
Special Called Meeting of the Mayor and Council of the City of Milton was held on April 26, 2007 at 5:00 PM, Mayor Joe Lockwood presiding.

CALL TO ORDER

Mayor Lockwood called the special called meeting to order.

ROLL CALL

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

City Clerk Marchiafava called the roll.

Councilmembers Present: Mayor Joe Lockwood, Councilmember Karen Thurman, Councilmember Julie Zahner Bailey, Councilmember Lusk, Councilmember Neil O'Brien, Councilmember Tina D'Aversa, and Councilmember Rick Mohrig.

PLEDGE OF ALLEGIANCE

Mayor Lockwood led the Pledge of Allegiance.

APPROVAL OF MEETING AGENDA

City Clerk Marchiafava called Agenda Item No. 07-248.

Approval of the Meeting Agenda

Motion: Councilmember Mohrig moved to approve the meeting agenda. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Lockwood stated that the next item is public comment.

PUBLIC COMMENT

John McMillan 14255 S. Thompson Road, Milton, Georgia. (*Clerk's Note:* This public comment was not recorded. There was a problem with the recorder.)

John Machisko, 7225 Bell Road, Johns Creek, stated he is with the Cauley Creek Water Reclamation Facility. What he would like to talk about is he is an environmental engineer and is very passionate about the reuse of water. He will provide a little history. Cauley Creek was one of the first urban water reuse facilities put in the State of Georgia. In fact, it is the first and it is combining with Fulton County's Johns Creek plant to put in an entire area of what they call "urban water reuse". What is really urban water reuse it is reclaimed waste water that is treated to a very high degree. To give you an idea, Channel 2 came out to Cauley Creek about six or seven months ago and they did a feature article on them. One of the things they did is they took the ethanol from their plant and they put it in the beaker and they compared it to basically tap water. When you looked at it up on the television, you cannot see whether it is reuse water or tap water and you could not tell the difference. Even though it is clear as tap water, you do not want to drink it, but it is treated to a very high degree. Considering the droughts going on what it does is EPD used to worry about reuse water being what they called consumptive use basically taking all the water out of the river, Chattahoochee River and Lake Lanier. It is not going back, but now they realize that that is not as critical and reuse or reclaimed water, urban water reuse, is very important to them along with the ARC because they do not consider absolute consumptive use because people realize now when they use reuse they are not going to overuse it just because they think it is cheaper. In fact,

Fulton County what they have done is we serve seven – eight golf courses and they are expanding it and we serve Perimeter Church, but what they are actually doing is they are going into Sugar Mill, which is already a mature subdivision and putting in the reuse water for all the houses there. What that does there is Fulton County is getting money for that reuse water. They have got it to a \$1.71 per 1,000 gallons, and it is a little less than drinking water. It is still paid for, but bottom line is we are not pulling water out of the Chattahoochee and using potable water for that. One of the things that reuse water does is we have yet to plan long-term potable water usage. That is outside of Lake Lanier in your reservoirs. There is a lot of money putting that in along with expanding your water plants. What reuse does it takes a valuable resource and reclaims it and uses it for varied things such as irrigation. You cannot use this for swimming pools, people think you can but you cannot go to the swimming pools with that, but a lot of industries even use it. It is safe for your kids running around your sprinkler in your yard, and the only thing different you see is you see a nice little purple pipe. If they are ever digging along and someone finds a pipe and they see this very beautiful purple they know it is clean water, but it is not potable water. In fact, if you go down Bell Road you have seen a whole line going in. They are going to send their pipe to Standard Club. The Standard Club now is going to use it and what happens is Standard Club, St. Ives and Atlanta Levy Club and River Pines had water withdrawal permits to come out of the Chattahoochee and by using their water they stopped this and there was 4-million gallons a day now that is continually going down the Chattahoochee River that were using reclaimed. They are using it to irrigate and now with all the water wars with Florida and Alabama, we are not quite sure you know what is going to come out of that and how much water we have to send down the Chattahoochee. If you use reclaimed water it becomes a very valued resource. We were also involved in building the waste center plant in Manor Golf and Country Club and every home there has water reuse. If you take a look you go down you will see a line full of purple, but it became an asset, and it is a valuable asset to the property owners that they can use reuse water. One of the benefits is right now there is a watering band, and we are almost in a drought. It is probably going to get worse as the summer comes, but people on reuse continually use that water. There is not a restriction on it because it is already being reclaimed and already being reused so it is a benefit to the homeowners, benefit to the value of the homeowner, and it is usually a very valuable resource as people are planning long-term that we will take up the potable water that is used now. In fact, Forsyth County what they are trying to do is in their new developments they are almost requiring the developers as part of their code to put in dual pipes, one for reuse and one for sewer. That way they have got the infrastructure in place so you could do new developments that you plan for the future and also you could take a subdivision that is mature and put it in. It is still cheaper because Forsyth has increased its water rates. They have a 3-tier system and some homeowners are spending maybe about a \$1,000 a month just to irrigate their lawns. However, as reuse they would not take the potable water and they would not have to increase the size of the water plant because he thinks you are thinking long term in how you want Milton to develop in the future. He would just like you to think about what water does and taking highly treated water and basically using it for your community. Thank you very much.

[Inaudible question]

John Machisko replied no, what people are concerned with you do not want to use reuse water to drink. That is something that is in a pool people might think that it is equivalent to drinking water or anything that can take human consumption. It is alright for if the kids running around and it sprays on you it is not going to do anything, but they are trying to avoid any human consumption. What you do is when you put the reuse in there is always an absolute air gap that they call the word air gap so it is never interconnected with the potable water line.

Mayor Lockwood asked if there was any other public comment.

City Clerk Marchiafava stated there was no other public comment.

Mayor Lockwood stated we will move on to reports and presentations.

REPORTS AND PRESENTATIONS

Proclamation for Silver Star Day.

Councilmember O'Brien stated this is a proclamation which he is very pleased to have the opportunity to read:

PROCLAMATION

WHEREAS, many American men and women have bravely served our country and have been injured while answering the call of duty; and

WHEREAS, Silver Star Day encourages awareness and caring throughout communities across Georgia for those individuals who have been wounded in action and for their families; and

WHEREAS, Silver Star Day derives its name from a tradition dating back to 1917. Soldiers would sew over a blue star with silver thread to signify a wounded soldier; and

WHEREAS, our Nation's security continues to rely on patriotic men and women who put their personal lives on hold in order to serve in the Armed Forces of the United States of America. Georgia continues to provide its best and brightest sons and daughters to serve in the proud tradition of the US military; and

WHEREAS, let us remember and appreciate with grateful hearts the contributions and sacrifices of the over 760,000 Georgians who have served along with the tens of thousands of Georgians presently serving both here and abroad in harms way.

NOW THEREFORE, we, the Mayor and City Council of the City of Milton, do hereby recognize May 1, 2007 as Silver Star Day in Milton, Georgia.

Given under my hand and the Seal of the City of Milton, Georgia on this 26th day of April 2007.

Joe Lockwood, Mayor

Mayor Lockwood thanked Councilmember O'Brien for bringing forward this proclamation. Moving on to unfinished business, will the City Clerk please sound the next item?

UNFINISHED BUSINESS

City Clerk Marchiafava called Agenda Item No. 07-249.

Consideration of resolution accepting dedication of Longstreet Road in light of new information received.

City Attorney Scott stated our format is a little different tonight so he figured he would just address you from here. As he thinks most of you know since the last Council meeting, we have had some developments on the Longstreet dedication and abandonment of the right-of-way. The applicant has informed him that they cannot obtain a 20-year bond so they are coming back to us for consideration. Mr. Duncan is going to tell you what they have been able to procure, and he is also going to tell you about the certification that is in front of you now. We can talk about it more after his presentation.

Lee Duncan stated thanked the Mayor and Council for providing this opportunity this evening to bring closure to a matter that has been with you for some time now. We totally understand the challenges of a startup city. Demands on your time are substantial and we are very appreciative of you providing this extra commitment to hearing this request. In addition, your staff has gone out of their way to make themselves available to get an understanding of this matter and

be able to make recommendations for your consideration. Again, he understands the demands and he will be brief. Longstreet is a public right-of-way that provided access from Hookville Road on the west to Wills Road and Capnon Road on the east, the road bisects the Manor Development. Previous land plans had merged the Manor traffic into Longstreet at three points or three new intersections. The current improvements eliminate any direct access from the Manor Development onto Longstreet. All costs associated with the improvements to the public right-of-way have been paid by the Manor Development. The Manor Development at build out represents to the City of Milton 430 homeowners that are only in the City of Milton. The Manor Development also goes up into Forsyth County with about 65 homeowners and Cherokee County with about 225 homeowners. The homeowners occupy homes that average about 1.4 million dollars. At build out this development will provide about 16% of your fiscal year 2007 property taxes. Since the community roads are private and self-maintained, the only services required of the City of Milton for the Manor are for public safety. In your current budget this averages about \$238.00 per person per year, which they project to a maximum potential for the Manor to be about \$360,000.00 per year or a resting 3% of your total operating budget. This represents a net gain to the City annually of more than \$750,000.00 per year. In addition, currently the financial impact of expenditures from just construction workers associated with the Manor approaches \$3,000,000.00 annually. This is simply the impact of each construction worker spending an average of \$7.50 per day with some merchant in the City of Milton.

Liability Issues - The City of Milton is assuming no more liability than would be presented for any other public right-of-way. The City of Milton is assuming responsibility for maintaining a previously approved dedication of a right-of-way and associated improvements. This abandonment and acceptance of the realigned roadway was thoroughly reviewed and approved by the Fulton County Commission in March of last year subject to construction and compliance with design standards and acceptance by Fulton County staff. This was accomplished and evidence satisfying those conditions has been provided to the City of Milton's staff. Improvements on Longstreet represent roadway realignment, shoulder improvements, guard rails and intersection improvements at Wills Road, which actually reduces any potential liability concerns for the City of Milton over the previous roadway. Every citizen living on Longstreet was contacted and provided in writing their total support for improvements prior to construction.

Safety - By utilizing a grade separation design the roadway improvements actually eliminate what could have been three very busy traffic intersections. He is going to give you what was originally planned for those roadways. [There was a handout for the Mayor and Council provided.] What has been highlighted in front of you is three potential locations for intersections, which is how the Manor traffic would have been integrated into Longstreet, but by locating this with a grade separation plan those intersections have been eliminated. Those locations of those intersections would have been the primary access point for about half the community in excess of 200 homes. Assuming four trips per home per day, you are looking at roughly 800 trips from the Manor admitted through those intersections. In addition children on bicycles going to the club, pedestrians or runners exercising, and all golf-related traffic such as players and carts and maintenance equipment rely on the requirements in these intersections. This is inevitable since 11 holes of the golf course are south on Longstreet and 7 holes are north. Literally Longstreet cuts through the middle of the community. Using the grade separation design allows internal traffic on Manor North Drive underneath Longstreet eliminating the need now or in the future for possible intersection improvements and traffic control devices at these locations. The general public is provided via Longstreet Road continued unimpeded access as they had previously and experienced no interruptions. Total intercommunity access is maintained without any additional imposition on the public right-of-way. Further the old intersection at Wills Road and Longstreet with a wide configuration and with nine new quarters for traffic going north and west. The realignment has eliminated all blind view quarters and provided more conditional T-alignments at the stop signs at this intersection.

Nighttime – As sustained by Fulton County staff and further sustained by your own engineering staff, the improvements were constructed in accordance with state DOT standards needing work seating current construction standards for the City of Milton. Design criteria utilized provides the City with a structure that far exceeds any other structure currently in your inventory with a routine inspection program. The culvert structure should be maintenance free for the next 20 to

30 years depending on the volume and type of traffic, and the City should enjoy a much more reasonable maintenance program with the new roadway than had been anticipated with the previous roadway.

Summary – This provides a much improved situation for all involved, for residents on Longstreet, traffic using Longstreet, the City of Milton and the Manor community. A much safer public right-of-way is now in place, much safer interconnectivity with other public right-of-ways is in place, grade separation eliminates interactivity between Manor traffic and the public right-of-way, and all improvements are unconditionally transferred to the City of Milton and their costs. The culvert structure had carried an additional 2-year warranty, but we have successfully extended that an additional 1-year term or a total of three years through April of 2010. They asked that abandoned is 2.29 acres and we ask that received is 2.34 acres. The City will enjoy a less intense maintenance requirement over the previous roadway. The access requirements of the City are provided in a much improved system and, at the same time, the needs of the Manor are properly met allowing continued development of a very special dynamic resource to the City of Milton. Thank you again for your time and he will be happy to respond to any questions.

Mayor Lockwood asked is there any questions for Mr. Duncan from Council.

Councilmember Lusk stated just comments. He and Councilmember O'Brien went out to visit your site today before this quorum and he was impressed with the level of construction, and the quality of construction out there. He would agree and thinks we are getting an asset out there rather than a liability. He did have some questions, and he did not have the benefit of having the permit drawings with him when he talked with Mike Tuller and he would like to have him address them. One of the issues was signage on your curbs out there and he or Abbie Jones could address those at this point. Aside from all of that what we are getting here is a road that is what a year old, or two years old?

Lee Duncan stated less than one year old.

Councilmember Lusk stated less than a year old in exchange for a road that we had out there and is a new road that is built according to design standards, DOT standards, as opposed to old Longstreet that was constructed to who knows what standards. He thinks the City is benefiting from it for all of the reasons that Mr. Duncan has addressed here, but he would like Abbie Jones or Mike Tuller to address a couple of those issues.

Transportation Engineer Jones stated she was trying to remember exactly which questions, the signage?

Councilmember Lusk stated the signage only posted speed limits per signage, warning curb signage, and the other one was what was designed for protection of the intermediate wall in the double boxed culvert. This seems to be no protection for the outboard faces there.

Transportation Engineer Jones stated she would start in reverse order with the interior section of the culvert as it is less than a foot for the center wall so it is too narrow to be able to put any of the standard types of crash barrels right there. She guessed they could put a rubber type of device right there, but she really does not think it would add a whole lot to that area. To go back to the signage on Longstreet, staff did request "Curve Ahead" signs and she believes that they were installed.

Councilmember Lusk stated it may have been raining too hard and blurred his vision.

Transportation Engineer Jones stated they are around the corner quite a bit and well in advance in the curve.

Councilmember Lusk stated he would have thought that there might have been something up at the crest of the hill on each side as further indication of the curve.

Lee Duncan stated if he could bring to the attention of the City Council this is the end of the school year and we do sometimes experience signs that get “lost” at the end of the school year and that might be something that we need to look at.

Councilmember Lusk stated thank you.

Transportation Engineer Jones stated she guessed he was asking about additional signage at the top on the crest of the curve, which it was at the center of the horizontal curve and the vertical curve as well. Currently, there are no chevrons up there of the as the reflectivity value of your aluminized guard rail. It is quite reflective, and the staff considered the idea of Chevrons or at least reflective specks within the guard rail, but the guard rail is quite reflective.

Councilmember Lusk stated he was satisfied if staff is.

Transportation Engineer Jones stated staff is.

Lee Duncan stated in addition members of the City Council we have presented tonight to the City Attorney and the staff a certification letter from a structural engineer that was involved with the design who came back and inspected the structure and certified the structural integrity that you are getting out there.

Mayor Lockwood questioned if there any other questions for Mr. Duncan from Council.

City Attorney Scott stated there are a couple of other issues that he wanted to address. He has spent a fair amount of time this week working on this issue, spent some time with the applicants working with them, he contacted Councilmember Lusk who put him in touch with, he is not exactly sure if his title is a salesman or representative, surety companies that he routinely gives within his construction business for bonds. He confirmed directly that the 20-year bond would probably be nearly impossible to get and even with something as long as five years would be nearly impossible to get. The two to three is probably the best that we could expect so he got that directly from someone who is in the industry. He also contacted E. R. Snell Company, which is the contractor who actually built the overpass. He assured him that they used absolutely the highest standards on it and they also discussed the fact that at the time regarding the 2-year and he believed it said warranty which they had presented previously was the best that they could do. We now have been told that we should get a 3-year they have indicated that they can provide that to us. So the difficulty is simply not being able to physically satisfy what he would call a condition precedent to the resolution and the acceptance of the dedication. He wants to make sure that you understand from the legal perspective the challenge that we face with this. We have an abandonment, we have a dedication, we cannot simply abandon and give them land without receiving something in exchange because that would be a gratuity under the constitution provision in the Georgia Constitution that prohibits a municipality giving gratuities. At the same time, if we do not accept the dedication we are going to be in another legal situation, once we have affirmatively declined to accept it and that is this, if we allow the public to continue to use this street we are effectively taking their property for public purpose without compensating them for it and that would arise to a claim of what is called inverse condemnation. You all are familiar with imminent domain. You are all familiar with what the word condemnation is. You condemn a property as a municipality, you pay the money after first getting an appraisal so that you know what you think its worth, you pay that amount of money into court fund and then you initiate the condemnation action and begin the proceeding. At that point, it is essentially the City’s land, the county’s land and from that point the case is really only about the value of the land because the taking has already occurred. In order to affect taking constitutionally you must provide them with the money that the land is worth. You cannot deprive anybody, like liberty of property under the Federal Constitution of course even the State Constitution. If we were to allow people to use this, the property would be being used by the City for the general public purposes without compensating them for it if we do not affect the dedication and the abandonment as well. The issue then is we have a lawsuit on our hands and they would be able to come to use and collect the fair market value of this property as improved. He does not think that is a situation that we want to be in. He knows that you are probably not completely comfortable with every aspect of this; this is a situation that both the applicant and the City wound up in as a

result of incorporation and the new steps that the County took. We are all in the same boat together, and he is sure that that is what the applicant would agree with. Granted we would have liked to have been able to inspect this and have our inspectors out there and approve the means and methods and materials of construction as it was going on, but he thinks at this point we have the best information we can get about that. Staff indicated to you that they have accepted that and certainly the engineering letter he thinks helps. He is not sure what choice you have at this point on this issue and he wished he could say there are more choices.

Councilmember Thurman stated so are you saying if we want to continue using the road we basically have to work something out or else we have to close the road.

City Attorney Scott stated he is telling you that if you do not accept this road tonight, his instruction to Greg Wilson has been that community services needs to get barricades out there and barricade this road tonight, because we cannot allow the public to continue to use it unless we have expressly rejected the dedication.

Mayor Lockwood stated City Attorney Scott has had some concern and he has heard some other concern about this being a precedent setting issue, and asked what his opinion.

City Attorney Scott stated he does not believe that this is a circumstance that could possibly ever repeat itself, and the reason for that is this is solely a county to city incorporation transitional occurrence. We know this never would have happened if the County had bothered to record the plats. That has been their beef the whole time, and he certainly understands their frustration. If that had happened before December 1, 2006, we would not even be discussing this, it would already be counted for our City property inherited through the County when we incorporated. His suggestion is that he does not think this can possibly set a precedent whenever you look at precedent from a legal perspective. Precedent only counts if you get a factually, materially similar situation, so a legal principle or a legal decision only applies when the facts are identical or nearly materially identical to a prior situation. He does not see how this could ever happen again because we are never going to become a City again. We are never going to have an application for abandonment and dedication occur first to Fulton County and then having it come back to us because the deed did not get recorded. He does not see how we could set a precedent by accepting this. He has certainly heard some of the discussion last week or the week before when we discussed the actual dedication, and there were some discussion that we would not want to accept infrastructure in terms of a private or gated community such as White Columns or any of the other gated communities inside the City. We would not do that, we would not want to do that, but we would not face the same situation there because it would not be something that is being used by the public in part and making some benefit to the private roadway beneath it. We would not face the same situation where we are accepting or faced with the choice to accept something that had originally been proposed to the County, had been approved through the County and had gone through the entire process but for the recording. He is not sure you know if it was the deed or the plat, ultimately the plat. He does not think that this could ever happen again, and cannot imagine a situation under which this could ever happen again.

Mayor Lockwood asked is there any other questions from Council for City Attorney Scott.

Councilmember D'Aversa stated she has a couple of questions. She guessed her concern still lies with the liability. She understands what has been said about reverse condemnation, and she accepts all of that. She also accepts that we are having this situation in front of us and it is not precedent setting because it was something that Fulton County left with us. She thinks we are going to come into time and time again, however, from a liability perspective, she wants to make absolutely certain that there is not a greater than 3-year bond. It made her feel much better to know that we were anticipating a 20-year bond. Now, if that is not the case and we cannot have a 20-year bond, it seems to her after talking with a couple of folks from the corps of engineers that they seem to think that there is some legitimacy to having a greater bond.

City Attorney Scott stated he thinks she is right; there is legitimacy from our perspective. He would love to see a longer bond.

Councilmember D'Aversa stated that there could be one provided.

City Attorney Scott stated no, the information that he has received this week both directly from the bond representative and talking to E. R. Snell, who deals with this very often with all the projects. They do a number of projects like this and also from the applicant and the issue is that the insurance companies that service sureties on these bonds it is just not commercially viable for them to deem a business or bonding something for that length of time because there is just so much risk involved.

Councilmember D'Aversa stated and at the risk of being argumentative because that is not her intent here, it is her intent to get us to closure on this as well. She is just really concerned with three years. It just does not seem long enough to her.

City Attorney Scott stated he would love to be able to recommend longer than that, but that is what we did last week when we looked at 20-years and that was his recommendation at the time.

Councilmember D'Aversa stated she guessed her question would be are we certain that we have talked to enough groups, talking to one salesman with all due respect is not enough in her mind.

City Attorney Scott stated he spoke to him and then spoke to the gentleman at E. R. Snell and they assured him that they had also attempted to contact the Travelers, which is the surety company that they deal with and he believes that issued the bond, that we are being given and they specifically asked Travelers if they could get one, they could not give them one. He believes that they also contacted other companies. He thinks that what we are running into is that it is just commercially impractical or impossible to get a bond of that duration. All he can tell you is what information he has been given on this subject.

Mayor Lockwood stated he can also add that he had that same situation in his business and he would concur.

City Attorney Scott asked Councilmember Lusk could he also provide input.

Councilmember Lusk stated he will confirm that in fact he spoke with Joe Dolph with St. Paul Travelers. He is the actual regional bonding manager for St. Paul, E. R. Snell's bonding company. He spoke with him Tuesday night and he confirmed that it is uncommon in the bonding or the surety industry to provide bonds longer than two years. He said he might talk with Snell to get three years, and if he understands correctly that is what we are getting. Under normal circumstances if the City of Milton were to have let this contract themselves, we probably would only get a 1-year warranty bond on the project. He thinks what we are getting here is an extended warranty beyond what is common in the industry and the facility is already in use. It is almost one year old and, in fact, what we are getting is in excess of three years.

Mayor Lockwood asked if there were any other questions.

Councilmember Zahner Bailey stated yes sir, she does have some questions. First, she would just like to thank the applicant also one for the time that has gone through to date, and also for the presentation this evening. She would echo the thanks to City Attorney Scott obviously for his time in trying to look into this. She would like to frame her questions and to say she too would like to bring closure so her questions are directed specifically at the risk to the City of Milton making sure that the responsibility, she thinks that we have is that we are sure that we have really thought through all the different avenues and the possibilities. It is not at all to say that we do not want closure for this because in deed she does. If you will bear with her, these questions are tied to making sure that at least based on her need for due diligence

that we have gotten through some of these questions. As it relates to the bonding, and she does not know if everybody in this room is clear about what was decided at our last Council meeting, but we voted as a Council. She did not support the 20-year bond, but the Council voted 6-1 to approve. She thinks it was 5-2 last week that we were going to accept a 20-year bond, and the reason we are talking about this again tonight is that 20-year bond could not be achieved or at least we did not think it could be. One question she has, because obviously just a week ago we felt that a minimum of 20 years was necessary to mitigate some of that financial risk that comes with the risk of maintenance and potentially having to replace or work on that bridge. Her question is and we maybe need to reach out to others and she does respect that two and three year option for bonds, but are there some other options that the corps of engineers can suggest might be some other avenues. She would at least wonder if we would not want to pursue that, and also wondered if CH2M Hill would be a resource for us given they are a multibillion dollar organization with whom we have a contract. Would that be someone to whom we would want to look to help us with this question? Just a thought given all that they are involved with, would they have any avenues for seeking potentially a longer than 3-year bond, just a question, does not know the answer. The other option she is wondering about is, in addition to the bond, she knows there have been some discussions about escrowed bonds for a period of time.

City Attorney Scott stated that option has been explored and it was not an attractive option to the applicant.

Councilmember Zahner Bailey stated she understands that, but again her questions are protection for the City, and she hopes he understands that Mr. Duncan understand that we are trying to find that balance. She understands why perhaps you would not want to put \$254,000.00 in escrow, but is there some middle ground that would allow us to bridge the gap between the 3-year and 20-year bond, which a week ago we said we needed at least 20 years. She asked is there some combination of bonding with cash escrowed bonds that would help better protect the City in the instance the financial risk and/or the insurance liability. That is something that she is not sure has been explored in terms of a combination approach. Those are questions that she does not know we have answers for, but those are questions that she has tonight hearing how we are going to find a solution that is a win for everybody and she thinks that is the goal.

City Attorney Scott stated he can answer her final question.

Councilmember Zahner Bailey stated that is not her final question, but...

City Attorney Scott stated well the latter question.

Councilmember Zahner Bailey stated yes, sir.

City Attorney Scott stated he had a fair number of discussions with Council for the applicant as well as Mr. Duncan and since last Thursday and we have explored options of a smaller amount of escrow. We have explored the \$254,000.00 in escrow, and we have explored trying to get longer bonds. He thinks we have covered basically all the options that you have suggested and he does not think that there are any left that we have not explored. The bottom line here is that they have presented this to us as the best thing that they can economically provide to us and that is their presentation and he guesses to a certain extent to use a television colloquial it's their final answer.

Councilmember Zahner Bailey stated she guesses the difference is, and she thinks what is being asked of us is to abandon an old road that would allow for 12 lots to continue to be developed. That is obviously the leverage point from the City of Milton so the deal she thinks is to come up with an agreement that meets everybody's needs and mitigates the risks to the City. This will help with regards to reverse condemnation the mention that if that road were to remain public and it is a liability if the bridge were to remain in the ownership with either the Manor or the LLC tied to the homes or to the golf course. If you can help her understand that issue because when you say that there would be no value with the public continuing to use that and yet we would not have given value to that. Now her question is she thinks we are giving value when we abandon an old road that allows for that road to be utilized for apportionment of 12 lots that are being developed.

City Attorney Scott stated he wanted to explain.

Councilmember Zahner Bailey stated thank you.

City Attorney Scott stated what he was saying to you was he could not recommend, he would strenuously object, if the Council chose to continue with the resolution without reconsidering it in which we agreed to the abandonment already. If we were not receiving the dedication in exchange for it, he would tell you that if you were to reject the dedication. Now you need to reconsider the motion to abandon, and he knows that that is not what the applicant wants to do. He hopes that that is not where we go, but from the legal perspective if we were to abandon without receiving something in exchange for it, he believes that you would be guilty of abiding with a gratuity.

Councilmember Zahner Bailey stated and that is what she is trying to understand the difference because she does want to pursue that abandonment. Obviously, that is in your best interest as the developer and continuing with those 12 lots that are already under, effectively kind of under construction based on that site plan. Her question is just that there is obviously value in that and she just wanted to make that clear that we are the City providing value to the Manor, those LLCs because we are abandoning that road. Obviously, in exchange for that under the negotiation with Fulton County was that road had to be rebuilt. What she is trying to understand though is there not another approach in the mix of that that avoids the reverse condemnation issue and those legal concerns. As an example and she is trying to think outside of the box a little bit, so let us just say that we were to abandon that road given the access to those lots. We then just need to have that public road dedicated, but could we not still have the structure beneath the road remain with either the Manor Golf Course or the Manor or the development corporation so that the financial risk of the bridge and that culvert remains. We would still accomplish the abandonment, and we will still dedicate it.

City Attorney Scott stated that was along the lines of the original idea that staff had had in dealing with this, and that was to try to secure some kind of right-of-way or easement over the top of the road. What we found and what they presented to us last week was that because of the particular type of construction of this road, you cannot physically separate the road surface from the rest of the structure because it is all one piece.

Councilmember Zahner Bailey stated and she guesses and she is no construction engineer and she does not claim...

City Attorney Scott stated he is not either.

Councilmember Zahner Bailey stated but given that she knows it a monolithic pore in terms of the components of that, but then there is still asphalt and other road elements.

City Attorney Scott stated he does not believe there is, he believes it is all concrete.

[Multiple inaudible responses and comments]

City Attorney Scott stated is there asphalt on top of it, okay, well...

Councilmember Zahner Bailey stated to her there is some separation between the road materials and the other and, again, she just wanted to make sure that we are really thinking through all the options.

City Attorney Scott stated he thinks from the applicant's perspective it is not economically or liability speaking desirous for them to allow the overpass to remain in operation at all if it is not dedicated while the rest of the roadway is. He means if he was them he would probably, and he thinks that they have already indicated to him, that if we did not want to take the bridge they may have to consider barricading it and..

Councilmember Zahner Bailey stated and she thinks that is where we have to grapple with this, and she does understand that the applicant, she really does understand that applicant would prefer not to have that liability.

Lex A. Watson, II, Esq. stated the liability that we are talking about is not the liability for the maintenance of the bridge. It is the liability if somebody is injured on the bridge.

Councilmember Zahner Bailey stated and that is a great point and that is why she is grappling. She does understand that and thank you. Just as a Point of Clarification, and she thinks that that is the two issues that she struggles with and that we all have struggled with some in this last week, but there is a maintenance issue. The cost of that maintenance is that we as a City will assume tonight if we abandon and dedicate and take on the liability both maintenance and otherwise. She is concerned that we with the 3-year bond are not mitigating that maintenance and long term replacement risk or fixed risk along with the liability issue.

Councilmember Thurman stated she would like to ask what are the odds that this will need maintenance in the next 25 years and are we spending more. If you look at the probability of it needing maintenance and the cost of the maintenance it would need, are we spending more in attorney fees to get this thing settled than it would probably work out to be if we did it that way.

Transportation Engineer Jones stated for 25 years the attorney fees might win.

Councilmember Thurman stated that is kind of what she was thinking. It looks like we are dragging this on to the point that, we are looking at absolute worse case scenario of what could possibly happen. If the bridge is properly structured most likely the chances are extremely slim that within 25 years there is going to be any maintenance and asked is that correct.

Transportation Engineer Jones stated very little, if any.

Councilmember Thurman stated so we are spending more in attorney fees discussing this and with them working back and forth then probably the maintenance would be.

Transportation Engineer Jones stated for 25 years, yes.

Councilmember Thurman stated okay.

Transportation Engineer Jones stated she thought it would be helpful to explain what staff tried to do because they did recognize the fact that it is two separate structures. Upon further investigation, they did find that they are touching, and that means that the concrete culvert has the asphalt sitting on top of it. Usually, a road has the EAB underneath it, gravel, and then some compacted sub-grade. One thing that maybe would have been ideal in the Fulton County approved plan would have been to have had on the vertical profile to have had a dirt separation between the two. That would have solved probably 100% of this conversation, but that was not how the original plans were approved. That was just not the design that was chosen and so the design that was chosen makes the two touch. Because the two touch that means that the bridge component of it, basically, if there were to be icing on a bridge, which is very common, that is why Community Services is so proactive anytime it gets cold and wet, the liability would have actually stayed with the owner of the culvert. That is a problem because the owner of the road is usually who should be liable for that and so you get into a legal problem. She does not know the exact particulars, but that was the problem why we could not do that particular wording of a dedication which staff was suggesting a right-of-way excluding the private road, excluding the culvert, but because of that particular design and then the legal issues of the liability for icing and things like that, that was the particular reason why they could not do that. This is why we are here now.

Councilmember Zahner Bailey stated thank you Abbie.

Mayor Lockwood asked any other questions?

Councilmember Zahner Bailey stated she guesses it comes back to whether or not there is a balance between that 3-year bond and some portion of escrow that would give us a balance between what was approved by a majority last week and the 3-year bond. There still seems to be a gap that would be possible to bridge if all parties were so inclined to come up with a solution.

Councilmember Thurman stated she understood that all parties had really worked on a solution and had not been able to come up with one, is that not the case?

Lee Duncan stated first of all he is here to help solve the problem and he is trying to get to a point where you all can get this off the table here and move on to other things. He can honestly tell you that between his time, the time of his staff, and the time of your staff, we have exhausted this issue relative to sureties. He has provided with your City Attorney a list of all the sureties that we have contacted during the last three weeks to discuss this issue. We have explored options, as far as cash requirement is concerned, and that is just not a reasonable request in our opinion at this point in time. We do not consider that realistic. He asked why should we be leaving that amount of money at risk for a 20-year window or whatever it might be. If you want to explore the option of exempting property taxes during that period of time, you are holding money that might be something we should be discussing.

Councilmember Zahner Bailey stated well her suggestion was actually to bridge the gap between the Mayor's suggestion last week of a 20-year bond and a 3-year bond.

Lee Duncan stated what we are presenting to you is from a design standpoint a premier structure. We are providing you with the best that is available in the market. We have eliminated three potential roadway interchanges that he suspects at some point in time in the very near future you have been wrestling with signalizing them, putting signage up there, speed brakes, and many other number of things, right turn lanes, left turn lanes or whatever else, all of that is gone. Each intersection probably represents about a quarter million dollars to you and your budget. Now, what you have is a structure that is paid for, you have a road that has been realigned, the old roadway there was very, very dangerous, the speed limits have been revised on the roadway, and the roadway has been designed to accommodate those speed limits. They have worked very closely and have been involved with this and staff to make sure that what was going in out there was going to benefit the community. They worked with the people that live on Longstreet, and tried to address their concerns and he thinks they did. He thinks that City Attorney Scott put it the best way. This is our best and final offer and he thinks they have done everything they can humanly possible to deal with this and to provide you with what he would consider to be truly an asset, truly an improvement over what you would have inherited from Fulton County.

Mayor Lockwood stated he would like to say, and he certainly agrees with Councilperson Zahner Bailey's concerns, but he would like to say that this is not a situation that we want to be in. It is not a situation we would have picked, if the City of Milton had started this process it would have been done differently, but at this point we just have to make a decision and move on and make the best decision. We can move on and also with the knowledge that hopefully this will not happen in the future. We are certainly not setting a precedent and we will have to from now on out. This situation will not happen on private property. At this point, he would like to ask if we have a motion to consider the consideration of the resolution accepting the dedication of Longstreet Road in light of the new information received.

Councilmember Thurman stated so moved.

Councilmember Lusk stated he will second that.

Councilmember Thurman stated and that is with the 3-year warranty.

Motion and Second: Councilmember Thurman moved to accept the consideration of the resolution accepting the dedication of Longstreet Road in light of the new information received. Councilmember Lusk seconded the motion.

City Clerk Marchiafava stated Mr. Mayor, she has public comment item and asked did she want to speak before the final vote.

Rose Prestianni stated she would love to because quite honestly she is absolutely disappointed. She feels like it is a shame, and is a travesty that we have been herded from Fulton County. She had written a letter to the Council. Her closing remarks is we need to find out how we got into this so we do not get into it again. While she appreciates Mr. Duncan's remarks, but honestly from a City of Milton resident they appeared more self-serving. She thought we were looking for win-win. She thinks that this is a bend and what we are going to be doing is accepting liability. She and her husband took a long time to find this stretch of Longstreet. She was almost inclined to say why not we just close it. She is not sure what the impact would be, but it appeared to be a dangerous road. She did not see any speed signs, and did not see any warning of the curve. They were actually concerned for safety when they drove on this because it was elevated significantly elevated. To call this a culvert under this road is slightly disingenuous. She means it is an overpass, and we ought to call it what it is. When you tell people it is a culvert, they think that water is running under it. She is sure a lot of water could run under it, but it is just very disappointing to be in this situation. She appreciates the hard work that everyone has done, but she does think that the City now has to be very concerned for safety, and liability. It is more of maybe accidents on this curve, icing in winter. To Councilmember Thurman's point, she thinks we may end up with long-term expense. She is sure we have spent a lot of time and money on attorney fees, but she certainly hopes we learn from this. As a City of Milton when we get requests for other things going forward as she knows we will later this evening, we act with a lot of deliberation, and take our time to make decisions. We should think long term, not short-term gain, which is the feeling that many of us are getting on this Manor Road because everything we have seen here, or at least everything she has seen or heard tonight was yes this great road. She does not see how much it is serving the benefit of the City of Milton, but it is a beautiful community, the Manor, and there is no question about that. Now they have a beautiful overpass and a beautiful private road and a beautiful private golf course. She thinks they will be quite happy with these results, but as a citizen of the City of Milton she is really quite disappointed. Thank you for the opportunity to share those concerns.

Councilmember Thurman stated she believes this is the fourth or fifth time at the Council meeting that this has been discussed. She believes that we have not rushed through any kind of decision on the matter.

Rose Prestianni stated we have inherited this and the real issue is we have obviously...and she suspects that as time goes on we will uncover more beautiful gifts that Fulton County has delivered to our door step in the middle of the night. Thank you very much.

Mayor Lockwood stated thank you and he would like to say, he thinks we have a motion and a second. It is a situation that we have inherited and it is not something we would have picked. In the future we will act differently, so at this point is there any more discussion.

Councilmember Zahner Bailey stated she would just say that she does appreciate everybody's work and thinks that sometimes these issues require legal consideration just to say that the questions this evening are not what drove our attorney's involvement. The attorney's involvement was driven by the fact that there were issues between the applicant and Fulton County and now the City of Milton. We did not have a choice as to whether or not our attorney spent some time evaluating the situation. The issue tonight and at our last meeting was whether or not we are appropriately for the City of Milton handling the financial and other liability tied with this issue before us. She knows there is a first and a second, and her only statement would be that she does think another option would have been to include the 3-year bond with some portion of a cash escrow. She would like to clarify it was not cash out of pocket, but it was an amount of cash in escrow that she was suggesting to bridge the gap between what was an approved Mayor and Council decision last week for the 20-year bond. What is before us tonight is only a 3-year bond, so she was trying to find a solution to bridge

that 17-year gap to help mitigate the cost of what today was a \$254,000.00 bridge overpass and what the future cost of that would be both for maintenance, as well as for potential replacement. While she appreciates the fact that we can all hope that in 25 years we have no maintenance cost, she does not think that we should be making decisions for our City based on a hope and a dream. We need to be more responsible in that, so regardless of this vote, she would have hoped that we would have considered both a bond and at least some portion of escrowed funds for a portion of this period. She surely was not suggesting that it was for perpetuity.

Mayor Lockwood stated thank you, is there any other discussion?

Vote: There was no further Council discussion. The motion passed (5-2), with Councilmember Zahner Bailey and Councilmember D'Aversa Williams voting in opposition.

Mayor Lockwood stated that concludes this special called meeting, is there a motion that we adjourn.

ADJOURNMENT

Motion and Vote: Councilmember Lusk moved to adjourn the April 26, 2007 Special Called meeting at 6:12 pm. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously.

Date Approved: August 2, 2007

Jeanette R. Marchiafava, City Clerk

Joe Lockwood, Mayor

that 17-year gap to help mitigate the cost of what today was a \$254,000.00 bridge overpass and what the future cost of that would be both for maintenance, as well as for potential replacement. While she appreciates the fact that we can all hope that in 25 years we have no maintenance cost, she does not think that we should be making decisions for our City based on a hope and a dream. We need to be more responsible in that, so regardless of this vote, she would have hoped that we would have considered both a bond and at least some portion of escrowed funds for a portion of this period. She surely was not suggesting that it was for perpetuity.

Mayor Lockwood stated thank you, is there any other discussion?

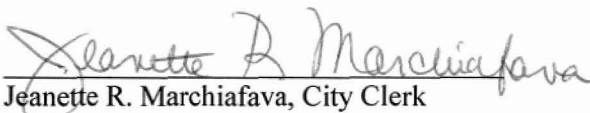
Vote: There was no further Council discussion. The motion passed (5-2), with Councilmember Zahner Bailey and Councilmember D'Aversa Williams voting in opposition.

Mayor Lockwood stated that concludes this special called meeting, is there a motion that we adjourn.

ADJOURNMENT

Motion and Vote: Councilmember Lusk moved to adjourn the April 26, 2007 Special Called meeting at 6:12 pm. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously.

Date Approved: August 2, 2007



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor