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Special Called Council meeting of the Mayor and Council of the City of Milton was held on August 16, 2007 at 7:00 PM, Mayor Joe Lockwood presiding.

Mayor Lockwood introduced Steve Smith of Birmingham United Methodist Church who gave the invocation.

CALL TO ORDER

Mayor Lockwood called the meeting to order.

ROLL CALL

City Clerk Marchiafava called the roll.

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

APPROVAL OF MEETING AGENDA

City Clerk Marchiafava read Agenda item 07-327, Approval of the Meeting Agenda. Staff would like to request the following changes to the Meeting Agenda:

- 1) Remove from First Presentation Agenda Item No. 07-334, Approval of an Ordinance and policy for the management and maintenance of the storm water system from the Agenda.
- 2) Add to First Presentation Approval of an Ordinance Amending Chapter 8, Parks and Recreation of the Code of Ordinance for the City of Milton, Georgia.
- 3) Move from Unfinished Business to after the Consent Agenda Item No. 07-310, An Ordinance granting a Non-Exclusive Agreement with BellSouth Telecommunications doing business as AT&T Georgia concerning the providing of Internet Protocol Enabled Video Services.
- 4) Move from New Business to after the Consent Agenda, Agenda Item No. 07-335, Approval of a Resolution Requesting the Milton Community Development Director enter into formal negotiations with the preferred consulting for the development of the Milton Comprehensive Plan.
- 5) Add to New Business, Approval of June 2007 Invoice for Legal fees.
- 6) Add to New Business, Approval of a Resolution Authorizing the City Manager to File a Notice of Intent with the Georgia Environmental Protection Division in Order to be covered under a NPDES permit for discharges from a stormwater system.
- 7) Add to New Business Approval of a Resolution Appointing Christopher J. Lagerbloom as Acting City Manager.
- 8) Add to Mayor and Council Reports the Discussion on Proposal from the Sizemore Group for the update to the Crabapple Master Plan.

- 9) On Zoning Agenda Item No. 07-314, to move RZ-07-008, 15260 Hopewell Road. This item requested to be heard first, making RZ-07-005, Item No. 2 on the Zoning Agenda.

Motion and Vote: Councilmember O'Brien moved to approve the Meeting Agenda, as Amended adding to postpone the approval of the April 26, 2007 Work Session Meeting Minutes. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously.

PUBLIC COMMENT

City Clerk Marchiafava called for Public Comment:

Carolyn Husk, 235 Hereford Road, Alpharetta, Georgia 30004 - Code Enforcement right-of-way off Milton Roads and maintenance of grass.

Dennis Potts, 2745 Webb Road, Milton, Georgia 30004 - Article in AJC regarding stormwater runoff and septic tanks - affects in Milton.

Kim Horne, 415 Wade Glen Court, Milton, Georgia 30004 - Positive comment about passing the sign ordinance.

Rose Prestianni, 105 providence Oaks Point, Milton, Georgia 30004 - Thanks to the safety officers in implementation of the SOS System.

Chuck Campbell, 550 Kensington Farms Drive, Milton, Georgia 30004 - Thanks to Mayor and City for hard work and achievements.

Mike Purpura, 570 Kensington Farms Drive, Milton, Georgia 30004 – Wanted to say thank you to the City and he is tired of negativity in press and emails.

Mary Jo Greiff, 16160 Birmingham Highway, Milton, Georgia 30004 - Asked where Milton expects to get its tax base from.

John McMillan, 14255 Thompson Road, Milton, Georgia 30004 - Lack of follow-through on Representative Jan Jones' vision for the City of Milton. Issue - local control of zoning and land planning, property tax rate protection, no property tax rate increase, and improved roads and fire, police and 911.

REPORTS AND PRESENTATIONS:

Presentation of the Fireman's Fund grant check to the City of Milton

A Grant check in amount of \$10,000 was presented to Chris Lagerbloom, Director of Public Safety for the City of Milton's Fire Department, by Jeff Darling, Lighthouse Underwriters, Chris Molinari, Vice President with Fireman's Fund Insurance Company, Kathy O'Toole, Business Development Manager Fireman's Fund Insurance Company, Angela Lawrence, Vice President, Commercial Insurance, Fireman's Fund Insurance Company, and Jeff Vetter, Southeast Regional Underwriting Executive. Director Lagerbloom thanked everyone from the Fireman's Fund Insurance Company. He gave a brief explanation on how the grant money would be spent on behalf of the fire department.

CONSENT AGENDA

City Clerk Marchiafava read the Consent Agenda as follows:

(Agenda Item No. 07-328)

1. Approval of Financial Statements for the period ending July, 2007.

(Agenda Item No. 07-329)

2. Approval of the April 26, 2007 Work Session Meeting Minutes.
(Postponed by motion and vote)
(Agenda Item No. 07-330)
3. Approval of the June 7, 2007 Regular Meeting Minutes.
(Agenda Item No. 07-331)
4. Approval of the June 14, 2007 Work Session Minutes.

Motion and Vote: Councilmember Mohrig moved to approve the Consent Agenda, as amended (Items 1, 3, and 4). Councilmember Thurman seconded the motion. The motion passed unanimously.

City Clerk Marchiafava announced the next agenda item, No. 07-310. *(Moved by motion and vote)*

Approval of an Ordinance granting a Non-Exclusive Agreement with BellSouth Telecommunications, Inc. doing business as AT&T Georgia concerning the providing of Internet Protocol Enabled Video Services.

Ordinance No. 07-08-37

City Attorney Scott stated:

- At last legislative session the General Assembly of the State of Georgia passed a new Bill (House Bill 227) creating state-wide franchise fee arrangements.
- AT&T is coming into Milton offering Internet protocol Enabled Video Services competing with cable and will be signing a Franchise Fee Agreement (GAP).
- AT&T is willing to sign a side letter providing some indemnification.

Chip Edenfield spoke on behalf of AT&T and reiterated what City Attorney Scott stated.

City Clerk Marchiafava stated there was no Public Comment on this item.

Motion and Vote: Councilmember Lusk moved to approve an Ordinance granting a Non-Exclusive Agreement with BellSouth Telecommunications, Inc. doing business as AT&T Georgia concerning the providing of Internet Protocol Enabled Video Services. Councilmember O'Brien seconded the motion. There was no Council discussion. The motion passed unanimously.

City Clerk Marchiafava announced Agenda Item No. 07-335. *(Moved by motion and vote)*

Approval of a Resolution Requesting the Milton Community Development Director to Enter Into Formal Negotiations with the Preferred Consulting Firm for the Development of the Milton Comprehensive Plan.

Resolution No. 07-08-51

Community Development Director Tom Wilson stated:

- The Resolution would authorize the Community Development Director to enter into negotiations to finalize contact with the City's preferred vendor of the Comprehensive Plan Services.
- The proposals were reviewed by team of local experts and it was a unanimous decision to choose the firm called BRBH as the provider of these services.
- He recommended approval of the Resolution.

John Ford, Planning Director with BRBH stated:

- He was involved in Comprehensive Planning for over 33 years and is happy to take on the challenge for the City of Milton.
- They had great working partners in the Atlanta Regional Commission and Department of Community Affairs with the State.

City Clerk Marchiafava said there was no Public Comment on this item.

Motion and Second: Councilmember Karen Thurman moved to approve the Resolution requesting the Milton Community Development Director enter into formal negotiations with the preferred consulting firm for the development of the Milton Comprehensive Plan. Councilmember Rick Mohrig seconded the motion.

Mayor Lockwood called for discussion on the motion.

Discussion on the Motion:

Councilmember Zahner Bailey asked Community Development Director Tom Wilson if they could speak about the public participation process of the Comprehensive Land Use Planning Update activities.

John Ford, BRBH:

- Stated he was the Planning Director for BRBH.
- Their address is 2000 Powers Ferry Road, Marietta, GA.
- Talked briefly about the process.
- Would be providing resource to put plan together and document information.
- Would involve community input.
- Would be developing a questionnaire that will be sensitive to citizens of Milton.
- Will have public meetings early on to identify information to be included in community assessment.
- Would be putting together a community participation plan.
- Workshop meetings talking about goals and ideas.
- Talked about the character areas and looking at growth.
- Stated they would be looking at the valuable assets of the city.
- Talked briefly about the transportation portion of plan.
- Represented that there were three different schedules: 12-month plan, 15-month plan stretching out data collection process and review process, and a 20-month plan which would require significant amount of inter-governmental coordination.
- Felt City should try to accomplish Milton's goals in the 12-month plan.
- Said that a good deal of the transportation elements from Fulton County plan were already there, but some updates would need to be done.

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

PUBLIC HEARING

City Clerk Marchiafava announced Agenda Item 07-332.

Public Hearing and First Reading of the Millage Rate Ordinance.

Finance Manager Stacey Inglis stated:

- Ad Valorem Tax Rate for the City of Milton, GA for the 2006 calendar year for property subject to ad valorem taxation by the City is hereby fixed at 4.731 on 40% of each \$1,000 of property subject to ad valorem tax by the City and is hereby levied for general government purposes.
- All ordinances and parts of ordinances in conflict are hereby repealed.

A PowerPoint presentation was presented:

- The total Tax Digest \$1,917,713,090.
- The total taxes levied \$9,072,701.
- Talked about the Digest Increase.
- Said the first property tax levied by the City was \$4.731 mills.
- Stated that the budget year starts on October 1st.
- This budget was being set for 2008.
- Said City cannot pass mileage rate until they receive tax digest from the county which City received in July.
- In January, City got tax anticipation notice - \$5,155,000,000.
- The tax anticipation money gives City operating funds for entire year.
- The note has to be paid back in December.

Mayor Lockwood stated:

- When the City started it had expenditures and the City does not collect any revenue until end of the first fiscal year.
- The City had to borrow money upfront and will be paid back at end of fiscal year in December and we will have to take out another tax anticipation note to get the City through next year.
- The goal of the City is to have enough reserve so they will not have to continue to borrow.

PUBLIC COMMENT

Christopher Bloor, 1800 Birmingham Road, Milton GA

- Keep taxes where they are currently set.
- City would have the opportunity to lower it if necessary.
- It is important to review the needs of the City.

Jon Carroll, 2140 Country Ridge Road, Milton, GA

- It may be a good idea to consider what Johns Creek did.
- City should consider inflation factors.

Bob Moheb, 13085 Morris Road, Milton, GA

- Said taxes have skyrocketed.
- Stated that this was not what Fulton County would have done.
- City of Milton was put together to keep taxes low and keep citizens safe.

City Clerk Marchiafava stated there was no further public comment.

City Attorney Scott clarified that the public safety equipment, police and fire apparatus was purchased on a lease, but at end of lease the City owns the equipment permanently.

BREAK

Mayor Lockwood called for a 5 minute break at 8:18 PM.

RECONVENE

- The meeting reconvened at 8:34 PM.

City Clerk Marchiafava said that next we have the Zoning Agenda and read the Zoning Rules at this time.

ZONING AGENDA [Zoning Agenda Transcribed Verbatim]

City Clerk Marchiafava announced that Agenda Item 07-314 would be heard before Agenda Item 07-313.

Agenda Item 07-314:

RZ07-008 - 15260 Hopewell Road to rezone from AG-1 to C-1 the existing 1.179 square foot structure for a retail market by Mark King. (Staff notes that MIX was the inappropriate district to request and the request has been amended to C-1 and a concurrent variance is needed). This is a second reading.

Community Development Director Wilson:

The planning staff has created a planning analysis he thought everyone had been given a copy of. Staff's recommendation on the petition is to deny the petition. To give a recap of that analysis, the Community Development Department's Senior Planner, Robyn MacDonald, will give more detail about what the analysis said.

Planner Robyn MacDonald:

The request was to rezone from AG-1 to C-1 for the existing 1,179 square foot general store for an overall density of 2,250 square feet per acre. Staff recommended inappropriate zoning district previously for the proposed zoning and, therefore, the current C-1 zoning was substituted. Staff also recommends deleting a portion of the AG-1 where the parcel for the single family house has been deleted also from the request. The proposed development overall is inconsistent with the comprehensive plan which in this area recommended agriculture which would typically allow a minimum one acre lot. It is also inconsistent with the map as well as any kind of policy in the area. There is no other board policy from Fulton County that supports this request. Therefore, Staff recommends denial of this request.

Mark King, Applicant:

My name is Mark King and I reside 240 Holcombe Hill Lane, Milton, Georgia. As you are all well aware, I put in for a rezoning application for what I was calling The Milton Market in a general historic building here in the new City of Milton. At the time I put in the application, and certainly I applaud the efforts of Tom Wilson and his staff, as they gave me good guidance, but unfortunately, there was a great deal of confusion in regards to how I should make the application C-1/MIXED and things turned around at the last minute to no ones real fault, but it was just a procedural item. Due to that, I do not think I can put forth my best case scenario for my plan for The Milton Market. I would like to ask the Council to withdraw my application and hopefully approve that withdrawal process.

Mayor Lockwood asked if there were any comments:

Support:

Preston Collett:

Good evening folks. I live at 15190 Hopewell Road, Alpharetta, Georgia 30004, the property adjacent to the property in question. This is not the year 1955 folks. Zone it C-1. You are going to run him off. Small businesses are what is going to make you grow, so what is wrong with it being a country store? It was before. I lived there when it was a store. Why not zone it C-1 and let us get on with the future. Thank you.

City Clerk Marchiafava stated that is all of the comments in support. We will now hear from those who are in opposition.

Opposition:

Joan Borzilleri:

I live at 540 Kings County Court, Milton, Georgia. Respectfully request that you deny this request for rezoning. Please uphold the recommendation of the Milton Planning Commission which voted to deny 6-0. Please uphold the current AG-1 zoning. Please uphold the Fulton County Comprehensive Land Use Plan under which we still operate. I am submitting a petition signed by many of my neighbors requesting denial. Let us not take a step backward in allowing the spot zoning on the dangerous corner. It will set a precedent in this AG-1 area. Please deny this.

Steve Galberaith:

I live at 555 Kings County Court, Milton, Georgia. I also own property at 5560 Hopewell Road. That may not be next door to the property, but I believe it is definitely in the immediate area of that piece of property. I think that the traffic implications are valid. I think the inconsistencies with the Land Use Plan are very valid arguments, but for me this is a classic example of spot zoning. When you allow spot zoning that mushrooms. It is going to mushroom here and it is going to mushroom elsewhere in the city if you allow it here.

Leon Cole:

16700 Birmingham Highway, Milton, Georgia. To allow the spot zoning of this AG-1 property would be very unfavorable to good planning. There is currently no C-1 zoning in the immediate vicinity. Any request for rezoning to C-1 is inconsistent with all Fulton County documents that we are currently using for zoning purposes and I request that you deny this and not accept the withdrawal.

Phyllis Flory:

390 Coach House Lane, Milton, Georgia. First of all, I want to thank you for your grueling work and your perseverance in this is tremendous task on our behalf. I really appreciate what you are doing. I also am and my husband as well is very much against the rezoning of the property at Hopewell Road and Thompson Road, as well as the others that are on the agenda. Allowing that spot zoning to occur would open the whole intersection there to possibly gas stations, possibly another large store and possibly even a strip mall because once you let that C-1 zoning in how are we going to keep everybody else out of there. We will be venerable. We past that intersection everyday and sometimes several times a day and when my husband approaches that intersection, if there are one or two cars parked there, he cannot see the fast moving traffic coming up Hopewell Road and it is an accident waiting to happen if we were to allow the change in this area. Not only that, I think we are all part of our little community and to keep it that way, we cannot allow that type of C-1 zoning so I encourage you, as the previous gentleman said, not to accept the withdrawal, but to deny it. I thank you on behalf of my husband and myself.

Rose Prestianni:

I reside at 105 Providence Oaks Pointe, Milton, Georgia. Thank you Mayor and City Council for the opportunity to speak before you tonight. I would like to echo Mr. Leon Cole's eloquent comments and I think he spoke well about this particular zoning. While the concept was a great one and just the thought of a little country market is a great idea, but it is just the wrong location. I think like some of the petitioners that have come to speak tonight, you should not allow withdrawal or deferral and should also not allow the zoning. Staff has recommended denial and the Planning Commission has unanimously denied it. It would set a dangerous precedent for the residents to allow the spot zoning so I ask respectfully that you consider denial for this matter and not withdrawal or deferral.

Kim Horne:

I reside at 415 Wade Glen Court, Milton, Georgia. I would echo the comments before me and would request that you hear this case and vote on it tonight and I reserve the rest of our time for rebuttal. Thank you.

City Clerk Marchiava stated that ends comments at this time.

Mayor Lockwood said we have a request from the applicant to withdraw RZ07-008, 15260 Hopewell Road to rezone from AG-1 to C-1.

Motion and Second: Councilmember Karen Thurman moved to accept the applicant's request to withdraw RZ07-008 - 15260 Hopewell Road. Councilmember Bill Lusk seconded the motion.

Discussion on the Motion:

Councilmember Zahner Bailey said as a Point of Order, she was not sure if the applicant wanted to use any of his rebuttal time.

Mark King, Applicant:

I honestly appreciate all the citizens concerns, because I am a citizen of Milton also and have been longstanding. I have many of their same concerns, so on a technically, I would like at this time reiterate my request to withdraw based off of the confusion off of the zoning issue altogether and that is really the basis of it. Certainly everybody has been very kind and open about this. I have gotten great support from the Community Development office and Tom Wilson specifically, so I will not take up any more minutes at this time. Thank you.

City Clerk Marchiafava said there is time remaining for opposition if they would like to come forward and make any other remaining remarks.

Opposition

Kim Horne:

My feeling is that it should be heard tonight because there was ample time for public comment at the Planning Commission meeting and the change from C-1 to MIXED to me amplifies more why this should be denied and not less. The MIXED use would allow residential with the commercial. C-1 does not allow for that and therefore the density is actually increased with C-1 because you can only use 1/2 of an acre with C-1 and 2/3 of an acre would still be AG-1, so I think the public has been amply notified, has spoken and therefore it should be heard this evening and not accepted for the withdrawal. The technicality was obviously not his fault or anyone else's fault, but it was simply an oversight and still should be heard tonight. Thank you.

City Clerk Marchiafava said the Public Hearing is closed on this issue.

Mayor Lockwood asked if there is any additional discussion.

Councilmember Zahner Bailey:

One, I just want to thank the applicant obviously for his desire to help preserve a historic structure. I think it is a common ground that we all share that the history we all have in Milton is important and worthy of preservation. I also heard from one of the speakers this evening that it was a great idea and perhaps from the zoning perspective maybe there is an opportunity for those sorts of opportunities where there are zonings, so while you have mentioned a desire to withdraw, it sounds like you have a concept that you care very much about. My second point, however, from a withdrawal versus a denial standpoint, I know that we have a motion on the floor with regards to withdrawal, is that my concern with accepting a withdrawal based on a technicality is that we have had public advertisement, we have had a full process that went through the Planning Commission that went first through the CZIM and now this evening at this public hearing. If we withdraw this evening, my concern is that there is no time period by which the applicant or a different applicant on the same property would not have to wait a period of time -- there would be no waiting period. According to the law and according to our policies, means that it could be withdrawn this evening and in the next cycle we could either have the same applicant or a different applicant coming forward on this same parcel. My concern with regards to that is that a denial would allow us to acknowledge the planning staff's recommendations, it would allow us to acknowledge the public that has spoken this evening, and it would allow us to acknowledge the Planning Commission's vote and recommendation, and if Mr. Wilson could just speak about the time frame if we denied it this evening, which would be an alternative to the motion before us, if it were denied based on the inconsistencies with the Comprehensive Land Use Plan, and based on the fact that staff has recommended the denial, and based on the fact that

policy for this area deems that it should remain AG-1. If the denial were based on those elements which are according to policy and laws, would there, in fact, be a one year period before which a similar zoning could come back to this parcel. Could you just answer that question for me?

Community Development Director Wilson:

Yes I can, but if I could make one point before that, and that is about the technicality and the change from the MI District to the C1 District. When this property was first presented to the planning staff, it was a four acre site with a yellow house on it and a country store on it. The applicant wanted to live in the yellow house and operate the country store, but that was one piece of property with two uses on it. The only district in which you can do that have both residential and commercial with the MIX district. Later as we were doing our staff analysis we realized and found out that the store actually sits on its own piece of property. Therefore, in order to minimize the footprint of this zoning were you to approve it, we substituted a C-1 zoning on the smaller parcel of land. Both zonings, the MIX and C-1 were both inconsistent with the Comprehensive Plan and policies and that change had nothing to do with our recommendation -- our recommendation would have been the same. To answer your question about any time period in which the applicant could not come back before this Council, if you deny it tonight, this exact same application cannot come back to you for twelve months. That does not mean that an application on this property that is significantly different could not come back to you next month, so only this same issue could not come back to you for twelve months if you deny it tonight.

Councilmember Zahner Bailey:

So a similar request for C-1 could still come back if we withdrew versus a denial based on the recommendations in the CLUP.

Community Development Director Wilson:

Anything significantly different could come back before you tomorrow.

Councilmember Thurman:

It would have to go through the full process of the public hearings, the Planning Commission and CZIM and everything else.

Community Development Director Wilson:

That is correct. It would start right back over with the CZIM and the whole process would play itself out one more time.

Mayor Lockwood asked if there is any more discussion.

Councilmember D'Aversa:

I have a question about the actual property. I live less than a mile from the property and I travel along that road every day a couple times myself and there is a dip, an obvious hazard there. I think it is outside the property line, I think it is regard to the city line, but while we are talking about the property, I think it is probably important that we take care of that. It has become an obvious cut-through now because of the paving of the property for the potential store. They did a nice job of refurbishing the house that is on there, but that paving which would have allowed for parking basically, looks like an extension of the street now, so people cut through when they are turning onto Cogburn Road going east and that is causing a little bit of a challenge and there is a big dip there, so maybe we could take care of that. I know it is not related to this, but I figured while we are talking about it maybe we should address it.

Community Development Director Wilson:

We could certainly address that anytime we issue a permit on this property. We did not issue the building permit on this property as you know. It was issued in Fulton County. It was and maybe Mr. King could verify this, but Mr. King did speak to me about extending the grass strip between the road and his parking lot, all the way around that corner, all

the way back down Hopewell to his other entrance, which would prevent what you are talking about is this broad expansive pavement which people just tart across all over in different ways. So in do that would certainly control the access in and out of t hat property and would be a big help. Without issuing some sort of permit on there, I really could not require that someone do that.

Councilmember D'Aversa:

Well the dip when you come down Thompson Road and come east going on Cogburn Road because if you try to go straight and stay on the legal road as opposed to going on the property in question like a lot of people are doing, you go down a dip. It is a hazard and it is going to damage a car. It is not a pothole, but a big dip. I am not sure if that is our street, but I am asking that we just check it. I am not sure if it is on Mr. King's property.

Mark King, Applicant:

I am absolutely familiar with that corner and very familiar with the traffic patterns because I sat there many, many days and spent many hours and did traffic count and directions and all of those types of analyses. I want to make sure that everyone here, the Councilmembers, the mayor and everybody here in the audience -- and that is completely correct with what Tom Wilson said. The pavements there preexisted. It was not something that was new. It has been there ever since I traveled that intersection from the early 90's and I am certain it was there long before that, so it has always been paved. In our plans and in working with the new City of Milton, we spent an extensive amount of time restructuring that corner to provide a more safety aspect to it and that included doing a buffer zone all the way around that corner and extending long beyond the building so it would really create a more safe environment for everybody that travels there and it would absolutely stop all of the cutting across that parking lot that is going on by skaters in the area, county workers -- it is a real gathering spot. We spent a lot of time and were going to spend a great deal of money in refurbishing that corner to make it safer and also keep in mind that the site lines of the traffic were important when we did those analyses also. I do have the board in the car that I brought with me to the two meetings that I attended on this and showed the public and showed the Planning Commission and everybody was grateful and supported those efforts. It was a great idea, but again due to the rezoning aspects of it, that is going to be withdrawn along with my withdrawn application, so I hope that further explains this. Again, being a resident here I am concerned about that corner also and we definitely had in the plans to make significant corrections safety wise to that corner. I would add that those corrections should be made anyway.

Councilmember D'Aversa:

Well it sounds like you are withdrawing the possibility of you making those corrections, so I would defer to our staff.

Community Development Director Wilson:

We will send someone out there to take a look at this dip and if it is in the right-of-way, it is obviously our obligation to fix that and provided we have transportation funds available we can do that.

Councilmember Zahner Bailey

Mr. King, are you still the property owner or is someone else the property owner?

Mark King, Applicant:

I am not the property owner.

Councilmember Zahner Bailey:

We as Tina D'Aversa stated, perhaps we need to look at the traffic patterns. There has been some paving that has occurred at a time that came further than were the staff had recommended. If that was going to be returned to some of those buffers, I would suggest that because Mr. King is not the property owner, that we do pursue that with the property owner. Also, I do not think this has been answered tonight, but we need to evaluate the EPA concerns and whether or not there had been a tank and whether it has been removed because again, regardless of whether or not this

zoning proceeds or not tonight, whether withdrawn or otherwise, I think those are issues that have come forth obviously from the citizens with regards to this property and we need to address in the near future.

Community Development Director Wilson:

Let me tell you what I know about that. As for the paving, the property owner did resurface the paving that was there. He did not extend it to any areas that were unpaved before. He did, however, overlay that pavement which is new pavement. The EPD -- obviously there were pumps there that were visible until just recently. I talked to the property owner about whether or not those tanks were removed and he said that they were. I called the EPD and asked them if they had any record of that removal and they simply do not have a record of them even ever being there. Apparently those were put in before EPD tracked these sorts of things. They have no record that these were ever removed or installed, so the only information that I have is from the property who said that they were removed. The only way to know for certain would be to go in and do some sort of subsurface testing.

Councilmember Zahner Bailey:

My only follow-up to that would be based on the ordinances that we passed in the last number of months, if there is a risk - and that is obviously for your department to evaluate, but if there was anything that would require just to verify - if there was a simple soil test that could be done, in consideration of public safety, that might be worthy of doing.

Mayor Lockwood:

Let me suggest that we have Staff look into that.

Community Development Director Wilson:

I will follow-up with that.

Councilmember Thurman:

I have one quick comment and that is I really appreciate you trying to save a historic structure. I really hope going forward we will have a historic preservation ordinance and there will be some kind of incentive. Too many times these historic structures because they cannot really be used and because of their location they end of falling in disrepair and they end of being torn down either by whoever owns them or just by nature itself, so I really do appreciate your doing it. The reason I really would like to see this withdrawn is because I really do hope with have a historic preservation ordinance within the next year and I think it is very important that we work with the people who do own the historic property. This was a country store at one time and there is nothing more character to the area than an old county store, but I clearly do not want to set a precedent for commercial zonings in the area, so I am hoping that as part of all of this we can work something out that allows things that are in proper character that were there 50 years ago to do it without setting any kind of precedence whatsoever. I think if we can maintain the historic buildings we had and the use that they were originally built for, that would be a great thing as long as we made sure that it did not open up the door for things that we do not want. That is why I would really like to see this withdrawn and then at the time we do have a historic preservation ordinance, we could see how this might fit in with it.

Councilmember D'Aversa:

That is a good point. There are some opportunities under the AG-1 zoning to utilize that structure if you are open to it. There is a lot of discussion in the area. On the other corner down that same road at Francis Road, there is a clinic and in the area there is a lot of opportunity and it sounded like you were not just necessarily wanting to open up a store, but you are trying to do something with the historical site, so there might be an opportunity there so there might be an opportunity there with the AG-1 zoning.

Mark King, Applicant:

My passion and vision was to take a step back in time and put Milton back to the way it was at the corner and offer a community value point. Basically that is an open porch - a gathering place - a meeting place in the old way of doing

things. As I mention and I am sorry for taking up your time, yes it could be other things. It could be a veterinary clinic, it could be a chain link dog run with concrete there, there could be chickens on the property, there could be all of those types of things of which would fall under AG-1 which I am certain that the neighbors would appreciate, so again, the best intentions and vision for what I thought the NW Overlay verbiage included, which was all about historic and preserving the integrity and intrinsic value of the area. It was a general store before the subdivisions overtook the area and I just wanted to return it to that, but again, I am asking for a withdrawal. I just want to take a step back and close the book on this chapter. I am sorry that this has taken so long - I did not want it to, but there you have it.

Councilmember Lusk:

Without being redundant here, we are in the process of setting up our budget for this coming year and there seems to be a movement within council here and within staff about setting up a historic preservation ordinance which would be part and parcel of the Comprehensive Land Use Plan I would hope. The word that I get from the community out there is we want to preserve the rural nature of Milton. What better way is there than to preserve structures like this. We have seen so many of them in the past year meet the wrecking ball, and it is heartbreaking to see some of these structures go. The old judge's house on the corner of Freemanville Road and Birmingham Road. I hate to see that happen here and I would just hope that we would take this road slow and easy and determine what we are going to do out here and rather than to deny somebody the use of the property and help to work with the community and would be property owners to come up with the best use for these facilities and help preserve the nature of this city that we all talk about continuously.

Mark King, Applicant:

Along those lines, I would like the community to know that the materials that we used in the structure were farmed from local barns and we tried to use all vintage materials when we redid the building. I tried to keep the integrity there and we resourced a lot of places to get this vintage material and that is why we wanted to keep the integrity of what Milton was intact.

Mayor Lockwood:

Thank you, Mr. King. I think where we are at is that Mr. King has asked to withdraw his application and I would ask that if someone does not have something different to say, let us move forward and bring this to a vote.

City Clerk Marchiafava restated the Motion. Councilmember Thurman moved to accept the withdrawal of application for Agenda item No. 07-314, RZ07-008 - 15260 Hopewell Road to rezone from AG-1 to C-1 the existing 1.179 square foot structure for a retail market by Mark King. Councilmember Lusk seconded the motion.

Vote: There was no further Council discussion. The motion passed 6-1, with Councilmember Zahner Bailey in opposition.

City Clerk Marchiafava called the next Agenda Item No. 07-313.

RZ07-005 / VC07-002 – 855 Mayfield Road to rezone from AG-1 to MIX to develop a total of 15,000 sq. ft of medical office; 3,500 sq. ft of commercial; and 9 residential units. Request to reduce the 75-foot buffer and 10-foot improvement setback to a 15-foot landscape strip adjacent to AG-1 by Milton Medical Holdings, LLC c/o Jay Davis. (Second Reading).

Community Development Director Wilson:

Mayor and Council, our recommendation on this is for denial of both the rezoning and the concurrent variance to reduce that buffer. Here to give us an explanation of our staff analysis if Robyn MacDonald, our senior planner.

Planner Robyn MacDonald:

The applicant has proposed a mixed use development. Although the commercial and the office densities are consistent with the recommended below 10,000 square feet per acre for the Crabapple Crossroads area, it is inconsistent with more recent board policies that ranges between 2,000-3,000 square feet per acre. The sub-village residential A which is about 2.35 acres that consist of the 9 single family residences at a density of 3.83 units per acre is consistent with the recommended sub-village A residential A of 4 units per acre. Staff notes that within the Crabapple Crossroads Community Plan no designation was discussed in detail. This plan was approved by the Fulton County Board of Commissioners on June 4, 2003. Historically the Fulton County Board of Commissioners have consider the neighborhood nodes of 100,000 square foot cap for individually both retail and office for a total of what would be 200,000 for the Crabapple Crossroads when reviewing and deciding on zoning cases before them. Staff has compiled a chart showing the approved zoning and approved densities. [Stated in packet]. Both office and commercial densities are a total square footage of 100,000 square feet each has been used up. Even though this plan is consistent in many aspects of the Crabapple Crossroads Plan with the commercial and mixed use of commercial as well as residential, it exceeds the policy of the Comprehensive Land Use Plan as well as the pass board policy to uphold the 100,000 square foot for each office and for commercial. The actual development of the property is consistent with the Overlay District with one exception, which is the 75 ft. buffer adjacent to AG-1 property. Therefore, we are recommending denial of the concurrent variance as well. In conclusion Staff recommends the MIX and concurrent variance be denied. A set of alternate conditions are included to allow the site to be rezoned to NUP to be developed with 8 units of residential at a density of 4.6 units per acre within the village mixed use and 9 units of residential at a density of 3.83 units per acre within the sub-village A residential with an overall density of 4.16 units per acres.

Jay Davis, Applicant (Dinsmore Commons) 855 Mayfield Road, Milton, GA:

I hooked up with a couple of residents that had this piece of property they wanted to developed and I had the experience, so we took four acres from the Dinsmore family and laid it out with staff's very good help. If you have not praised them enough lately, you really need to. They really went out of their way to put your ordinances and rules into effect. At any rate, the main thing about this property that was attractive to us was because it was in the Crabapple core. It is right downtown and in the middle of everything. A farm in the middle of everything. Outside of this area has already been approved for over 20,000 square feet of office space. We thought this would be the perfect opportunity to bring in dentists, doctors and orthodontists who wanted a spot close to the schools and within walking distance with street lights and everything we could bring to the area. We thought we could help the community. We thought it was one what the community wanted. The Comprehensive Land Use map says Mixed Use in Sub-Village A residential. We did everything to accommodate everything to go along with Staff's wishes in regard to size and type, including parking and sidewalks, saving all the specimen trees. We would like to save the Dinsmore house if we can. It is full of lead and asbestos and if we cannot save it we are going to replicate it. Staff recommended adding a traffic arm that that intersection and a cross street along the south side of the property which will help with the overall traffic plan that the city has a great need for.

The Planning Commission and the Design Review Board did not have a bad word to say about my plan. I got two votes but did not get all the votes because of the cap that is in place or at least the perception of a cap. I presented to you what I think is a pretty good plan. I got a lot of support from the neighbors that are actually around this property and in the downtown Crabapple core. The only difficulty I have had is explaining about the buffers. There have been some issues about parking lots, but I can address these concerns. I do not have a problem with the folks speaking in opposition. If you believe that the Crabapple core area which is right downtown within walking distance to all those intersections - if you all believe that that is supposed to be all residential, well you have a NUP designation right it. That is not what I want to do. I do not believe that is what belongs downtown, but if that is what we have to do to get our money back out of the property, we are going to.

I have sunk \$150,000 into this piece of property that I cannot get back if we do not do something, so I am not going away. I need to get something done. I would like you to consider if you cannot give it to me today, at least do not defer me or deny me in such a way that I cannot come back and get it as soon as you change your plan. I have addressed the safety, lighting, turn lanes, all traffic recommendations, sewer, and putting a pavilion by big oak tree for

community. I have plenty of tenants of doctors and dentists. If except for this cap, I would like to know if this would have been denied. I think that is important because when you fix this cap it will not be an issue anymore and my \$150,000 will be wasted if I do not at least have an opportunity to address this. I do have some support and I will save the rest of my time.

City Clerk Marchiafava called for public comment in support of the applicant.

Support

Wess Williams - 12499 Charlotte Drive, Milton, GA:

I represent the property owners, the Dinsmore family. Mr. Dinsmore is going to speak on behalf of the property as well. I am also with Carroll Realty, who brought this piece to market. Do not think you will find someone who will provide everything that was asked for. This gentleman will not be getting back any impact fee credits as they do in Alpharetta or any credits whatsoever. He has put in money out of his own pocket because he sees the value in this project. His design is incredible. The architect he has chosen is well-known throughout the region and will be exactly what someone would ever dream in having in downtown Crabapple. He has spent time and money. I would ask that the future land use map be looked at and see what is capable of being in that location. This project fits it to a "T" and then you add the amenities, it is a great opportunity. I do not think it is good to have this side of Crabapple with wonderful properties, marketable properties, being cut off at the legs by not having an opportunity to be sold or developed. I would hope this can be done while we have the opportunity to do it right.

L. B. Dinsmore, 855 Mayfield Road, Milton, GA:

I support the plan along with my family and the Planning Commission. Most people agree that it is a good plan. Conceptually I support the cap. It is a good idea, but unfortunately it is a good idea that was poorly implemented by Fulton County. I am sorry you have to be the one to remedy that situation. I would ask that if this is the only criteria, at least cut Jay some slack in coming back before you again.

Stan Sparrow, 875 Mayfield Road, Milton, GA:

My property is the opposite corner of Charlotte and Mayfield. I support the application. It is consistent with the land use map. The applicant is going to meet all the requirements at no cost to the city.

City Clerk Marchiafava said that is all we have in support of the applicant. We will now hear from the opposition.

Opposition:

Leon Cole, 16700 Birmingham Highway, Milton, GA:

I cannot believe what has happened to Crabapple Corners. Growth is beyond what I can comprehend. I do not think it should be allowed to go any further. Commercialism has already been fulfilled in that area. The requested densities are inconsistent with the recent policies set by the Fulton County Commissioners of 100,000. I am sorry about the \$150,000 that applicant might lose if it does not go through, but that should not be considered by this board. I am requesting that you deny this request.

Kurt Nolte, 825 Dockbridge Way, Milton, GA:

One of the main reasons that we voted for the City of Milton was to have greater control over the quality of our lives. One issue that myself and most of my neighbors believe is better control over our land use. We have a land use policy in place and you have set precedence in denying others based upon the 100,000 square foot cap. I implore you to continue with that cap. Just because somebody made a bad decision on the Fulton County side, I do not think we should compound that with additional commercial and office space.

Elyse Anderson, 565 Kensington Farms, Milton, GA:

The biggest disappointment to me with the Crabapple Master Plan has been the distribution of the 100,000/100,000 for commercial and office. I feel for the landowners that want to develop now, but I have to ask for denial of this zoning request based on the fact that as the plan stands now the commercial has been distributed even though poorly distributed. We have a responsibility to wait on the update of the Crabapple Master Plan and the CLUP that has been talked about tonight. Within the CLUP Crabapple has the opportunity to become a character area and that is a new thing in planning. That is essentially what the community voted on when they voted for the Crabapple Master Plan and that was to continue the character of the area and I just think that this property is asking for too much density based on where it is on the outskirts of the Crabapple study area so I would ask that you deny it based on those things.

Rose Prestianni, 105 Providence Oaks Pointe, Milton, GA:

This is a tough case. I ask that you vote for denial of this. You have heard it from others and I will repeat it again. We do have a cap and it is our policy. It is not just nice to have, it is as good as law for us and the more we erode that policy it is a slippery slope from which you may never recovery. On July 12th, the Mayor and Council voted unanimously to deny RZ07-003/VC07-003. There was a lot of pros and cons and after a lot of sole-searching you did the right thing and you unanimously voted to deny that request and that was a good precedence so I ask you to continue to support that precedent and uphold the Comprehensive Land Use Plan. I would also like to applaud Staff for their recommendation. I would also like to quote from your own words, that positive results would occur if it was developed with the alternate conditions that allow only residential development at the recommended densities of the Crabapple Crossroads Plan. Development consistent with the plan will solidify the character of the area and I support that comment and respectfully ask that you deny this request and continue to demonstrate your leadership in upholding appropriate land use for the City of Milton.

Kim Horne, 415 Wade Glen Court, Milton, GA:

I too am here to ask that you support the Planning Commission's and Staff's recommendation for denial of this case. Many cases before Fulton County for the Crabapple area as had Milton. Some good and some not so good. This case needs to be held at the same standards are everybody else, even if the plan is better. The cap is the cap and that is what we are living with today, so I feel this should be denied based on the cap. Fulton County might have made a mistake and we do not want to make the same mistake. Two wrongs do not make a right. The developer is asking for allowances regarding the density and buffers. The adjacent neighbors deserve to have those buffers upheld. This is not in the core area, but more toward the outskirts across the street. For these reasons I request that you deny this request.

Sharon May, 15160 Highgrove Road, Milton, GA:

I am here asking that you keep the caps in place. Caps are important and I ask that you deny this petition as it is inconsistent with the Crabapple Crossroads Community Plan and also with the Comprehensive Land Use Plan and it exceeds the 100,000 cap. It is unfortunate for the petitioner, but when there are caps in the nodes if someone comes later and says, I should have been a part of the process, we will have nowhere to go but down a very slippery slope so I ask that you deny the petition.

City Clerk Marchiafava said that completes public comment.

Jay Davis, Applicant:

If all else fails, I tried everything I could do to get this right for you and the community. I want you to approve me. I want to approve me for the MIXED use and if not, for the residential and if you cannot do that then just defer me for a few months until I can get this new Comprehensive Land Use Plan in place so we at least have the opportunity to recoup. That is what I am asking for. Thank you.

City Clerk Marchiafava asked if there was any further opposition? The Public Hearing is now closed.

Councilmember Thurman:

I would like to ask Staff a question real quick if I could.

Mayor Lockwood:

Go ahead Karen.

Councilmember Thurman:

I know there has been a lot of talk about updating the Crabapple Plan which we will be discussing when we have council meetings at the end of it. If we do remove the caps and we do not know whether they will or will not be removed when the plan is updated. The plan will go through community input and will be done by professionals and council with then vote on it. If at the time the plan does change and we deny him, he has to wait a year even if the plan changes and what he would have previously submitted would qualify under the new plan, he would still have to wait a year - is that correct?

Community Development Director Wilson:

It is my understanding he would have to wait that one year, yes.

Councilmember Thurman:

So realistically, deferring it - how long can we defer it if we defer it? Can we defer it for four months or six months until which time we hope to have a plan or are we restricted on the amount of time we can defer it?

Community Development Director Wilson:

There is no restriction on the time you can defer it.

Councilmember Thurman:

Thank you.

Councilmember Lusk:

Based on that commentary, I would recommend that we do defer this applicant for a minimum of four months. We are in the process of formulating our budget for next year and appropriating what I hope will get passed as our funds for historic preservation plan are incorporated into our comprehensive land use plan. We are also looking at appropriating some funds here to study the entire Crabapple Crossroads situation with an attempt to sort out and hopefully correct some of the wrongs that have been hoisted upon us by our previous landlord, Fulton County. This is a great opportunity here with the proposal that Mr. Davis did propose and a key part of that are corrections or contributions to enhance or improve the transportation system down there and the road situation. That seems to be one of the biggest gripes of practically everybody here aside from the Whelan situation that came through late last year. We are talking probably from my experience in the neighborhood from my experience and from what I hear, traffic improvements down there probably in the neighborhood of \$500,000 to \$700,000. We are talking about street lights, right and left turn lanes, drainage improvements -- everything that goes along with improving an intersection. We are talking about in this proposal here to connect Charlotte Drive with Mid Broadwell Road, which I think and from talking with Abbie Jones, I think this would go a long way to help or at least start that connectivity aspect of improving the traffic around Crabapple. There are other proposals out there that would tie into this proposal and further enhance the connectivity around Crabapple itself. I understand the cap situation, but I am not sure we should just deny looking at this proposal further so that is why I am proposing a deferral and study it a little more and realizing there are some benefits to this proposal to the city as it relates to the traffic situation down there. We do not want to see another wrecking ball situation, but preservation of these historic structures.

Councilmember D'Aversa:

I have a couple of questions for Mr. Scott with regard to the application that we denied for the 100,000 cap on July 14th. How does this impact us if we defer this particular application when we denied the last application?

City Attorney Scott:

As long as you are not approving it I think you are safe.

Councilmember Zahner Bailey:

Could you expand on that? If this were approved and the other was denied, could you expand on that from a legal perspective.

City Attorney Scott:

If this was approved and the other was denied, you would be making very inconsistent decisions and would be opening yourselves up to legal challenges.

Councilmember Mohrig:

If we just did a deferral you are saying that there is really not any exposure or precedent?

City Attorney Scott

Said that is correct because it is neither an approval nor a denial and it certainly is not an approval. I think it is a much safer option in terms of preserving the Comprehensive Plan than outright approving it at this point.

Councilmember Mohrig:

If we do a deferral, we are not saying that we are altering the caps. What we are saying is that we it is still allowing us to work with the applicant to see what other options are out there that would fit from an historic standpoint. I heard the applicant request that we consider that so we can continue to work with him.

Councilmember D'Aversa:

Another point is that we have heard tonight several times that we have embarked on -- aside from our Public Safety Department -- the greatest undertaking that we will take for our city and that is our Comprehensive Land Use Plan. I think we would be remise if we do not allow that process to happen and to allow all the public input. Our cap may remain at 100,000. Mr. Davis is going to take that chance and it sounds like he is more than willing to work with us in taking that chance. I am not sure if that is the appropriate word, but I am extremely passionate as I know all of you are or you would not be here tonight about that plan. I know that all my fellow councilmembers are and the staff is as well. I appreciate and I think I speak for all of the council your willingness to take that opportunity to allow that plan to be developed. Unfortunately, it does not sound like the plan is going to happen that quickly, so if we defer this for four months, there are still no guarantees and I know that Councilmember Thurman has something that she is proposing this evening, but there still are no guarantees.

Councilmember Mohrig:

Would applicant be able to make some changes if we deferred this?

Community Development Director Wilson:

He could make amendments to his application. We would have to have time to advertise it if he did that. You are safe ground to do what you are doing. There are no amendments that can be made to change anything about the absence of any more room in that 100,000 cap. He could make changes to his site plan, he could make changes as long as we have time to advertise that. What you are actually contemplating now is to defer this to see if within the next four months there is any new information that would allow you to make a more informed decision.

Councilmember Zahner Bailey:

With a four month deferral, we are getting ready to go into negotiations with our Comprehensive Land Use Plan. We were given 3 plans and 3 timeframes. The quickest was twelve months. Councilmember Thurman is going to give us a staff report tonight. One comment is if there is a concern about not further delaying Mr. Davis' opportunity to come back with a different site plan that would meet possibly some future change, if we denied it this evening because it is

inconsistent with the CLUP, that actually would begin that twelve month cycle now so that when we had an updated process that included full public participation, I think he might actually end up with a better timeframe because it would allow him to refile under a new Comprehensive Land Use planning process. If it gets denied after four months because it still does not meet the plan, that twelve month period begins. We need to consider this. My second concern is that I am hearing up talking about modifying potentially the Comprehensive Land Use Plan outside of the CLUP plan's process that is supposed to be an exhaustive process. I am concerned that there may be a perception that we are proposing a deferral with the anticipation that in four months we would have a plan that would indeed modify that cap. I am concerned about what this means for us legally. I do not know if this is a good procedural for us. This is my second point of concern. We do not want to give the impression that we are pausing on a rezoning in anticipation of a plan that we have not done any RFPs for yet and do not know if we have the budget dollars allocated. Our public hearings have not even been completed on the budget. The fact that we have already denied a rezoning done the street in a similar situation because it was maxed out.

Can you, Mr. Scott, speak to the law about "exactment" or approving a rezoning with the hope that we are getting something in return for that?

City Attorney Scott:

An exactment is a situation where you are having a *quip pro quo* or saying well we will do this in exchange for what you are going to provide for us. You usually have a situation where it is not the applicant's plan to provide those improvements. I do not think this would be considered an exactment because this is something that he is bringing to us as part of his plan. We are not saying that we will approve this if you do this for us.

Councilmember Zahner Bailey:

I appreciate your input because my concern is that I heard some comments a few moments ago about transportation improvements that could be \$500,000-\$700,000 and those are things that we are actually separately dealing with for the transportation plan. I am just cautious. Obviously we need solutions for Crabapple, but I think we also need to be mindful of the impact that it has on the overall planning process and the precedence that it sets in terms of procedures. I am not familiar with deferrals and whether typically being four months or with the anticipation that we defer something knowing that we have not even a CLUP planning update process. I would be remiss if I did not note those concerns and I appreciate that opportunity, Mayor.

Mayor Lockwood:

Mr. Wilson, can you address if it would defer four months and I believe you said it could be extended afterwards or would we have to go through a process to get it extended, or is this a minimum or maximum?

Community Development Director Wilson:

Every time this comes before you in a public hearing, you have three choices. You can approve, deny or defer and you may do that over and over again until you get ready to make a decision to approve or deny.

Mayor Lockwood:

Is there a minimum or a maximum time period?

Community Development Director Wilson:

There is a minimum time period of thirty days and there is no maximum.

Councilmember Thurman:

I would like to make some comments just for clarification. Back last March in speaking with Tom Wilson about the transportation and traffic issues in Crabapple, we started discussing ways to fix the broken plan regarding Crabapple. All of us that were involved know what we really wanted for the area and unfortunately, that is not what we have been

left with. In order to fix what is there and fix the traffic that we all sit in every day or do our best to avoid, we really are going to have to update the Crabapple Master Plan. Working with Representative Jones, she was able to get us \$15,000 toward that update. I have been reaching out to the business community for the remaining \$10,000. We really feel like it will cost us around \$25,000 to update the Crabapple Master Plan and do it properly. That will involve a lot of community input, it will involve professional planners, and it will be going through the whole process. We are not going to just suddenly show up here one night with a plan - it will involve the whole thing. The reason why we are doing it now and I have reached out to the business community, is primarily because I do not want to wait until our next budget cycle which is just October. We need it done faster than that. In speaking with some land planning professionals, they really thought we could get this accomplished in 4-6 months and that is why the discussion has been tonight on 4-6 months. We are hoping to move forward with this in the next couple of weeks. We have to start getting quotes and start going through the formal process and do everything we have to do legally and I am sure Tom Wilson will make sure we stay above board on everything that we do. We are hoping to get this started prior to the budget process. With the help from our business community, if we can raise the \$10,000 and I have spoken to a bunch of people in the business community and I really feel like we will be able to get this thing fixed and have a plan with all the community input that we need to have -- I do not know what will happen with the cap. We want the scope to be with an emphasis on fixing the traffic. We are hoping to get this thing fixed within 4-6 month with an updated plan that the community has given us their input on and that has come before the planning commission and passed by City Council. That is the reason for the 4 month deferral. It may take up to six months, but I would like to get it done in 4 months. I hope everyone speaking for and against it tonight will be involved in this plan because obviously you care about the Crabapple area.

Mayor Lockwood:

Based on what I am hearing from Council, may I have a motion and a second for deferral?

Motion and Vote: Councilmember Lusk moved to defer four (4) months Agenda Item No. 07-313, RZ07-005/ VC07-002 – 855 Mayfield Road to rezone from AG-1 to MIX to develop a total of 15,000 sq. ft of medical office; 3,500 sq. ft of commercial; and 9 residential units. Request to reduce the 75-foot buffer and 10-foot improvement setback to a 15-foot landscape strip adjacent to AG-1 by Milton Medical Holdings, LLC c/o Jay Davis. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed 6-1, with Councilmember Zahner Bailey voting in opposition.

City Clerk Marchiafava called the next agenda item no. 07-315.

RZ07-009 / UP07-002 / VC07-006 – 3455 Morris Road to rezone from AG-1 to A (Staff notes that the site is currently zoned A pursuant to Z96-124 and therefore the rezoning petition RZ07-009 portion of the request is not needed to develop a 9,500 square foot Montessori School and a concurrent variance to decrease the 20-foot landscape strip to 10 feet along Webb Road. (Second Reading).

Community Development Director Wilson:

RZ07-009 is for a Montessori School and Daycare at the intersection of Webb and Morris Road. When this application was first filed with us, we realized from the maps that we obtained from Fulton County indicating the existing zoning on the property. Those maps indicated that this property was zoned AG-1. You cannot have a Montessori School and Daycare in an AG-1 district so we advised the applicant that he should apply for a medium density apartment zoning which is consistent with our long-range plan. Through our analysis we discovered that the map from Fulton County was incorrect and there was an underlying apartment zoning on this property already, therefore, there was no need to rezone this property to an apartment zoning. There is still the need and requirement to have a use permit on this property for a daycare. The daycare use permit allows all the uses proposed for this property, that being the school. Staff recommendation is for approval of the use permit for the daycare and denial of the associated variance to reduce the 20 ft. landscape strip along Webb Road to 10 feet.

Planner Robyn MacDonald read recaps of the planning analysis stating that the proposed 95 foot square foot daycare center with a density of 3,209 square foot per acre is compatible with the surrounding multi-family residential and office development. The proposed use does not violate any known statutes, ordinances or regulations governing land development. Staff anticipates that there will be an increase in vehicle traffic flow with the proposed daycare. Applicant had requested for a reduction in the landscape strip along Morris Road and because of the excess amount of the acreage Staff recommends that this variance for the reduction be denied. In conclusion Staff is of the opinion that the proposed daycare facility is consistent with plan policies and is an appropriate use for this area if developed with the requirements of this zoning ordinance and Staff's recommendation conditions. Therefore, Staff recommends the use permit be approved conditional subject to the conditions set forth.

David Shokoohi, Applicant, 2145 Barnes Mill Road, Marietta, GA 30062:

I have a strong background in education and used to be a director of high school and other academic facilities and for the past 15 years have put a lot of attention into Montessori education in other areas in this area and hope to put this school in this area. My architect is here tonight if you have any questions. I care about children very much and I believe the school should be built as soon as possible.

City Clerk Marchiafava said we will now have public comment. I do not have anyone speaking in support, so we will go to those in opposition.

Opposition:

Paula Makrides, 450 Kensington Farms Drive, Milton, GA
[Could not stay but wanted comments read into record]

If we allow the current land use plan to be discarded then any builder/developer may ask for changes to the land use plan. What good is the land use plan if we allow changes?

City Clerk Marchiafava said this is all for public comment at this time.

Councilmember Zahner Bailey:

I believe that you intend to go before the Design Review Board regarding the design of the building, and the architect that you have with you this evening would be a part of this process is that correct?

Community Development Director Wilson:

Certainly that will be required before we issue a building permit. The Design Review Board will also be reviewing the demolition of those buildings that are on there as well.

Councilmember Mohrig:

No way to save the Webb Feed Store?

Community Development Director Wilson:

I do not know, perhaps. It has a lot of history there, but my recent inspection shows me that it is just about to fall down and it is really dangerous to even go there to inspect it.

Councilmember Mohrig:

Also, regarding transportation that is an intersection that is now during morning rush hour and evening -- that is a terrible intersection. We talked to Fulton County 10 years ago when they were proposing putting the high density. It backs all the way from that intersection north back to McGinnis Ferry and Bethany Bend. It will take you in the morning 40 minutes to get through there. Is there any consideration when we are putting this in for intersection improvements?

David Shokoohi, Applicant:

I have allocated a piece of land at the corner of this land for signage or anything for the safety of this area.

Planner Robyn MacDonald:

The transportation planners have reviewed this and the conditions that she has requested of the applicant starts on page 17 and 18.

Councilmember Zahner Bailey:

I feel more comfortable that this matter will go before the Design Review Board to review to make sure the plans are coordinated. I am recommending approval but I want the sidewalks to be specifically identified and that we are consistent with the master plan and the trail system which includes connectivity along Highway 9. I want to make sure that the sidewalk plan was as consistent as it could be with no hardship on the applicant.

Motion: Councilmember Zahner Bailey moved to approve the withdrawal of RZ07-009, to approve UP07-002, subject to staff conditions and deny VC07-006 3455 Morris Road to rezone from AG-1 to A. (Staff notes that the site is currently zoned A pursuant to Z96-124 and therefore the rezoning petition RZ07-009 portion of the request is not needed to develop a 9,500 square foot Montessori School and a concurrent variance to decrease the 20-foot landscape strip to 10 feet along Webb Road with the following conditions:

**CONDITIONS OF APPROVAL
UP07-002
3455 MORRIS ROAD**

The Mayor and Council approved a Use Permit for a Day Care Facility (Article 19.4.15) subject to the owner's agreement to the following enumerated conditions. Where these conditions conflict with the stipulations and offerings contained in the Letter of Intent, these conditions shall supersede unless specifically stipulated by the Mayor and City Council.

1. To the owners agreement to restrict the use of the subject property as follows:
 - a. Restrict the use of the subject property to a day care facility at a maximum density of 3,209.46 square feet per acre zoned or a total gross floor area of 9,500 square feet, whichever is less.
 - b. Restrict the number of students in the day care facility to 160.

2. To the owner's agreement to abide by the following:
 - a. To the site plan received by the Community Development Department on June 7, 2007. Said site plan is conceptual in nature and must meet or exceed the requirements of the Zoning Ordinance, all applicable city ordinances, and these conditions prior to the approval of a Land Disturbance Permit. In the even the Recommended Conditions of Zoning cause the approved site plan to be substantially different, the applicant shall be required to complete the concept review procedure prior to application for a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.

Community Development Director Wilson said staff's recommendation is approval of the use permit and approval of the two part concurrent variance as modified and illustrated in the conditions of zoning. Robyn MacDonald will give a little more detail.

Planner Robyn MacDonald:

1. Applicant is requesting a use permit for a landscaping business. After research and many questions, it is a landscape business with 3-4 employees coming to the site and then going out of their jobs and returning in the evenings. There will be some materials being stored there in the existing barn on the property. This is consistent with the land use permit. Staff notes that there has been several use permits for landscaping businesses approved in the recent past in 2004 and 2002 and there so there have been other landscaping business by the Board of Commissioners in Fulton County previously. The applicant is requesting the variance. There were two variances described. One is to reduce the 50 foot buffer and 10 foot improvement setback and the Planning Commission and Staff concurs to make the recommendation to reduce that buffer along the east property line to the extent necessary to allow the existing structures to comply, as well as on the west property line, the 50 foot buffer and 10 foot improvement setback to be reduced 25 feet beginning at the right-of-way on the west property line and extending northward along the west property line to a point adjacent to the existing cross tie wall and to the extent necessary to allow the existing structures to comply. The second part of concurrent variance is related to the use permit. The use permit has a 50 foot setback adjacent to AG-1 that is required along the east property line that is being requested necessary for the existing structures to comply. Staff notes that the site is approximately 100 feet wide at the road. We also have comments from the traffic engineer saying that there is appropriate site distance both up and down Birmingham for the vehicles to come in and out. Because of the configuration of the site and that there will really not be a lot of activity according to the applicant on the site, but mainly because of the size and shape, we are recommending approval of the two part concurrent variances as described in the recommended conditions. It is also heavily vegetated along the sides. The original request was for the entire property line, but I believe the applicant is fine with Staff's request and the Planning Commission for the variances. There is a fair amount of screening on both the east and west side along the property line and the arborist has investigated and made his own conclusion. In conclusion, Staff recommends approval of the use permit.

Mayor Lockwood said thank you. Can I hear from the applicant and all those in support of this application?

Mike Boland, Applicant, 15386 Birmingham Highway, Milton, GA:

I am with North River Landscaping. I am here with my partners, David Rindt and BillyBradach. I do not have much to add other than what Ms. MacDonald said except that the buffer plantings we propose to plant - reductions down from 50 feet down to 25 feet. We propose to plant those with the same amount of vegetation that would be required with a 50 foot buffer those allowing a denser screening. I do have a letter of support that you should have of my public participation plan from my immediate next door neighbor, the Potters. They are elderly and not able to attend, but they sent their letter of support.

City Clerk Marchiafava said we will now hear from the opposition.

Opposition:

Leon Cole, 16700 B Birmingham Highway, Milton, GA:

Although a commercial landscaping business is permitting under this AG-1 land, this application does not meet the required minimum buffer standards. The approval of this petition would set a negative legal precedence from future AG-1 parcels that could not meet the requirements for this type of use permit. No hardship exists and the property meets the standards for a residential location and could be used as such. Fulton County about a year or so ago denied

very similar requests about a mile from my house. It was an odd shaped piece of property, but they denied the variance. It would be okay for a house there. I do not think Fulton should grant this petition.

Rose Prestianni, 105 Providence Oaks Pointe, Milton, GA:

There is something about this case. I thought long and hard about it and am going to ask that the Mayor and City Council deny it. The property just by itself is not configured and it cannot meet the use permit for which the applicant is asking unless a variance is granted. As Mr. Cole did state, there was a property not far from this one that the Fulton County Commissioners did deny the use permit with a concurrent variance. I know Staff mentioned other cases where permits and variances were granted, but doing something one if it is not correct does not mean we should continue doing it and set precedence. This case could set a precedent for continued erosion of zoning policy, land use and variance. There is no hardship with the case. The property was the way it was when petitioner bought it. I believe the parcel should meet the standards before a special use should be considered for it. It is in the middle of all residential areas and is hard to say today what will or will not happen in the future with this property if we allow these exceptions to occur. It is uncertain to me how we could predict that there will only be a few cars going in and out, so I think granting an exception for this opens the door for other AG parcels that may be lurking out there and waiting for Staff or another resident to discover that they are operating without a use permit and this would set a precedent to allow more to come in the door. I think the buffer and setback reductions should not be allowed and ask that the request be denied.

Kim Horne, 415 Wade Glen Court, Milton, GA:

To echo the comments from early, I too would ask for denial especially with regard to the buffers. We have 19,600 square acres of AG-1 land. Landscaping business is allowed on AG-1 land. We have multiple use permits that sit on AG-1 land for landscaping and agricultural businesses. This parcel is just not suited for that type of use because of the shape of the land. I think one thing that Staff noted in their analysis that was not noted this evening was the 2004 case that Mr. Cole was talking about off of Birmingham Highway. I would like to quote what Commissioner Riley said and I agree with her and would like to see you make the same motion. They moved to deny that application because it was inconsistent with the buffer requirements for use in an AG-1 district. I am sure there are other parcels in the area that could be used for this.

Mike Boland, Applicant (Rebuttal):

As Mr. Cole mentioned the case that was refused back in 2004. I believe that was in the Birmingham Crossroads area which is quite a different area of development out there. I do not know the history there, but I think you have to look at a request for use on a case-by-case basis. The precedent has been set by other properties in the area. This property allows for this use. The point my neighbor made to me is we did not want all this here before, referring to the neighbor across the street with hundred of homes. It was a permissible use. The residents have a right to express their opinion about how property is used, but that is the extent of it. I think we are being quite reasonable with the request for the reduction in buffers. I am not requesting to reduce them down to 5 or 10 feet to build a greenhouse or anything like that; we just need to use the property.

Rose Prestianni, 105 Providence Oaks Pointe, Milton, GA (Rebuttal).

I would like to reiterate as I said before that the land itself the way it sits on the property is just not suited for the use the applicant is trying to put on it. The 2004 case which was voted to deny 6-0 unanimous stated it was inappropriate to make adjustments for the buffers. I think it is important in an AG-1 area to stand by those rules and practices. So again, I ask that you deny Petitioner's requests.

Michael Boland, Applicant:

With all due respect to Ms. Prestianni, it is her opinion that it is not suited for use. The property is located on a downward slope; the front of the property is only 100 feet wide. The backyard is surrounded by trees. I think it is her personal opinion that it is not suited for this use. I do not think this would be setting a precedent that has not already been set.

Mayor Lockwood:

Mr. Wilson or Ms. MacDonald, can you confirm what the Planning Commission's recommendation was on this?

Planner Robyn MacDonald:

Said it was for approval.

Councilmember Thurman:

Did they go along directly with Staff's recommendations or were there additional conditions.

Planner Robyn MacDonald:

It was revised that the variance was only for those portions where the building encroaches into the buffers so therefore it is not the entire property line that is reduced, but just only those areas where the existing buildings are encroaching.

Councilmember Thurman:

So there hardship is the fact that there is a physical building already there that they are wanting to obviously continue to use.

Robyn MacDonald:

Correct. There is a proposed barn in the center part of the development, but that is not built and I guess you can ask the applicant.

Councilmember Thurman:

But we would not be granting any variances for a proposed barn, it is just for the existing structure that is there, is that correct?

Community Development Director Wilson:

The proposed barn would meet the 50 foot setback. The variance on the east property line we really do not need that - you do not really have to have variance to the buffer for an existing structure to remain in that, so if you wanted to deny that part of the variance, please do. We picked that up because it had been advertised and applied for. On the west property line we recommend that we reduce it only to the extent necessary to allow a small working area in the rear of that property and only starting at Birmingham Highway and extending to the backyard where there is a retaining wall.

Councilmember Thurman:

It also refers to 3 parking spaces. Would these be paved?

Community Development Director Wilson:

They would need to be an all-weather surface that could be gravel or a number of things, but cannot be dirt or grass.

Michael Boland, Applicant:

The parking space area at the home and that is actually where a garage would be if this house had a home. It is already paved. We do not plan to alter the property at all if the use gets permitted.

Councilmember Thurman:

Based on this, I recommend that we approve this application per Staff's recommendations.

Councilmember D'Aversa:

I received quite a lot of comments that could not come tonight. Some of the letters were from the subdivisions adjacent to the property or down the road like White Columns and Nix Road that were asking us to deny this use. The

Design Review recommended denial of the concurrent variances as well. I looked at some of the other requests for similar types of buffer reduction requests and it seems as though a nearly exacting case was denied on Birmingham Highway. The basis was because the development standards could not be met. In that case, there was a hardship. The property was purchased knowing what the use would be. If we approve these variances you could sell tomorrow and other landscape companies could come in and make the changes you say you are not. I do not support the approval of this application unless Staff has recommendation how we can confirm that there would not be another company that could come in and use the property because we made these changes and allowed these variances.

Community Development Director Wilson:

I do not think there is any way you could say this use permit would only be as good as long as Mr. Boland owns this property. I think you could tighten it up some and say as Mr. Boland has indicated, he has two two-man crew right now and you could restrict it to just that use, but I do not think you could restrict it to just his ownership with the land in perpetuity. I would like to add something about that 2004 case that was denied. It was on about a 4.5 acre piece of property, but it had a different use also, in that it had a design studio in which people were coming in and out to get their designs done so it had a pseudo-commercial use on it as well and that probably should have had some bearing on that recommendation.

Councilmember Thurman:

So it really was not a precedent setting case as you might think, because it had a different set of facts.

Community Development Director Wilson:

Yes, and let me say this about setting precedent. To mean that means that in a similar case or a case identical to this that your recommendation should be the same. If it were identical, my recommendation would be the same, so I do not fear the precedent setting part of this myself.

Councilmember Zahner Bailey:

Could you restate that Mr. Wilson where you say if it is a case similar to this or identical, you would have the same recommendation?

Community Development Director Wilson:

What I am saying is that a case exactly the same as this were to come before me, my recommendation would be exactly the same as this, so we are not doing something here that I would not repeat in the future in exactly the same situation.

Councilmember Thurman:

So what you are saying is that this is a different set of facts that you made your recommendation on than the earlier case that was decided by Fulton County.

Community Development Director Wilson:

This is definitely quite different from that case. This is a very small intensity use. We cannot control what happens to it totally in the future, but the use as it is proposed is low intensity and the truth of it is, there is nothing going on in that rear yard that all of us do not do in our front yards. Leaf-blowers, lawnmowers, edgers -- that is what is going on back there and so considering it is low intensity and generates low traffic, my recommendation was for approval and I would make the same recommendation if this came up again next year in exactly or nearly exactly the same configuration.

Councilmember D'Aversa:

The use permit though gives no restrictions, so there is no guarantee at this point about the operating hours or the number of trucks, and these were the concerns I was hearing about.

Community Development Director Wilson:

We could make that a condition of zoning, both of those things could be a condition of zoning. If you want to restrict it to hours of operation you can do. If you want to restrict it to the number of crews that can operate out of there you can do that.

Councilmember D'Aversa:

That would make me feel more comfortable because there is a lot of concern from homeowners about the usage of the property and it sounds like we are embarking on something that has no restrictions. If your business does very well and I hope it does, it could be a lot more use that it was approved for. The concerns I have heard are that there are no guarantees that you are going to continue in the business and what happens after that. The variances go with the property as we stated so someone else can come in and do something that would go against what the homeowners and residence in that area would like to see happen in that area. I would feel more confident with some restrictions.

Michael Boland, Applicant:

We honestly do not think we could operate more than 4 crews out of that location. At that time we would have to either buy adjoining property or move elsewhere and we want to be able to remarket the house as a home. It is not suited for a large business. Another point is even if we were to operate 4 crews; the people for those 4 crews would not necessarily be coming out there. We are working with a program with some Hispanics down in Roswell for a work visa type program where we would have the crew foreman go out and pick up the truck and equipment, go down to a central location in Roswell and pick up these people. We only have two trucks and one crew. One for fertilization and one maintenance. We currently have one employee and three business partners. We have been a company since July 24th of last year and started operations in March of this year. We will be probably hiring one other employee shortly. We usually leave out in the morning around 7:30 a.m. We plan to work in the 8:00 a.m. to 5:00 p.m. timeframe. Crew finish up anywhere from 3:30 to 5:30 p.m.

Planner Robyn MacDonald:

Under use permit standards, limits of hours of operation are from 6:00 a.m. from 8:00 pm. But if you wanted to make it stricter, you can condition the zoning.

Mayor Lockwood:

Our noise ordinance would kick in if there were any issues with noise.

Councilmember O'Brien:

Mr. Boland, I take it you have no intentions of selling the property at this point since that was raised? I did go out and see the property and it is quite secluded. My impression is it is unlike you could hear any activities that were described as there is great a bit of road noise. I have consideration trust in the members of the Planning Commission and it is a significant endorsement for our consideration that in this case it has received both their unanimous approval and Staff's recommendation.

Michael Boland, Applicant:

No sir, we just purchased it in June. Our hopes and plans. The property next door has been there for 30 years. If and when that becomes available, we possibly would like to purchase that and create a greater buffer around our business.

Councilmember Zahner Bailey:

A couple of questions for Staff. I know Mr. Wilson under your current recommendations I believe on page 18 it shows the removal of trees on the front of the property to provide for proper line of site for visibility. I know that today it is currently buffered and yet because of the requirements for transportation, one under item C it says remove and replace existing fence 10 feet further from Birmingham Highway. I believe that is going to require the removal of the trees that are currently help to buffer the front of that property. We are talking about a buffer that actually has recommended conditions being suggested for removal. The other is the 2004 case. I would state that Commissioner

Riley did because deny this because of the configuration and not because they considered it a C-1 component but because of the concurrent variance requested on that case. Would this body consider because of the numerous questions that have been raised by community members that do live in this area, could we perhaps defer this and have applicant get together with some of those citizens about their concerns.

Michael Boland, Applicant:

May I comment on that? I sent out two different letters on two different occasions regarding my public participation plan. I received only two phone calls from two people at White Column and the other from my neighbor welcoming me to the neighborhood. From the two people I spoke with at White Columns, one was Debbie Johnson who become much more comfortable once she realized we were on the other side of Birmingham Highway and that our business was not going to back up to their neighborhood. However, she did say before we hung up the phone that they want this to remain a residential corridor. So if I found a five acre site out there and wanted to use it without buffers, she would be opposing that. I did attempt to contact these people. I put my cell phone number at the bottom of the letter and said please call me so we can discuss any concerns. I do not know how else to reach out other than go knock on their doors. I am trying to work with everybody. We are in the business of enhancing property and I certainly do not want to do anything detrimental in that area. It is a beautiful area, I want to enhance it and help maintain the area and help anyone else out there would like our assistance.

Councilmember Thurman:

I am willing with withdraw my original motion and restate the motion to limited it to 4 vehicles.

Mayor Lockwood:

Do I have a unanimous consent to allow Councilmember Thurman to rescind her previous motion? Okay, it is unanimous.

Councilmember Thurman:

Restated her motion and included the following restrictions that follow.

Motion: Councilmember Thurman moved to approve UP07-001/VC07-004– 15386 Birmingham Highway (SR 372) to request a Use Permit for landscaping business Article 19.4.27) to use an existing 1,200 sq. ft home and a 500 sq. ft. barn and develop a 3,750 sq. ft. barn. The applicant is also requesting a two part concurrent variance 1) to reduce the 50-foot buffer and 10-foot improvement setback to a 25 foot buffer and 10-foot improvement setback along the east and west property lines (Article 12H.3.5.C.1); and 2) reduce the 50-foot setback adjacent to AG-1 (agricultural) to 30 feet along the east property line (Article 19.4.27.B.3) with the following conditions:

**CONDITIONS OF APPROVAL
UP07-001
15386 Birmingham Highway (SR 372)**

The Mayor and City Council approved a USE PERMIT for a landscape business (Article 19.4.27.) CONDITIONAL subject to the owner’s agreement to the following enumerated conditions. Where these conditions conflict with the stipulations and offerings contained in the Letter of Intent, these conditions shall supersede unless specifically stipulated by the Mayor and City Council.

- 1) To the owner’s agreement to restrict the use of the subject property as follows:
 - a) Landscaping business in the existing structure(s) and one 3,750 square-foot future barn. No modifications will be made to the exterior of the structure(s), other than normal maintenance.

- b) Total square footage of all structures shall not exceed 5,250 square feet, or a density of 2,706 square feet per acre.
- 2) To the owner's agreement to abide by the following:
- a) To the site plan received by the Milton Community Development Department on June 5, 2007. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit or Certificate of Occupancy, whichever comes first. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of the first Certificate of Occupancy.
- 3) To the owner's agreement to the following site development considerations:
- a) Reduce the 50' buffer and 10' improvement setback along the east property lines to the extent necessary to allow the existing structure(s) to comply (Part 1 VC07-004).
 - b) Reduce the 50' setback adjacent to AG-1 (Agricultural) along the east property line to the extent necessary for the existing structures to comply (Part 2 VC07-004).
 - c) Reduce the 50' buffer and 10' improvement setback along the west property line to 25 feet beginning at the right-of-way and extending northward along the west property line to a point adjacent to the existing cross-tie wall and to the extent necessary to allow the existing structures to comply (Part 1 VC07-004)
 - d) No more than one (1) exit/entrance on Birmingham Highway. Curb cut location and alignment are subject to the approval of the Milton Traffic Engineer.
 - e) The site will be limited to 4 (four) work vehicles; does not include office staff.
- 4) To the owner's agreement to abide by the following requirements, dedication and improvements:
- a) Reserve Right of Way necessary along the following roadways, prior to the approval of a Land Disturbance Permit, sufficient land as necessary to provide for compliance with the Transportation Master Plan and the adjacent developments, according to the definitions in the newly established Right of Way Ordinance.
 - b) Dedicate at no cost to the City of Milton prior to the approval of a Land Disturbance Permit or Certificate of Occupancy (whichever comes first), sufficient land as necessary to provide the following rights-of-way, and dedicate at no cost to the City of Milton such additional right-or-way as may be required to:
 - (i) Provide at least 10.5 feet of right-of-way from the back of curb of all abutting road improvements, along the entire property frontage, as well as allow the necessary construction easements while the rights-of-way are being improved.
 - (ii) Provide 20-foot Milton Trail easement along Birmingham Highway (SR 372), outside of the required Landscaping Strip.
 - (iii) Pay into sidewalk fund rather than install sidewalk across frontage as this phase of the Milton Trail is scheduled in Long Range.

- c) Driveway entrances and roads shall meet the Community Service Policies and AASHTO guidelines:
 - i) Remove and replace existing fence 10 feet farther from Birmingham Highway (SR 372) for sight visibility.
 - ii) Remove trees from frontage of property to provide proper line of sight visibility.
- 5) To the owner's agreement to abide by the following:
 - a) The developer's Professional Engineer shall demonstrate to the City by engineering analysis submitted with the LDP application (should greater than 5000 square feet be disturbed), that the discharge rate and velocity of the storm water runoff resulting from the development is restricted to seventy-five percent (75%) of the pre-development conditions. Locations shall be as approved by the Stormwater Engineer.
 - b) The proposed development shall utilize vegetative measures for water quality. Individual Land Disturbance Permits/Building Permits are strongly encouraged to utilize GASWCC limited application controls such as infiltration trenches, porous surfaces, rain gardens, etc. A maintenance agreement is required to be recorded for such item used.
 - c) Septic tank to be pumped out prior to Certificate of Occupancy.
 - d) Exterior bulk storage areas shall be protected from erosion and detailed on the Building Permit/Land Disturbance Plan.

Discussion the Motion:

Councilmember Mohrig:

I heard one of the concerns were the hours of operation.

Mayor Lockwood:

I believe it was 6:00 a.m. to 8:00 p.m. The noise ordinance is more restrictive time wise. Regarding the crews, the vehicles themselves would limit the size of the crew and most of them will be offsite.

Councilmember Zahner Bailey:

I had a question about the existing building. I want to be caution about what was said earlier, can you comment about that Mr. Wilson?

Community Development Director Wilson:

I think what I said was that when Mr. Boland came in I suggested to him that if he had any vision of future expansion, that this would be a good time to address it so he would not have to go through this process again. I think Mr. Boland can address the fact of whether this is in his business plan. He will be limited to the conditions of zoning as are written or amended them and the site plan as it is before you today. He would have to come back before you if he had to buy additional property adjacent to this he would have to come in for a use permit on that new property.

Councilmember Zahner Bailey:

I do have a question for Staff and possibly the applicant. Do you have any intent to have bulk materials or any tractor trailers, because there are some AG-1 examples where this use permit could allow that. This is why I think we are suggesting a deferral because then the applicant could work through some specific conditions that perhaps to Ms.

D'Aversa's point are not necessarily identified. Are there any things that limit it within Staff's recommendation currently that would preclude some of those other things?

Michael Boland, Applicant:

Ms. Zahner Bailey, I do not know whether you have had the chance to go by the property, but it is not conducive to getting a tractor trailer in and out of there and it is not in our plans at all. No bulk materials. We typically pick up if we are doing an installation job we would go pick up the plantings or have it delivered to the job site so there is no reason for us to store plantings.

Motion and Vote: Councilmember Lusk moved to End Debate. The motion passed 6-1, with Councilmember Zahner Bailey in opposition.

Second and Vote: Councilmember Lusk seconded the original motion. The motion passed 5 -2, Councilmember Zahner Bailey and Councilmember D'Aversa voting in opposition.

Mayor Lockwood asked the City Clerk to call the next item.

City Clerk Marchiafava read the next Item No. 07-31.

ZM07-002 – 295 Crooked Stick Drive (Lot 11) to modify zoning conditions 1.d and 1.e to allow a pool house to encroach into required rear and side property lines. This is a second reading.

Community Development Director Wilson:

The Community Development Department recommends approval with conditions of this modification. Robyn MacDonald will provide the details of this analysis.

Planner Robyn MacDonald:

This is a modification that is being requested to modify conditions 1-D and 1-E to allow the relocation of an existing pool house to correct encroachment into the neighboring property. As you can see from the aerial of the property [showing from aerial map where the property line was and where discrepancy was]. The discrepancy was not discovered until the original owner who built the house sold or was looking to sell the property to an interested party and that party went ahead to purchase the property with the intent to correct the problem. A version of this request came before the Fulton County Board of Commissions last year in September. It was a different request for a zero lot line side property to reduce it to zero unlike the 10 foot that they are requesting today. The Fulton County Board of Commissioners did deny it and the applicant did make their appeal to the Superior Court. According to City Attorney Mark Scott there has not been any resolution to it but if there was, Fulton County no longer has jurisdiction over this property. The applicant has stated in their letter of intent that the pool and pool house was located to the eastern side of the property. Due to the downward grade from west to east on the site, a retaining wall was constructed adjacent to the pool house to manage surface water run-off. Staff notes that the nearest residential structure along the east property line is approximately 210 feet from the existing pool house. Given that the area between the two structures is heavily landscaped with mature vegetation, that the applicant will be relocating the pool to correct the encroachment into the adjacent property and the pool house will be 10 feet interior to the property line. A part of the modification is to reduce the periphery CUP requirement of 100 feet down to 50 feet which is along the south property line. Staff recommends that we approve this based on the hardship that was no self-imposed because of the rock and the repositioning of the property of the pool house and they are trying to fix the problem by being willing to relocate the house off of the property line and away from the property to the right. Staff also notes that in your staff report are letters of support for this variance from the east and the south and from the west property owners. Staff therefore recommends approval of this zoning modification as set forth in the report. Referred Council to topography report and photos.

Jim Grosch, Applicant, 295 Crooked Stick, Milton, GA.

Robyn MacDonald has pretty much hit all the points I wanted to hit on this so I will try to keep this short. I have tried multiple ways beyond the variance offering to purchase the land next to it. My goal would have been to have kept the house there, and Mr. Bottoms who owned the house before me also tried that, but one of the major differences I wanted to point out is that Mr. Hays who is in the house that is 210 feet away opposed the Fulton County case but does not oppose this one and I think that is very significant. I will have to tear down the house and move it over unfortunately. I am trying to minimize water flow and keep as much of the pool plumbing in place which is more than 10 feet away where all the pool equipment is. I am trying to keep as much of the concrete in place as I can without having to dig up too much and try to get through this as fast as we can. Mr. Hays and I reached a compromise of the 10 feet which he does not object to. I have also discussed this with the other two neighbors who did not object to the zero feet the last time either. I also would like to point out that lot 10 has similar variances for their pool house. The property line also slants as you can see. It is a very weird property line and you can actually see where the house is closer to his house right now than the pool house is now or will be so I do not think this is causing any negative value. The only two people who can see the house are Mr. Hays and myself. The other side cannot even see it and nobody can see it from the street and beyond us is all woods, so this is not an eyesore or causing the property values to drop. I share the homeowners' association's goal in resolving this matter quickly. I bought this house back in November and I had a big orange sign in my yard for a couple of months and I would like to get this matter resolved. I want to keep the values of the neighborhood up and I do not think this has any negative impact. I want to resolve this situation. Someone else was going to buy the house so I went ahead and purchased it and decided to go through the hassle of this. We felt the house was worth it. I respectfully ask that you follow Staff's recommendation and approve this.

City Clerk Marchiafava said we will now hear comments in support of this item.

Support:

C.D. Hays, 305 Crooked Stick, Milton, GA:

I live in the adjacent house at 305 Crook Stick. A year ago I did oppose this with a zero setback. My interest in giving this accommodation in getting the pool house moved off of my property and back at least some distance from it so I would hope that Council approves this request so it can get moved in 3-4 months or so. It was voted 6-0 a year ago and the pool house is still sitting on my property.

City Clerk Marchiafava advised Mayor and City Council that Mr. Voigt has submitted an Affidavit that has been property submitted and will speak on behalf of the Estates at National Homeowners Association in opposition.

Opposition:

Nick Voight, 370 Tournament Players Drive, Milton, GA:

Thank you Mayor Lockwood and City Council for allowing me to come. I am President of the Estates at National Homeowners Association and I am here representing the Homeowners' Association. The Homeowners Association Board of Directors met on August 4th to discuss this and we would like to go on record to oppose this zoning modification. Our recorded Protective Covenants calls for a side setback consistent with that applicable zoning, the 25 foot buffer on each side of a community or a building. I would like to make a comment that even though the planning board and the people in support of it mentioned that it is 265 feet to the next house that is really irrelevant. If I built something next to vacant land, I still have to observe the 25 foot setback. It does not matter how far it is. That is one of my issues. I come to this meeting sort of conflicted. The association is concerned about our members. We want Mr. Hays and Mr. Grosch to get relief and get the pool house moved, but I am also tasked with enforcing the covenants and they are for a 25 foot setback and we feel very strongly from a homeowners association that this should be observed. The point is that if the structure is going to be moved 10 feet, let us move it 25 feet, observe the covenants and due what is called forward zoning.

Jim Grosch, Applicant (Rebuttal):

I respect what the homeowners' association is saying. I do want to point out that there are 3 other zoning modifications that do exist in this neighborhood. There only about 20-25 houses. So about 15% of the houses have zoning modifications, including my neighborhood who is almost in the same situation as my house, so we are not setting any precedent here and I do not think there is any negative impact on this. I am trying to make it look as closely as I can to what it looked like. 10 feet is what Mr. Hays agreed to.

Nick Voight (Homeowners' Association -Rebuttal):

I would like to talk a little about the previous variances that were already authorized. Two of them were on the same property which is the lot to the east side. That property was built at the beginning of the subdivision before the homeowners' association was incorporated and before there were protective covenants filed for the land, so yes there was a variance on that and a modification recorded. I do not believe that precedence does not matter to you all. This should matter and you should be upholding the 25 foot setbacks.

Mayor Lockwood:

Mr. Wilson, can you confirm tell us what our options are. I know we can approve this and move it 10 feet. If we do not approve that, the pool house could just stay on the lot line. It looks like it either stays on the lot line or over the lot line or we approve the 10 feet. It looks to me like the site does not allow to move 25 feet, would that be you opinion?

Community Development Director Wilson:

An engineering study would have to be done and it would certainly elevate the pool house somewhat and probably modify its design somewhat. I will say this about it. We know that -- I have been searching through the Fulton County records. It is not easy to get information out of Fulton County right now. We do know that there was a permit issued for the construction of this pool house, because we found some inspection reports.

We have not been able to find the site plan that went along with that permit, so there is no way for me to know if this thing were permitted in error and the pool house was built according to the site plan that was approved, or if they approved a site plan with 25 feet and somehow it got misplaced. I do not know that and I do not know if I will ever know that. In order to enforce against this and move it over, I think I would have to have that sort of information and at this point I have not been able to find that.

Councilmember Thurman:

I know the initial map showed what they believed the property line was and what the actually property line was. Why was there confusion that much regarding the property line? Do we know that?

Community Development Director Wilson:

I have no idea. It is just a statement from Mr. Bottoms or Mrs. Bottoms and I have no idea about the confusion.

Jimmy Bottoms (previous owner), 119 Coffey Road, Barnesville, GA :

The pool house and pool were built at the same time and they were permitted by a company that are no longer in business so we do not have a lot of information on what is and is not happening. Me and the neighbor did walk the property line and also we had this covenant. I was the President of the homeowners' association and had some dead trees on my lot and his lot and he said it was my property so I had them taken down. We never questioned whose property it was until the sale of the house came about and then of course the neighbor denied it or declined to help us. Basically the property was maintained by us. We planted trees, we planted grass, we took care of it, we took care of the drains and so forth and so on, so in my opinion since the pool was built where it was built and the house was built where it was built and the stacks and ribbons were where they were, it seemed there were no problems. That is basically it. I think that if you go back you will find that there was a permit for the pool and there was a plan drawn to that and approved by Fulton County but now everybody is denying who did what and Fulton County said they did not and you are say you did not and nobody can find anything, but I think we had enough information if we have to take it to court to pursue any action we need to. We are still willing to do that with Fulton County because we think they

denied it on an unjustifiable basis. The destruction of property I believe is the most important thing you have to consider. You do have to destroy this property to move it any amount of feet and I think if you approve 10 feet you are saying demolish this building.

City Attorney Scott:

Can I ask a question? The relief you sought from Fulton County, was that from the Board of Zoning Appeals?

Planner Robyn MacDonald:

Fulton County Board of Commissions.

City Attorney Scott:

I am afraid that you may be out of time from having done that. They do not have jurisdiction any longer. They may be able to give you damages, but that cannot give you any relief. It is seven years for adverse possession and it would probably require at least a fence and not just plantings.

Councilmember O'Brien:

I have a couple of questions. The house has been there six years, is that right?

Jimmy Bottoms, Previous owner:

It was completed April 31, 200.

Councilmember O'Brien:

This seems like just an incredibly awkward situation and I had the opportunity to look around the other day to see this for myself. I may have some of the same thoughts that others do that having looked at the pool house -- first of all it is regrettable if it had to be dismantled and moved, but my initial reaction in reviewing the case and seeing it is that if you are going to move it 10 feet, perhaps attempt to site it in compliance, but I may need some help from Mr. Scott. If the covenants specify that they must comply with zoning restrictions, setbacks and so forth, if we acted to provide relief in that regard, does that satisfy the incorporate covenants for the homeowners' association.

City Attorney Scott:

No, it does not, but at the same time, you do not have any legal requirement to honor their covenants. That is a private agreement that is only enforceable between members of the association.

Councilmember O'Brien:

But the members are obligated to abide by it, right?

City Attorney Scott:

That is correct and the association could file an action to require the property owner to abide by the covenants, but that is not something you are bound by.

Councilmember O'Brien:

It seems as though we are faced with a choice of either accepting -- a denial will keep an encroachment and a cloud on the title of both properties which is a situation that would need some resolution, and on the other hand if we approve the request as I understand it, it would be below the stated setback requirements that the homeowners' association are concerned about and their interest would not be satisfied.

Councilmember Thurman:

I have a question for the homeowners' association President. Are you more concerned about this particular piece of property and this particular pool house or the precedent you believe this would set on the other residents? I know there are still some vacant lots and future development.

Nick Voight (Homeowner's Association):

That is a touch question. I guess I go back to Mr. Wilson's comments in a previous discussion regarding the landscape business. The comment was that in similar circumstances you would have recommended approval, so if I built a pool house within 10 feet of the property line which is 15 feet over the variance and you approved that, you would approve mine too?

Councilmember Thurman:

No, we would not permit yours.

Nick Voight (Homeowners' Association):

We are talking precedence and believe me I have spent a lot of time with Robyn and it was very valuable and the thing I keep hearing is precedence does not matter in a zoning modification, but precedence keeps getting brought up in all of these. I counted it came up 14 times and at least 3 of the Councilmembers mentioned precedence, so my feeling is that we are concerned about the precedence. Do I really care about this? I want Mr. Hays and Mr. Grosch to be happy and get the thing off of Mr. Hays' property. It has been on there a long time, the Fulton County Commission said it is wrong -- there is no variance there. It needs to be moved, so would I be happy with 15 feet, yes, but I am concerned about what it will do for the rest of us.

Councilmember Thurman:

Can you address precedence and the difference between precedence in the zoning case and the variance? I think this is definitely a topic of discussion this evening.

Community Development Director Wilson:

I would like to defer to our City Attorney Mark Scott to talk about precedence.

City Attorney Scott:

Precedence is a legal concept there is no question about it. Precedence applies just like when you are talking about cases. It is just like what the senate talks about whenever someone is nominated to the U.S. Supreme Court. I think this is something we can all identify with and it really comes down to precedence applies to situations to what are called materially similar. They are so much alike that you really cannot distinguish them. Now that is part of my job as an attorney is to find ways to distinguish cases or find ways to argue that they are materially similar and that is what lawyers argue about all day long. That is one of the biggest parts of my job and lawyers are going to haggle over these things all the time and frankly, that is something that you will have to debate about all of the time - whether something actually sets a precedent or whether it does not. Quite often it is like splitting hairs. It is a very tough thing and it is something that you are going to be arguing about again and again and again. You will be asking me the same questions again and again and again because this is one of the biggest things we have to rustle with. So, the question is whether it would set a precedent. If somebody were to want to build a new home in their subdivision and put a pool house within that setback, I think that you could argue that this does not set a precedent for that because if it is new construction and they know and they are making an application for it to go in there that is completely different situation than a situation where it was put in there by mistake and now you have to rectify it. So I think you can say that it is not materially similar to new construction going ahead and putting it in. If the same thing happened and someone put it in there by mistake, yes, you could say it is materially similar and yes, at that time they should get the same type of variance after the fact, but I do not think they would be able to get either an exception to the covenants or a variance before the fact. Would you agree Mr. Wilson?

Community Development Director Wilson:

I would and I would like to maybe bring us back around to what is before us tonight. What is really before you tonight is either approve or deny a modification that would relocate this pool house at the 10 foot mark. It is not before you tonight to force this house to go over to the 25 foot mark. That is simply not before you. It is fairly simple in my

perspective, if you approve it probably moves. You cannot force it to move, but he said he would move it. If you deny it, it stays where it is and then it would be up to either the city to have evidence that he built it in the wrong location and somehow enforce it to get it moved or for the homeowners' association to develop that evidence that could get it moved.

City Attorney Scott:

That is one question that I would like to ask and that is if we were to approve this for the 10 foot move and he goes ahead and complies with that, is the homeowners' association going to file an action to enforce the covenants?

Community Development Director Wilson:

I think they probably have the ability to do that.

City Attorney Scott:

They certainly would have every right and I guess the question is if they have the intention, because I would be very remiss in thinking that we would want to grant them this relief so that they could do that if the homeowners' association is just going to turn around and try to stop it privately anyway.

Nick Voight (Homeowners' Association):

This has been a very enlightening experience. Homeowners' associations do not have deep pockets. If the council decided to approve, I think the homeowners' association would not like it, but it is no likely we would do anything else. I cannot say anything about the new board or anything like that, but frankly, we do not have funds to take action or anything like that. We would like to see it moved 25 feet because that is in accordance with the regulations, but are we going to take action? Probably no.

Mayor Lockwood:

I would like to get back to Mr. Wilson's point. We have two options here. Unfortunately, this is a situation where these two home owners, or actually three with Mr. Bottoms.

C.D. Hays, neighbor:

I would like to say one thing. I am the guy next door. There has been some indication that Mr. Bottoms made a mistake. Mr. Bottoms built the house himself. He had an obligation to have a survey and plat and build it in the right place. I was very careful when I build my house to not be within the setback of the back fence, so I do not know who made the mistake and I am not saying that Mr. Bottoms intentionally put the pool house there, but he was the builder and he is the one that made the error, so just to slough it off that some poor pool guy made the mistake I really believe is a misstatement of the facts. Again, I would just like the pool house moved.

Mayor Lockwood:

Sure, and what I was saying is that this is an unfortunate situation between the two homeowners now and obviously Mr. Bottoms. We have two options. One before us is to approve with the 10 foot buffer or leave it alone and in that case, going back to Mr. O'Brien's point, then it is still a situation for both homeowners if either one ever wanted to sell. I would like to move forward with a motion to approve it with the 10 foot buffer as staff has recommended.

Motion: Mayor Lockwood moved to approve per staff ZM07-002 – 295 Crooked Stick Drive (Lot 11) to modify zoning conditions 1.d and 1.e to allow a pool house to encroach into required rear and side property lines with following conditions:

CONDITIONS OF APPROVAL

**ZM07-002
295 Crooked Stick Drive (Lot 11)**

The City of Milton Mayor and City Council approved the modification of the conditions of Z85-181, M89-055 and M89-92, with the regard to the above referenced property currently zoned CUP (Community Unit Plan) District. Zoning Modification petition ZM07-002 was approved by the Mayor and City Council at the August 16, 2007 hearing, subject to the following conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. No more than 36 single family detached dwellings and accessory uses and structures at a maximum density of 0.37 units per gross acre.
 - b. Limit the height of the buildings to no more than 3 stories.
 - c. Provide a minimum lot area of 2 acres per dwelling unit.
 - d. Provide at least the following setbacks on each lot:

Front 60 feet from right-of-way, except for Lot 27 which shall have a minimum of 54 feet (M02-003)
Side Interior 25 feet from property line; except for lot 10 which shall have a 20-foot side yard setback (M89-55); except for Lot 11 which shall have a 10-foot setback from the rear property line for a distance of 180 feet along the east property line. (ZM07-002) Side Corner 40 feet from right-of-way
Rear 50 feet from property line.
 - e. Property at least a 100 foot building setback from the property line of the CUP, except for Lot 10 which shall have a setback of 40 feet from the peripheral property line (M89-92); except for Lot 11 which shall have a setback of 50 feet from the peripheral property line (ZM07-002).
 - f. Provide a minimum heated floor area per dwelling unity of 3,000 square feet.
 - g. No lot shall drive direct access from either Providence Road or Batesville Road.
 - h. Recreation areas shall be for the exclusive use of the residents of the development and their guests, and shall not be located within 50 feet of the boundary of the project.
 - i. All recreation and other areas which may be held in common, shall be maintained by a Mandatory Homeowners Association where proposed documents of incorporation shall be submitted to the Director of Planning and Community Development for his review and approval prior to the recordation of the first final plat.
 - j. The property shall be developed in accordance with the Fulton County Subdivision Regulations. All internal streets shall be privately owned and maintained.
 - k. Detached Dwellings – Swimming pools shall be allowed in side and rear yards of single family dwellings in any district, except for Lot 27 which shall be allowed to have a swimming pool in the front yard of a double frontage lot, adjacent to Batesville Road. (02VC-012).
2. To the owners agreement to abide by the following:

- a. Any exterior illumination on the site shall not exceed 1.2 foot candles on any property line adjacent to a residential use or zoning district, nor will the light source be directly visible from adjoining residential properties.
 - b. Limit the free-standing project identification signage on the entire property to no more than one unlighted, double faced pole/sign monument adjacent to Providence Road, having no more than 40 square feet of surface area per face and further not to exceed a height of 10 feet from finished grade measured from the base of the sign structure.
 - c. To provide and maintain off-street parking on the subject property during the entire construction period.
3. To the owner's agreement to abide by the following requirements dedications and improvements:
- a. Dedicate at no cost to Fulton County , prior to the approval of a Land Disturbance Permit, at least 30 feet of right-of-way from the centerline of Providence Road, and dedicate at no cost to Fulton County such additional right-of-way as may be required to provide at least 10.5 feet of right-of-way from the back of curb of all abutting road improvements, as well as improve said road 14.5 feet from cent of road to back of curb, and further to allow the necessary construction easements while the right-of-way is being improved.
 - b. Provide deceleration lanes for a distance of 200 feet and a 50 foot taper from all project entrances.
 - c. Connect to metropolitan water available to the site and provide on-site sewage disposal satisfactory to the Board of health; as well as pay all required tap-on fees, front footage assessments and pro-rated share of the cost of public utility extensions as determined by the Department of Planning and Community Development.
 - d. Design required on-site storm water detention facilities such that they are not located within any required buffers or on required parking areas.

Discussion on the Motion:

Councilmember Zahner Bailey:

One question the Mayor has given me. Could you just state again the question that Councilmember O'Brien had asked about those 25 feet? When it is moved, was there an ability to move it into that which would make it in compliance since it was going to be moved anyway or was there an engineering issue in terms of the rock and topography. I do not know if I heard that answer.

Community Development Director Wilson:

Anything can be done.

Jim Grosch, Applicant:

I do not think it is close at all. I think there would be major excavations that would have to be done and major retaining walls and the possibility that we will hit rock, but we do not know.

Councilmember Thurman:

It looks like from the topography, it is pretty steep right there.

Jim Grosch, Applicant:

It is pretty steep there and it also would wipe out the entire backyard.

Councilmember Lusk:

I too have visited the site and surveyed the conditions out there. I think in good faith, Mr. Grosch is trying to mitigate this to the greatest extent possible without running into other site conditions out there that would make it prohibitive to relocate it.

Councilmember Zahner Bailey:

My only request would be for the record, the attorney stated that this is materially different from other situations.

City Attorney Scott:

It would be materially different from a situation where somebody was to construct this on purpose.

Second and Vote: Councilmember Mohrig seconded the motion. There was no further Council discussion. The motion passed unanimously.

Break:

Mayor Lockwood said we are going to request that we take a 5 minute break.

Reconvene:

Mayor Lockwood reconvened the meeting and asked the City Clerk to call the next item of business.

FIRST PRESENTATION

City Clerk Marchiafava said next we have First Presentation and read the following:

1. Agenda Item No. 07-333, Approval of an Ordinance Amending Chapter 6, Code of Ethics and Standards of Conduct.
2. Added by motion and vote is Agenda Item No. 07-351, Approval of an Ordinance Amending Chapter 8, Parks and Recreation of the Code of Ordinance for the City of Milton, Georgia.
3. (*Removed by motion and vote*) Agenda Item No. 07-334, Approval of an Ordinance and policy for the management and maintenance of the storm water system.

Motion and Vote: Councilmember Thurman moved to approve the first presentation of items 1 and 2. Councilmember Mohrig seconded the motion. The motion passed unanimously 5-0 by those present. (Councilmember Lusk and Councilmember O'Brien were not present for the vote.)

Mayor Lockwood asked the City Clerk to call the next item.

City Clerk Marchiafava said the next item is Unfinished Business and called Agenda Item No. 07-311.

Approval of an Ordinance Adopting Chapter 18, Assemblages in Public Places of the City of Milton Code of Ordinances.

Ordinance No. 07-08-38

Public Safety Director Lagerbloom said this is a New Chapter Code of Ordinance that deals with people assembling in public places and any area of mass public gathering. This provides for an approval process to be able to get a permit to do that event. Ordinance outlines what that process entails and what timelines are for approval or denial. Appeal if denied is to Mayor and Council at regularly next scheduled council meeting. This is for a planned event.

Councilmember Zahner Bailey said with our September 29th event, will we need to pursue anything through your department with this ordinance?

Public Safety Director Lagerbloom said probably not because it will not encroach on any public property since we will be at the Birmingham Methodist Church. We will certainly check to make sure we do not violate our own ordinance.

City Clerk Marchiafava said there is no public comment on this item.

Motion and Vote: Councilmember Mohrig moved to approve an Ordinance Adopting Chapter 18, Assemblages in Public Places of the City of Milton Code of Ordinances. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 6-0 by those present. (Councilmember O'Brien was not present for the vote.)

Mayor Lockwood asked the City Clerk to call the next item.

City Clerk Marchiafava said the next item is New Business and called Agenda Item No. 07-336.

Approval of a Resolution to enter into a Project Framework Agreement for PI0007312 Transportation Master Plan (ARC #FN239).

Resolution No. 07-08-52

Operations Director Hanlin said we would like to have the Transportation Master Plan occur concurrently with the Comprehensive Plan. We are requesting that Council commit to this project a little out of sequence prior to our budget being formalized in an effort to secure the \$100,000 in funding from the state that we need to accelerate the Transportation Plan and have these two plans occur at the same time.

Councilmember Mohrig asked what our commitment is.

Operations Director Hanlin said it is \$100,000 for \$500,000.

Councilmember Zahner Bailey said could you just confirm that the \$100,000 was a reduced amount when we were going through our budget review process that at one point it was \$125,000 and \$100,000 is the confirmed amount.

Operations Director Hanlin said that is correct, it did change - it went down to \$100,000.

Mayor Lockwood said if there is no further discussion do we have a motion?

Motion and Vote: Councilmember Zahner Bailey moved to approve a Resolution to enter into a Project Framework Agreement for PI0007312 Transportation Master Plan (ARC #FN239). Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Lockwood asked the City Clerk to call the next item.

City Clerk Marchiafava said the next item is No. 07-337.

Approval of a Resolution Consenting to Creation of the North Fulton Community Improvement District.

Resolution No. 07-08-53

City Attorney Scott said we discussed this on Monday morning and Monday afternoon for the pre-meeting agenda. Councilmember D'Aversa had asked if he would get some more information from the Community Improvement

District. He spoke with Brandon Beach and was informed that there would definitely be a property owner within the bounds of the City who would go on the board. He does not have the name in front of him, but he believes he was a representative of the Deerfield Park development. He was told this had been discussed it with the Mayor. We do not have the actual say as to who it is. The second question was where we would stand in terms of getting our share of revenue. He was assured that there are already plans on the books for money to be spent up here.

Councilmember Zahner Bailey said to Councilmember D'Aversa's point, if we do not have this yet in writing, would there be any reason that some of the answers to these questions that many of us have about the CID. She asked could we in an abundance of caution make sure we get those commitments in writing so there are no opportunities for misinterpretation after this evening.

City Attorney Scott said his only trepidation in going ahead and deferring this is that we are in a position where we are going to have to - even if they will not put it in writing; we are going to have to approve this CID anyway.

Councilmember D'Aversa said we do not have to approve it, but we are a part of it already - our land is part of it.

City Attorney Scott said we are being asked to approve it after the fact. The real question is whether this is something we want to join - a preexisting CID that already includes part of Roswell and Alpharetta, or do we want to create our own. There is significant expense if we create our own. We would have to hire someone to put it together.

Council discussion about joining a CID or creating our own.

Councilmember Zahner Bailey said she has a question for Councilmember D'Aversa. Other than these properties and Deerfield in particular, is this just for those preexisting properties, or is this also the transition that would have incorporated the suggested at several work sessions before - is this meant to supplant that where if other people wanted to join this in addition to those that already were? Do we also have the opportunity to appoint somebody? She guesses it is the largest property owner as part of that process.

City Attorney Scott said yes, this could definitely supplant that. We could still create one of our own, but we would not have to now and they would expand.

Councilmember D'Aversa said she is comfortable with it if we have it in writing that they are going to be proactive with it and they have earmarked funds for our area.

Councilmember O'Brien said would it be fair to say that the issues that are of concern that could be further discussed and have a letter or memorandum of understanding and even if we did not receive the assurances and satisfied everyone on the Council, we could rescind it, could we not?

City Attorney Scott said yes you could.

Councilmember O'Brien said so really there is no downside to us entering into this agreement tonight.

Mayor Lockwood said you are right. We could rescind it to give it some time. He could wait ten days to sign it. Do we have a motion?

Motion and Vote: Councilmember Thurman moved to approve a Resolution Consenting to Creation of the North Fulton Community Improvement District. Councilmember O'Brien seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Lockwood asked the City Clerk to call the next item.

City Clerk Marchiafava said the next item was added by motion and vote.

Approval of June 2007 Invoice for Legal fees.

Acting City Manager Lagerbloom said he can tell you that staff has been through the three functional areas that are represented this month, which is the City Community Development and Community Services and there have been no disputed charges or those that were have been rectified. The total bill for the month of June is \$10,391.37.

Mayor Lockwood said if there is no discussion, do we have a motion.

Motion and Second: Councilmember O'Brien moved to approve the June 2007 Invoice for Legal fees. Councilmember Thurman seconded the motion.

Discussion on the Motion:

Mayor Lockwood said he has been through these and approved what pertained to him.

Vote: There was no further discussion and the motion passed unanimously.

Mayor Lockwood asked the City Clerk to call the next item.

City Clerk Marchiafava said the next item was added by motion and vote.

Approval of a Resolution Authorizing the City Manager to File a Notice of Intent with the Georgia Environmental Protection Division in Order to be covered under a NPDES permit for discharges from a stormwater system.

Resolution No. 07-08-54

Operations Director Hanlin said this was discussed on Monday morning and now Friday morning. This is the first step in a legal requirement that the city has which is to be compliant with the federal regulations regarding the stormwater permitting process. We have chosen to have the City Manager enter into this agreement on your behalf and thereby committing the city to be compliant with the law and also to protect our drinking water. It is essentially an unfunded mandate. We really do not have a choice.

Motion and Second: Councilmember Zahner Bailey moved to approve a Resolution Authorizing the City Manager to File a Notice of Intent with the Georgia Environmental Protection Division in Order to be covered under a NPDES permit for discharges from a stormwater system. Councilmember Mohrig seconded the motion.

Discussion on the Motion:

Councilmember O'Brien said insofar as we are in an unusual situation with our acting City Manager, just to be careful since this is a document that will receive consideration attention potentially. As long as we have satisfied the requirements to designate the City Manager at any given time acting here or more permanent He asked Ms. Hanlin if she was of the opinion that that will satisfy any outside scrutiny.

Operations Director Hanlin said she believes that is a question for the City Attorney.

City Attorney Scott said the Charter says that in the event that there is a vacancy in the position of City Manager, either there is one designated in advance or we designate one and we are about to do that.

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

Mayor Lockwood asked the City Clerk to call the next item.

City Clerk Marchiafava said the next item was added by motion and vote.

**Approval of a Resolution Appointing Christopher J. Lagerbloom as Acting City Manager.
Resolution No. 07-08-55**

City Attorney Scott said there is a provision in the Charter, 3.24 that talks about an acting City Manager. We can either do that in advance or when a vacancy occurs the Mayor can appoint someone. The Mayor has appointed Chris Lagerbloom and we are now seeking approval of the full Council.

Motion and Vote: Councilmember Lusk moved to approve a Resolution Appointing Christopher J. Lagerbloom as Acting City Manager. There was a unanimous second and no Council discussion. The motion passed unanimously.

Mayor Lockwood asked the City Clerk to call the next item.

MAYOR AND COUNCIL REPORTS

City Clerk Marchiafava said the next item is Mayor and Council Reports.

Councilmember D'Aversa said regarding Providence Park, for the record is part of the Fulton County Department of Parks and Recs located at 13440 Providence Park Drive. Site consists of 45 acres and is located in North Fulton County. It is approximately 2.5 miles north of the City of Alpharetta in the City of Milton. We voted earlier this year to not purchase that park land with the other park land we purchased because there has been hazardous waster contamination on the park and we could not get a clean bill of approval. The contamination was removed from the stormwater earlier in the year. Knowing that our citizens, as well as Mayor, Council and Staff desperately would like to expand the park and recreation offerings and really acquire this property as soon as possible, we started having some discussions with the YMCA about some various uses of the park. We discussed various opportunities that might happen with regard to the park. YMCA has been a partner with the City of Alpharetta and City of Roswell and would like to partner with the City of Milton to provide programming for our City in the future. We got with staff and decided to take a look at the property after meeting with Commissioner Lynn Riley and her assistant and discussed some of the options that we had. We discussed this with the Mayor and the City Attorney about the legal opportunities regarding purchasing the park sooner rather than later.

The EPD has estimated that it will still be another year and a half or longer before they can give us a clean bill of health on the entire park. AJC ran an article about the contamination that you got a copy of. Today, we believe that the area of contamination is contained in an area of the park and not the entire 45 acres which means there are portions of the park including a facility that is very active. Where we currently are is that we have Commissioner Riley working on our behalf to talk with the Commission about allowing us to subdivide the property and take control of the property or purchase the property that is not currently contaminated. Attorney Scott has discussed this with the Fulton County Attorney with the same effort in what we can and would be legally allowed to do if their commission allows us to do it. We have gone so far as to prepare a draft resolution that if council approves, stating that we would purchase the portions of the property that are not contaminated. The only reason there would be any hesitance on my part that the Commission may not support it is because there was a change in commission chair since we were offered the opportunity to purchase the property. The status is where it has been, but she is hopeful that shortly we will have some opportunity to purchase portions of that park with Council's approval. The property has not been maintained, but if we take control of it in short term, we will have minimal, in her opinion, more minimized corrective action that will have to be taken.

City Attorney Scott said he wants to make it clear that the resolution that he drafted is not to actually purchase the park at this point, it is for the steps needed in purchasing the park. We first would have to get some environmental engineering in there to make sure what is safe to take and what is not. Then we would have to get a surveyor in there

and stake off and survey what we would take and what we are not and also would have to come up with a survey easement to allow the county access to that. It is all very doable.

Councilmember Zahner Bailey said she has a question about the containment issue. Who would pay for that because it is already within that remediation process with Fulton County? Would they be willing to pay for the services that we need to confirm that the land we would subdivide and purchase is free of contamination?

City Attorney Scott said we have not received any indication from them that they are willing to do that and frankly he does not believe that they would. He believes that is something we would have to do. They were prepared to sell us the park plan. We are not going to take on that liability and he would not let you take that on. If there are expenses involved in taking pieces of the property, we will probably have to pay for that.

Councilmember D'Aversa stated that what she heard Commissioner Riley say during their meeting prior to going out and walking the property is that she was going to go to the Commission and ask them to pay for that. There is a liability of not having an on-site manager for the query.

Councilmember O'Brien said could this be structured as a lease, perhaps a no-cost lease where we assume the maintenance responsibility of the structure.

City Attorney Scott said he would not recommend a lease because we are going to recommend a clear hard and fast property line between what is contaminated and what is not and the only way he knows to do that is by subdivision, so we need to buy what is subdivided and leave what is contaminated. If we subdivide, then we do not have liability for the portion we do not buy. It would be prudent to go ahead and get some cost estimates from some environmental engineers and a surveyor.

There was further discussion about the purchase of the park property with Council and City Attorney.

Councilmember Mohrig said perhaps the contaminated areas could be fenced.

Acting City Manager Lagerbloom said we sent some of our City folks to Providence Park today and also sent one of our fire building inspectors to get a concept of what shape the building was in. Since your visit, the locks have been changed at the park and the building has been secured.

Mayor Lockwood thanked Councilmember D'Aversa for the work she has done and also to Mark Scott and the staff.

Councilmember Thurman said regarding the proposal from the Sizemore Group for the update to the Crabapple Master Plan. She is still trying to raise money about this community. She asked Bill St.Aubin because he has been involved in the plan before it was given to her what he thought would be needed to update the Master Plan. It is her understanding from talking with Director Tom Wilson that we will need to get two other quotes.

Community Development Director Wilson said we have to get two quotes. They do not have to be bids, but just quotes.

Councilmember Thurman said she asked that something be put in writing just so when we do ask other people what to do we really know what we are asking and can compare apples to apples rather than apples to oranges. What she would like for the Council to do over the next few days since it is already so late is to look at this and let Tom Wilson and her know if you think there is anything that needs to be included that is not or is included that does not need to be just so Tom can go ahead and start working on getting the two additional quotes. We can make a decision and go forward. The primary issue is traffic congestion. We do have the \$15,000 grant that was started with it and if we can get the other \$10,000 then we can try to get this done in 4-6 months. This will become part of the comprehensive plan

process. We do not want to wait 12-15 months to start working on the traffic problems in Crabapple. This is not the final documents, but a draft. We want to get moving on this.

Councilmember Zahner Bailey said she hopes we would look at it from a scope perspective. Hopefully, we are not using this document to define our scope because it is obviously a scope that is coming from just one entity. She hopes we would look at the scope as it relates to the overall comprehensive land use plan process. The scope needs to be defined not on one entity but instead what is needed to make the right decision.

Mayor Lockwood said what he would suggest is to have Director Wilson look at the scope and either concur with it or give suggestions and then maybe we could have Sizemore re-quote it when we get to that point based on the adjusted scope as well as the other two entities.

Community Development Director Wilson said he will take a look at it. If you want to expand the scope, he asked that you send him an email and they will put it all together and re-visit it.

Discussion about the scope.

Councilmember Thurman said until we get something in writing, then it is a little harder to get the money out of the business community. She does have some commitments, but we can certainly use some more.

Councilmember Lusk said he has a very brief presentation. He called attention to an article in the August 2nd Forsyth County News *entitled GA 400 Now Hospitality Highway*. You probably noticed the signs up and down 400. This was the result of State Representative Amerson and his resolution designating the road and quoting him and it has to do with tourism and economic development. Those are two of the highest income producing areas for all of the cities and counties along Georgia 400. It is a pretty good article and going to have some impact on the City of Milton and of course all of the cities up and down 400. It is one of things out there you do not hear about.

Councilmember Mohrig asked if it talked about how we actually get a sign out there on 400. He knows Alpharetta has something and different cities that have designated signs.

Mayor Lockwood said we are working on that. Are there any other added Staff Reports?

STAFF REPORTS

Acting City Manager Lagerbloom said we do have one. Linda Blow will provide an update on the Milton Roundup event on September 29th for the City of Milton.

Project Coordinator Linda Blow passed out the task list to Council and advised them that we now have \$4,000.00 in sponsors. Lisa Maggart will give the details. This will be a great party.

Communications Manager Maggart said we have a great committee and everyone is taking on tasks and is being very committed and dedicated in achieving what they need to achieve. One of the challenges we have is that the date of the event is the same date of two big football games and also is the day there is a big band competition going on in Milton. We are trying to get the word out about the event. From a publicity standpoint and marketing and promotions, currently the main information given out has been a flyer. About 2,000 flyers have been passed out. It has the basic information on the flyer. We have since then started working on a t-shirt logo that we will tie in with a Milton logo. We want something to promote the signature event and something people can wear throughout the year to keep the awareness up. Other promotional items have been ordered.

We have already secured strong press coverage from the Milton Herald. There will be three articles, two prior to the event and one post coverage of the event. Jason Wright will attend the event and will be taking photos. She believes we will also get coverage in the North Fulton Neighbor and they have already committed. We are looking on where we need to spend money on advertising. If we get enough press coverage, you often do not have spend the extra budget money. Also she will be doing the on-line advertising. As we get closer to the event, we will start seeing more media articles. We are considering the idea of doing a separate website specifically for the event on a very cost effective basis.

Councilmember Thurman mentioned that she may also want to talk to the Milton Beacon.

Communications Manager Maggart said she is going to be speaking with Al Levine tomorrow.

Mayor Lockwood called for a motion to adjourn.

Motion and Vote: Councilmember O'Brien moved to adjourn the August 16, 2007 Regular Meeting at 12:47 a.m. Councilmember Mohrig seconded the motion. There was no Council discussion. The motion passed unanimously.

Date Approved: _____

Jeanette R. Marchiafava, City Clerk

Joe Lockwood, Mayor