

Regular Meeting of the Milton City Council

Thursday, January 10, 2008

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The Regular Council Meeting of the Mayor and Council of the City of Milton was held on Thursday, January 10, 2008 at 7:00 p.m., Mayor Joe Lockwood presiding.

INVOCATION

Reverend John Wolfe of Birmingham Methodist Church gave the invocation.

CALL TO ORDER

Mayor Joe Lockwood called the regular meeting of the Milton City Council to order. .

ADMINISTER OATH OF OFFICE TO THE NEWLY ELECTED OFFICIALS

Chief Municipal Court Judge Barry Zimmerman administered the Oath of Office to the newly elected officials: Julie Zahner Bailey, District 2, Burt Hewitt for District 4, and Alan Tart for District 6.

Mayor Joe Lockwood thanked Judge Zimmerman for his service to the City and welcomed the newly elected officials.

ROLL CALL

City Clerk Marchiafava called the roll.

Councilmembers Present: Councilmember Julie Zahner Bailey, Councilmember Bill Lusk, Councilmember Burt Hewitt, Councilmember Tina D'Aversa and Councilmember Alan Tart were present.

Not present for roll call: Councilmember Karen Thurman - She was present for the rest of meeting.

PLEDGE OF ALLEGIANCE

Mayor Joe Lockwood welcomed the Sons of the American Revolution who will lead us in the Pledge of Allegiance with the assistance of some Boy Scouts.

Mayor Joe Lockwood thanked everyone who was present tonight. He stated the City really appreciates the citizenry being present.

TEN MINUTE RECESS:

Mayor Lockwood called for a 10-minute recess to meet the newly elected officials.

RECONVENE:

Mayor Lockwood reconvened the regular meeting.

APPROVAL OF MEETING AGENDA

City Clerk Marchiafava read Agenda Item No. 08-453.

Mayor Joe Lockwood asked if there were any other items to be considered. There were no additional items.

Motion and Vote: Councilmember Lusk moved to approve the meeting agenda. Councilmember D'Aversa seconded the motion. The motion passed unanimously.

PUBLIC COMMENT

Mayor Joe Lockwood asked if there was any public comment.

City Clerk Jeanette Marchiafava stated that there was no public comment tonight.

CONSENT AGENDA

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Mayor Joe Lockwood stated that there was no Consent Agenda.

REPORTS AND PRESENTATIONS

Proclamation of Thanks to Eddie Moore for his contribution to the Milton Public Safety Department.

Interim City Chris Lagerbloom stated that before he reads the Proclamation, he asked Mr. and Mrs. Eddie Moore to come forward.

Mayor Joe Lockwood wanted to whole-heartedly thank Mr. Eddie Moore and his wife, Sabrina. He met them last year and it is amazing what the Moores have done for the City. They have worked hard and made the donation of Milton's police dog. We have asked Officer Kiel to show us some demonstrations with our police dog, but pointed out that it is amazing what he has already done for the City of Milton.

Interim City Manager Chris Lagerbloom read the Proclamation of thanks to Eddie Moore.

Whereas, the City of Milton, Georgia is an incorporated City in Fulton County, Georgia and is a City charged with delivering municipal services; and

Whereas, the Mayor and City Council have taken an aggressive stance on crime prevention, the public safety by supporting the Milton's Department of Public Safety and by supporting the concept of creating a police canine team; and

Whereas the use of canines in police work dates back to the 14th century at St. Marlow, France where canines were used to guard dock installations and today over 7000 canine teams exist around the United State; and

Whereas, some of the many advantages of creating a canine team include public relations, narcotics searches, police officer safety and dedication to duty; and

Whereas, the City of Milton located DaSilva, a fully certified and amazingly credentialed police canine from Louisiana and appointed to Officer Brian Kiel as the handler for this inaugural canine team; and

Whereas, the police canine team was made possible because of the benevolent contribution of Mr. and Mrs. Eddie Moore, who purchased DaSilva; and

Whereas, because of Mr. Moore's contribution the safety of the City of Milton, the citizens, the visitors and its police officers was greatly enhanced.

Now therefore, we, the Mayor and City Council of the City of Milton hereby recognize Mr. Eddie Moore and Mrs. Sabrina Moore and offer their heartfelt gratitude for the amazing contribution to the City and its citizens.

Given under my hand and the seal of the City of Milton, Georgia on the 10th day of January 2008.

Officers Kiel and DaSilva gave a demonstration of their police skills.

ZONING AGENDA

City Clerk Jeanette Marchiafava stated that there was not a zoning agenda for this evening, but she will be announcing the first presentation items.

FIRST PRESENTATION

City Clerk Marchiafava read the following First Presentation items.

Agenda Item No. 08-454

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U07-007/VC07-012 – To request a Use Permit (Article 19.4.3) for Agricultural Related Activities to add a 3,240 square foot training building and to request a four-part concurrent variance to use the existing parking area within the 100-foot setback near the west property line (Article 19.4.3.13.4); 2) To increase the maximum building setback from 20 feet to 250 feet for the new building (Article 12h.3.5.C.1); 3) To allow parking between the existing buildings and the street (Article 12H.3.5.F.3); and 4) To delete the 75-foot buffer and 10 foot improvement setback adjacent to AG-1 and/or residentially developed properties (Article 12H.3.1.C.2).

Agenda Item No. 08-455

RZ07-020/VC07-015 - To rezone from O-I (Office-Institutional) to O-I (Office-Institutional) to expand the existing day care facility from 2,000 square feet and 38 students to 3,600 square feet at an overall density of 2,647 square feet per acre. The applicant is proposing a 1,600 square foot building separate from the existing structure. The applicant is also requesting a concurrent variance to reduce the 25-foot buffer and 10-foot improvement setback to a five-foot landscape strip along the east and west property lines from the existing building for a distance of 150 feet.

Agenda Item No. 08-456

An Ordinance regarding 2008 meeting and work session dates and times for the City of Milton City Council.

Motion and Vote: Councilmember D'Aversa moved to approve the first presentation items. Councilmember Thurman seconded the motion. The motion passed unanimously.

UNFINISHED BUSINESS

Mayor Lockwood stated that there is no unfinished business.

NEW BUSINESS

PUBLIC HEARINGS

ALCOHOL BEVERAGE LICENSE APPLICATIONS

City Clerk Marchiafava read agenda item no. 08-457:

Approval of Alcohol Beverage License Application for the Union Restaurant located at 14275 Providence Road, Milton, GA 30004. Applicant is Bob Fisherman for Consumption on the Premises- Wine/Malt Beverage/Distilled Spirits.

Finance Manager Stacey Inglis stated that the staff would like to recommend the approval of the issuance of an Alcoholic Beverage License to The Union Restaurant for consumption on the premises of wine, malt beverages and distilled spirits. This restaurant is located at 14275 Providence Road. They have met all of the conditions that are required by the City and staff recommends approval.

Mayor Lockwood stated that the Council has received some requests or concerns from some citizens and neighbors that live there but he feels confident that between the City Attorney, the staff and he is going to ask Tom Wilson to confirm if the applicant has met all of the application requirements.

Community Development Director Tom Wilson stated that the applicant has met all of the setback requirements and distance requirements required in the alcohol beverage ordinance. A lot of people are concerned about perhaps the church property across the street. He would like to say that although he understands it is perhaps owned by a church it is not a church use. There is no use permit that has ever been approved or granted for that property which would indeed create the church use.

Community Development Director Wilson added that the ordinance really says that the 600 feet or the 200 yards is from the primary building on the church property. Since there is no primary building nor is there a church use established on that property, and the applicant meets that 600 foot setback rule.

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Mayor Lockwood asked if there were any questions for staff.

Councilmember D'Aversa stated that she would like to ask City Attorney Mark Scott, even though it maybe a little redundant, if Tom Wilson could confirm and maybe for the community's sake per se to have a comment on how they go about making a decision to grant or deny an alcohol license such as this one requested.

Community Development Director Wilson stated that he had a copy of the alcohol ordinance in front of him and he was in the process of turning to the correct section on the application.

Councilmember D'Aversa stated that the main reason for that is because they have gotten some comments and most of the comments are the concern about allowing an alcohol license on this property. She wants to make sure that everyone understands exactly why the Council makes the decisions that they make. They are not being arbitrary at all and she thinks one will hear from the ordinance and from the City Attorney confirming what Tom Wilson and the Stacey Inglis have already noted.

City Attorney Mark Scott stated that he would very briefly run through the section of the ordinance regarding the licensing qualifications if that is what Councilmember D'Aversa would like for him to do.

The first requirement is that the licensee has to be a citizen of the United States or a lawful resident alien. The second is for the applicants, all the partners, officers and the majority of stockholders all have to comply with the provisions that one will be hearing about in just a moment. No person shall be granted a beverage license unless it appears to the satisfaction of the City manager or his designee. That person, partners in the firm, officers and directors of the corporation have not been convicted or plead guilty or entered a plea of *nolo contendere* or have been released from parole or probation from any crime involving moral turpitude, illegal gambling or illegal possession or sale of controlled substances. It goes on the other moral offenses. In other words, one cannot have been guilty of any crimes involving basically moral corruption and morals and that sort of thing.

For the record, the City Manager's discretion in this process is quite detailed and it is quite involved. No license for the sale shall be granted to any person convicted under any Federal, State or local law of any felony within 10 years of the filing of the application. It is unlawful for a City to be involved in the organization requesting the license. No license shall be granted to any person who has had any license issued that was revoked within two years previous. The City Manager may decline to issue a license when any person having ownership interests in the operation or place of business or controller of that place does not meet the same character requirements as were spoken of earlier in terms of the requirement for the license. All licensed establishments must have and continuously maintain in Fulton County a registered agent for process so they can be served with a law suit if necessary. All applicants must be of good character. Operators, managers, clerks or other employees shall be of like character. Corporate or firm applicants should have a good business reputation. The license application may be denied to any applicant for any alcohol beverage license where it appears that the applicant would not have adequate financial participation in the proposed business. In other words, they want to make sure that the person who is applying for the license is not just a straw party for someone else who is within the organization who might not meet the qualifications otherwise.

The City Manager, at his discretion, might consider any extenuating circumstances which may reflect favorably or unfavorable on the applicant, the application or the proposed location. If in his judgment circumstances are such that granting of the license would not be in the best interest of the public, such circumstances could be grounds for denying. For purposes of this chapter, a conviction or plea of guilty or *nolo contendere* shall be ignored as to any offense in which the defendant was allowed to avail themselves with the First Offender Act. In other words, the first and second provisions give one a free pass basically. Applicants shall be approved via ordinance by the City Council. Applicants must meet public hearing requirements. The advertised notice is as follows: The applicant must post a notice on the premises fifteen days prior to the date of the hearing. The sign will be no less than 12 square feet painted or printed in black letters of three-inches in height against a white background. It shall state:

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1. That they have made an application to sale alcohol beverages in the City of Milton.
2. The type of the license.
3. The time and place of the public hearing.
4. The names in which the license shall be issued.
5. It has to be placed on the location more than three feet from the ground and no more than ten feet from the roadway.

The City Treasurer shall prepare and cause to be published the notice of the pending application in the newspaper and that shall include the location or street number of the premises where the applicant proposes to conduct the activities. The applicant shall pay for the publication cost. The license shall be issued following the approval of the City Council. It does reference State law, which is OCGA33-3-2.

The bottom line in all of this is if one meets all of those requirements, the City basically does not have a whole lot of discretion to deny unless there is an awfully good reason.

Councilmember Thurman asked if the applicant were here tonight. She asked if Mr. Fisherman was the owner of The Union Restaurant proposed to be built there on the site.

Applicant Robert Fisherman stated that there were two addresses for the building, 21970 and 14275 Providence Road. He stated that he has met all of the qualifications of the City and also with the State Department. Everything else that he has done has been approved. He has already been issued a temporary license by the City of Milton.

Councilmember Thurman asked if Mr. Fisherman had gone through the necessary procedures to review and confirm.

Applicant Robert Fisherman stated that he has spent a long time this week just dealing with these particular alcohol beverage licenses. He can tell the Council that he is comfortable at this point that this application does meet the Alcohol Beverage Ordinance.

Councilmember Thurman stated that was exactly the affirmation that she likes to hear. She thanked Mr. Fisherman for that diligence.

Councilmember Zahner Bailey asked again for confirmation and she knows that due diligence has been thorough this week, but as a matter of record and given some of the questions that the Council has had, if Tom Wilson or Mark Scott would like to comment. She knows they have had some inquiries as to whether or not the distance from bus stops would preclude the allowance of a permit. It is her understanding that it would not because the bus stop is not considered school property. She asked either Director Wilson or City Attorney Scott to confirm that for the record.

Community Development Director Wilson stated that was correct. The issuance in the Alcohol Beverage License Ordinance specifies that that is the case. It is not considered school property.

Councilmember Zahner Bailey confirmed that the actual distance from the school property is not from a bus stop, which she thinks is considered part of the right-of-way. But again, for the benefit of the public, she thinks that it is important that the Council confirm that tonight.

Another point she wanted to clarify is that given that this parcel was confirmed as C-1 decades ago, she thinks it is important to affirm with both staff and legally, if they can confirm, if there were ever any conditions placed on this parcel that would have precluded or prohibited the issuance of this license this evening.

Community Development Director Wilson stated that there is not. He stated that Councilmember Zahner Bailey is indeed correct. There was a 1977 ordinance. There are no conditions that would preclude this use.

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Councilmember Zahner Bailey clarified for the record that this was not a rezoning because this is already an established C-1 parcel and it is because of that pre-existence with no conditions, that this is not a prohibited use under any conditions. She just wanted to make sure as an affirmation. And, this is probably a question for both Tom Wilson and Mark Scott, but could they both just confirm that all requirements for public advertisement were indeed met - whether that is any addresses or names of the applicant. She asked if they could make that confirmation for the record.

Community Development Director Wilson stated that he was going to turn back to what he read just a moment ago.

City Attorney Mark Scott stated that it is his understanding, having confirmed with the City Manager that the sign was posted. He did ensure that was the case. He has seen it with his own eyes. It is their understanding that it was reported to Shalonda Brown that the correct date and time of the hearing was on the sign. He confirmed today that the advertisement was run correctly in the Milton Herald as well. He also confirmed looking at the ad copy that the address was correct on there as well as the name of the applicant.

Mayor Lockwood stated that there has been a lot of concern about there being a church property near there and he would like to have Tom Wilson confirm what he understands is that even though a church may own the property there has not been a use permit. It is not permitted for a church and there is not a church there now. So, legally and technically that does not count.

Community Development Director Wilson stated that Mayor Joe Lockwood was correct.

Mayor Lockwood stated that his point to that is he wants everyone to know that the City certainly takes all of its citizens' concerns seriously, but they also have to go by the guidelines of the law too.

Mayor Lockwood asked for public comment.

City Clerk Jeanette Marchiafava called Reverend Gary Martin to speak.

Reverend Gary Martin, 16173 Hopewell Road, Milton, GA, stated that he was speaking tonight as the pastor of Providence Baptist Church. He is also a Milton resident. There was a part of him that said that when he came down here that he was coming for absolutely no reason because the Council already had their minds made up. A part of him also said, oh no, that is not the case. This is a new City and they are really trying to listen to the public. He stated that they have reaffirmed his initial thought. Their minds are made up before he says anything to them. He heard something about the sign placement being within ten feet of the street.

Community Development Director Wilson stated that is what the ordinance requires.

Reverend Martin stated that the sign is nailed to the building and he knows for a fact that is more than ten feet from the street. His only objection is the location to the church. As this City was established the one thing that he kept hearing is how they wanted to keep this what it always was. When he reads the papers and articles about new development, the great lengths the City goes to, to ensure the new architecture has the right look. The horse farms and the communities remain as they were. This really seems contradictory to that. As far as the church and the cemetery, this is diagonally just across the street. The neighborhoods that are there, they seem to carry on something that generations ago was started, and he feels reasonably certain that for those living generations ago, that the distribution of alcohol back in the presence of the church and the community is not what they would have done.

He thanked the Council for their time. He keeps hearing about all the work that they do and he realizes they work hard and also realizes that their salaries are not great. He would like to think that as people of the community they do still have a voice. A voice other than just whether or not they voted for Council or whether or not they would vote for them again next time. He would like to think that the concerns of the community were the most important.

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Melinda Martin, Cowart Road, Milton, GA, stated that she was a 65-year resident of Alpharetta and a year-and-a-half resident of Milton. This pouring license is being requested within a short distance of a church. It is being requested in a short distance of a school with at least 20 buses going in and out of that school drive each day and probably 200 cars. Each car and each bus has students in it and they may possibly be the Council's students. This is a two lane road that they have asked for this restaurant. She asked if the Council want their children on the road when someone has just stopped and maybe had a drink or two. There are three stop signs within a very short distance and people run the stop signs now. If they have to availability of the alcohol, one knows that there are chances of more accidents. This is a commercial property that was established way before her time. It was a grocery store, but they did not sell alcohol. She has no objections to the restaurant it is the alcohol that she objects to. She hopes that when the Council considers their vote or if they vote and it sounds like they do not even have to vote, as it sounds like it has already been approved, but she hopes they consider their child might be on a bus or in one of those cars that someone that does not have control of their vehicle. She thanked the Council for listening to her and hopes that they will consider what she has said.

Rose Prestianni, 105 Providence Westpoint, Milton, GA, stated that she lives about a mile from the restaurant with its proposal before the Mayor and City Council. She stated that the speakers ahead of her have raised some very good points. She lives within about a mile of this location and she was actually was concerned when it became what seems to be a fairly significantly sized restaurant when a location that looks to her like it at one time was a spot zoning. This is surrounded by all residential, churches, schools, residential and very little leeway on the road. The road conditions are not good. It is unclear if there is even an area for parking. They have been led to believe that they will be shuttling people to a remote parking lot to get to this establishment. She is very concerned about allowing a liquor license at this location. She believes that Mark Scott stated that there was discretion that one could take. The location might not be in the best interest of the public. She heard this evening that this is not a location that calls for a liquor license whether it the applicant has met the alcohol and beverage ordinances or not or has even been improved by the State Department of Revenue. This does not seem to be an appropriate location for the consumption of alcohol. The location does not seem to be one that is in the best interest of the community to allow consumption of alcohol in such a close proximity to schools, children, churches and homes.

She hopes the Councilmembers' minds are not completely made up. She applauds their researching this thoroughly and perhaps there is some more research that needs to be done. Perhaps the vote should not be taken this evening, but maybe some more thought and some additional input should be put into this matter. She thanked the Council for their time this evening for possibly considering that alternative.

City Clerk Marchiafava stated that completes public comment.

Mayor Joe Lockwood asked for a motion and a second at this time.

Councilmember Thurman asked if they could ask a few more questions before the motion.

Mayor Lockwood stated would need a motion to discuss it.

Motion and Second: Councilmember Zahner Bailey put forward a motion to defer until their January 24th meeting. Councilmember D'Aversa seconded the motion.

Discussion on the Motion:

Councilmember D'Aversa asked if the sign was nailed to the building and whether they could confirm the distance of ten feet.

Applicant Robert Fisherman stated that out in front of the building is grand-fathered asphalt. Out in front of the road is fourteen feet off the road, so there is no place to place a sign through the asphalt.

Councilmember Zahner Bailey stated that is a Point of Order for staff. The question is in regards to the ten feet.

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Interim City Manager Chris Lagerbloom stated that he conferred with the City Attorney while they were having that discussion. He thinks he is more capable of answering the question.

City Attorney Mark Scott stated that his concern with denying on that basis alone would be that ---

Councilmember Zahner Bailey stated that her motion was to defer.

City Attorney Mark Scott responded that with either deferring or denying, obviously deferring does not have the impact of denying. He believes that the applicant would probably be successful with the argument that he has substantially complied, that all of the other notice requirements have been complied with. If it is just a matter of the distance from the road, then that is not a material breach of the notice requirements. He does not think that that would mitigate against deferring necessarily, but it would make a problem with denying.

Councilmember Thurman inquired when the applicant was planning on opening the restaurant.

Applicant Robert Fisherman stated around the 24th or 25th of January.

Councilmember Zahner Bailey stated that there were actually some other restaurants in the area that have opened without necessarily having their licenses in place at the time of opening.

City Attorney Scott stated that they also have a temporary license already.

Councilmember Zahner Bailey clarified it was a temporary license to pour.

City Attorney Scott stated that was correct.

Councilmember Zahner Bailey asked that for the issuance of a deferral, if they were hypothetically to approve the motion on the floor this evening for a deferral, and asked what would that do to a temporary license.

Applicant Robert Fisherman asked what they are deferring for.

Councilmember Zahner Bailey stated as a Point of Order, she thinks they are in discussion.

Councilmember Thurman stated that she thinks there is still some misunderstanding regarding what the Council's role is in this is, and the fact that they make a decision whether or not...it is her understanding that if they denied this case eventually and the applicant sued, in the City Attorney's professional opinion it might be difficult for the City to defend a lawsuit because they have met all of the qualifications. She asked if that was correct.

City Attorney Scott stated that he would say that is correct, especially considering under Section K the City Manager, in his discretion, has recommended...he is sure that that is not what Interim City Manager Chris Lagerbloom wants to hear, but has recommended favorably towards the applicant.

Councilmember Thurman clarified that basically he has met all of the qualifications so this really is not the Council's decision as to whether or not they feel like they ought to be able to serve alcohol there as much as whether or not they have legally met all of the requirements. She asked if that was correct.

City Attorney Scott stated that he thinks that is a fair statement.

Councilmember D'Aversa mentioned that is why she would say that even if it is technicality, if they have not met that 10-foot requirement, she would just like to see us meet all of the requirements beyond a shadow of a doubt under the law. She would hate to do anything one way or the other that would not have met all of the requirements.

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Mayor Lockwood stated that he would like to ask Tom Wilson what his thoughts are the 14 feet, 10 feet, whatever....he believes the applicant said that there was 14 feet of asphalt versus being a technicality.

Community Development Director Wilson stated that Robert Fisherman is absolutely right. Everything in front of that building is asphalt and appears to be pretty much pavement or pavement recovery zone. It obviously does not meet the exact letter of that ordinance. He thinks a fall back to this issue would be to re-advertise until we do meet the full letter of that ordinance and come back to the Council at a later time.

Mayor Lockwood asked if the applicant meets all of the requirements, and can agree with what a lot of the citizens have said, but on the flip side, we just cannot change the rules both ways. If they have met all of these requirements what is the Council accomplishing by deferring this over four feet on the sign. If it is just going to make the applicant come back and if they have met all of the requirements again, is the Council wasting their time or are they wasting the City's time and are they wasting the applicant's time.

Community Development Director Wilson stated that he thinks they would be right back here sometime in the future with the very same decision to make. He stated he does not think any of this is relevant to their decision-making on this issue.

Councilmember Tart stated that two statements were made in the comments. One of them had to do with the distance from the schools and one of them had to do with the distance from the church. He asked Tom Wilson to clarify for public record what that actual distance is and what the ordinance says - first with the school and then with the church.

Community Development Director Wilson stated that it is .6 miles to Summit Elementary School. It is 1,260 feet to the First Baptist Church. The requirement is 600 feet setback from those particular items.

Councilmember Thurman inquired if that was from main door to main door.

Community Development Director Wilson stated that it was.

Councilmember Thurman clarified that they were more than twice the requirements.

Community Development Director Wilson stated twice the requirement from the church.

Councilmember Thurman stated that they were even further than that from the school.

Community Development Director Wilson stated that they were over a half a mile from the school.

Mayor Lockwood inquired if there were any other questions for staff or comments.

Councilmember Zahner Bailey stated that she had a question for Mark Scott. She knows that he was mentioning when he was reading the ordinance and he was talking not so much about the discretion of the City Manager, but he started to talk about location. We heard from one of the public comments about concern about location to the roads. Obviously, not within those requirements of the yards from church and the school, but what latitude is there within the ordinance, if any, with regards to assessing the appropriateness of that location separate from the specific distances that were just mentioned.

City Attorney Scott stated that the actual section states that the City Manager at his discretion may consider any extenuating circumstances which may reflect favorably or unfavorably on the applicant, which isn't the case here obviously. The application for, and this is the key, the proposed location of the business if in his judgment circumstances are such that granting of the license would not be in the best interest of the general public, such circumstances may be grounds for denying the application.

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Councilmember Thurman asked Mark Scott what he thought would be those circumstances that would qualify for that?

City Attorney Scott stated that he could certainly see if they were public safety issues, if there were issues questioning the morality or the business relationships with the applicant himself. If there were a church 601 feet from this site as opposed to 1200, he could see those things. He stated what concerns him about this is that if we were to deny on the basis of the discretionary and extenuating circumstances portion when it more or less meets all of the other requirements, we could face a lawsuit saying that they had abused their discretion.

Mayor Lockwood stated that at this point what he is hearing is the only grounds for deferral would be cause of the technicality of the sign being 14 feet back versus 10 feet back.

Councilmember Zahner Bailey stated that her motion was two-fold. One was the 10-feet, and in an abundance of caution and because their goal is to always provide the public the opportunity for as much public comment as possible, if we had not met the letter of that law, she still believes that whether we want to call that a technicality or not, it is incumbent upon this Council, even if it means they come back and have the same discussion in two weeks, it would be incumbent on them to meet that requirement. But, in addition to the sign and distance requirement, she thinks that a few weeks would allow for perhaps just a little bit further look into that discretionary element, and if from a legal perspective if there was anything that would preclude what they have just discussed based on the comments that they have had this evening about location. In an abundance of caution, they have done everything in their power on behalf of their citizens to make sure that in fact the law and the ordinance has been thoroughly reviewed with the discretionary elements of public safety. Those would be the two based upon which she would ask for a deferral until the 24th.

Mayor Lockwood asked if there were any other questions of staff and stated that he knows there has been a lot of due diligence done.

Councilmember Zahner Bailey stated that she appreciates that.

Interim City Manager Chris Lagerbloom stated that he did not have anything further other than the fact that he can tell the Council that they thoroughly looked through the application. He drove by the site yesterday just to confirm that the date was current or that the date was correct on the sign. Frankly, he does not know, other than putting a hole in the blacktop, where one could permanently mount the sign on that piece of property. One could probably put up some type of sign, but that is certainly a decision for them to make and if that is what he wants to do they will certainly work with the applicant.

Councilmember Zahner Bailey stated that just on that point, Mr. Lagerbloom, she thinks that out there on the edge there may be some spots that are not asphalt that a small sign might...one could probably put some stakes in the ground. At the edge there is a mailbox kind of on both ends. She thinks that many people on this Board are familiar with that because they had signs out there historically. But, there may be some places that hopefully that there decision tonight does not come down to whether or not they are trying to decide if the asphalt would allow for signage. There should be an abundance of precaution from an advertising standpoint.

Councilmember Thurman stated that her question is if there is any additional information to be gained from it, then she would be very much in favor of deferring it. If there is no additional information to be gained from it, we have promised as a Council to try to make our meetings more efficient, to try not to be here until 2 o'clock in the morning, etc. Bringing something back just to rehear it again when there is not going to be any additional information to her is not being more efficient. Is there any additional information that they we would gain from deferring?

Interim City Manager Lagerbloom stated that the only information that he would indicate that one would have two weeks from now that we do not have tonight is that they could tell them that the design was within 10 feet of the road. He stated he did not anticipate any other new information.

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Mayor Lockwood stated what he is hearing, and he knows staff has done their due diligence, is that they could be here making the same decision two weeks from now.

Motion: At this point, there is a motion and a second on the floor so he would like to go ahead and move the previous question.

Councilmember Zahner Bailey stated that she does have one question....

City Attorney Scott stated that if the Mayor has moved the previous question and there is a second, there is no discussion. The question about moving the previous question, one now goes to a vote and it takes two-thirds to pass.

City Clerk Marchiafava called for all of those in favor of the motion. She asked for those that were opposed to please raise their hand.

City Attorney Scott stated they are not voting on the motion. They are voting on the previous question of ending the debate.

City Clerk Marchiafava asked the Council to revote if the motion is clear.

Vote: The motion to end the debate was approved unanimously.

City Attorney Mark Scott said they would now vote on Councilwoman Julie Zahner Bailey's motion to defer for two weeks until the 24th.

Vote of Motion to Defer: The motion failed 5-2, with Councilmember Zahner Bailey and Councilmember D'Aversa voting in opposition.

Mayor Lockwood stated that they were now back to square one. He asked for a motion and a second.

Councilmember Zahner Bailey asked if there was now no motion on the floor.

Mayor Lockwood stated the floor is now open and needs a motion and a second to either approve or deny this application.

Motion and Second: Councilmember Bill Lusk moved to approve this application. Councilmember Thurman seconded the motion based on the fact that it appears the applicant has met all of the legal requirements.

Discussion on the Motion: Councilmember Zahner Bailey stated that right now the license that is before the Council is for malt, wine, and distilled spirits. What is the opportunity for us to request that that be downgraded to a request of malt and beer and to remove the distilled spirits as an option given the motion to defer failed. First of all do we have a legal opportunity to do so? She knows that is not the application that is before them. She asked do we have the authority vested in them as a Council to make that decision.

City Attorney Scott stated that he believed the Council would have to ask the applicant if he would agree to that change.

Councilmember Zahner Bailey asked if it was up to the Council or do they really have to get into a discussion outside of Council?

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City Attorney Scott stated that he thinks if the applicant would agree to that in order to expedite the process certainly that would be up to him. He believes the applicant could ask the City then to amend his application for non-distilled spirits.

Mayor Lockwood stated that he sees the applicant shaking his head no, so at this point they have a motion and a second. They either need to vote on this or have it amended.

Councilmember Zahner Bailey stated that the second part of her question separate from the applicant's potential to consider an amendment to his application was. Would another option be if we were to have to opportunity, if we had so chosen to defer, could we have during that deferral had discussions to reduce it to a request for two of those three elements. Would that have been an option?

City Attorney Scott stated that the Council certainly could have had that discussion.

Councilmember Lusk asked Tom Wilson if he had an approximate idea of the distance between Milton's Restaurant, Northwest Middle School, Milton's restaurant and Milton High School. Additionally. He stated that in the next application we are looking at Foster's Restaurant on Broadwell Road.

Community Development Director Wilson stated that the really cannot tell you the linear feet, but he can pretty much assure him that it is less than .6 miles from Milton's to the school, Milton's to Fosters, and Milton's to Azio's. Those distances are all smaller than the .6 miles in this case.

Councilmember Thurman stated that she had a question regarding Councilmember Zahner Bailey's original question. She asked can we deny him malt if he has made that request and is that something that legally could be supported, or if he makes an attempt and qualifies for the beverage license, is it all or nothing?

City Attorney Scott stated that given the fact that he has applied, and he is not exactly 100 percent sure of the answer for that and would have to check to be absolutely sure, he cannot sit there and tell the Council that they can downgrade it. The application is for wine, beer and distilled spirits and Sunday sales. It is that simple. Sunday sales are legal under the Fulton County ordinance. He cannot tell the Council that they can legally downgrade it. But, given that that is his application, that is what is before them and he is not prepared to advise the Council that they could downgrade it at this point in time.

Mayor Lockwood stated that he thinks it would need to be denied and then the applicant could re-apply. He asked if anyone had anything different to say.

Councilmember Tart stated that he would like to make a comment to the citizens. He stated he has heard what they are saying, but he also knows what the ordinance says and the ordinance is what it is. If we are looking at distances to churches and distances to schools and distances to residential, all of SR 9 is going to be within close proximity to residential. Crabapple is going to be in the same situation where it is in close proximity to residential. And again, the ordinance is what it is. We are not here to debate on the ordinance right now. We are here to debate on the liquor license itself, the application. If we were to deny this based on just because the citizens do not want it to go forward, we could be putting ourselves in a legal predicament and would have to use tax dollars to fight that legal predicament and we would lose. That is what they have to go up against here.

Mayor Lockwood stated that at this point he has a motion and a second to approve this license. He asked if there was anymore discussion. There was no further discussion.

Vote: The motion passed 6-1, with Councilmember D'Aversa voting in opposition.

City Clerk Marchiafava read Agenda Item No. 08-458.

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Approval of Alcohol Beverage License Application for Margbest LLC d/b/a Fosters Grille of Crabapple located at 12540 Broadwell Road, Suite 1103. Applicant is Michael O'Keefe for Consumption on the Premises-Wine and Malt Beverage.

Finance Manager Stacey Inglis stated that this applicant, Michael O'Keefe, d/b/a as Fosters Grille of Crabapple has met all of the conditions of the ordinance and staff recommends that Council approve the alcohol license as presented before them.

City Clerk Marchiafava stated that there was no public comment.

Mayor Lockwood asked the Council if there were any questions. .

Councilmember Zahner Bailey clarified that this license was specifically for beer and wine and no distilled spirits.

Finance Manager Inglis stated that was correct.

Councilmember Zahner Bailey stated that similar to the question of Councilmember Lusk, in this area not only have the distances been verified in terms of schools but also in terms of churches, all of those have been affirmed. She pointed out for the record that this obviously is in the midst of a number of residences, but there is nothing in the ordinance to preclude a license like this from being approved regardless of distance from residences.

Finance Manager Inglis stated that was correct as long as they are zoned properly they meet that requirement.

Mayor Lockwood asked for a motion and a second.

Motion and Vote: Councilmember Lusk moved to approve the Alcohol Beverage License Application for Margbest LLC d/b/a Fosters Grille of Crabapple located at 12540 Broadwell Road, Suite 1103. Applicant is Michael O'Keefe for Consumption on the Premises-Wine and Malt Beverage. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously.

Five-Minute Recess:

Interim City Manager Lagerbloom asked Mayor Joe Lockwood if it would be his pleasure if the Council could recess for about five minutes prior to the next item.

Mayor Lockwood stated that he did not have a problem with that. He called for a five minute recess.

Reconvene

Mayor Lockwood reconvened the regular meeting.

Interim City Manager Lagerbloom stated that the National Weather Service has issued a tornado watch in effect until 1 a.m. on Friday. He is looking at the website and looks as though in about ten minutes they are about to see some pretty good rain. He stated that this is a precautionary and should we be forced into some type of a situation where we need to take cover, Charles Millican near the exit sign will lead that effort. t. There are a couple of designated safe zones in the building so if they need to evacuate, please look for Charles and he will lead everyone.

City Clerk Marchiafava read Agenda Item No. 08-459:

Approval of Alcohol Beverage License Application for I Love New York Pizza d/b/a as I Love New York Pizza at 980 Birmingham Road, Suite 200, Milton, GA 30004. Applicant is Neredya Blandon for Consumption of the Premises- Wine and Malt Beverage.

Interim City Manager Lagerbloom stated that is requesting on staff's behalf that Agenda Item No. 08-459 be deferred until January 24, 2008.

Mayor Lockwood asked Chris Lagerbloom if he has had discussions with the applicant on deferral.

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Interim City Manager Lagerbloom stated that he did. He just spoke with the applicant and explained why. He stated that he could bore the Council with the details now, but with this weather coming he would rather wait two weeks.

City Clerk Marchiafava stated that there was no public comment.

Motion and Vote: Councilmember Thurman moved to defer until January 24, 2008 the Alcohol Beverage License Application for I Love New York Pizza d/b/a as I Love New York Pizza. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Lockwood stated that the public hearings are now closed.

City Clerk Marchiafava read Agenda Item No. 08-460:

Approval of a Resolution authorizing the issuance of a tax anticipation note in the amount of \$5,450,000.00.

Resolution No. 08-01-06

Finance Manager Inglis stated that she was very excited to bring to the Council the bid responses that they received. They received three bid responses for the quarter tax anticipation note. She wanted to take some time to explain what a tax anticipation note is. Basically, it is a short term borrowing tool that allows the issuing government, which is Milton, to borrow against anticipated tax revenue. Since the City does not actually bill for taxes until the fall, we need operating revenue to carry them until they receive that revenue. To help us to that we are allowed to issue tax anticipation notes and we are anticipating that they need \$5,450,000. They received three quotes from three different financial institutions. They received one from BB&T. Their quote was 3.1 percent. We received a quote from Bank of America. Their quote was 2.767 percent. And the last quote, the winning bid, was Wachovia and their bid was 2.56 percent. That is significantly lower than the interest rate that the City had last year, which was 3.84 percent. The City is very excited about that. The City is using Troutman-Sanders Active Bond counsel on this. Last year, we used another firm, Hunt & Williams, and their fee was \$8,000. With Troutman-Sanders, Milton got the same deal that Johns Creek got last year and they are charging the City \$2,500. This is also a significant savings as well. She recommended that Council approve the 2.56 rate.

Motion and Vote: Councilmember Thurman moved to approve the Resolution authorizing the issuance of a tax anticipation note in the amount of \$5,450,000.00. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously.

City Clerk Marchiafava read Agenda Item No. 08-461:

Approval of a Resolution Amending Resolution No. 07-02-12, a Resolution Appointing Members to the City of Milton Planning Commission.

Resolution No. 08-01-02

Community Development Director Wilson named the appointees to the Planning Commission. Jennifer Fletcher from District 6 has been nominated for a term commencing January 10, 2008 and ending December 31, 2011.

Councilmember Tart stated that he would like to present to the Council Jennifer Fletcher. She has a great background in real estate and he is looking forward to her serving District 6. She lives at 3334 Galley Walk in Milton.

Councilmember Hewitt stated that he would like to reappoint Fred Edwards to the Planning Commission. Fred Edwards is the retired president of Reed-Prost and a long-time resident of the area.

Mayor Lockwood added that the Planning Commission is a very important Board and they make a lot of decisions for the future of Milton. The City appreciates their help, commitment, dedication, and time. He is glad to have them as a part of the City and working with the Council.

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Motion and Vote: Councilmember Thurman moved to approve the Resolution authorizing the issuance of a tax anticipation note in the amount of \$5,450,000.00. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously.

Administration of Oath: Mayor Lockwood administered the Oath of Office to Jennifer Fletcher and Fred Edwards.

Addition to the Agenda

Councilmember Zahner Bailey stated that she would like to suspend the meeting to add Curtis Mills be reappointed to the Planning Commission to the agenda. He is not present to be sworn in, but they might as well go ahead and get him approved and the Mayor can swear him in right before the Planning Commission meeting so that the Council does not have a special called session.

Motion and Vote: Councilmember Thurman stated that she would like to make a motion to add the reappointment of Curtis Mills to the Planning Commission that to the agenda. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously.

Approval of the Reappointment of Curtis Mills to serve as Planning Commission Board Member, District 2.

Motion and Vote: Councilmember Thurman moved to approve the reappointment of Curtis Mills to the Planning Commission, District 2. Councilmember Tart seconded the motion. There was on Council discussion. The motion passed unanimously.

City Clerk Marchiafava read Agenda Item No. 08-462:

Approval of a Resolution Amending Resolution No. 08-01-01, a Resolution appointing members of to the City of Milton Northwest Fulton Overlay District Design Review Board.

Interim City Manager Lagerbloom stated that staff is recommending that we defer this item because they did not have any new appointees. If it is the pleasure of Council, we can defer this item because there are no additional appointees at this point.

Motion and Second: Councilmember Zahner Bailey moved to defer the stated that she would like to put forth a motion to defer the Resolution Amending Resolution No. 08-01-01, a Resolution appointing members of to the City of Milton Northwest Fulton Overlay District Design Review Board until January 24, 2008. Councilmember Tart seconded the motion.

Discussion on the Motion:

Councilmember Lusk asked if they were still calling this City of Milton Northwest Fulton Overlay District Design Review Board. He thought they had changed it to the City of Milton Design Review Board.

Community Development Director Wilson stated that he believes they did.

City Clerk Marchiafava stated that when the agenda was published initially, they did put Northwest Fulton Overlay on it. Once made aware of the change, the name of the Board was corrected. That change was made when Kathi Cook was reappointed recently.

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

City Clerk Marchiafava read Agenda Item No. 08-463:

Approval of a Resolution Amending Resolution No. 07-03-20, a Resolution Appointing Members to the City of Milton Board of Zoning Appeals.

Resolution No. 08-01-03

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Community Development Director Wilson stated that regarding the nomination for the Board of Zoning Appeals, Scott Kilgore from District 2, Todd Chernik from District 4, and Heidi Sowder from District 6 have been nominated for reappointment to the Board of Zoning Appeals for a term commencing on January 10, 2008 and ending on December 31, 2011.

Mayor Lockwood asked the Council if they would like to introduce their nominee.

Councilmember Zahner Bailey stated that she would like to thank Scott Kilgore for his service over the last year and for the commitment for the next four years. He has been in this community a long time and is very committed and has been very dedicated to that process. She appreciates, as does this entire board, his service. She also thanked his family for the commitment as well.

Councilmember Hewitt stated that he would like to thank Todd Chernik for being willing to serve again in 2008. He has been in the area for about 13 years and is the president of Sapphire Consulting.

Councilmember Tart stated that he was honored to be able to reappoint Heidi Sowder. She has a long history of championing for this area and he appreciates her service in the past. He looks forward to working with her in the future.

Mayor Lockwood stated that he would like to reiterate what he said earlier about the Planning Commission. The BZA is a very important board and makes decisions that will shape the City of Milton. The Council certainly appreciates all of their time and effort and look forward to working with them again in the future.

City Attorney Mark Scott stated that the staff is delighted that the members have been reappointed because the City has an outstanding BZA.

Motion and Vote: **Councilmember Thurman** moved to approve a Resolution Amending Resolution no. 07-03-20, a Resolution appointing members to the City of Milton Board of Zoning Appeals by reappointing Scott Kilgore for District 2, reappointing Todd Chernik for District 4, and reappointing Heidi Sowder, for District 6. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously.

Oath of Office

Mayor Lockwood administered the Oath of Office to Scott Kilgore, Todd Chernik, and Heidi Kilgore at this time.

City Clerk Marchiafava read Agenda Item No. 08-464:

Approval of a Resolution Amending Resolution No. 07-04-29, a Resolution Appointing Members to the City of Milton Construction Board of Adjustment and Appeals.

Community Development Director Wilson asked if there were any nominations for the Board of Construction Appeals.

Councilmember Zahner Bailey stated that she would re-nominate Mike Doyle, who has served on that board for the last year.

There were no other nominations.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution Amending Resolution No. 07-04-29, a Resolution Appointing Members to the City of Milton Construction Board of Adjustment and Appeals and Reappointing Mike Doyle for District 2. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously.

(Clerk's Note: Mike Doyle was not present. Oath of Office will be administered at a later date.)

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City Clerk Marchiafava read Agenda Item No. 08-465:

Approval of a Resolution Amending Resolution No. 07-02-16, a Resolution Appointing Members to the City of Milton Board of Ethics.

Resolution No. 08-01-04

Interim City Manager Lagerbloom stated that District 6's nomination is Howard Drobos for a period commencing January 10, 2008 and ending the December 31, 2008.

Councilmember Zahner Bailey stated that she would like to reappoint Joe Whitley as her appointee to the Board of Ethics.

Councilmember Tart stated that he would like to introduce to the Council to Howard Drobos. He stated he was honored that he will be serving from District 6. He has experience in ethics and is actually a member of the Ethics Committee of the Georgia Society of CPAs. He has been an advocate in their neighborhood and he appreciates his service there as well.

Motion and Vote: Councilmember Thurman moved to approve Resolution No. 07-02-16, a Resolution appointing members to the City of Milton Board of Ethics by appointing Howard Drobos from District 6 and reappointing Joe Whitley in District 2. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

Oath of Office

Mayor Lockwood administered the Oath of Office to Howard Drobos at this time. Mr. Joe Whitley was not present.

(Clerk's Note: Joe Whitley was not present. Oath of Office will be administered at a later date.)

City Clerk Marchiafava read Agenda Item No. 08-466:

Approval of a Resolution Amending Resolution No. 07-03-24, a Resolution Appointing Members to the City of Milton Bike & Pedestrian Path Committee.

Interim City Manager Chris Lagerbloom stated that we do not have any nominations for this Committee at this time. Staff is requesting to defer this item to the January 24, 2008.

Motion and Vote: Councilmember Thurman moved to defer to the January 24, 2008 meeting a Resolution Amending Resolution No. 07-03-24, a Resolution Appointing Members to the City of Milton Bike & Pedestrian Path Committee. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously.

City Clerk Marchiafava read Agenda Item No. 08-467:

Approval of Appointments to the City of Milton Comprehensive Plan Advisory Committee.

Community Development Director Wilson stated that Kim Horne from District 2 has been nominated to be reappointed for the term commencing January 10, 2008 and ending December 31, 2011. He asked if there were any additional nominations.

Motion and Vote: Councilmember Thurman moved to approve the Resolution Amending Resolution No. 07-06-45, Appointing members to the City of Milton Comprehensive Plan Advisory Committee and reappointing Kim Horne from District 2. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously.

City Clerk Marchiafava read Agenda Item No. 08-468.

Approval of Resolution Regarding the Future of Providence Park.

Resolution No. 08-01-17

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Councilmember D'Aversa stated that she was going to defer to have the City Attorney review this Resolution and the status of Providence Park.

City Attorney Scott stated that he would like to bring the Council up to date initially on a conversation that he had today with County Attorney Jerry Clark regarding Providence Park, as well as some other issues. But as to Providence Park, he advised Mr. Clark that the Council would be considering this ordinance tonight, and he informed me of what he was going to do regarding Providence Park. Assuming he said that he was going to go to Commissioner Riley to make sure he had her blessing and stated that he was completely confident that they will have their blessing on this. It was his understanding that Mr. Clark intended to seek Commissioner Riley's blessing to initiate drafting a lease for the City of Milton to begin operation at Providence Park at a nominal rental rate that would include indemnification of liability for the ongoing clean up there, but allow Fulton County access to it.

He also recommended that as they negotiate this they also consider, as we have had some discussion before about this, making an application to the Department of Environmental Protection under what is called the Georgia Brown Fields Act. This would allow the City to take possession of that property and thereby avoid liability for the previous contamination on that site. It is a \$3,000 application fee unfortunately, which is a bit of money for the City, but it is probably worth it. It would be a little bit more of an insurance policy in terms of anything else that might be found on that site in the future. He thinks it would put the City in a lot better position for the future in case something else would happen or it would be discovered that they were not aware of and then we would just go through the application process.

The subdivision idea is out at this point. He did not think that the City should necessarily proceed with that because for one thing, Jerry Clark's opinion is that they did not think that the Board of Commissioners in Fulton County would necessarily prefer that idea. He stated he also thought it would cost the City a lot more money than the lease idea would cost the City. He thought that doing the lease was probably the most time expeditious way of handling it. It would really be a matter of just the attorneys meeting and working out the details of the language and then both the Board of Commissioners and the Milton City Council approving entering into the lease.

Mayor Lockwood asked if this would affect the future purchase price and can they lock that in?

City Attorney Scott stated that he will certainly take the position that he is going to want to have the lease payments applied towards the purchase price.

Councilmember Zahner Bailey stated that was already locked in.

City Attorney Scott stated that the purchase price was locked in by resolution.

Councilmember D'Aversa stated that based on the clean bill of health by the EPD, what she would like to see the City do is pursue that permit even though they are going to do the lien.

City Attorney Scott clarified that Councilmember D'Aversa meant the Brown Fields. He said he highly recommended that.

Councilmember D'Aversa stated that further to that they have a situation where Fulton County does not want to come out and retake control over the recreation building that Milton's City Manager and Public Safety staff have now determined that there is more vandalism happening now. A few months ago that was not even apparent. The City needs to take control of that recreation facility and go ahead and do what was minor cleanup, get it reopened, and get some activities happening there. The City should really take control of the park. She thinks that will go a long way as to showing Fulton County that the City has every intention of taking the park over and it will also give them the opportunity to offer some additional opportunities this summer. Between now and the time summer gets here maybe they can do some things with the YMCA or with some of the other groups like the Boy Scouts. The other thing would be that they have had some discussions with other Commissioners, who they know supports this and they have met

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with. We have met with Commissioner Riley out at the site with Commissioner Pitts and Chairman Eaves, who are very much in favor of the City of Milton going ahead and possibly taking control of the park. They see it as something that is very positive for the City to do. She thinks it is certainly a win-win situation.

Mayor Lockwood stated that he wanted to provide a little information to the public. In a nutshell they have Providence Park, which is 55 acres above Providence Road, and Fulton County had owned it. There was some contamination that was found in the soil, someone had stored some barrels of some sort of chemicals way back. When the City became the City of Milton, they purchased other park land, but they did not purchase that park land because of the contaminated soils until the time when Fulton County cleaned it up. It will take several years to get a clean bill of health. They are trying to move forward so the City can use that park land. We do not want to buy the land for the liability that it had, but it can make a lot sense for us to lease the property, and not use the polluted part until it gets a clean bill of health. Once that is done, the City can purchase it. It is a very nominal purchase price; it is about \$100.00 an acre and that is really just a token. Reason being, as Fulton County, the tax dollars pay for it so we should not pay for it again.

He commended Councilmember D'Aversa for working diligently on this and trying to get it so we can get some use out of it providing more park space for their citizens.

Councilmember Lusk asked if there was any sense of when they could consummate this transaction from the county's end.

City Attorney Scott stated that he did not get any sense because he wanted to get direction from Commissioner Riley. We know that she is behind this and there is no question that she is. He stated he thought it was really just a matter of how long it takes for the county attorney's office to be able to negotiate a lease. They are going to have to vote on it, but given that they have already passed the resolution and given the fact that there have three commissioners so far who are in support, he cannot imagine that Commissioner Lowe would not be in support of it as well. He believes they would have the votes based on what the Councilmember D'Aversa is telling him.

Councilmember D'Aversa stated that they have met with Commissioner Pitts last week and with Commissioner Usart right before the holidays, so she knows there is no benefit to them preventing the City from taking control. One thing that she and Councilmember Thurman were discussing too was that this is the right action to take rather than just going and taking control of the park. They want Fulton County to continue with the clean up even though they may be charging the City's special service fund for that clean up. That is in the City's best interest as well.

Councilmember Thurman stated that she thinks that they need to be careful with the way the lease is written in that right now it is her understanding that all of the expenses for the clean up are coming out of the special service district. She stated if the City is fortunate enough to get the legislation through that they hope to get through; the special service district check gets written over to Milton. Supposedly they will continue paying for those under another insurance fund. We want to make sure that Fulton County is the one that is liable for the additional clean up expenses and it does not come back to Milton. She knows that it could be pretty significant.

City Attorney Scott stated that would be one of the highest priorities in either a lease or an eventual purchase.

Councilmember Thurman stated that the sooner they can get the special service district fund, the quicker they can proceed.

Councilmember D'Aversa stated that Interim City Manager Lagerbloom may want to comment with regard to public safety. She stated he has been out to the building; they have taken a look at the building with regard to some of the opportunities that they might have to have some sort of police precinct on that side of town. It makes her feel really good that they might have those types of uses in that area.

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Interim City Manager Lagerbloom stated that he thinks it is a great location. He had the opportunity to tour it this week. He had a very good conversation with Debra Hewing at Commissioner Riley's office and they worked very quickly to get it at minimum security. The gate was unlocked and one of the windows was kicked out, but he had the opportunity to go out to the building. It is in as good of shape as one could imagine an empty building would be. It is usable with some work, but it would be a fine location for a police deployment area. They would not even necessarily need the whole building, but just a portion of it. There are a lot of different opportunities out there. He stated he thought that time is probably the important factor.

City Attorney Scott asked if everyone on the Council had a copy of the resolution in front of them.

Councilmember D'Aversa stated that the idea behind this resolution is that they wanted to make sure it covered some of these conversations in the past. They wanted to formalize that the Council all agrees that this was the right path for them to take and to pursue.

City Attorney Scott stated that he would read the Resolution into the record. He knows that they are running into a weather problem, but he wants to make sure that everyone knows what they are voting on.

The Council of the City of Milton hereby resolve while in Regular Session on the 10th day of January 2008 at 7 o'clock p.m.

Whereas, the portion of Fulton County now containing the City of Milton historically suffered from an extremely limited number of county park; and

Whereas, one of those county parks, Providence Park, was closed to the public in January 2004 because of a discovery of the materials stored in the park they contained hazardous waste and remains closed to this day; and

Whereas, in accordance with a Resolution of the Board of Commissioners of Fulton County, the City of Milton purchased all county park land within the City limits with the exception of Providence Park on January 2, 2007; and

Whereas, the City of Milton and its citizens would greatly benefit from the recreational activities which would be afforded to Providence Park when it is re-opened and operated by the City of Milton; and

Whereas City staff and Council members inspected Providence Park during 2007 with representatives of Fulton County and Commissioner Lynn Riley and found most of the land and the facilities contained within the park to be operable, safe and highly desirable for recreation; and

Whereas, the safety of the public and the interest of both the City of Milton and Fulton County and their citizens would be served well if that at the very least the City of Milton could receive, transfer or title to and assume operation of the areas of the park which are not contaminated; and

Whereas, either the transfer of the uncontaminated portions of Providence Park to the City of Milton or the transfer of all the park property to the City of Milton provided that appropriate legal measures be taken to ensure that the City does not incur liability for clean up, will represent the best stewardship of taxpayer investment and resources by ensuring the park facilities and properties are properly maintained, kept up and operated.

Now, therefore, be it resolved by the City Council and the City of Milton this 10th day of January 2008 that the staff and the City Attorney in the City of Milton are hereby directed to make all possible efforts to work with the elected officials and staff of Fulton County to either effect the

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transfer of the non-contaminated portions of Providence Park in the City of Milton, or take appropriate legal measures to transfer the entire park to the City of Milton in such a manner that the City does not incur liability for environmental issues contained thereon or resulting consequences thereof.

Councilmember Zahner Bailey clarified that the lease was a portion in one of those options.

City Attorney Scott stated that it was.

Councilmember Zahner Bailey stated that she had a question with regards to the lease negotiations and knowing that there was some damage to that building. She asked; does the City imagine that Fulton County, as part of that lease, would help fund any maintenance of that building?

Councilmember Thurman stated that if funded, it was coming out of the special services fund.

Councilmember D'Aversa stated that they need to be pretty tough with the fact that they do not want to pay very much for this space since the City is going to be acquiring it anyway. She thinks we should just take it and refurbish the building and just take control of it.

City Attorney Scott stated that he thought it will be very small.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution Regarding the Future of Providence Park. Councilmember Zahner Bailey seconded the motion. There was no further Council discussion. The motion passed unanimously.

MAYOR AND COUNCIL REPORTS

Mayor Lockwood stated that he would like to take this opportunity and welcome their two new Councilmembers Burt Hewitt and Alan Tart. He would also like to welcome back Councilmember Zahner Bailey, Councilmember Lusk, Councilmember Thurman, Councilmember D'Aversa, and staff back to 2008. He gave his best wishes for the City and the Council and the staff. He is sure they will just continue on what they have done last year and continue to move the City forward. He looks forward to a good year.

There were no Council reports at this time.

STAFF REPORTS

Interim City Manager Lagerbloom stated that they have a very small window here that they want to try to get them done in if they can. The severe weather is knocking at their door.

There is a Special Called meeting that he would like to publish for a week from tonight immediately prior to their workshop for the purpose of handling an item in Executive Session. The Executive Session is to discuss personnel. The intent is to publish a 5 p.m. Special Called meeting next Thursday for the half hour just before their workshop to discuss personnel.

EXECUTIVE SESSION

City Clerk Marchiafava read Agenda Item No. 08-469:

The purpose of the Executive Session is to discuss pending litigation.

Interim City Manager Lagerbloom stated that because of the pending weather the Executive Session that they have to discuss pending litigation, and this has been confirmed with the City Attorney, that they can also handle a week from tonight in that same special called meeting. His intent is that they would defer this Executive Session tonight and handle it at 5 p.m. next Thursday, January 17, 2008 for personnel and litigation.

Trees on Providence Road

Interim City Manager Lagerbloom stated that he and one other item that he needs the Council's direction on tonight that revolves around the trees that are planted in the right-of-way on Providence Road as it relates to that waterline extension, the transmission line. We worked with Fulton County through the direction of many of the Council right before the holidays. We will do our best to save those approximately 24 trees or to do something that would be better than just going in there and taking them out and putting the water main in. We evaluated seven different alternatives. One of those alternatives was just to have them taken out, but then six alternatives in addition to that spent quite a bit of staff hours and a good bit of time with the Mayor. What they decided to recommend was that they have the option of putting that water transmission line as near to the tree as they could without taking the tree out. In many circumstances the survival rate, at least in that action, was anticipated to be similar to the survival rate as if they had actually gone in with a spade and moved them and repotted them in the drought conditions. It was their attempt to at least have the majority of them saved and have a decent chance of success.

He stated that the county responded...*Thank you for input received back although it is our opinion that we are going to take the trees out and we are going to clear cut the right-of-way and any construction easement.*

This was not anticipated to start until January 15th although they saw earlier today that if the City of Milton had not taken the action that they took this afternoon, those trees would be gone at this point. They put a stop work order on the easement into the right-of-way permit that they had issued. At this point, the City has stopped their work because if they had allowed them to continue they would have had those trees taken out this afternoon.

What he was looking for with bringing this to the Council tonight is that the county has been very good with the action the City has taken. They have reached out to our staff and have been willing to come to a table on Monday to work on an equitable solution. He brings this up just to say that from the staff's perspective their equitable solution is the solution that they presented them that they worked on prior to the holiday - to put that water line as close to the trees as one can without removing the trees in as many circumstances as possible. What he really needs right now is the Council's guidance to say that is still a good solution in going to the table with that on Monday. That is certainly staff's recommendation. He just wanted to throw this in front of the Council if they should start getting phone calls as to why the county cannot do the work on those transmission lines; it is because the City has stopped their work until they can figure out what to do with that area.

Mayor Lockwood added that they need to keep in mind, even though they are doing everything they can to save these trees that they would probably have a 50/50 chance of making it with them putting the line in and trimming the roots back. The downside to that is that if the tree dies a year from now or six months or whatever, then the City has a liability then of removing the tree. The other downside is that even though they want to save trees and keep trees, those trees are in the right-of-way and could potentially cause an accident or a dangerous situation with a car hitting them. He wants to hear comments from the Council in providing direction. It is probably the middle of the road best decision in his opinion to try to save the trees. That way they are not changing the landscape at all. But, they have to realize that there is a good chance that the trees may die anyway.

Councilmember Zahner Bailey stated that she was in conversation with Mike Wallace and others of Fulton County going back several weeks. Mr. Wallace was very receptive to just not clear cut, but instead would work towards alternative to help save these trees and other specimen trees on Freemanville.

Interim City Manager Lagerbloom stated that Mr. Wallace was the one that sent the City the email.

Councilmember Zahner Bailey stated that she would love the opportunity to have that conversation because up until now, he said all along that they of course were willing to just work within it and try to stay away from that root system. To the Mayor's point, it is a great solution. At least it gives the opportunity and if they clear cut there is no opportunity to save the trees. And again, just for those who may not be familiar with it, it is the part of Providence where the developer of Holcomb Farms had intentionally planted trees on both sides. So there is between 25 and 30 trees going down both sides of the corridor. To clear cut one side is obviously going to remove the symmetry that was planted

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between eight and ten years ago. You do have citizens that have an expectation to continue to see those trees. She stated that as the Mayor pointed out, the Council does not have the authority to preclude them from being removed. The only thing she would say from a safety perspective is that there have been no accidents which have involved those trees over the last eight years that she is aware of. They have a lot of trees that have been naturally growing in the right-of-way and a lot of roadways, so she does not think of that as a public safety issue. Hopefully, the City can encourage the county, and there is no cost and additional hassle to them, and they just have to lay the water line without clear cutting the trees.

Interim City Manager Lagerbloom stated that was truly their intent on Monday if there is no opposition.

From a safety perspective just to put that on the record since safety has been talked about as a part of this, one of the things that staff said when they evaluated these trees in the right-of-way was they determined with their traffic engineer what truly a safe zone is with the speed of the road as long as there has been curb and gutter there. Those trees sit outside that safe zone. If there were not curbs and gutters there one would almost end up 25 feet off the roadway before he is out of the safe zone. The fact that there is curb and gutter there with the speed limit as it is decreasing towards the stop sign...just to put on the record he does not think that leaving them in is going to incur any extra liability from a safety perspective.

Councilmember Zahner Bailey stated that the only other footnote she would have would be that if he gives any push back on Monday...she would want to clarify what his concern is. The second would be that they would consider if they want to have the tree save use and take those trees to their park land. They are significant trees - about eight or nine years in growth. Before the City encourages someone just to clear cut them, it is old growth that has value and we have 200 acres of park land that could use them.

Mayor Lockwood stated that they did run some numbers and the cost is more than if they were to buy a comparable tree.

Councilmember Zahner Bailey stated that they would have to have somebody that was willing to help then.

Mayor Lockwood stated that obviously they want to save the trees. They just want to be realistic about it. He thinks now they have got their attention, he thinks they will come to the table and talk. He would like to hear anyone else's comments or if they are all okay on moving forward on the stance that they want them to try to save those trees and work around them. The City needs to realize that they take a little bit of liability that the trees may not live.

Councilmember Thurman stated that she thinks they are making the right decision. Obviously, there is no assurance in it, but they are doing what they can do to keep their trees.

Councilmember Lusk stated that he would go along with them also. His experience on sites and moving trees is one still takes a risk on their survival. Fortunately, they are in a dormant period where the trees are not requiring as much food. He thinks that if they take reasonable care to excavate along side of them without damaging the root zone too much, the trees would probably stand a better chance of survival than if they were to remove them to a tree save.

Councilmember D'Aversa asked if it would be possible to send someone out there to watch that effort. She said she would hate to have to do that. They have already reneged and basically gave them an indication that they were going to accept that stop work order process. Prior to the holidays they had this conversation only to come back to find out they may not have. They had to know that the City was serious about it, and we could do the stop work order.

Mayor Lockwood suggested that maybe Arborist Mark Law could go by different increments during the day.

Community Development Director Wilson stated that they needed to understand that this is a 22 or 24-inch diameter line. It is a big line.

Mayor Lockwood stated he appreciated everybody's efforts and believed the City is on the right track.

Councilmember Zahner Bailey stated that beyond those trees there were also seven other specimen trees that they identified when one goes north on Freemanville. Mike Wallace had gone out and observed those and of those seven, two of the seven had been identified as being able to save. Her only request to Chris Lagerbloom or Jim Seeba would be that any of those others, we would want to encourage them to do as they said that they would do to save as many of the trees as possible.

Staff Jim Seeba stated that some of them were improperly marked and were not in any danger at all.

Councilmember Zahner Bailey stated that the key was they did not want their subcontractor to go out and have a tree marked that was not even in the right-of-way and have them take down a specimen tree! She thanked Chris Lagerbloom for going and insuring that those trees that were specimens that were not in danger are not now going to be taken down. She asked that they make sure that the subcontractor does not mistake a tree that was identified and take one down that does not need to be taken down.

Mayor Lockwood stated that this was one of the advantages of being their own City of Milton versus having Fulton County watch Fulton County.

That concluded staff reports.

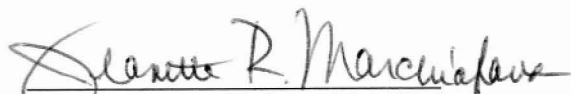
ADJOURNMENT


Mayor Lockwood requested a motion to adjourn.

Motion and Vote: Councilmember D'Aversa moved to adjourn the regular meeting. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously.

After no further business, the regular meeting of the Milton City Council was adjourned at 9:31 p.m.

Date Approved: March 3, 2008


Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor

