lines City Attorney Scott mentioned something about 1,000 feet. The question is why would we eliminate that. He thinks if you had 1,000 feet, it severely limits the places you could have it because we have a lot of residential all along Highway 9 today.

City Attorney Scott said the 1,000 feet was the original plan. The problem is that the Highway 9 commercial zoned areas are so shallow that there is residential or AG1 behind it everywhere. When we tried to come up with a map that showed the Council that it worked out to be nothing.

Councilmember Thurman asked if there was another number between 0-1,000 that we could use.

City Attorney Scott said they looked at 500 and 250 as well.

Councilmember O'Brien asked City Attorney Scott at what point would he perceive, if at all, that there would be a content based risk if we go below 128 feet. He asked could at some point a petitioner suggest that we are in effect limiting content by limiting the size of the sign to such a dramatic degree.

City Attorney Scott said he thought an argument could be made to that point that if it gets so small you are not allowing enough to go on there. On the other hand, the soundest grounding of this type of ordinance is when you have nothing but height and size, which is essentially what we tried to do. He guessed that the question is it comes out to the risk reward type analysis once again. It is how low can you go and how small can we get and still not attract challenge. He thinks it was the consensus of the Council. In fact back in December we limited it to 128 feet with the idea that he could do something with that, but at the same time when you look at these from a commercial feasibility standpoint, he thinks that the billboard people will tell you that 128 square feet is so small that it is not commercially feasible. We are actually regulating it at that size and are actually almost outlawing them anyway.

Councilmember O'Brien asked if anyone else has had a favorable experience using the rationale that we are pursuing.

City Attorney Scott said he has not seen anybody actually use such a small one. He thinks Roswell at one point had size restrictions and he thinks that was just one of many aspects that they were sued over. Roswell has been sued multiple times; they probably have been sued more than any other jurisdiction by the billboard companies.

Councilmember Zahner Bailey said in response to Councilmember O'Brien's question, she bets there are possibly some examples out there of other jurisdictions.

Councilmember O'Brien replied that it occurred to him as we were discussing this if we kept trying to dial down incrementally as desirable as that would be that we might then invite at some level, a content.

Councilmember Zahner Bailey said she did not think it was fair to say that we had a consensus that 128 and 20 feet was in fact the magic number. She does not think that there was anything that made that magical. Councilmember O'Brien made a very valid point and she wants data and would like to be able to do something other than pull it out of the air and say that is magic because if we can indeed rationalize it down further and or prohibit them, she still thinks we need to explore it. She does not have the data to be able to say that the industry says that here is the average and here are the areas where it has been smaller. She wants to go measure the ones she has seen in Cherokee that appear to be smaller. Maybe she is mistaken, but she thinks there are some smaller examples.

Councilmember D'Aversa-Williams wants to make a comment similar to her short dissertation earlier trying to understand billboards and this ordinance. She asked what is the difference between a billboard and a sign and where do the two begin to converge. As far as she is concerned, we have a sign ordinance and she will go on record and say that she would prefer that we prohibit billboards in the City. She does not know how we get from this workshop to that type of a vote. Some likely have a difference of opinion on our Council, but after we had our retreat last week, she did a pretty good bit of research throughout Georgia on the billboard ordinance, as well as the noise ordinance to try to understand herself were other cities are. There are a number of cities in Georgia that do not allow billboards and they specify what a billboard is. Then their sign ordinance is different. A sign is different than a billboard, but you kind of have to specify that. Obviously, she is not an attorney, but she does look at some of these other cities and believes that when they had cases that have come up it is the consistency whether it was their land use plan or their ordinances and the consistent enforcement of their ordinances that allow them to prevail. That does not mean we may not spend money prevailing.

City Attorney Scott said the problem with billboards as opposed to other types of use is that first amendment freedom of expression issue. He thinks the answer to Councilmember D'Aversa-Williams' question is that he does not know that there has ever been an arbitrary distinction drawn. But, it would seem to him when you look in the context of our ordinance, and of course based on other ordinances that were looked at, he would say that probably 128 feet is the smallest that anybody considers being a billboard and anything smaller than that would be a sign. He asked if the Community Development Director would concur on that.

Community Development Director Wilson said no he thinks we just have signs of varying sizes and at some point you call it billboards. He is sure the billboard company does not consider 128 sq ft a billboard nor do they consider 228 sq ft a billboard. They really are just all signs of varying sizes.

Councilmember Thurman said she would like to look into the set backs that are required in commercial buildings and different zoning adjacent to AG1 property because she thinks that is the very minimum that we want. She wants a residential rezone property.

Community Development Director Wilson said he would also remind everyone that a parcel of land is entitled to one free standing sign. If that parcel of land is developed and they have a free standing sign, then a billboard would be prohibited anyway. Any other free standing sign would be prohibited. As you think about the parcels up and down Highway 9, only those that have no sign at this point would even be allowed a future sign of any size.

City Attorney Scott said the traditional billboard ordinance makes that distinction between off premise and on premise signs. We took that away because that has been recently deemed to be contested, but he is certain that the same

ordinances that had that distinction did not limit to one sign, which he thinks is probably one of the saving graces of our ordinances.

Community Development Director Wilson asked Councilmember Zahner Bailey what would make her feel comfortable and what information is necessary for her to make a firm decision. He asked what information would she prefer or like for them to research.

Councilmember Zahner Bailey said she would like to know an educated estimate based on the data and the restrictions of the number of signs that would be allowable based on the set back and based on the "lift" that City Attorney Scott mentioned. As Councilmember Thurman just mentioned, instead of 1,000 if we were to look at 250 feet from a residential development versus that 500 feet. There is an A, B, and C; how many signs are currently drafted with those restrictions, how many signs in M1, C1 and C2 areas if it is with a few additional restrictions. She asked if it were 250 hundred feet from residential areas, from a case law perspective, she really would like to see examples within of the other jurisdictions that have prohibited billboard signs and maybe even some cases where they have been sued and what is that result. She suspects that some of those communities that are out there feel as some of us do, that billboards do not place in their city. Rather than to talk in hypotheticals, she would prefer to have some of that data. She does not know if we have a place in their city that today. Individually and obviously she knows that City Attorney Scott has done a tremendous amount of research and may have some of that knowledge. She knows that she does not have that for comparative purposes because her perspective would be instead of how do we allow some billboards, she would prefer to say out of a legal perspective, how can we defend ourselves in a situation if we just prohibit signs and their size.

Mayor Lockwood asked Community Development Director Wilson if he could get that information to all of Council and staff.

Community Development Director Wilson replied absolutely.

Councilmember Lusk asked how many jurisdictions are there in the state of Georgia that would regulate signs in particular the billboards.

City Attorney Scott said he thinks they all do.

Councilmember Lusk continued and asked to just get an estimate of City Attorney Scott's research time researching 528 municipalities in cases with involve signage.

City Attorney Scott said we need to understand that not every municipality has been challenged. For that matter many have and it has not resulted in a reported decision. It may just have been settled or handled at the local superior court level and superior court decisions are not usually published. If it gets to the federal court and it is handled in federal district court, it would ordinarily be published and certainly if it gets appealed it gets published.

Councilmember Zahner Bailey said she does not think you have to look at every 528 jurisdiction. The key is was there any basis in law that allows us to prohibit billboards where we could potentially, or with some confidence, succeed when sued. She thinks that that is the challenge; do we prohibit them altogether and what is the risk reward there. The reward is huge in contrast if we cannot get comfortable legally. She asked what is the risk reward and how do we further restrict what she believes practically every citizen wants other than those that would have their land with the billboards having revenue. They have said they did not want them in our City. She would hope that we would do some more due diligence.

City Clerk Marchiafava announced the next item is a discussion on the noise ordinance.

There is public comment and she would like to remind everyone they have two minutes each and a total of ten minutes for this item.

Josie Creamer, 125 Wynstead Court, thanked everyone for allowing him to speak afternoon about the noise ordinance. First, he wants to say, 1) he is strongly in favor of establishing a noise ordinance in the City of Milton that does not provide blanket exemptions. 2) He thinks it is reasonable to have a variance provision because it is going to be necessary as we conduct our daily lives in the City of Milton. 3) He thinks that variance provision should allow citizens who are affected by the granting of the variance to be allowed to be heard to object to that granting of the variance. Those are his 3 principal points. He knows through some discussion particularly where he is concerned, he is anti-school and that is the mainstream of his efforts to establish this noise ordinance. He could tell you that that is not true. Two of his children went to school at the Old Milton High school; two are going to the new Milton High school. He is very happy with the school. It is the operation of the loud speaker system at the school that is his problem. But it is not only that, it is the construction at Crabapple Crossing that starts at 4:00 am, it is the barking dogs in the neighborhood at 3:00 am in the morning, it is kids hanging out blasting their radios; it is all those things and that is what the noise ordinance is all about. He would hate for the Council to focus on the school as being the issue although for him that is part of it. The school has operated that sound system in a way that he thinks is abusive; they have made promises to him about how it is going to be operated and the method that it is being operated and they have not done that. In his own expense, he hired a sound engineer to take sound readings from his own patio. At the last Milton home game the sound readings reached 86 decibels. He has that report for your consideration and hopes the Council looks at it to see how that can affect somebody and somebody with no recourse apparently without an ordinance.

Phil Cranmer, 1040 S. Bethany Circle Drive, stated that he would just like to preference a few of his comments just by providing a very real scenario that a lot of the residents in the Bethany Creek subdivision just about two miles north of here have been experiencing for quite some time and continue to experience. Imagine being in your home and having the loud music play, karaoke machines going or trivia night going, and not being able to control the volume or the off button for that matter. Then imagine you and your children and family are trying to go to sleep at 11:30 at night. We have three court hearings against Montana's, two of which are open. He is referring to Montana's Bar and Grill that backs up to Bethany Creek subdivision. We continue to call 911 frequently, just about every Friday and Saturday. He thinks everyone would agree that not only is it a waste of our time, but a waste of the city's resources to continue to come out on these 911 calls because of that noise. We do have a stack of hand written petitions by the residents of Bethany Creek and are getting all the other subdivisions within a five mile radius to join this effort. In addition, we feel that our property value and our quiet neighborhood are at stake and below Milton's value that we preach on. Clearly, this does not fall in line with that at all. We are not looking to seek or inflict any financial damage, only that our neighborhoods remain quiet and music free and control of that in our homes. In addition, they do have those two cases being heard in Fulton County. His question to the Council is, under the new nuisance ordinance do they have to resubmit a formal complaint and will those Fulton cases be transferred to Milton. If not, what is it we need to do to continue forwarding this request.

Scott Morgan, 1085 S. Bethany Creek Drive stated that he lived in Bethany Creek. His neighbor, Phil Cranmer previously spoke. In addition to being a direct victim, all of Bethany Creek has been a victim for over a year. He has lived there for over a year and it has happened every weekend. It used to happen during the weeknights and that has been halted. He does not know if you all are familiar with Montana's. It is right there on Highway 9 just south of Bethany Bend. In addition to what Phil Cranmer announced, these are 43 signatures and complaints of everyone in their neighborhood. What they have done previously is had to call 911. That is what Fulton County told them to do at the court hearings. It has not halted and they go to court at the Annex Building and they are at a loss because they are trial by jury. This has happened twice and nothing happens. They are just being pushed off to 18-30 months. He had the actual citations if anyone is interested in looking. This is what our neighbors have to say. 1) "My children can't sleep when your music is playing so loud. We have been in our house before Montana's moved in. (It used to be an Ace Hardware) Montana's is so loud due to it having a green house. Montana's has complete disregard for our community and our right to enjoy our peace and backyard and even our sleep". 2) "Like any other law or ordinance or regulation, they are implemented to protect the roots of people. We as a family neighborhood expect noise disturbance ordinances to be enforced on Montana."

Councilmember D'Aversa-Williams asked what the citation was for and was there a fine for Montana's.

Scott Morgan replied yes. The fines are supposed to be issued at \$1,000 per citation, which at this time no fines have been inflicted because they go in and change it to a trial by jury. It has been thrown out twice.

Councilmember D'Aversa-Williams asked what was the reason for it being thrown out.

Scott Morgan said a neighbor prior to him complaining had a ban for six months and during that time he was calling and making citations which would have been enforced due to it being one day after the six months. The court date changed to that date, one day after the six months so they could not do anything. He has all of this information and nobody could look at it.

City Attorney Scott said it is probably a lack of speedy trial.

Ron Wallace, 13090 Freemanville Road, lives on the Freemanville side next to Milton High School. Joe Creamer talked a little bit about his side and some of the challenges that he has experienced. We have a different situation and he has heard that the school is trying to do something about it and making some positive moves. That is a good thing and hopefully that would cure a lot of things that they are challenged with. He thinks we need to look at three things, and agrees with the way the ordinance was proposed. If that has not been changed, he encouraged the Council to go forward with that. The next thing Joe Creamer talked about is the word variance and what does that mean. To him, he hopes that means occasionally - the exception. As an example, Wal-Mart submits a variance and wants to have fireworks on the 4th of July, we let them do it. If Milton High School wants to have the challenge of bands for three days over the weekend, let them do it, but that does not mean every single day. The next thing is how do we enforce this. There are discussions on decibels. In his viewpoint and experience from law enforcement, he believes that does not hold well and thinks it is easily challengeable. Instruments have to be calibrated. You probably need to ask a question, do you want your police officers to have to buy or have the City buy sound equipment for them to include measuring devices. Do you want them stationed where the complaint is for long periods of time. With all that, the challenge typically is, are they calibrated correctly and you get into a lot of red tape. A common sense in his viewpoint approach is sound and distance to each human ear. If it is a 100 feet at this level of sound and you can hear it, much like when you are enforcing law to have the boom box in a vehicle and you can hear from this distance they are in violation. That is the contention. It was mentioned a couple times on the personal matters and he encourages the Council to do what is right. If you put yourself in their position where at night you cannot sleep, you have bands playing, you have drums playing, you hear speakers, and you have forces running through fences and so on and so forth. He thinks if that was your situation you would probably take a hard look at it. The future coming and there are other stores going in. He thinks you have to consider what else is out there in the future.

Cary Eubank, 13695 Highway 9, Alpharetta, stated that he is the owner of Montana's Bar and Grill. He agrees with his neighbors. He thinks the noise ordinance should be more stringent and the only way to measure noise is with a decimal meter. He has done a little proposal on some things that might help you all as far as decimal caps. Looking at some other ordinances that have restrictions on them for weekday weekend times, he feels that it might be of some help. He has taken a major expenditure effort to help correct the noise coming from Montana's, but he wants to move forward and try to get this solved and be able to have a good accurate measurement of the noise.

John McMillan, 14255 Thompson Road, Alpharetta, stated that he agrees with most of the points made tonight. There are a lot of reasons to have a noise ordinance. The main thing he would say is that we make sure that we do not, as an unattended result, prevent future schools from being able to have Friday night football. He is sure that is not what this is about, but he just wanted to make sure that everybody on the Council agrees with him - that we are not going to try to restrict children from playing soccer or football on Friday or whatever the circumstance might be.

Mayor Lockwood asked if there was any more public comment and City Clerk Marchiafava replied no. There was no Council discussion.

Public Safety Director Chris Lagerbloom stated that he is going to talk just for a brief second then he will turn it over to our City Attorney for an update where he thinks we are with our noise ordinance, and then maybe get some suggestions or feed back as to where we go from here, and what your feel on regulated noise is. He has acted as kind of a clearing house it seems this week for people who wanted to talk about what was appropriate for noise. One person specifically yesterday who he does not think is in the audience, but wanted to go on record is he talked to Pat Corley about construction noise and just to pass along what her thoughts were. She lives in the area that there will be a lot of construction at Freemanville and Birmingham Road. Apparently, a bunch of houses are going to go in up there. She felt that our time of having construction prohibited between 10:00 pm and 7:00 am was just simply not restrictive enough. She would recommend Monday through Friday and construction be allowed between 8:00 am and 6:00 pm with the prohibition between 6:00 pm and 8:00 am the following morning. On Saturdays, a prohibition between 5:00 pm and 9:00 pm the following morning and no construction on Sunday. He wanted to make sure her comments were made. Next, we will walk through the ordinance as it exists.

City Attorney Scott said he does not know if you want to walk through the whole thing because it has had first reading. Public Safety Director Chris Lagerbloom and he have been tinkering with it for the lack of a better term, based on a lot of the feedback that we have been getting and we are trying to come up with something. He knows that Councilmember D'Aversa-Williams had specifically asked some questions about the idea of a meter versus an apparent noise ordinance and he wants to address that first. His recommendation as your city attorney, and as the person who will be your city solicitor once we start our court, is to continue with an apparent noise ordinance, as opposed to a meter ordinance, and he will explain why. The metered noise ordinance has enforcement problems. Largely, that is based on the calibration of the instrument. It is difficult to keep them in calibration and it is very easy for an attorney representing a defendant to question the accuracy of the measurement based on calibration. It would make it much more difficult to get a conviction and to actually enforce the ordinance if we went with something like that. On the other hand, he does not want to get into an apparent noise ordinance that is totally subjective because that would also be unenforceable. The question is how we best balance those two things. One of the ideas they battled around yesterday and today is Section 2 of the ordinance stated, "unreasonable noises prohibited" and that sets up five conditions. If you met three of the five, a noise is considered to be unreasonable. He will go through those quickly. 1) Noise made between the hours of 10:00 pm – 7:00 am; 2) Noise is plainly audible within the noise unit which is defined basically as a home, business, or office that is not the source of the noise; 3) Noise is amplified by a machine or object; 4) The tone of the noise is abnormally a higher level according to the perception of the listener with normal hearing capabilities; 5) Noise remains constant for at least 5 minutes or the noise is repeated at least 3 times during a 30 minute period. The more we talked about these the more we had problems particularly with the last two. What they thought about a little more would be to perhaps propose the idea deleting Section 2 altogether and rather than to go with Section 3, which prohibits specific noises and that has 10 categories and add an 11th category to catch all unreasonable noise clause, they came up with language such as this. "If a complaint does not involve any of the above numbering specific noises, an unreasonable noise can be a noise that occurs at any time of day which is perceived as a nuisance to a reasonable listener" (that gets into your objective standard which you need) "within a noise sensitive unit, remains constant for at least 5 minutes or occurs at least 3 times within the 30 minute period." He thinks that gets into sort of a sustainability issue that he thinks you need to have to be able to prove the existence of the noise itself. It brings back some of the issues in what is now Section 2 without getting you 3 out of 5 requirements, which he thinks would be problematic to enforce. In terms of other provisions of the ordinances that was previously brought, he is certainly more than interested in hearing your suggestions about specific times and days. If you want to avoid Sunday construction altogether, he certainly can see doing that. He could certainly see that you may want to consider decreasing the amount of time construction during the weekdays. The variance issue that some of the folks who spoke tonight of allowing another opposing party to speak up and say I oppose this variance and this is why. That may be something that the Council may wish to consider. He took a look at Alpharetta's ordinance in the last day or so and, once again, Alpharetta is a measured noise ordinance and they use meters. He just thinks that is fraught with problems. When we were at the high school the other day even the principal said he did not think that a measure ordinance was the best thing because of the problems he recognized there are with it. The neighbors adjacent to the high school he thinks, are also telling you, particularly Mr. Wallace who was a reserve officer in Alpharetta, that he does not think that a measure ordinance with the meters is necessarily the best way to go about it from an enforcement capability. But, there are a couple of issues in Alpharetta that he knows what we are trying to do

here and specifically in some of the discussions with the high school. One of the things they talked about is the band practices. He knows that band practices can be a problem with the neighbors too, but at the same time there is that balance that needs to be struck between the high school, as the principal put it, allowing the high school students to have a normal high school experience. He thinks that is the balance that we need to try to strike. He is not making a recommendation. The Alpharetta ordinance under exceptions sectioned accepts choir and band practices in the noise ordinance. Alpharetta also has an exception for noise that results for the activities of an organized sports league. Again, he is not making any suggestions, but he is bringing attention to that as something that Alpharetta does and may not be what we want here, but it is an exception. He is certain that if he lived just adjacent to Milton High School, he would not necessarily want those himself. That is part of the balancing act that you are going to need to strike here in making these decisions. There is an exception here for noise created by the operation of a domestic power tool provided that it occurs during the hours of 7:00 am and 10:00 pm and that is probably too broad of an exception. What he is saying is that this ordinance is still very much a work in progress and what he is asking for to formulate something that he thinks the Council can be comfortable with is more input. It appears to him that what we need more is fine tuning as opposed to throwing this whole thing out and starting over again. He invited comments and directions on where we go from here.

Mayor Lockwood asked if we do not measure noise with a decibel meter and having a noise that is audible at a certain spot, which is to say the person monitoring that is going to be objective or the next guy and how do we control that.

City Attorney Scott responded that from a legal standpoint it has to be what is considered a reasonable person's standard and it is not just the police officer taking his or her judgment. It is what the police officer observed and what they believe would be reasonable under the circumstances. It will involve training and guidance. A good portion of their discussion this week on this topic has been to come up with an ordinance that has language that we think we can train our police officers to objectively enforce.

Public Safety Director Lagerbloom stated he would like to talk about enforcement if he can because that is one of the questions in a noise ordinance is how in fact and do you enforce it if you do not have the meter. He could tell you that when he and City Attorney Scott walked through the process this morning of looking at Section 2 that existed, he was exceptionally uncomfortable with those last two which potentially could make one of the three. Simply because you would ask the question of what is an abnormally high level of noise and then what is constant for five minutes or reoccurs three times every thirty minutes. Does that mean that you play it for four minutes and 59 seconds and turn it off and wait five minutes and do that again. Where exactly do we draw that line? He could put an actual unusual nuisance clause into Section 3 that exists today. He thinks that does not take away or diminish anything that would have existed in that Section 2, but actually defines it. It gives law enforcement and code enforcement officers more of a guideline without having to go and pick x's on a box to see if they can get to three. This is something that would be enforced by both the police and could potentially be enforced by code enforcement. That is two different branches that would have the ability to do this. It does become largely a matter of training and guiding the police agency or code enforcement agency to know what reasonable is. We ask these police officers to make life or death decisions in a split second and we certainly trust their abilities to make that type of a reasonable person decision. This is just one other way that we allow them to be our City ambassadors. Based on the information that we give them, we send them out there to weigh the circumstances on both sides and make the best decision they know how to make. Not unlike what we would ask them to do in a speeding case, in a burglary case or in a homicide case. That is simply what they will do. They will have to document and testify to the fact that the action that they took was what they felt to be reasonable at that point. He is confident that this style of ordinance that is not a decibel is the right ordinance to go with. He would have his own personal preferences as to what the times should be, but those are not truly important because whatever as Mayor and Council decides is the correct policy. That is what your enforcement will be from the police side. That is why we come tonight truly looking for whether 10-7 is a good time or what those times should be. What ever you give us at this point is what we would like to enforce.

He would like to address the fire arm issue real quick because it was brought up in an email and whether or not we should regulate noise with fire arms. He really sees that as kind of two separate and distinct issues. Whether you choose

to regulate fire arms at all would be a decision that this Council would make. Through regulation, he would feel as though we would not attach it to a noise ordinance. If you prohibit fire arms from being discharged in the city limits that in itself limits the noise that they would create. But, he really thinks that we have two separate and distinct issues and certainly we will walk down the fire arms regulation ordinance road if you want to. He can tell you Alpharetta completely prohibits fire arms within the city limits. You could go that restrictive to just being as non restrictive as the state law allows. He is happy to handle it if you feel we need to, but handle it in a different ordinance as it relates to noise.

City Attorney Scott said he would like to piggy back on the fire arms issue. Another issue that Councilmember Zahner Bailey had raised was the helicopter issue. He is hesitant to regulate helicopters on the bases of noise alone. His suggestion is to regulate it as a use not as a noise issue. The reason being that the one case that is published involving an apparent noise ordinance was declared unconstitutional by the Georgia Supreme Court involved a helicopter. He does not want to tread so close to the line of that case. He thinks that in terms of discouraging helicopters, there are a lot of land use issues and land use functions by which we can discourage those. Given the fact that that case is out there, he is hesitant to use noise as a reason to discourage helicopters and use the noise ordinance for that purpose.

Councilmember Thurman stated some of us had the pleasure on Tuesday night of visiting one of our sister cities, Sandy Springs, when they were hearing their noise ordinance. Not only did we get to hear comments, we actually sat through all of their comments which are very similar. They learned some new terms that night, like over ordinance, which she thought was an interesting term. Quite frankly, you would like to think that everybody played nice and there would be no need for these ordinances. Unfortunately, that is not what happens in real life and we have to have ordinances. Their ordinance is also not an equipment of decibel based ordinance and is more of a reasonable ordinance. She would like to look at their ordinance and see how it compares. The main questions that their citizens had were concerning the hours that noises were allowed, different hours were allowed on week days and on weekends, which she thought was important. Also, whether on not the noise could be heard not from inside the house, but from the property line. She thought that was important too because if somebody is enjoying something in their backyard they should not be forced to hear somebody else's opinion of what is considered noise. She knows what is music to one person is noise to another. She thought it was important that it be based not on being inside your house, but being on your property itself. Those are some things she thinks we need to look at and that is the hours and then also the property line.

Councilmember Lusk said he has a draft of their proposed noise ordinance here and the approved ordinance should be on the internet tomorrow.

Councilmember Mohrig said from a noise ordinance he thinks we heard it is not just the schools. The schools may have been something that has gotten oppressed. He wanted to address Mr. McMillan's comment and stated that we are not out to try to restrict people's experience at a high school. We are looking for what is reasonable. There was good discussion with the high school, but it goes beyond that where we are actually talking about what we have heard either from a business or noise issues within the neighborhood. What he would like to specifically address is construction. He would put forward that we should not have construction on Sundays. He thinks from an hour standpoint to allow construction noises until 10:00 pm at night is unreasonable. For any of us who have lived next to new subdivisions going up, when people are hammering and air guns are going off late into the night with truck deliveries, that is not reasonable to think that they can work until 10:00 pm. Maybe if it is way out in the middle of nowhere, but we cannot plan for that. The ordinance has to be reasonable for what we could expect. He asked Community Development Director Wilson what Fulton County allowed for construction during the week and on Saturdays.

Community Development Director Wilson said that they do have construction noise regulations there. He believes it was from 7:30 am until maybe 8:00 pm Monday through Friday. They also have a 30 minute additional period that they tack on to that if you are more than 1,000 feet from the nearest residential property. On Saturday, they allow from 9:00 am – 6:00 pm. On Sundays, they do not allow construction noise at all. We have been very successful at prosecuting those kinds of construction related activity noises from his time in Sandy Springs. We were almost 100% effective

prosecuting that kind of noise disturbances. That is construction noise and is not radios, parties, or other things, but construction noise was really very easy and we were almost 100% effective.

Councilmember Thurman said there was actually a chart there at the Sandy Springs council meeting for Fulton County and several of the other cities around that stated what their hours were and they were all very similar. Most of them were either 7:00 or 7:30 pm.

Community Development Director Wilson stated that 7:00 – 7:30 at night sometimes in the summertime whenever it gets dark later, we would prefer that it may be extend that to 8:00 or 8:30 pm. That would be at the Council's discretion.

Councilmember Thurman stated that was a very controversial thing in Sandy Springs.

Mayor Lockwood asked if there was a variance process. In an emergency situation and there is a water main break and you need to get some equipment in to make repairs could that process be used. There was a response that that was correct.

Councilmember Thurman said she believes that Sandy Springs also allows for personal use of power tools on the weekend as long as you had no more than two hired hands working, and that the owner of the property was working with them. It was very specific. They did allow personal use for construction on your own home on the weekends, as long as you did not have too many other people working with you.

Councilmember Mohrig said he thought that was a good idea to distinguish between personal and commercial construction. What he was addressing was commercial construction because that is a concern especially when you are having major construction going on near your neighborhood.

Mayor Lockwood said using the term commercial, he thinks you mean professional construction.

Councilmember Mohrig said essentially when someone is coming in to put up a building whether it is residential or commercial/professional construction, so we do not have problems when someone is working until 10:00 at night. We have had 2:00 in the morning deliveries with trucks backing up. Those are the things we want to try to limit and be able to enforce. He thinks that is what we would want to do as a Council.

Councilmember Lusk said he believed that holidays were restricted.

Councilmember Zahner Bailey said in terms of the construction traffic, she knows that some of the communication that she has received, as well as talked about not having construction noise on Sunday has already been incorporated. But on Saturday she thinks that 9:00 a.m. was too early. She does not know if we as Council tonight want to dabble with that time, but she would propose that we at least consider the 10:00 a.m. start time on Saturday. She thinks that 10:00 a.m. on a Saturday is reasonable for folks that are not waking up early. That is just her perspective. The other would be in the evening and thinks that the community does have concerns even on those summer days having construction beyond a certain time because they want to be out enjoying their personal time. She does not know that she would be in favor of extending that time. She surely understands the desire for more work time, but she thinks again if our premise was noise ordinance, we need to try to protect the community members. She is concerned if it goes much beyond 7:00 p.m. Obviously, this needs to be a Council wide discussion in terms of beginning and ending times during the week.

Mayor Lockwood said we need to be reasonable and maybe look at what other people are doing. He sees some of the points made, but also most of these guys, and he is talking more residential building which is not something that he does, but those guys are making their living during the summer when it is lighter longer and there is no rain.

Councilmember Lusk said one of the handouts they gave out the other night in Sandy Springs was a concurrence restriction or allowable time durations of what six different cities have. It is amazing at how closely they were all coordinated.

Councilmember O'Brien said he has that handout and can provide it. If he may add he was impressed. They had a very thoughtful discussion and clearly spent a lot of effort. He did a number of things that we can perhaps emulate and make a distinction on Sunday nights, but he would suggest maybe ramping up the fines for multiple offenses rather than 25-50 and so forth. He would suggest a modest first offense and then \$100, \$250, \$500. In comparison to all the other cities in the area, they seem to have a reasonable relatively restrictive set up that would be a fit for us and what we would hope to do here.

Mayor Lockwood suggested that the information be distributed.

Councilmember Zahner Bailey said she had a quick question about firearms and helicopters. We laugh, but helicopters fly over and if we think the bands are loud, helicopters are pretty loud. It was not that long when there were some folks that wanted to land helicopters on a pad. It is an issue and we have helicopters that fly over our area. While she understands that from a use perspective typically that gets directed more towards commercial and industrial areas. She asked what would be the timetable before we would get that incorporated and the same with fire arms. We live in an agricultural area and she can tell you that she personally can hear people shooting off guns. She has emails from people that are concerned especially as we have more residential development occurring and she does think we need to address it. Not just from a noise perspective, but from a regulatory perspective. We obviously have a mixture of agricultural land as well as residential and it is one of those balancing acts. She personally thinks that a gun is pretty loud. She has gotten emails from people who live on Freemanville and on Bethany and we have got people with subdivisions and large pieces of land. If we have people out shooting their gun, which we do, the question is are we going to allow that and do we also incorporate it in our noise ordinance. She surely understands that we want to also deal with it elsewhere knowing that it did not make our priority list. She does not know if we want to be dealing with a noise ordinance that does not at the same time deal with these other loud noises that occur daily or at least weekly in our community.

Councilmember Lusk said he did not know if he would rather get shot with a gun with a silencer on it or with one without it. As the Public Safety Director suggested it needs another ordinance.

Councilmember Zahner Bailey said her question specifically is if we know that we are going to do that as a regulation later, is there any reason that we would not also be included now so that if it is a year or two before that gets incorporated and at least deal with the noise of it. Somebody can contact 911 and a police officer can come out and say, you know, people need to be able to enjoy their picnic without guns going off.

Public Safety Director Chris Lagerbloom said he did not know that he is totally clear and does not want to get too far off the track. He guessed that would be something that would be reasonably easy to do if he knows the Mayor and Council's preference. If you are looking to strictly prohibit firearms discharging in the City of Milton that is a very easy thing to bring forward. If that is too restrictive, the fire arm discussion could take on the likes of the noise ordinance discussion and then we would need to get into a workshop with it.

Councilmember D'Aversa-Williams asked why would helicopters be landing in my backyard or guns going off in my neighbor's backyard not fall into our noise ordinance if they are unreasonable noises.

Councilmember Zahner Bailey said there have been parties in their area where people hire helicopters to come give kids rides. She is not making this stuff up - it happens. If we are dealing with a noise ordinance and she is in my backyard, the people we hear from consider that inappropriate noise for their residential neighborhood. Her only question is if this not the place to deal with that and it is a loud noise, and if we are going to be dealing with noise, she is not sure why we would exclude certain noises from other noises. That is all.

City Attorney Scott said our pilot can probably illuminate us on this a little bit, but he believes that aircraft operation restrictions are beyond our jurisdiction. It is the FAA.

Councilmember O'Brien said his understanding on the helicopter issue, especially military helicopters/aircraft, some consider that the sound of freedom. As far as personal helicopters or corporate helicopters, keep in mind that even reciprocating helicopters if it starts and engages the rotors, it is probably airborne within five minutes. Probably as a practical matter, it would be in his opinion, less onerous than a chainsaw or something that is going half the day at your neighbors. He thinks it might be a Pandora's Box issue as far as firearms. If he is not mistaken, it is extremely controversial even in an urban setting like Roswell to have a restriction on firearms. He would offer that in a somewhat rural setting like Milton, there are many people who have legitimate reasons for careful prudence and thoughtful discharge of a firearm on their property. He thinks some may regard that as extremely intrusive.

Councilmember D'Aversa-Williams said that with a noise ordinance, you are not regulating whether they can use their gun or not, you are regulating the noise level. That is not the same.

Councilmember O'Brien said you are effectively regulating the firearm because it requires a Class 3 license for silencer, if he is not mistaken. He thinks that legitimately someone would probably argue that you are restricting their ability under the second amendment, and he is just offering this as a thought.

Councilmember D'Aversa-Williams said most of the noise ordinances in Georgia do include and do regulate any of these types of noises via it helicopter, car, drag racing, etc.

City Attorney Scott said again he wants to admonish that the one case on the books where an apparent noise ordinance had been declared unconstitutional. A case that arose from a helicopter restriction was cited and then challenged that the community's noise ordinance was declared unconstitutional.

Councilmember D'Aversa-Williams asked what the specifics of the helicopter were.

City Attorney Scott said it was just a helicopter taking off from a dock and he believes it was on Lake Oconee.

Councilmember O'Brien said he thinks we have some public comment about some other aspects of this and have fairly thoroughly achieved consensus. He is not sure that we want any public comment about helicopters or firearms. The essential issue we are facing is the interaction of the community.

Councilmember Zahner Bailey said actually on firearms there were emails specifically from community members like the one on construction, and we did receive some specifically on firearms. That is not my issue. That is a community issue that people ask what are we going to do about firearms from some people who live on farms. Their concern was that there was target practice occurring and they felt it was too loud and they did not see anything to deal with it. Again, she is just bringing that forward. It seems like it is a noise. As Councilmember Thurman said some people believe in noise as a good thing. Some people absolutely might think a helicopter is a sign of freedom. If it is a birthday party next to your house on a Saturday and there is a helicopter going in and out, they may not think that. Again, she is not making a judgment one way or the other and is simply asking from an ordinance standpoint, do we really want to be in the business of saying which noises we think sound OK versus which noises we think don't. She thinks it should say there are certain noises that people are going to find sometimes too loud.

Councilmember O'Brien asked if this could be subject to just an amendment that might be offered by an individual councilmember when acting on the ordinance if we do agree to amend along these lines that we would do so.

City Attorney Scott said he is going to ask in the interest of having something that you can review ahead of time, rather than deal with all these things piece meal as amendments, when we bring this up again. He believes that the measures

plan is to bring this up at first reading again not just for the second reading. If the Council would email him with your suggestions about what you want to see in this, we will put it together and get a draft ready.

Councilmember Thurman asked if City Attorney Scott would mind emailing them a copy of the Sandy Springs ordinance to look at prior to that time.

City Clerk Marchiafava said we will get all of those documents and send them to everybody.

Mayor Lockwood said from personal experience, he could see a lot of people where they live would not want any firearms going off, but out where he lives there are coyotes and things like that. They are up there trying to kill his dog, pets, etc. and there may be a safety issue or something like that so it may be a big issue to them.

Councilmember Thurman said she will tell you that when they were looking at this issue a lot of people that were looking into annexing into Milton and Arnold Mill area chose Milton because of the firearm issue with Roswell. It was surprising the things they would ask. A lot of them said Roswell will not let me shoot my guns.

Councilmember Mohrig said he would go along with what Mr. Lagerbloom said. He thinks we need to treat it as separate from the noise ordinance. He thinks we also need to tread very carefully because we are a rural area and people that have 100 acres may want to hunt on their property or do target practice. We have to be very careful not to get into over regulation or we start to say, you can use your leaf blower only between these hours, etc. He does not think that is the intent of what we want to do with the noise ordinance.

Councilmember D'Aversa-Williams said she thought we were going down the path of reasonableness as a measure. We are not regulating somebody that is in the middle of 100 acres.

Councilmember Mohrig said we have had discussions that have gone back and forth. He is just stating his comment that we need to be careful in over regulating. We have to have something that is reasonable that law enforcement can actually go out and enforce as well as something that really meets our community needs. That was his intent.

Councilmember D'Aversa-Williams said you do not want to be specific because it does need to be left to the reasonableness of the measure.

Public Safety Director Chris Lagerbloom said he truly thinks that reasonableness is a good part of that and what is generated by what the activity is. Two hours worth of target practice is different than one gunshot you are going to hunt on your property. If we are talking about reasonableness he thinks that in large part is part of the decision making process as to what the actual event is.

Mayor Lockwood said reasonableness also reflects the old saying about a tree falling in the woods if nobody saw it. It may make a noise, but if no one hears and no one complains it is not an issue. He thinks we all are in agreement that we need some more information and staff is going to provide that for us. We will look forward to seeing that information.

Public Safety Director Chris Lagerbloom said he has one more that he would like to bring up that is not in this ordinance he just kind of like to get your opinion on it and that is commercial trash collection.

City Manager Bovos said that is actually regulated through our solid waste ordinance. It is already taken care of.

Councilmember Lusk asked is there any chance that we could sort of collect some of our constituent input and route it through the staff and then back to all of us so that we are all sharing the same suggestion or concern.

Councilmember Zahner Bailey said the gentleman's name specifically is Pisano. Vince sent a note and it went to Chris Lagerbloom and our city attorney. He raised concerns specifically raised about firearms. That was specifically

one of the items and there are some neighbors. For the record, she does not have guns so she does not get out and shoot them. She thinks that if we are looking at noise, one person's perception that noise is loud and her only point is this noise ordinance needs to deal with a plethora of things that different people would be concerned as loud what ever that is.

Five-Minute Break

Mayor Lockwood called for a 5-minute break.

Inter Basin Transfer of Sewer for Mr. Dennis Potts.

City Clerk Marchiafava reminded the Council that there were documents passed out earlier in the meeting for Mr. Potts.

Dennis Potts stated that he owns this piece of property. He wrote a letter stating his case and does not think there is any necessity of him going back through that letter. He wanted to explain, other than the letter, that a plat that shows the surrounding property has either sewer or access to sewer. Next page shows a development that we are going to try to do on this property incorporating the Dane Group property. The next two pages are emails from public works at Fulton County supporting him to get sewer going to the pump station that you can see on the first page of the plat, and the last page is a letter that the Dane Group got from Dianna Wheeler from the City of Alpharetta so that they could get sewer to their property on Windward Parkway. The Dane Group was the group that developed the extension of Windward all the way through to Webb Road. The only thing that he asks is that you look at these documents that he supplied you with. There is kind of a precedent set here and he is the last person to really ask for sewer. He has been caught up in a situation. Put yourself in his shoes. That is all he asks. Thank you.

Community Development Director Wilson stated he expects everyone is aware of the sewer pump that says that you cannot pump sewer from one basin across the ridge line into another basin for processing. Mr. Potts obviously lives in one basin. Highway 9 is the ridge line and sewer would be pumped across that ridge line into the Johns Creek basin. If you understand that with one exception to that policy is if you have frontage on Highway 9, then you may do so. You may actually pump across that ridge line. Mr. Potts' property does not have frontage on Highway 9. It is true, as Mr. Potts mentioned, that everything around him is either sewer or has the ability to gain sewer either through an exception or because they were sewer before the policy.

Mayor Lockwood asked if Mr. Potts if he would have to pump his sewage to another basin and about the properties that surround him.

Community Development Director Wilson stated they either have frontage on Highway 9 and or they are exempted by the policy. This is in most cases or in some cases are in the city of Alpharetta. Alpharetta has written such a letter to Fulton County to encourage them on a case by case basis bring sewer these individual properties. We have been in discussion by one of our citizens who have asked us to write such a letter to Fulton County to deviate from their policy to provide sewer to a property that does not have frontage on Highway 9.

Councilmember Thurman said she wanted to confirm that all the properties around this do have sewer or access to sewer.

Community Development Director Wilson said or the ability to gain sewer because they are exempted by the policy because of the frontage on Highway 9. This is a Fulton County policy. It is our policy only in as much as it is referenced in our Comp Plan so we have been asked to write Fulton County and encourage them to deviate from their policy. That would be a community values issue. If the Council wishes to write that letter or not write that letter is your decision tonight.

Greg Hightower, 220Walton Meadow Lane, Roswell, stated that he is part of the development of the group. Basically, what he wants to do is to say he can answer a lot of questions that go back years. If there any questions and you want to find out kind of how we got to where we are today with the development, he is available. As you might see here on this

board, it does not take him completely out of the development and it goes around. The ridge line is Highway 9 and we obtained sewer based on the policies before the resolution came in. As these resolutions passed, we had property that rubbed off Highway 9 because if you cut out the Kroger, you have a piece of property that is not located on Highway 9. The resolutions that were passed would prohibit this from having access. So we needed Alpharetta to allow us to continue based on being a municipality. They could ask if this is good for them and good for the community to allow the sewer to flow. They went ahead and agreed to write a letter like that. Fulton County does not care if it is what works for the community. As you can see around here (pointing to the plat), these developments on this track Mr. Carson bought. He continued it with some other property that we wanted to make it contentious all the way to Highway 9, and beginning to create this a baron island of no sewer with everybody else around him having sewer.

Councilmember D'Aversa-Williams said it was her understanding too that the City of Johns Creek does not want to allow widespread pumping into their basin, but they would allow on a very limited basis for exceptions to that. Not just with the frontage on Highway 9, but for those limited exceptions similar to this one. She asked if that was correct.

Community Development Director Wilson said that is correct.

Councilmember Thurman said this is not like opening the door for a large sewer area; this is an exception rather than a rule.

Community Development Director Wilson said this request is simply for an exception. This is not asking to open the door further.

Councilmember Mohrig said so essentially we could just ask for this one last plot and ask Fulton County to allow this exception just for this piece of property.

Community Development Director Wilson said that is certainly their option.

Councilmember O'Brien asked if there was any comment from the Court at Windward Village or some of the other adjoining neighbors. He does not know if he really engaged Mr. Potts correctly, but asked does he generally have this neighboring subdivision support to offer that.

Dennis Potts said all he could say is when he wrote this in November, he met with the buyer saying he had no opposition whatsoever. Also when he was down there getting his zoning, no one showed up to have any opposition towards it. He can say that there have been exceptions already on this resolution.

Mayor Lockwood stated as everybody knows, a big concern in our community is sewer and more sewer coming. This looks like a different situation and asked how we can allow this, but make sure this is not a typical circumstance.

City Attorney Scott said that given the fact that we are not being asked to pass a resolution or ordinance, not being asked to change zoning or anything else, we are simply being asked to have staff write a letter to Fulton County. He guesses it could be considered caused by an official action, but is it not an official action to enforce the law or it does not rise to the level of a resolution where we are expressing the will of Council. He thinks you are much safer if this is something you want to do, as opposed to making a radical change which he certainly in particular would not want to do.

Councilmember Lusk asked is it correct that Community Development Director Wilson is proposing that in his option #2.

Councilmember Zahner Bailey said Mayor Lockwood was asking Community Development Director Wilson wanted to comment.

Community Development Director Wilson said that the only other comment to be made is the fact that this decision to provide sewer to Mr. Potts is not really our decision and it is a Fulton County decision. That decision truly lies with Fulton County regardless of what we do here tonight. That is their decision and it is between Mr. Potts and Fulton County whether or not he is provided sewer. Fulton County has asked us to be concurrent with that to make a decision concurrent with our own. They want to make their decision concurrent with our wishes, but the actual decision is not ours to make it is Fulton County's to make.

Councilmember Zahner Bailey said it is her understanding that Fulton County was not in the position to extending sewer without a letter. She does not know if it would be appropriate to ask Commissioner Riley to respond.

Commissioner Riley stated they made it very clear to applicants in the area that it was not something that Fulton County wanted to entertain unless they had support of the municipalities or jurisdiction that was going to be overseeing this area. Fulton County has the final decision and Mr. Potts has every right to come before the Fulton County Board of Commissioners at any time and ask for that sewer extension. They express very clearly at the time of zoning that it was inherent that he has the will of the Milton City Council behind him before we make any exception to a highly contentious sewer basin transfer policy that they do not want to modify or deviate from without the will of the governing body.

Councilmember Thurman asked Commissioner Riley if the City of Milton did write a letter requesting Fulton County to extend sewer to Mr. Potts' property, does she feel that would set any kind of precedence at all for any future cases or would it be seen by Fulton County as we see it as an exception. She is concerned about doing something that is going hurt our current policy and wants to make sure that this is not something that is going to hurt our current policy.

Commissioner Riley said absolutely and she thinks a caveat in letter form saying that because of the circumstances surrounding this particular piece of property makes it a very unique anomaly. Also as was said early on, our Johns Creek basin can only take so much flow and we are close enough to capacity that it would not be something that would be in the will of Fulton County to extend any further sewer development in the northwest Ettowa basin.

Councilmember O'Brien asked if Commissioner Riley was talking about more of a broad base expansion. Something of this size is not going to make a large impact.

Commissioner Riley said currently the ability to serve that area that is sewerable within the City of Milton is within the capacity of the Johns Creek basin. Anything further that that would be outside capacity so just by that fact alone it limits sewer expansion.

Councilmember O'Brien said this is transition issue that would be an act in fairness to an individual property owner in an extraordinary circumstance owing to the fact that we just established Milton.

Commissioner Riley said absolutely. This came into play after the vote to incorporate had occurred. So at that time we made it clear that it was prudent to have the City Council weigh in on how they felt about this before Fulton County went forward with any considerations.

Councilmember O'Brien had one last question. Was this zoning already passed it as ONI. The response was that is correct. So zoning went through. BARRA was supportive when we looked at the use. From that standpoint, Fulton County went ahead and approved and said this was good use. We have the support of the community so this land area ONI was good and the sewer was the only thing you wanted to have them come back and talk to us once we were in place.

Commissioner Riley said the ONI Zoning was not contingent on sewer or non-sewer. It was strictly on the merits of land use.

Mayor Lockwood asked if the letter from Alpharetta was fairly typical.

Commissioner Riley said absolutely. When there is going to be a deviation from a policy, they generally look to the municipality to weigh in to tell them how they feel about it since it is their tax payer base, although the county is responsible to provide that sewer.

Mayor Lockwood said he thinks this is a conversation that is something staff would generate and not an ordinance for them to vote on.

Councilmember O'Brien asked if this would require the Council to vote on this to do the letter and asked what is needed from them.

City Manager Bovos said it is a deviation from the policy that we have so we cannot, from staff's perspective, deviate from a policy without Council's approval.

Councilmember O'Brien said so it would be a resolution that we direct staff if we vote for it to write that letter of Fulton County. He asked is that something we need to put on the agenda three weeks out.

City Manager Bovos said our goal tonight is to get everybody's read on whatever we think this is an acceptable agenda item to move forward.

Mayor Lockwood said he would like to comment on what Councilmember Zahner Bailey stated and he would like to say he certainly has compassion for Mr. Potts and his situation and he thinks this is an exception and not the rule. He can understand this situation, but he also wants to make sure that it is not the same as we are rezoning something and adding sewer. We want to make sure that legally we can show that in our intention.

John McMillan, 14255 Thompson Road stated that because the people we have adjacent to them could get the same treatment if he ended up needing it by virtue of having property that goes all the way to Highway 9 he wanted to comment. That was an oversight that the late Bob Fulton mentioned to him at one time and that was all it was. It just did not get included so that would be in keeping with his will.

Mayor Lockwood asked Mr. McMillan if he was saying it is not an issue with his property now.

John McMillan said he does not think it is, but he has property that has frontage on Highway 9.

Mayor Lockwood asked if Community Development Director Wilson concurred with that.

Community Development Director Wilson said yes. John McMillan does own that property going down to Highway 9 that can be combined with his other property, a piece of property, and a single lot that has frontage on Highway 9. He thinks that would be exempted by the policy.

Carol Lane, 14890 E. Bluff m stated that she has not looked at this at all and she can understand his situation if every single area around him is sewer and he is not. Her total concern is setting a precedent and it is a scary thought if when you are working on a case, it is sort of like the open the door here. It is only one time and down here it will be just one time and before you know it, it is in. She would respectfully request that the Council allow public information and let them know what the properties are around that area that might request the same thing. She understands letting this happen, but what she worries about it setting precedence.

Councilmember Thurman said she believes Commissioner Riley made it clear that this would not be setting precedence.

Mayor Lockwood said he would like to ask Community Development Director Wilson if he could recall if there was any other property around the area that may have the same situation.

Community Development Director Wilson said he was just talking to Mr. McMillan. He does have property that has frontage on Highway 9. That was one of the standards for the exemption, but it also must be in specific land lots. He is unsure at this moment whether or not his property is in totally or partially in those itemized land lots. It would take him just a second to find out if you could indulge for just a moment.

Councilmember Zahner Bailey said when Community Development Director Wilson looks for that, it is not just the properties here. There are some other properties that we are aware of where you might have an applicant asking for similar extension of sewer, but maybe a little further down Highway 9 near the Bethany Bend Crosswalk. We do need that research and she has been very mindful of everybody's opportunity to speak. She does look forward to making a few comments when it is an appropriate time.

Carol Lane said in her opinion that is setting a precedent and that may not be technically what Fulton County did, but we needed it.

Councilmember Lusk suggested to maybe to short circuit some of this and separates the two and tries to resolve one at a time. He referred to Community Development Director Wilson's email today and the options that he put forth. One of the options would be for Mr. Potts to combine his parcel with the adjoining parcel. So whether we recommend his proposal to include sewer on his parcel right now, or deny it, he has the option of combining the adjacent property. So it is going to take the short road or the long road.

Community Development Director Wilson said that is certainly an option that he could do that, but he did just go and look at the property in which he was combined with in order to gain that access. It is not listed in one of the land lots that are exempted so the exemption is two parts: You must have frontage on Highway 9 and you must also be in one of ½ dozen different land lots. Mr. McMillan's property is not in those land lots, although it does have frontage on Highway 9. His property would not by virtue of this policy be exempted, therefore, entitled to sewer without some sort of an exception.

Councilmember Thurman said she would prefer that if we take care of one piece, we take care of all of it in this little area tonight so that this does not come before us on a regular basis. As far as when we make a decision, we go ahead and look at the whole thing rather than looking at two or three individual pieces.

Councilmember Mohrig said he had one last question for Fulton County Commissioner Riley, and asked if the Council did go forward and City staff sent a letter saying we agree with allowing Mr. Potts, would Fulton County still have the final decision and then they would determine where he would hook or how he would hook up to sewer if that was allowed.

Commissioner Riley said if the Board of Commissioners approved his request based on the public hearing, then yes the county department of public works would make a decision on how it would be handled.

Councilmember Zahner Bailey stated that she sure understands Mr. Potts' situation. Her comments are directed to the issue of Milton being primarily a non-sewered area and she thinks Commissioner Riley was very accurate when she indicated this is a very contentious issue. We need to take heed this is not an issue that any of us can consider lightly, at least in her opinion. There is a no inter basin transfer policy that is in place. It is absolutely tied to specific land lots and we just heard this evening, in the course of five minutes, how we went from one property to perhaps would be in violation of that policy to two or three. She does not know that it stops at two or three. She thinks that there are some other land lots from other applicants that will be before us at a different Work Session inquiring about their parcels, which are near Highway 9, but do not touch Highway 9 for which they have already circulated some requests for potential rezoning that they have not formally come to us yet. She knows that community members and some Council

members have seen those site plans. She would be remiss if she did not voice her extreme concern about negative legal precedent and she believes that we need to do more research before making an exception to a policy that specifically, not too long ago, has been revised to close loop holes. Commissioner Riley is very aware of those loop holes that were perceived that the community in large numbers communicated how concerned they were and that those loopholes, procedural or otherwise, will close. They, in theory, were closed definitively. Only a few months later, here we are talking about new potential exceptions. When we went through the legal discussion with Fulton County then, the point that many made was that we should not be legally making an exception. That is if we were going to reevaluate land lots, we needed to do it within the resolution so that it could never be perceived legally as an exception to the rule, but instead the resolution would need to identify a specific land lot. The one exception where that was not handled is when the land annexed for Kings Ridge School was annexed in the City of Alpharetta. The City of Alpharetta then, as its own entity, came forward and made the premise that because it was a school that was handled differently because it was an institutional use. She would ask that we tread very carefully and again, not a statement relevant to Mr. Potts or Mr. McMillan specific parcels, but that any decision regarding the no sewer policy in her view has the potential of setting in motion. If we are concerned about lawsuits, we need to be concerned about a lawsuit over this one. If we begin to make some exceptions to specific parcels, she believes that we may have some other applicants who again, have properties nearby Highway 9 that would like to see their parcels connected to sewer as well. She is very concerned about simply making an exception without going back and readopting a resolution that is specific to land lots. There is a number of ways legally that we would need to look at it, but to simply say that we think it will not set a legal precedent, she is very uncomfortable with it. She does believe that our citizenry deserves an opportunity to be more aware of this than just a few days consideration. This is a policy that this community has been concerned about for a very long time and she is extremely concerned about it.

She has one more point. While Fulton County has ultimately the decision, Fulton County and our commissioners have been very clear. To the citizens she represents and the other member of the Council represent, there was not a desire to modify or violate the no sewer policy. While we say tonight that it is ultimately up to Fulton County, of course it is, those policies have been upheld and she think there has been an agreement with the community that those would continue to be upheld. Our writing a letter as a collective body, she believes says and puts in motion a premise that we believe it is OK to make some exceptions to those laws and policies that have been in place. If we need to deal with it one-on-one situations that there maybe some ways to handle it legally that are not then viewed legally as an exception, then maybe we need to go back and identify specific land lots. She thinks we need to do some more research about the legal precedent setting issue; it is a huge issue for this community and to think we are going to out of the gate effectively compromised our no sewer policy, not just for one property but potentially for several, for her is it is not a small issue.

Dennis Potts stated he understands the situation of maybe opening up the gates and maybe you do need to do some more research, but he thinks if you do your research you will not find another piece of property beside he and Mr. McMillan that have been surrounded by sewer. You may have some other properties that touch sewer, but they are not surrounded by sewer. They have not been singled out like he has been.

Mayor Lockwood asked if there were any more comments. There was none.

After no further business, the Work Session adjourned at 9:10 pm

Date Approved: May 3, 2007